



CDFA
COMMUNITY DEVELOPMENT FINANCE AUTHORITY

COMMUNITY DEVELOPMENT BLOCK GRANT

Implementation Guide

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CHAPTER 2: NATIONAL OBJECTIVES AND ELIGIBLE ACTIVITIES

INTRODUCTION

This chapter describes the federal requirement that all CDBG-funded activities fulfill one of three National Objectives established by Congress. The following paragraphs discuss the process of selecting one of the three National Objectives. This includes the procedures for documenting that the Grantee's activities fulfill the selected objective.

Federal regulations stipulate that before any activity can be funded in whole or in part with CDBG funds, it must be determined that the activity (e.g., housing, public infrastructure) is eligible under Title I of the Housing and Community Development Act of 1974, as amended. In addition, CDBG requirements mandate that each funded activity must meet one of the three established National Objectives.

To achieve these goals, the CDBG regulations define eligible activities and the National Objectives that each activity must meet. As a pass-through entity for CDBG funds, CDFA is charged with ensuring that each project it funds 1) meets one of the National Objectives listed below and 2) is an eligible activity.

SECTION 2.1 MEETING A NATIONAL OBJECTIVE

The primary objective of the CDBG program is to develop viable communities by helping to provide decent housing, suitable living environments, and expanding economic opportunities principally for persons of low-to-moderate income.

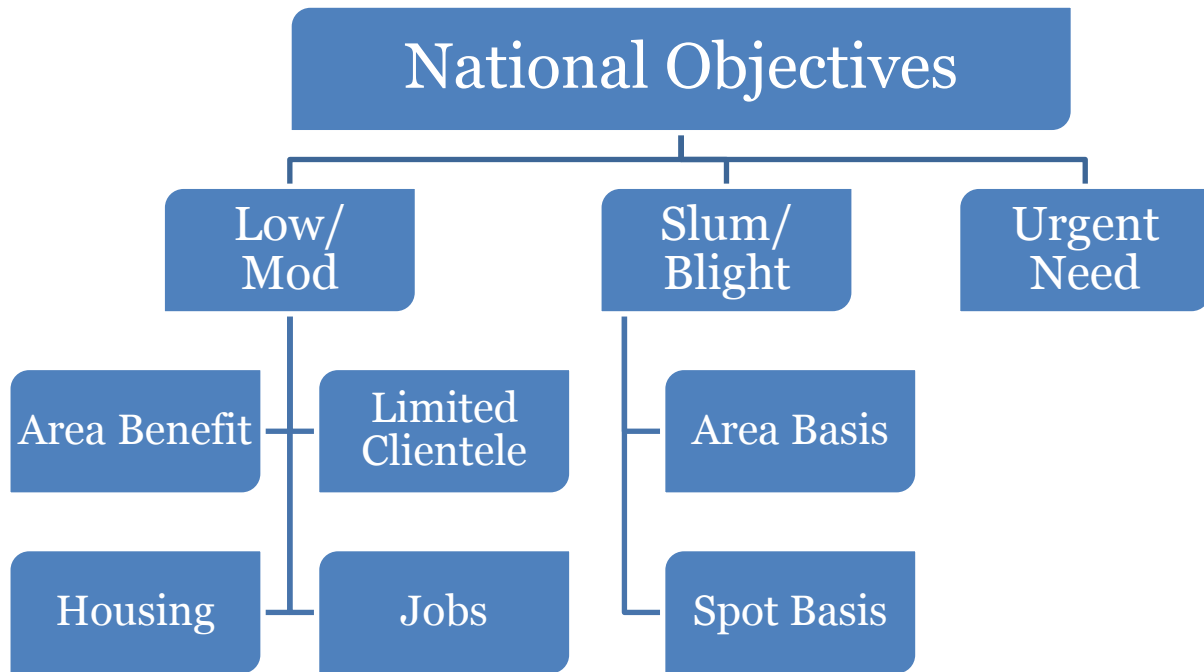
[24 CFR 570.483](#)

This section will describe the criteria which must be met and the records which must be maintained in order for an activity to be considered to have met a national objective of the CDBG program. The three National Objectives are:

1. Provide benefits to Low- and Moderate-Income persons,
2. Aid in the prevention or elimination of slums or blight, or
3. Provide funding for projects that have a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community.

Any activity that fails to meet one or more of the applicable tests for meeting a national objective is in noncompliance with CDBG rules.

The diagram on the following page illustrates the three HUD National Objectives and their methods for attainment.



Each of the three CDBG national objectives, and the subcategories of criteria for how that objective may be met, are described below. Because of statutory, and sometimes regulatory, limitations, some of the subcategories may not be used for each type of activity. These limitations are also reflected in the guidelines shown in this chapter.

SECTION 2.2 BENEFIT TO LOW-TO-MODERATE INCOME (LMI) PERSONS

The LMI National Objective is often referred to as the primary National Objective as HUD regulations require that States expend at least 70 percent of their CDBG funds on activities that benefit low- and moderate-income people as defined below. In addition to ensuring that the required percentage of CDBG funds serves people in the overall LMI category, municipalities must also ensure that the activities proposed, when taken as a whole, will not benefit moderate-income people to the exclusion of low-income people (see definitions below).

Activities that benefit LMI people are divided into three sub-categories:

- Area-benefit activities
- Limited Clientele activities
- Job creation/retention activities
- Housing activities

2.2.1. LMI AREA BENEFIT

For the LMI Area Benefit Activity (LMA), benefits must be available to all the residents in a particular service area in which at least 51 percent of the residents are LMI persons. The most readily available information on income is kept by the U.S. Census and is generally described by census tract or a larger aggregation of tracts. However, the service area for a CDBG-funded activity does not need to be consistent with census tracts or other officially recognized boundaries if income statistics are available for some other geographic unit (see subsequent description). In all cases, however, the area used to determine LMI benefit *must* be the entire area in which the activity is provided. Activities of the same type that are provided in different areas must be considered separately (on the basis of their individual service area). An activity that serves an area that is *not* primarily residential in character (e.g., a commercial area with a handful of residences, or an area where residential structures make up fewer than 51% of the total structures) CANNOT qualify under the “LMI Area Benefit” National Objective.

For example, typical area benefit activities include:

- Street and Sidewalk Improvements
- Water and sewer lines
- Acquisition of land to be used for a park
- Construction of a community center
- Rehabilitation of a community library

In determining whether an activity will actually benefit LMI residents, 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. It is important to understand that not all activities that take place within a particular area will benefit that entire area.

A project is considered to be of benefit to LMI persons if at least 51 percent of the population qualifies as LMI within a defined geographic area, and documentation of the percentage of LMI beneficiaries is provided with the grant application. Defining the geographic boundaries for an area-wide project is accomplished by answering two questions:

1. Who are the beneficiaries of the project? and
2. Where do they live?

Depending on the type of project, the defined geographic area could be as small as a single neighborhood within a town, or as large as multiple counties.

The geographic area that will be served by an activity need not be coterminous with census tracts, block groups, or other officially recognized boundaries. It is critical, however, that the service area determined

by the municipality be **the entire area served by the activity**. For example, even though a predominantly LMI neighborhood may be one of several neighborhoods served by an activity (for example, a grocery store), the percentage of LMI persons in **the total area served by the activity** must be considered for this purpose of determining the service area.

Within the defined geographic area where the proposed activity will be implemented, the LMI population of an area can be determined in one of two ways:

- Low-to-Moderate Income Summary Data (LMISD) provided by HUD.
- A methodologically-sound income survey conducted by the municipality or a third party.

Both methods are described below.

DOCUMENTING WITH CENSUS DATA

Appropriate census data must be used to establish the LMI population. HUD provides detailed data arranged to show the percentage of LMI persons in each incorporated place, census tract and block group. Low-Mod Summary Data is available directly from HUD at <https://www.hudexchange.info/programs/acs-low-mod-summary-data/acs-low-mod-summary-data-local-government/>.

HUD Low-Mod Summary
Data

Each year, HUD will provide data for incorporated places and for census tracts based on the American Community Survey (ACS). If the geographic service area for a proposed activity is generally the same as a census tract or block group(s), then HUD data may be used to justify the income characteristics of the area served.

If HUD data does not indicate that the service area contains at least 51 percent LMI persons, and a municipality has a documented, compelling reason to believe the data is incorrect, then the municipality may request CDFA permission to conduct household surveys based on a change in either population or income of the area since the census. Also, if the service area is not generally the same as a census tract or block group, then an applicant should conduct household surveys to determine the LMI percentage for that service area.

DOCUMENTING WITH INCOME SURVEYS

An applicant may conduct a methodologically-sound income survey to establish the LMI status of households or families in a CDBG project area.

Income Surveys may be used to ascertain whether or not a CDBG-funded activity which is designed to benefit a particular area qualifies as primarily benefiting LMI persons. Income limits by family size will be available from CDFA based on data updated annually by HUD. These income limit forms will provide

data by city and county. Detailed information on properly conducting Income Surveys can be found on in HUD Notice CPD-19-02.

[CPD Notice 19-02](#)

All survey methodology must be approved by CDFA prior to the start of the survey to ensure that the methodology is sound.

[HUD Income Limits](#)

CDFA will accept surveys that are up to 3 years old. Completed surveys and documented approval by CDFA must be added to the project record and be accessible for review.

2.2.2. LMI LIMITED CLIENTELE

A Low-to-Moderate Income Limited Clientele (LMC) activity provides benefits to a specific group of persons rather than everyone in a defined service area. It may benefit particular persons without regard to the area in which they reside, or it may be an activity that provides benefit on an area basis but only to a specific group of persons who reside in the area. In either case, at least 51 percent of the beneficiaries of the activity must be LMI persons.

[24 CFR
570.483\(b\)\(2\)\(ii\)\(A\)](#)

To qualify under this subcategory, an LMC activity must meet ONE of the following tests:

1. Exclusively benefit clientele who are generally presumed by HUD to be principally L/M income persons. The following groups are currently presumed by HUD to be comprised principally of LMI persons:
 - Abused children,
 - Elderly persons,
 - Battered spouses,
 - Homeless persons,
 - Adults meeting Bureau of Census' definition of severely disabled adults,
 - Illiterate adults;
 - Persons living with AIDS, and
 - Migrant farm workers.
2. Require information on family size and income so that it is evident that at least 51 percent of the clientele are persons whose family income does not exceed the HUD Income Limits (This includes projects where the activity is restricted exclusively to LMI persons).
3. Be of such nature and in such location that it may reasonably be concluded that the activity's clientele will primarily be LMI persons (for example, a day care center that is designed to serve residents of a public housing complex).
4. Be an activity that serves to remove material or architectural barriers to the mobility or accessibility of elderly persons or of adults meeting the Bureau of the Census' Current Population Reports definition of "severely disabled," provided it is restricted, to the extent practicable, to the removal of such barriers by assisting:

[24 CFR
570.483\(b\)\(2\)\(ii\)\(B\) and
\(C\)](#)

[24 CFR
570.483\(b\)\(2\)\(ii\)\(D\)](#)

- The reconstruction of a public facility or improvement, or portion thereof, that does not qualify under the LMA benefit criteria; [24 CFR 570.483\(b\)\(2\)\(iii\)](#)
[Section 3.5.5](#)
 - The rehabilitation of a privately-owned nonresidential building or improvement that does not qualify under the LMA benefit criteria or the LMI Jobs criteria; or
 - The rehabilitation of the common areas of a residential structure that contains more than one dwelling unit and that does not qualify under the LMI Housing criteria.
5. Be a microenterprise assistance activity carried out in accordance with the provisions of HCDA Section 105(a)(22) or 24 CFR 570.482(c) with respect to those owners of microenterprises and persons developing microenterprises assisted under the activity during each program year who are low- and moderate-income persons. (Note that, for these purposes, once a person is determined to be LMI, he/she may be presumed to continue to qualify as such for up to a three-year period.) [24 CFR 570.483\(b\)\(2\)\(iv\)](#)

Activities that would be expected to qualify under the L/M Limited Clientele subcategory would be:

- Construction of a Senior Center
- Public services for the Homeless
- Assistance to L/M income persons developing a microenterprise
- Meals on wheels for the elderly
- Construction of job training facilities for severely disabled adults

DOCUMENTING COMPLIANCE

Applicants must document how proposed activities will benefit low- and moderate- income persons in conformance with federal law. The type of documentation necessary depends upon the users of the facility. Some proposed projects may involve more than one program/activity with different clientele and different documentation. The following describes what information must be submitted for different types of limited clientele activities:

1. Limited Clientele Based on Presumed Benefit. Documentation establishing that the facility or service is designed exclusively to serve a group of persons in any one or a combination of the following categories may be presumed to benefit persons, 51 percent of whom are low and moderate income: abused children, battered spouses, elderly persons, adults meeting the Bureau of the Census' Current Population Reports definition of "severely disabled", homeless persons, illiterate adults, persons living with AIDS and migrant farm workers; or

2. Limited Clientele Based on Family Size and Income.

Documentation that at least 51 percent of the clientele are persons whose family income does not exceed the low- and moderate-income limit (e.g., childcare center that is not exclusively for low- and moderate-income persons). The current income limits are on CDFA's website. Required documentation shall be one or more of the following, as appropriate:

[HUD Income Limits](#)

- a) A summary that shows how many current users have family incomes above and below the low- and moderate-income limits. The summary must be based on information about the family size and family income of each user. This information may be from existing program forms (e.g., application for daycare) or it can be collected using the CDFA income survey form.
 - b) Individual information forms gathered by the applicant do not have to be included with the application but may be reviewed during a site visit by department staff and/or must be available upon request at any time.
3. Limited Clientele Based on Nature and Location of the Facility. Documentation describing how the nature and, if applicable, the location of the facility or service establishes that it is used or will be used predominantly by low- and moderate-income persons.
4. Limited Clientele Based on the Removal of Barriers. Data showing that barriers to mobility or accessibility have been removed and how the barrier removal was restricted to the extent feasible to one of the particular cases authorized under this subcategory; or
5. Limited Clientele Based on Microenterprise. Documentation showing that the activity qualifies under the special conditions regarding job services where more than 51 percent of the persons benefiting are L/M income persons.

NOTE: Facilities must provide one year of family size and income data for the facility to be assisted. If one year of data is not available (new facility with no clientele history) the applicant must demonstrate how the services offered at the facility will be limited to low and moderate-income persons so that the use of the facility will meet the national objective. This is done by the applicant providing the department application forms, policies and other documents and procedures that will be used to limit the use of the facility so that 51% or more of the use of the facility is for low- and moderate- income persons.

2.2.3. LMI HOUSING

An LMI Housing activity (LMH) is one carried out for the purpose of providing or improving permanent, residential structures that will be occupied by LMI households upon completion. This would include, but not necessarily be limited to, the acquisition or rehabilitation of residential property, or the conversion of nonresidential property to residential.

For activities to qualify under the LMI National Objective, it must result in housing that will be occupied by LMI households upon completion. The housing can be either owner- or renter-occupied and can be either one family or multi-unit structures. When the housing is to be rented, in order for a dwelling unit to be considered to benefit an LMI household, it must be occupied by the household at affordable rents (defined by CFDA as Fair Market Rent minus tenant paid utilities).

OCCUPANCY RULES

Occupancy of the assisted housing by LMI households under this subcategory is determined using the following general rules:

- All assisted single unit structures must be occupied by L/M income households,
- An assisted two-unit structure (duplex) must have at least one unit occupied by a L/M income household, and
- An assisted structure containing more than two units must have at least 51 percent of the units occupied by L/M income households.

Exception: Under the following circumstances, structures with less than 51 percent occupancy by LMI households may be assisted.

The new construction of non-elderly, multi-family rental structures need only have at **least 20 percent of the units** occupied by LMI households. However, when occupancy by LMI **households** falls between 20 and 50 percent, the CDBG portion of total development costs may not be greater than the proportion of units occupied by LMI households. (For this purpose, total development costs include the cost of all work from design and engineering through completion of the physical improvements and, if integral to the project, the cost of acquisition.) For example, if such a structure were to cost \$1 million and 35 percent of the units are occupied by LMI households at affordable rents, the CDBG assistance would not be more than \$350,000 for the project.

Activities that would be expected to qualify under the L/M Housing subcategory would be:

- Acquisition of property to be used for permanent housing
- Rehabilitation for permanent housing
- Conversion of non-residential structures into permanent housing
- Home ownership assistance to a LMI household
- Hookups to connect residential structures to water and sewer systems

DOCUMENTING COMPLIANCE

In order to demonstrate compliance, the grant recipient must maintain the following records:

- A copy of the written agreement with each landlord or developer receiving CDBG assistance indicating the total number of dwelling units in each multi-unit structure assisted and the number of those units which will be occupied by LMI households after assistance;
- Total cost of the activity, including both CDBG and non-CDBG funds; and
- For each unit claimed to be occupied by an LMI household, the size and combined income of the household. [HUD Income Limits](#)
- For rental housing only:
 - The rent charged (or to be charged) after assistance for each dwelling unit in each structure assisted and
 - Information as necessary to show the affordability of units occupied (or to be occupied) by LMI households pursuant to criteria established and made public by the grant recipient.
- For each property acquired on which there are no structures, evidence of commitments ensuring that the above criteria will be met when the structures are built.
- Where applicable, records documenting that the activity qualifies under the special conditions regarding the new construction of non-elderly, multi-family housing that will have LMI occupancy of less than 51 percent.

2.2.4. LMI JOBS

Jobs are to be held by, or made available to, persons of LMI (defined as individuals whose incomes are equal to or less than 80% of the area median income (AMI) limits defined and published by HUD.

[Attachment 2-1: Job Creation/Retention Policy](#)

Jobs that are not held (filled) by LMI persons may be claimed to be “made available” to an LMI person only when both of the following are met:

1. The jobs do not require special skills that can only be acquired with substantial training or work experience and education beyond high school is not a prerequisite to fill such a job, unless the business agrees to hire an unqualified person and train them; AND
2. The assisted business takes actions to ensure that LMI persons receive “first consideration” for filling such jobs. Evidence must include a description of how first consideration was given to LMI persons for filling the jobs, what hiring process was used, which LMI persons were interviewed for each job, and which LMI persons were hired. The business is obligated to prove that they met the following criteria of providing “first consideration”:
 - a) The business must use a hiring practice that, under usual circumstances, would result in more than 51 percent of LMI persons interviewed for applicable jobs being hired; and
 - b) The business must seriously consider a sufficient number of LMI job applicants to give reasonable opportunity to fill the position with such a person and provide evidence; and

- c) The distance from residence and availability of transportation to the job site must be reasonable before a particular LMI person may be considered a serious applicant for the job.

DOCUMENTING COMPLIANCE

When assistance is provided to a business for the purpose of creating or retaining jobs, the grant recipient must have on file a written agreement with the business in which that business agrees to keep or create a specific number of jobs and identifies each such job by type and whether the job will be full- or part-time. The Business Economic Commitment Agreement (BECA) must also specify the actions the business and the grant recipient will take to ensure that at least 51 percent of the jobs created or retained will benefit LMI persons pursuant to the program rules.

[Attachment 2-2: Sample
Business Economic
Commitment Agreement
\(BECA\)](#)

For each activity determined to benefit LMI persons based on jobs to be created for or retained by low- and moderate-income persons:

- The number of jobs to be created and the number of additional jobs expected to be created, if any;
- The nature of the jobs created to date (number skilled, semiskilled, and unskilled, and for semi-skilled jobs, any special education or experience required) and the nature of additional jobs expected to be created; and,
- Any other evidence to support the conclusion that a majority of jobs will be filled by LMI persons, such as:
 - Evidence to assure accessibility of the jobs to areas where substantial numbers of LMI persons reside; and
 - Evidence to support any special outreach and/or training to be directed toward LMI persons.

Job creation:

When demonstrating that at least 51 percent of the jobs created will be available to low- and moderate-income (LMI) persons, documentation for each assisted business must include:

- A written commitment by the business that it will make at least 51 percent of the jobs on a full-time equivalent basis available to LMI persons and will provide training for any of those jobs requiring special skills or education;
- A listing by job title of employees at the time the application for assistance is submitted;
- A listing, by job title, of the total permanent jobs to be created, indicating which jobs will be available to LMI persons, which jobs require special skills or education, and which jobs are part-time;
- Evidence supporting the estimate of the total number of jobs;

- A description of actions to be taken by the recipient and business to ensure that LMI persons will receive first consideration for these jobs;
- A listing, by job title, race, ethnicity, gender and handicapped status of the permanent jobs created; which jobs were made available to LMI persons, and a description of how first consideration was given to such persons for those jobs. That description should include the hiring process used; the number of LMI persons considered for each job; and the number of LMI persons actually hired;
- A description of how the LMI status of those given first consideration was determined; and
- A description of how the total number of jobs was determined, including baseline and final payroll documents.

Job retention:

HUD requires that there be clear, objective evidence and documentation that jobs would be lost without the CDBG assistance; therefore, using job retention as a basis for meeting the LMI National Objective is difficult. Consequently, in the past, few projects have qualified as benefiting LMI through job retention.

The following are requirements for documenting records that support compliance with job retention goals.

- Clear and objective evidence that in the absence of the CDBG assistance the jobs will be lost;
- A written commitment by the business to meet the standard for retained jobs involving the employment of LMI persons; and
- A listing by job title, race, ethnicity, gender and handicapped status of the employees at the time the assistance is provided.

More detailed information can be found in [Chapter 11: Reporting and Recordkeeping](#) of this Implementation Guide.

SECTION 2.3 ELIMINATION OF SLUMS AND BLIGHTED CONDITIONS

Activities that would be expected to qualify under the L/M Jobs subcategory would be:

- Construction of a business incubator which is designed to offer both space and assistance to new, small businesses to help them survive and grow.
- Loans to help finance the expansion of a plant or factory
- Financial assistance to a business which has publicly announced its intention to close; and to help it update its equipment instead.
- Installation of water or sewer lines to a site or upgrading an access road to serve a new distribution warehouse being built by a company.

Public and/or private facilities requiring improvements that aid in the prevention or elimination of slums or blighted conditions in a designated slum/blight area may qualify for CDBG funding under the National Objective of Elimination of Slum and Blight Area Basis. Activities that qualify under the objective are either clearly **eliminating** objectively determinable signs of slums or blight in a defined **slum or blighted area (“area blight”)** or are **strictly limited to eliminating** specific instances of blight outside such an area (“spot blight”).

Accordingly, the subcategories under this national objective are:

- Addressing slums/blight on an area basis; and
- Addressing slums/blight on a spot basis.

[24 CFR 570.483\(c\)\(1\)](#)

[24 CFR 570.483\(c\)\(2\)](#)

2.3.1 AREA BASIS

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

1. The area must be officially designated by the grant recipient and must meet a definition of a slum, blighted, deteriorated, or deteriorating area under [NH Rev Stat 205:1-b](#) AND
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. CDFA will consider this test to have been met if at least twenty-five percent (25%) of all the buildings in the area meet the state or local definition of:
 - i. deteriorated or deteriorating;

[Attachment 2-3: Sample Blight Resolution](#)

- ii. abandoned;
 - iii. experiencing chronic high occupancy turnover rates or chronic vacancy rates in commercial or industrial buildings;
 - iv. experiencing significant declines in property values or abnormally low property values relative to other areas in the community; or
 - v. known or suspected of environmental contamination.
- b) The public improvements throughout the area must be in a general state of deterioration. (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 grant recipient on the boundaries of the area and the conditions that qualified the area at the time of its designation. The recipient must establish definitions of the conditions (listed above) and maintain records to substantiate how the area met the slums or blighted criteria.
4. Activities to be assisted with CDBG funds must be limited to those that address one or more of the conditions that contributed to the deterioration of the area. (Note that this 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.)

It should be noted here that, once an area has been properly designated as a slum or blighted area under these provisions, the grant recipient may continue to assist activities that are designed to address a condition that caused the decline of the area even if the area has been brought to a point where it could no longer meet the tests for physical evidence of blight needed for its initial designation. However, if the regulatory requirements have been revised to become more stringent since the area was designated, the area would need to be newly designated (for example, re-qualify) under the new criteria before new activities could be assisted with CDBG funds.

NOTE: The area must be re-designated every 10 years for continued qualification and documentation must be retained.

Where the assisted activity is **rehabilitation of residential structures**, two additional criteria must be met:

- Each such building must be considered substandard under local definition. (States are to ensure that state grant recipients have developed minimum building quality standards for this purpose. Local conditions may be taken into consideration; states are also free to set standards regarding building quality.)
- All deficiencies making the building substandard must be corrected before less critical work on the building may be undertaken.

An applicant shall not submit an application under Slum/Blight Area subcategory until they have received direct approval from CDFA to do so.

Activities that would be expected to qualify under the Slum/Blight Area subcategory would be:

- Acquisition and Clearance of Blighted Properties
- Rehabilitation of substandard housing
- Commercial revitalization through façade improvements
- Removal of environmental contamination on a property to enable it to be redeveloped for a specific use

2.3.2. SPOT BASIS

To comply with the national objective of Elimination or Prevention of Slums or Blight on a Spot Basis, (i.e., outside a slum or blighted area), an activity must meet the following criteria:

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

The activity must be limited to one or more of the following:

- Acquisition;
- Clearance;
- Remediation of environmentally contaminated properties;
- Relocation;
- Historic Preservation; or
- 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.

Activities that would be expected to qualify under the Slum/Blight Spot subcategory would be:

- Historic preservation of a blighted building.
- Demolition of a vacant, deteriorated, and abandoned building.
- Removal of environmental contamination on a property to enable it to be redeveloped for a specific use.
- Elimination of faulty wiring, falling plaster and other similar conditions from a residential building which are detrimental to potential occupants.

DOCUMENTING COMPLIANCE

In order to document compliance, the grantee must maintain:

- A description of the specific condition of blight or physical decay treated; and
- A description of the assisted activity showing that it falls under one of the activity types that are eligible to be carried out under this subcategory. Where rehabilitation of a building is carried out under this category, information showing how the activity eliminates conditions detrimental to public health and safety must be included.

SECTION 2.4 URGENT NEED

To comply with the national objective of meeting community development needs having a particular urgency, an activity must be designed to alleviate existing conditions which the local government certifies and CDFA concurs:

24 CFR 570.483(d)

1. Pose a serious and immediate threat to the health or welfare of the community, AND
2. Are of recent origin or recently became urgent, AND
3. The municipality is unable to finance the activity on its own, AND
4. No other sources of funding are available to carry out the activity, as certified by both the CDFA and the grantee.

Use of the Urgent Need national objective is rare. It is designed only for those activities that alleviate emergency conditions.

Activities that would be expected to qualify under the Urgent Need National Objective would be:

- Acquisition of property located in a flood plain that was severely damaged by a recent flood.
- Public facility improvements such as reconstruction of a fire station that was severely damaged by a tornado.
- Demolition of structures that were severely damaged by an earth quake.
- Interim assistance such as emergency neighborhood debris clean-up after a tornado.

SECTION 2.5 ELIGIBLE ACTIVITIES

As stated earlier, every project that receives CDBG funds through CDFA must meet two criteria: the project must meet a National Objective and it must also be an Eligible Activity. The following activities are an all-inclusive list of federally eligible activities. CDFA priorities will be set each year in the Consolidated Plan and/or Action Plan Update and eligible activities for that funding year will be described in the CDBG Method of Distribution (MOD). See [Chapter 3: Method of Distribution](#) for the current program year MOD.

Categories of Eligible Activity
Acquisition of Real Property
Public Facilities and Improvements and Privately-Owned Utilities
Code Enforcement
Clearance, Rehabilitation, Reconstruction, and Construction of Buildings (including Housing)
Architectural Barrier Removal
Loss of Rental Income
Disposition of Real Property
Public Services
Payment of Non-Federal Share
Relocation
Planning and Capacity Building
Program Administration
Economic Assistance to For Profit Businesses
Housing Services
Microenterprise Assistance
Homeownership Assistance
Construction of Tornado-safe Shelters
Lead Based Paint Hazard Evaluation and Reduction

2.5.1. ACQUISITION OF REAL PROPERTY

CDBG funds may be used by the grantee to acquire real property in whole or in part by purchase, long-term lease, donation, or otherwise. In order to be considered acquisition, a permanent interest in the property must be obtained. Long-term leases can be considered to constitute a permanent interest for this purpose. CDFA has established that an initial lease period of 15 years or more gives sufficient control to the acquiring party to constitute a permanent interest.

Real property to be acquired could include:

- Land
- Easements,
- Rights-of-way,
- Buildings and other real property improvements, or
- Other interests in the real property.

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

National Objectives – Acquisition of Real Property		
National Objective	Qualifies If...	Example
LMI Area Benefit	The property will be used for an activity the benefits of which are available to all the residents in a particular area that is primarily residential, and at least 51 percent of those residents (or fewer if the exception criteria apply) are L/M income persons.	Purchasing land for use as a park serving a primarily residential neighborhood that is predominantly L/M income.
LMI Limited Clientele	The property will be used for an activity the benefits of which will be limited to a specific group of people; at least 51 percent of who are L/M income persons.	Buying a building to be converted into a sheltered workshop for developmentally disabled adults.
LMI Housing	The property will be used for housing to be occupied by L/M income persons.	Buying an apartment house to provide dwelling units to L/M income households at affordable rents, where at least 51 percent of the units will be occupied by L/M income households.
LMI Jobs	The property acquired is to be used for an activity that will create or retain permanent jobs at least 51 percent of which will benefit L/M income persons.	Acquiring vacant property that is planned to be used for a commercial purpose and will be made available for that purpose only if the business commits to provide at least 51 percent of the new permanent jobs that will be created to L/M income persons.
Slum or Blighted Area	The acquired property is in an area designated by the grant recipient as a blighted area, and the property will be used in a manner that addresses one or more of the conditions that contributed to the deterioration of the area.	Purchasing deteriorated buildings located in a blighted area for rehabilitation or demolition.
Spot Blight	The acquisition of property is located outside a designated blighted area and the acquisition is a prerequisite for clearance that will eliminate specific conditions of blight or physical decay on a spot basis	The acquisition of a dilapidated property containing an abandoned grain elevator, the presence of which is detrimental to public health and safety which will be demolished.
Urgent Needs	The acquisition is part of an activity designated to alleviate conditions, and the grantee certifies and CDFA determines that those conditions are a serious and immediate threat to health and welfare of the community, they are of recent origin or recently became urgent, the grantee is unable to finance the activity on its own, and other sources of funds are not available.	Acquisition of property located in a floodplain that was severely damaged by a recent flood.

2.5.2. PUBLIC FACILITIES AND IMPROVEMENTS AND PRIVATELY-OWNED UTILITIES

CDBG funds may be used by the grant recipient or other public or private non-profit entities for the:

- Acquisition (including long-term leases for initial periods of 15 years or more),
- Construction,
- Reconstruction,
- Rehabilitation (including removal of architectural barriers to accessibility), or
- Installation of public improvements or facilities (except for buildings for the general conduct of government).

CDBG regulations define the terms “public facilities” or “public improvements.” However, CDFA has broadly interpreted these to include all improvements and facilities that are either publicly owned or that are traditionally provided by the government, or owned by a non-profit, and operated so as to be open to the general public. Such facilities include firehouses, libraries, and housing shelters. Public improvements include streets, sidewalks, curbs and gutters, parks, playgrounds, water and sewer lines, flood and drainage improvements, parking lots, utility lines, and aesthetic amenities on public property such as trees, sculptures, pools of water and fountains, and other works of art.

Facilities designed for use in providing shelter for persons having special needs are considered to be public facilities (and not permanent housing), and thus are covered under this category of basic eligibility. Such shelters include nursing homes, convalescent homes, hospitals, shelters for victims of domestic violence, shelters and transitional facilities/housing for the homeless, itinerant farm workers, group homes for the developmentally disabled, and shelters for disaster victims.

In the CDBG program, site improvements of any kind made to publicly owned property are considered a “public improvement” eligible for assistance under this category. This distinction would be of particular importance if a community sought to construct new housing on a publicly-owned property--direct CDBG assistance could not be used for the new construction, but could be used for site improvements such as water and sewer connections and development of streets and sidewalks.

Public facilities and improvements authorized under this category also do not include:

- Expenditures for buildings for the general conduct of government
- Costs of operating or maintaining public facilities or improvements;
- Costs of purchasing construction equipment;
- Costs of furnishings and other personal items such as uniforms;
- New construction of public housing

OTHER CONSIDERATIONS

Water/sewer hook-ups:

The costs of connecting individual properties (such as private homes) to service collection or distribution lines are NOT eligible as a public facility. Similarly, costs of constructing, installing, or reconstructing water wells, septic tanks, drain fields, etc. for individual properties are not eligible as a public facility. These activities must be classified as a cost of construction or rehabilitation of a building, as appropriate.

Title to public facilities:

Non-profit entities frequently hold title to and operate facilities such as senior centers, centers for the handicapped, and neighborhood facilities. When such facilities are owned by non-profit entities, they may qualify for assistance under this category only if they are made available to the general public. For a facility owned by a non-profit to qualify for CDBG funding, it must be open for use by the general public during all normal hours of operation.

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:

- The facility which is otherwise eligible and proposed for assistance will occupy a designated and discrete area within the larger facility; and
- The recipient 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.

Fees

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 L/M income persons from using the facilities, are not permitted.

National Objectives - Public Facilities and Improvements and Privately-Owned Utilities		
National Objective	Qualifies If...	Example
L/M Income Area Benefit	The public facility or improvement will be used for a purpose the benefits of which are available to all the residents in a particular area that is primarily residential, and at least 51 percent of those residents are L/M income persons.	Paving of gravel road and the installation of drainage in a predominantly L/M income community.

National Objectives - Public Facilities and Improvements and Privately-Owned Utilities		
National Objective	Qualifies If...	Example
L/M Income Limited Clientele	The public facility or improvement will be used for an activity designed to benefit a particular group of persons at least 51 percent of whom are L/M income persons.	Rehabilitation of a building to be used as a center for training severely disabled adults to enable them to live independently.
L/M Income Housing	The public facility or improvement exclusively assists in the provision of housing to be occupied by L/M income persons.	Site improvements on publicly-owned land to serve a new apartment structure to be rented to L/M income households at affordable rents.
L/M Income Jobs	The provision of a particular public improvement needed by one or more businesses to allow creation or retention of jobs, primarily for L/M income persons.	Rebuilding a public road adjacent to a factory to allow larger and heavier trucks access to the facility determined to be necessary for plant expansion and the creation of new jobs, where the business agrees to fill 51 percent of the jobs with L/M income persons.
Slum or Blighted Area	The public facilities and improvements are located in a designated blighted area and are designed to address one or more conditions which contributed to the deterioration of the area.	Renovation of an abandoned, deteriorated elementary school building, located in an area designated by the grant recipient as blighted pursuant to CDBG rules, in order to re-open it as a library and community center.
Spot Blight	The public facilities or improvements are for the historic preservation or rehabilitation of blighted or decayed public facilities/improvements located outside of a designated area. Rehabilitation must be limited to the extent necessary to eliminate specific conditions detrimental to public health and safety.	Rehabilitation/restoration of a severely deteriorated building of historic significance that is being used as a museum that is located outside a designated blighted area and does not serve an LMI income area.
Urgent Need	The acquisition is part of an activity designated to alleviate conditions, and the grantee certifies and CDFA determines that those conditions are a serious and immediate threat to health and welfare of the community, they are of recent origin or recently became urgent, the grantee is unable to finance the activity on its own, and other sources of funds are not available.	Extension of municipal water system distribution lines into a residential area where residents private wells have recently been found to be contaminated with high levels of fecal coliform bacteria.

2.5.3. CODE ENFORCEMENT

Code enforcement involves the payment of salaries and overhead costs directly related to the enforcement of state and/or local codes.

CDBG funds may be used for code enforcement only in deteriorating or deteriorated areas where such enforcement, together with public or private improvements, rehabilitation, or services to be provided, may be expected to arrest the decline of the area. Eligible code enforcement activities do not include the costs of correcting code violations

identified during inspections. The cost of correcting such violations may be eligible for CDBG assistance under other eligibility categories, such as rehabilitation.

National Objectives - Code Enforcement		
National Objective	Qualifies If...	Example
L/M Income Area Benefit	The code enforcement is targeted at a deteriorated or deteriorating area delineated by the grant recipient and: At least 51 percent of the residents of the area are L/M income persons and (2) The code enforcement, together with public improvements, rehabilitation, and services to be provided, may be expected to arrest the decline of the area.	Code enforcement efforts in an L/M income deteriorated neighborhood targeted for rehabilitation assistance, construction of a neighborhood facility, and street reconstruction.
L/M Income Limited Clientele	Not applicable	Not applicable
L/M Income Housing	Not applicable	Not applicable
L/M Income Jobs	Not applicable	Not applicable
Slum or Blighted Area	The code enforcement is targeted at a designated blighted area and: (1) Is designed to address one or more of the conditions which contributed to the deterioration of the area and (2) The code enforcement, together with public improvements, rehabilitation, and services to be provided, may be expected to arrest the decline of the area.	Building inspections for code violations in a designated blighted area, which are part of a comprehensive effort to arrest decline in that area.
Spot Blight	Not applicable	Not applicable
Urgent Need	While the situation is likely to be infrequent, it is possible for code enforcement to qualify if: (1) code enforcement is targeted at a deteriorated or deteriorating area, (2) The code enforcement, together with public improvements, rehabilitation, and services to be provided, may be expected to arrest the decline of the area; and (3) The grantee is able to certify that the existing conditions which the code enforcement is designed to alleviate pose a serious and immediate threat to the health or welfare of the community, they are of recent origin or recently became urgent, the grantee is unable to finance the activity on its own, and other sources of funds are not available.	Code enforcement activities taking place in an area that has been severely affected by a flood and are part of the community's overall response to the emergency.

2.5.4. CLEARANCE, REHABILITATION, RECONSTRUCTION, AND CONSTRUCTION OF BUILDINGS

CDBG funds may be used by the grant recipient or other public or private non-profit entities for the:

- clearance, demolition, removal, reconstruction, and rehabilitation of buildings; and
- lead-based paint hazard evaluation and reduction, as defined in section 1004 of the Residential Lead-Based Paint Hazard Reduction Act of 1992.

Clearance Activities and Considerations

Under this category, CDBG funds may be used for:

- Clearance, demolition, and removal of buildings and improvements,
- The movement of structures to other sites,
- The remediation of known or suspected environmental contamination, including project-specific environmental assessment costs not otherwise eligible, and
- The demolition of HUD-assisted or HUD-owned housing units with prior approval of HUD.

Where activities under this category are integral to the construction of a building or improvement on the cleared property, and where such construction is also to be assisted with CDBG funds, the clearance activities may be treated as a part of the construction costs and need not be qualified separately under the program.

National Objectives – Clearance

National Objective	Qualifies If...	Example
L/M Income Area Benefit	The cleared property will be used for a purpose the benefits of which are available to ALL the residents in a particular area, and at least 51% of those residents are LMI persons.	Demolishing a vacant structure and removing debris to make a community park and playground serving a predominantly (51%) residential LMI community.
L/M Income Limited Clientele	The cleared property will be used for an activity the benefits of which are limited to a specific group of people, and at least 51% of who are LMI persons.	Demolishing a seriously dilapidated structure from the site on which a new senior center will be built.
L/M Income Housing	The cleared property will be used for providing housing to be occupied LMI persons. Rental units for LMI persons must be occupied at affordable rents.	Demolishing seriously dilapidated buildings being used as temporary housing for migrant farm workers to make room for new migrant farm worker housing.
L/M Income Jobs	The clearance is part of an activity that will create or retain permanent jobs, 51% of which are for LMI persons.	Clearance of an environmentally contaminated site on which a new business will locate and agrees that at least 51% of the jobs to be created will be for LMI persons.
Slum or Blighted Area	The clearance activities are within a designated blighted area and are designed to address one or more conditions that contributed to the deterioration of the area.	Using CDBG funds to demolish one or more deteriorated buildings located in a designated blighted area.
Spot Blight	The clearance activity is undertaken to eliminate specific conditions of blight or decay on a spot basis that is not within a designated slum or blight area.	Demolition of an abandoned and deteriorated grain elevator, the presence of which is detrimental to public health and safety.
Urgent Need	The clearance is part of an activity designed to alleviate existing conditions and the grantee certifies that those conditions pose a serious and immediate threat to the health or welfare of the community, they are of recent origin or recently became urgent, the grantee is unable to finance the activity on its own, and other sources of funds are not available.	Clearance of a building that was destroyed by fire or tornado that constitutes a safety hazard to the community.

Rehabilitation Activities and Considerations

Section 105(a)(4) of the HCDA provides limited information on the types of property eligible under this category. Therefore, CDFA has included the following as interpretive guidance. For specific project eligibility, contact CDFA.

Eligible Types of Property

- Residential property, whether privately or publicly owned. This includes manufactured housing when such housing constitutes part of the community's housing stock and is classified as real property.
- Commercial or industrial property, but where such property is owned by a for-profit, rehabilitation under this category is limited to exterior improvements of the building and the correction of code violations. (Further improvements for such buildings may qualify under the category of Special Economic Development Activities.)
- Additions to existing buildings may be assisted under this category when they are incidental to the rehabilitation of the property, and may be provided as a part of other rehabilitation if the addition does not materially increase the size or function of the building.

Eligible Types of Assistance

- **Costs:** Costs of labor, materials, supplies and other expenses required for the rehabilitation of property, including repair or replacement of principal fixtures and components of existing structures (for example, the heating system).
- **HOME Administrative Costs:** CDBG funds can be used to pay for HOME administrative costs.
- **Financing:** Grants, loans, loan guarantees, interest supplements, and other forms of financial assistance may be provided under this category. 513 for details.)
- **Refinancing:** Loans for refinancing existing indebtedness secured by a property being rehabilitated with CDBG funds, if such refinancing is determined by the grant recipient to be necessary or appropriate to achieve its community development objectives.
- **Property Acquisition:** Assistance to private individuals and entities (whether profit or not-for-profit) to acquire for the purpose of rehabilitation and to rehabilitate properties *for use or resale for residential purposes*.
- **Security Devices:** Installation costs of sprinkler systems, smoke detectors, dead bolt locks, and other devices for security purposes.
- **Insurance:** The costs of initial homeowner warranty premiums and, where needed to protect the grant recipient's interest in properties securing a rehabilitation loan, hazard insurance premiums, as well as flood insurance premiums for properties covered by the Flood Disaster Protection Act of 1973, as amended, pursuant to 24 CFR 570.605.
- **Conservation:** Costs required to increase the efficient use of water (for example, water saving faucets and shower heads) and improvements to increase the efficient use of energy in structures through such means as installation of storm windows and doors, insulation, and modification or replacement of heating and cooling equipment.

- **Water and Sewer:** Costs of connecting existing residential structures to water distribution lines or local sewer collection lines, or installing wells, septic tanks, septic fields for individual houses, as well as replacing any of the above. (Costs of installing water and sewer collection lines are not eligible as rehabilitation.)
- **Tools:** Costs of acquiring tools to be lent to owners, tenants, and others who will use the tools to carry out rehabilitation.
- **Barrier Removal:** Costs to remove material and architectural barriers that restrict the mobility and accessibility of elderly and severely disabled persons to buildings and improvements that are eligible for rehabilitation under this category.
- **Landscaping, Sidewalks, and Driveways:** Costs of installation or replacement of landscape materials, sidewalks, and driveways when incidental to other rehabilitation of the property.
- **Renovation of Closed Buildings:** The conversion of a closed building from one use to another (for example, the renovation of a closed school building to residential use). Note that rehabilitation of a closed building for re-use as a public facility would be eligible as a public facility.
- **Historic Preservation:** This category also authorizes the costs of preserving or restoring properties of historic significance, whether privately or publicly owned, except that buildings for the general conduct of government may not be restored or preserved with CDBG assistance (see the section on Public Facilities and Improvements concerning this limitation). Historic properties are those sites or structures that are either listed in or eligible to be listed in the National Register of Historic Places, listed in a state or local inventory of historic places, or designated as a state or local landmark or historic district by appropriate law or ordinance.
- **Lead-based Paint Hazard Evaluation and Reduction:** The costs of evaluating and treating lead-based paint may be undertaken in the State CDBG program in conjunction with other rehabilitation activities under Section 105(a)(4) of the HCDA or as a separate activity under Section 105(a)(25). In addition to lead hazard abatement work itself, CDBG funds may be used for: testing the blood of children to determine the lead levels, inspecting and testing homes for lead hazards, temporarily relocating families during lead control work, community education and outreach, job training for lead hazard control workers, and collection and analysis of data on lead hazards.
- **Rehabilitation Services:** Staff costs and related expenses required for outreach efforts for marketing the program, rehabilitation counseling, screening potential applicant households and structures, energy auditing, preparing work specifications, loan underwriting and processing, inspections, and other services related to assisting owners, tenants, contractors, and other entities that are participating or seeking to participate in rehabilitation activities eligible under this category.

Rehabilitation does not include:

- Creation of a secondary housing unit attached to a primary unit;
- Installation of luxury items, such as a swimming pool;
- Costs of equipment, furnishings, or other personal property not an integral structural fixture, such as a window air conditioner; or
- The value of the homeowner's sweat equity to rehabilitate their own property.

National Objectives – Rehabilitation		
National Objective	Qualifies If...	Example
L/M Income Area Benefit	Rehabilitation of a building to be used for a purpose that will benefit all the residents of a qualifying L/M income primarily residential area.	Facade improvements to a commercial structure serving a predominantly L/M income primarily residential area.
L/M Income Limited Clientele	Not applicable	Not applicable
L/M Income Housing	Rehabilitation of housing to be occupied by L/M income persons. Rental units must be occupied at affordable rents.	Conversion of an abandoned warehouse into rental housing for L/M income households at affordable rents. Also improvements to a single family residence used as a place of business provided the improvements generally benefit the unit's residential occupants.
L/M Income Jobs	Rehabilitation of nonresidential property that will create or retain jobs for L/M income persons	Correction of code violations that will enable a business to survive and retain jobs, the majority of which is held by L/M income persons.
Slum or Blighted Area	Rehabilitation of residential structures located in a blighted area, the structure to be rehabilitated is considered substandard under local definition before rehabilitation, and all deficiencies making the structure substandard are corrected before less critical work is undertaken.	Rehabilitation of substandard housing located in a designated blighted area and where the housing is expected to be brought to standard condition and sold to non-L/M income households.

National Objectives – Rehabilitation		
National Objective	Qualifies If...	Example
Spot Blight	Rehabilitation of a structure located outside a designated blighted area, where the rehabilitation is limited to the extent necessary to eliminate specific conditions of blight or decay that are detrimental to public health and safety.	Rehabilitation of the deteriorated exterior of an abandoned manufacturing building located in an area that has not been designated as blighted and where the rehabilitation is limited to removal of the exterior blight. Rehabilitation of plumbing in a building located in an area that has not been designated as blighted and where rehabilitation is limited to corrections of code violators that are detrimental to public health and safety.
Urgent Needs	The rehabilitation is part of an activity designed to alleviate existing conditions for which the grantee certifies are a serious and immediate threat to the health or welfare of the community, the conditions are of recent origin or recently became urgent, the grant recipient is unable to finance the activity on its own, and other sources of funds are not available.	Rehabilitation of housing that has been badly damaged by a tornado and has been condemned.

Construction of Buildings Activities and Considerations

It is important to note that several activities that support new housing may be carried out using CDBG funds even though other resources are supporting the actual housing construction costs.

The following are examples of supportive activities:

- Acquisition of sites on which buildings will be constructed for use or resale as housing;
- Clearance of toxic contaminants of property to be used for the new construction of housing;
- Site improvements to publicly-owned land to enable the property to be used for the new construction of housing, provided the improvements are undertaken while the property is still in public ownership; and
- The cost of disposing of real property, acquired with CDBG funds, which will be used for new construction of housing.

National Objectives – Construction of Buildings (including Housing)		
National Objective	Qualifies If...	Example
L/M Income Area Benefit	Not applicable	Not applicable
L/M Income Limited Clientele	Not applicable	Not applicable
L/M Income Housing	L/M income households will occupy the new housing. Rental units must be occupied at affordable rents.	New construction of “last resort” housing needed for an L/M income household being displaced by a CDBG-assisted project.
L/M Income Jobs	Not applicable	Not applicable
Slum or Blighted Area	New housing qualifies if: (1) The new housing is located within a designated blighted area and (2) Development of new housing addresses one of the conditions that contributed to the deterioration of the area.	New, modest-income rental housing constructed by a non-profit Community Development Corporation on a formerly contaminated site in a designated blighted area, using a combination of CDBG and Low Income Housing Tax Credit funding.
Spot Blight	Not applicable	Not applicable
Urgent Needs	The new housing is needed to respond to a threat to the health or welfare of the community of recent origin and no other funding is available to meet the threat and the new construction is eligible (or the statutory waiver Authority for Presidentially-declared disasters is exercised).	Housing needed to replace units completely destroyed by a flood and needed to be built in a new location.

2.5.5 ARCHITECTURAL BARRIER REMOVAL

The HCDA makes specifically eligible the removal of material and architectural barriers that restrict the accessibility or mobility of elderly or handicapped persons.

Confusion has emerged concerning the distinction between removing barriers to accessibility and the need to provide for accessibility. Together, these issues led some grant recipients and beneficiaries to the impression that the involvement of the removal of barriers would qualify an entire activity for assistance under the CDBG program, or that the additional costs of making even newly constructed buildings accessible to the handicapped should be eligible for CDBG assistance under that authority, whether or not the rest of the building could so qualify.

If the construction or rehabilitation of the building is otherwise eligible for assistance with CDBG, the activities should be funded as an integral part of construction under the appropriate eligible activity. However, if the basic building, facility, or activity is not otherwise eligible under another provision of the HCDA, then the removal of architectural barriers in such a building or facility must be eligible under this category. The most obvious example of such an activity would be the removal of architectural barriers in a building for the general conduct of government.

Complying with National Objectives

Since the cost of removing existing barriers is specifically eligible under the HCDA, the removal of accessibility barriers may be presumed to meet the L/M Income Limited Clientele criteria if the costs of removal are restricted, to the extent practicable, to the removal of such barriers in:

- The reconstruction of a public facility or improvement, or portion thereof, that does not meet the criteria for L/M Income Benefit under Area Benefit;
- The rehabilitation of a privately-owned nonresidential building or improvement that does not meet the criteria for L/M Income Benefit under Area Benefit or Jobs; or
- The rehabilitation of the common areas of a residential structure that contains more than one dwelling unit and that does not meet the criteria for L/M Income Benefit under Housing.

2.5.6. LOSS OF RENTAL INCOME

CDBG funds may be used to pay housing owners for the loss of rental income incurred in holding, for temporary periods, housing units to be used for the relocation of individuals and families displaced by CDBG-assisted activities.

The statutory requirements concerning displacement require certain replacement housing to be made available to displacees. If the displaced household requires a type of housing unit that is scarce in that community, it may be necessary for the grant recipient to have an existing, available unit held open for the household for a short period until the displacement actually occurs.

Complying with National Objectives

Determining compliance of this activity with the national objectives of the CDBG program must be based on the underlying relocation activity.

If the activity resulting in the relocation assistance to the displaced household qualified on the basis of benefit to L/M income persons, then paying housing owners for losses incurred in holding units for those displacees also qualifies as benefiting L/M income persons, even if the displaced household itself is not L/M income.

Note: If the relocation assistance to displacees qualified under the “Blight” or “Urgent Needs” national objectives, then paying housing owners for losses incurred in holding units for those displacees also would qualify under “Blight” or “Urgent Needs,” as applicable.

2.5.7. PUBLIC SERVICES

Under this category, CDBG funds may be used to provide public services (including labor, supplies, materials, and other costs), provided that the following criterion is met:

The public service must be either:

1. A new service; or
2. A quantifiable increase in the level of a service above that which has been provided by or on behalf of the municipality (through funds raised by the grantee or received by the grantee from the state) during the 12 months prior to submission of an application.

Public services include, but are not limited to:

- Childcare,
- Health care,
- Job training (training a qualified pool of candidates for unspecified jobs.)
- Recreation programs,
- Education programs,
- Public safety services,
- Services for senior citizens,
- Services for homeless persons, and victims of domestic violence,
- Drug abuse counseling and treatment,
- Energy conservation counseling and testing,
- Homebuyer down payment assistance,
- Emergency assistance payments (for example, to keep tenants from losing housing), and
- Legal services (including walk-in legal counseling, foreclosure mitigation and prevention, landlord/tenant matters, veterans and public benefit appeals, child support orders, reasonable accommodations for persons with disabilities, and consumer protection).

Paying the cost of operating and maintaining that portion of a facility in which the service is located is also considered to fall under the basic eligibility category of Public Services, even if such costs are the only CDBG-funded contributions for those services.

The following **are not** eligible public services under this category:

- Political activities;
- Ongoing grants or non-emergency payments (defined as more than three consecutive months) to individuals for their food, clothing, rent, utilities, or other income payments.
- Payment of expenses in connection with litigation against the grantee or non-profit.

National Objectives – Public Services		
National Objective	Qualifies If...	Example
L/M Income Area Benefit	The public service is available to all the residents in a particular primarily residential area, and at least 51% of those residents are L/M income persons.	Operation of after-school programs for children attending an elementary school serving a predominantly L/M income area.
L/M Income Limited Clientele	The public service is limited to a specific group of people, at least 51% of who are L/M income persons. Services qualifying under this category serve a specific clientele, rather than providing service to all the persons in a geographic area.	Provision of meals to the homeless. (Most public services qualify under this category.)
L/M Income Housing	Not applicable	Not applicable
L/M Income Jobs	Not applicable	Not applicable
Slum or Blighted Area	The public service is provided within a designated slum or blighted area, and is designed to address one or more conditions which contributed to the deterioration of the area.	Provision of crime prevention counseling to residents of a designated slum or blighted area.
Spot Blight	Not applicable	Not applicable
Urgent Needs	The public service is designed to alleviate existing conditions that pose a serious and immediate threat to the health or welfare of the community, they are of recent origin or recently became urgent, and the grant recipient is unable to find other available funds to support the activity.	Additional police protection to prevent looting in an area damaged by a tornado.

2.5.8. PAYMENT OF NON-FEDERAL SHARE

This provision does not make any additional activities eligible for CDBG assistance because it limits the use of CDBG funds to paying the non-federal share only for activities that are otherwise eligible for CDBG assistance. Therefore, any proposed use of CDBG funds to pay the non-federal share of a federal grant-in-aid program should be evaluated against the requirements of the applicable eligibility category.

It should also be noted that the authority to use CDBG funds for the non-federal share of another program does not override any specific restriction against that use that may be contained in the HCDA or regulations for that program. For example, the HOME program requires a non-federal match, but specifically states that CDBG expenditures may not count towards meeting that requirement.

2.5.9. RELOCATION

CDBG funds may be used for relocation payments and assistance to displaced persons, including:

- Individuals,
- Families,
- Businesses,
- Non-profit organizations, and
- Farms

Complying with National Objectives

Determining compliance of this activity with the national objectives of the CDBG program must be based on the underlying relocation activity.

[24 CFR 570.488 and 24 CFR 570.606](#)

Relocation payments are **required** in certain circumstances.

Where such assistance is **required**, the activity may qualify as meeting the national objective of benefiting L/M income persons only where the acquisition or rehabilitation causing the relocation can also qualify under that objective.

If the grant recipient acquires property for construction of a public facility that will serve an area that qualified under the slums/blight objective but cannot qualify as benefiting L/M income persons, the payment of assistance to those displaced by such activity would qualify under the slums/blight objective **even if most or all of the displacees are L/M income**. This is because the grant recipient is required by law to make such payments and therefore it must be viewed as an integral part of the displacing activity.

2.5.10 PLANNING AND CAPACITY BUILDING

CDFA may also award grants to municipalities in which planning is the only activity, or in which planning activities are unrelated to any other activity funded as part of the grant. These are often referred to as “*planning-only grants*” or “*planning-only activities*.” CDBG funds may be used under this category for activities designed to improve the grantees capacity (or that of its sub-recipients) to plan and manage programs and activities for the grantees CDBG program.

CDBG funds may be used for:

- Studies,
- Analysis,
- Data gathering,
- Preparation of plans, and
- Identification of actions that will implement plans.

The types of plans which may be paid for with CDBG funds include, but are not limited to:

- Comprehensive plans;
- Individual project plans;
- Community development plans;
- Capital improvement programs;
- Small area and neighborhood plans;
- Local analyses of impediments to fair housing choice;
- Environmental and historic preservation studies; and
- Functional plans (such as plans for housing, land use, energy conservation, or economic development).

Planning and capacity building activities do not include:

- Engineering, architectural, and design costs related to a specific project (for example, detailed engineering specifications; working drawings, bid documents); or
- Other costs of implementing plans.

Complying with National Objectives

Planning-only grants or activities must comply with the requirements or LMI or slum and blight national objectives. (It is **not** possible for a planning-only grant or activity to comply with the Urgent Needs national objective.)

Planning-only grants or activities can meet the LMI Benefit objective if it can be shown that at least 51 percent of the persons who would benefit from implementation of the plan are L/M income persons.

24 CFR 570.483(b)(5)
and
24 CFR 570.483(c)(3)

Planning-only grants or activities can meet the Slum/Blight national objective if the plans are for a slum or blighted area, or if all the elements of the planning are both necessary for and related to an activity which, if implemented, could be shown to meet the Slum/Blight national objective criteria.

For either the LMI Benefit or the Slum/Blight national objective, such determinations are *NOT* dependent on the planned-for activity or project actually being implemented at some point.

2.5.11 PROGRAM ADMINISTRATION

CDBG funds may be used to pay reasonable program administration costs and carrying charges related to the planning and execution of community development activities assisted in whole or in part with funds provided under the CDBG program. Program administration costs include staff and related costs required for overall program management, coordination, monitoring, reporting, and evaluation.

In the State CDBG program, this category includes both the state's costs of administering the CDBG program as well as the municipalities' (and their sub-recipients') costs of administering grants awarded to them by the state.

Other activities eligible under this category include:

- Citizen participation costs,
- Fair housing activities,
- Indirect costs charged using an accepted cost allocation plan,
- Staff and overhead costs for project delivery, and
- Certain costs of administering a federally designated Empowerment Zone or Enterprise Community.

2.5.12 ASSISTANCE TO FOR-PROFIT BUSINESSES

This section describes what is possible under the statute and the regulations. Not all states design their CDBG programs to encompass all possible activities. It is important for both states and state grant recipients to understand what is and is not allowed under the CDBG program, and to distinguish between federal program requirements and additional state-imposed requirements.

Activities eligible under this section include:

- Loans,
- Grants, or
- Other direct financial assistance to pay for the expansion of a factory or commercial business, or the establishment of a new facility or business.

For example, the CDBG funds could be provided to the for-profit company in order to:

- Purchase land;
 - Construct a building or other improvements;
 - Renovate an existing building to accommodate the business;
 - Construct tenant improvements/finishes;
 - Lease space in or purchase an existing building;
 - Purchase capital equipment;
 - Purchase inventory;
 - Use as working capital;
 - Provide employees with higher wages or fringe benefits (such as health insurance) that the company would not otherwise provide; and
 - Provide job training to newly-hired employees who otherwise would not qualify for those jobs.
- Technical assistance to a business facing bankruptcy or otherwise at-risk.
 - Providing services or benefits to newly-hired employees that allow them to hold the jobs, such as transportation to the jobsite or day care assistance. The company could provide subsidies or vouchers to employees to obtain such services on their own; or the company could provide these services directly for their employees (for example, operating an on-site day care center); or the company could contract with a third party to provide/operate these services (for example, contracting with a bus service to transport employees to work).

Economic development activities do not include:

- Assistance to a for-profit business in the form of lobbying or other political activities.
- Assisting directly in the relocation of any industrial or commercial plant, facility, or operation from one area to another area, if the relocation is likely to result in a significant loss of employment in the labor market area from which the relocation occurs.

[24 CFR 570.482\(h\)](#)

National Objectives – Assistance to For-Profit Businesses		
National Objective	Qualifies If...	Example
L/M Income Area Benefit	The assistance is to a business that provides goods or services to residents of an L/M income residential area.	Working capital or expansion loan to a neighborhood business such as a grocery store or laundromat, serving a neighborhood area with 62% L/M income residents.
L/M Income Limited Clientele	The only use of CDBG is to provide job training or other employment support services as part of a CDBG-eligible economic development project, and the percentage of total project cost contributed by CDBG does not exceed the percentage of all persons assisted who are L/M income, but the percentage of L/M income persons assisted is less than 51%.	Training for 30 new employees, ten of whom (30%) are L/M income, hired by a manufacturer adding new machinery to its plant where CDBG pays no more than one-third (30%) of the total cost of the project, including the training. CDBG can also provide assistance for the purchase of new machinery.
L/M Income Jobs	The assisted project involves the creation or retention of jobs at least 51% of which benefit L/M income persons.	Financial assistance to a manufacturer for the expansion of its facilities, through purchase of additional land or building expansion or improvements, where the expansion is expected to create permanent jobs, at least 51% of which will be available to L/M income persons.
Slum or Blighted Area	The assistance is to a business in a designated slum or blighted area and addresses one or more of the conditions that contributed to the deterioration of the area.	A loan to a private development company to acquire and clear an abandoned rail yard in a designated area so the site can be redeveloped as an industrial park.
Spot Blight	<p>The assistance is to a business located outside of a designated slum or blighted area where:</p> <p>(1) The assistance is designed to eliminate specific conditions of blight or physical decay; and</p> <p>(2) The assistance is limited to the following activities:</p> <ul style="list-style-type: none"> • acquisition, • clearance, • relocation, • historic preservation, and • building rehabilitation. <p>Rehabilitation must be limited to the extent necessary to eliminate specific conditions detrimental to public safety and health.</p>	Financial assistance to a business to demolish a dilapidated structure it owns and construct a new building on the site.

National Objectives – Assistance to For-Profit Businesses

National Objective	Qualifies If...	Example
Urgent Need	The assistance to a commercial or industrial business is designed to alleviate existing conditions and the grant recipient certifies that such conditions pose a serious and immediate threat to the health or welfare of the community, they are of recent origin or recently became urgent, the grant recipient is unable to finance the activity on its own, and other sources of funds are not available.	Provision of direct assistance to reconstruct the only grocery store in a small, remote town that was damaged by a tornado, where no other funds are available for the reconstruction.

OTHER IMPORTANT CONSIDERATIONS

Job Pirating:

It is common practice in the economic development field for communities to compete against one another to be the site of new commercial or industrial facilities. One of the more controversial aspects of this practice occurs when communities offer CDBG assistance to a business to induce the business to move its existing operations from another community. The gaining community seeks to provide new jobs for its residents, but those gains sometimes comes at the expense of employees currently holding jobs with that business in another community, who are not in a position to follow their employer (and their job) to a new location. This practice has come to be known as “job relocation,” or more commonly, “job piracy.”

[Attachment 2-4: CDFA Pirating Policy](#)

The HCDA prohibits CDBG funds from being used “...to assist directly in the relocation of any industrial or commercial plant, facility, or operation, from (one) area to another, if the relocation is likely to result in a significant loss of employment in the labor market area from which the relocation occurs.”

Eminent Domain:

The HUD Appropriations Act includes the prohibition on the use of CDBG funds in conjunction with eminent domain. This prohibition is not in the Housing and Community Development Act, but is contained in each year’s HUD Appropriations Act. The text of the provision is as follows:

“No funds in this Act may be used to support any Federal, State, or local projects that seek to use the power of eminent domain, unless eminent domain is employed only for a public use: Provided, That for purposes of this section, public use shall not be construed to include economic development that primarily benefits private entities: Provided further, That any use of funds for mass transit, railroad, airport, seaport or highway projects as well as utility projects which benefit or serve the general public (including energy-related, communication-related, water-related and wastewater-related

Chapter 2: National Objectives and Eligible Activities

infrastructure), other structures designated for use by the general public or which have other common-carrier or public-utility functions that serve the general public and are subject to regulation and oversight by the government, and projects for the removal of an immediate threat to public health and safety or brownfields as defined in the Small Business Liability Relief and Brownfields Revitalization Act (Public Law 107-118) shall be considered a public use for purposes of eminent domain."

For grantees, this means quite simply CDBG funds may not be used for any economic development projects where eminent domain has also been utilized by a federal, state or local government in relation to that site or project.

Underwriting Requirements:

HUD has development minimum underwriting guidelines designed to assist grantees to select economic development projects that are financially viable and will result in the most effective use of CDBG funds. There are six criteria that must be evaluated:

[Attachment 2-5:
Underwriting
Requirements](#)

1. Project costs are reasonable;
2. All sources of project financing are committed;
3. To the extent practicable, CDBG funds are not substituted for non-federal financial support;
4. Project is financially feasible;
5. To the extent practicable, the return of the owner's equity investment will not be unreasonably high; and
6. To the extent practicable, CDBG funds are disbursed on a pro-rata basis with other finances committed to the project.

These guidelines do not apply to public facilities or microenterprise activities.

More detailed information on CDFA's underwriting requirements can be found in Attachment 2-5: Underwriting Requirements.

Public Benefit Standards:

Grantees should be aware that the public benefit standards and underwriting guidelines do apply to job training and other economic development services activities funded with CDBG, even though they may not involve direct financial assistance to a business. Furthermore, it is important to remember that the public benefit standards are part of the statutory eligibility requirements of the program. Their applicability is triggered by the **eligibility** category under which the activity is funded, **not by what national objective** the activity is designed to address.

By regulation, HUD has also included under this requirement, under certain circumstances, a public improvement activity that qualifies under the L/M Income Jobs subcategory of the L/M Income Benefit national objective.

24 CFR 570.
483(b)(4)(vi)(F)

Individual Standards:

For an activity that creates or retains jobs, the use of CDBG funds cannot exceed **\$50,000 per full-time equivalent job**, or;

For an activity that provides goods or services to residents of an area, the amount of CDBG funds provided for the activity cannot exceed **\$1,000 per L/M person served**.

The effect of these dollar limits is that, if an activity could both create or retain jobs AND provide goods or services to persons, it must fail *both* dollar standards to be precluded on the basis of these individual activity standards (and thus ineligible to be carried out using CDBG funds).

HUD also determined that there are certain kinds of economic development activities that by their nature *fail* to provide sufficient public benefit. They are:

- An activity in which the grant recipient promotes the community as a whole (as opposed to promotion of specific areas and programs);
- Assistance to a professional sports team;
- Assistance to privately-owned recreational facilities that serve a predominantly higher-income clientele, where the recreational benefit to be derived by users or members clearly outweighs the employment or other benefits to L/M income persons;
- Acquisition of land for which the specific proposed use has not yet been identified; and
- Assistance to a for-profit business while that business or any other business owned by the same person(s) or entity(ies) is the subject of unresolved findings of noncompliance relating to previous CDBG assistance provided to the business.

Therefore, any activity subject to the Public Benefit standards that falls into any of the above descriptions **may not be assisted with CDBG funds** regardless of any other aspect of the activity.

Aggregate Standards:

Activities that are subject to the Public Benefit standards and pass the individual activity tests outlined above also must generally, in the aggregate, either:

- Create or retain at least *one full-time equivalent, permanent job per \$35,000* of CDBG funds used for all such activities or
- Provide goods or services to residents of an area, such that the number of L/M income persons residing in the area served by the assisted businesses amounts to at least *one L/M income person per \$350* of CDBG funds used for all such activities.

As with the individual standards, if the activity can both create or retain jobs AND provide goods or services to residents of an area, the grant recipient may elect to apply either of the above aggregate standards to the activity. However, only **one** standard shall be used for each such activity. That is, if the grant recipient elects to use the area standard, any jobs created or retained by the activity are not to be counted for purposes of applying that aggregate standard.

2.5.13. HOUSING SERVICES

CDBG funds may be used to pay costs in support of activities eligible for funding under the HOME program. This includes services such as housing counseling in connection with tenant-based rental assistance and affordable housing projects, energy auditing, preparation of work specifications, loan processing, inspections, tenant selection, management of tenant-based rental assistance, and other services related to assisting owners, tenants, contractors, and other entities participating or seeking to participate in the HOME program.

Complying with National Objectives

Since such assistance must also meet HOME income targeting requirements, see the discussion under L/M Income Housing in the National Objective section above, to determine how these services can meet the CDBG national objectives.

Note: Activities funded under this provision are not prohibited from qualifying under other CDBG national objectives, but the requirement to comply with HOME criteria makes the L/M Income Housing Benefit the clear alternative for CDBG compliance.

2.5.14. MICROENTERPRISE ASSISTANCE

Activities assisted under microenterprise is limited to the provision of assistance to public and private organizations, agencies, and other entities (including non-profit and for-profit entities) to enable such entities to facilitate economic development by:

1. Providing credit (including providing direct loans and loan guarantees, establishing revolving loan funds, and facilitating peer lending programs) for the establishment, stabilization, and expansion of microenterprises;
2. Providing technical assistance, advice, and business support services (including assistance, advice, and support relating to developing business plans, securing funding, conducting marketing, and otherwise engaging in microenterprise activities) to owners of microenterprises and persons developing microenterprises; and
3. Providing general support (such as peer support programs and counseling) to owners of microenterprises and persons developing microenterprises.

Complying with National Objectives

Because microenterprises are for-profit businesses, most of the guidelines for meeting national objectives under other economic development eligibility categories also apply here. There is one notable exception, however. A microenterprise assistance activity may qualify under the L/M Income Limited Clientele national objective criteria if it assists owners of and/or persons developing a microenterprise who are L/M income persons. If such assistance is provided to owners/persons developing a microenterprise who are not L/M income persons, it would not qualify under Limited Clientele, but would need to meet the requirements of other subcategories (for example, Area Benefit or Jobs).

See the following chart for further elaboration on meeting the L/M Income Benefit national objective.

More detailed information on utilizing Microenterprise Assistance can be found in the CDFA Microenterprise Guide.

[Attachment 2-6: CDFA Microenterprise Guide](#)

National Objectives – Microenterprise Assistance		
National Objective	Qualifies If...	Example
L/M Income Area Benefit	The microenterprise assisted provides services to a residential area that has a sufficiently high percentage of L/M income persons.	A small carry-out store (with no more than 5 employees, including the owner) in a neighborhood having more than 51 percent L/M income residents.
L/M Income Limited Clientele	The microenterprise assistance is provided to a L/M income person who owns or is developing a microenterprise.	Assisting a resident of public housing to establish a business providing childcare or providing assistance to an owner/proprietor to purchase a tow truck to establish a towing business.
L/M Income Jobs	The microenterprise assisted will create or retain jobs, 51 percent or more of which will benefit L/M income persons.	Assisting in the expansion of a house cleaning service with two employees that agrees to hire an additional L/M income person for the business.

2.5.15. HOMEOWNERSHIP ASSISTANCE

The specific purposes for which financial assistance using CDBG funds may be provided under this category are to:

- Subsidize interest rates and mortgage principal amounts, including making a grant to reduce the effective interest rate on the amount needed by the purchaser to an affordable level. (The funds granted would have to be applied towards the purchase price.) Alternatively, the grant recipient/sub-recipient could make a subordinate loan for part of the purchase price, at little or no interest, for an amount of funds the payments on which, together with that required under the first mortgage, would be affordable to the purchaser.
- Finance the cost of acquiring property already occupied by the household at terms needed to make the purchase affordable.
- Pay all or part of the premium (on behalf of the purchaser) for mortgage insurance required up-front by a private mortgagee. (This would include the cost for private mortgage insurance.)
- Pay any or all of the reasonable closing costs associated with the home purchase on behalf of the purchaser.
- Pay up to 50 percent of the down payment required by the mortgagee for the purchase on behalf of the purchaser.

Note: The use of funds under this category is specifically limited to assisting low- and moderate-income households.

Complying with National Objectives

The use of CDBG funds authorized under this category is limited to assisting low- and moderate-income households, any such use of funds must qualify under the national objective of benefit to low- and moderate-income persons-housing activities (LMH).

2.5.16. CONSTRUCTION OF TORNADO-SAFE SHELTERS

Public Law 108-146, enacted December 3, 2003, otherwise known as the Tornado Shelters Act, amended Title I of the HCDA of 1974 to make CDBG eligible for the construction of tornado shelters in neighborhoods where there are residents of manufactured housing. Grantees can provide assistance to non-profit and for-profit entities (as loans or grants) for the purpose of constructing tornado-safe shelters. The construction of tornado shelters may be carried out in neighborhoods that may or may not contain a manufactured housing park, provided such a neighborhood contains not less than 20 manufactured housing units and the shelter is available to the manufactured housing residents. Furthermore, a neighborhood or manufactured housing park that receives assistance under this provision must meet the following criteria:

1. Consist predominantly of low- and moderate-income persons; and
2. Be located in a state in which a tornado has occurred within the past three years; and

3. Have a warning siren in the neighborhood where the shelter will be located or, if the shelter is located in a manufactured housing park, within 1,500 feet of the park; and
4. Ensure the shelter is sufficient in size to accommodate all of the occupants of the manufactured housing units at the same time and be located in the neighborhood in which the shelter will be used; and
5. Comply with the standards for construction as identified by the Federal Emergency Management Agency (FEMA) in Publication FEMA 361, Design and Construction Guidance for Community Shelters. This publication is available on FEMA's website at <http://www.fema.gov/library/viewRecord.do?id=1657>

Complying with National Objectives

Because the statute requires that shelter-assisted neighborhoods be comprised of predominantly low- and moderate-income residents, any use of CDBG funds under this category must qualify under the national objective of benefit to low- and moderate-income persons (LMA). A grantee must be able to document that at least 51 percent of the residents of the tornado shelter service area are low- and moderate-income persons.

2.5.17. LEAD-BASED PAINT HAZARD EVALUATION AND REDUCTION

The costs associated with the evaluation and reduction of lead-based paint hazards are eligible expenses under CDBG whether undertaken alone or in conjunction with other rehabilitation. Lead-based paint evaluation and abatement can either be completed as its own activity or as part of a rehabilitation activity. Typically, these expenses might include:

- Inspecting buildings for possible lead-based paint hazards;
- Testing surfaces to see if they contain-lead based paint;
- The abatement of lead hazards; and
- Payment of temporary relocation costs to protect residents from hazards while abatement work is taking place.

Complying with National Objectives

Lead-based paint hazard evaluation and reduction activities may qualify under the Housing category of the LMI Benefit national objective. In order to provide these activities for homeownership units, the residents of the units must be Low or Moderate Income (LMI).

For rental units the following conditions must be met:

- Rents must be set at levels which are affordable to LMI persons. Grantees must adopt standards for determining “affordable rents”.
- The general rule is that 51 percent of the units in each assisted structure are to be occupied by LMI households.

Single unit properties must be occupied by an LMI household. In structures with two units, at least one must be occupied by an LMI household. For properties with three or more units, at least 51 percent must be occupied by LMI households.

SECTION 2.6 INELIGIBLE ACTIVITIES

In general, any activity not specifically authorized under CDBG statute or regulations is ineligible for CDBG funds. In addition, the statute specifically stipulates that the following activities may not be assisted with CDBG funds:

1. Buildings for the general conduct of government, except to create accessibility for disabled population (e.g., city hall);
2. General government expenses;
3. Political activities;
4. Purchase of equipment or furnishings for a property. This excludes certain types of manufacturing equipment connected with economic development activities and the purchase of fire trucks as firefighting equipment;
5. New housing construction and Income Payments (Income Payments are defined in the regulations as direct payments to subsidize rent and/or utilities);
6. Operating and maintenance expenses for public facilities, improvements and services, and
7. Lobbying activities.

NOTE: CDBG-assisted facilities may not be used as collateral during any part of the grant period.

CHAPTER 4: GRANTEE REQUIREMENTS

INTRODUCTION

Grantees are responsible for a number of requirements that extend beyond just administering the Community Development Block Grant project. These requirements include steps that municipalities must take before applying for a grant and steps that may not be directly related to completing the project. For example, citizen participation requirements must be fulfilled before submitting an application and all grantees must undertake annual actions to further fair housing even if their projects are not assisting or improving housing.

Fair housing and civil rights laws impact many aspects of CDBG projects. Nondiscrimination must be shown with relation to any benefits created with a grantee's public facilities projects. In addition, the grantee will be expected to show that the community in general is committed to nondiscrimination, equal opportunity, and affirmative action.

GRANTEE RESPONSIBILITIES

- Follow citizen-participation requirements and adopt a citizen participation plan
- Affirmatively further fair housing by adopting a Fair Housing resolution
- Implement fair housing activities to affirmatively further fair housing on a consistent basis
- Implement the CDBG project in a non-discriminatory manner which includes accessible communications and adopting a non-discrimination resolution
- Maintain records that document project beneficiaries
- Demonstrate compliance with fair housing, accessibility, and civil rights objectives

This chapter covers these requirements, imposed by Federal laws and regulations, in the following sections:

1. Citizen Participation
2. Affirmatively Furthering Fair Housing (AFFH)
3. Equal Employment Opportunity (EEO) Compliance
4. Economic Opportunity - Section 3
5. Limited English Proficiency
6. Conflict of Interest
7. Signage
8. Drug-Free Workplace Policy
9. Grievance Procedures

SECTION 4.1 CITIZEN PARTICIPATION REQUIREMENTS

Municipalities must provide reasonable opportunities for citizen participation, hearings, and access to information with respect to local community development programs. Certain citizen participation requirements must be met by the grantee prior to application submission while other requirements apply throughout the course of the project. Grantees are expected to take whatever actions are appropriate to encourage the participation of all its citizens, including minorities and non-English speaking persons, as well as persons with disabilities. (Section 4.5 below addresses required steps to assist limited-English proficient persons.)

CITIZEN PARTICIPATION PLAN

All municipalities receiving CDBG funds from the State of New Hampshire must adhere to the Citizen Participation Requirements set forth in the State's Citizen Participation plan and adopt it. Each municipality also must meet the following requirements:

[Attachment 4-1:
NH Citizen Participation Plan](#)

1. Solicit input on local community development needs and proposed activities particularly by low- and moderate-income persons who reside within the municipality in which the grant funds are proposed to be used;
2. Promote public comment on the proposed application and community development activities via a minimum of two public hearings (more if any substantial change is proposed);
3. Provide special technical assistance to groups representative of LMI persons;
4. Identify the needs of non-English speaking residents and reasonable accommodation for persons with disabilities;
5. Provide for a timely appropriate and effective written answer to complaints and grievances;
6. Provide citizens with reasonable and timely access to information, including the amount of funds available, the range of eligible activities, the activities being applied for, and amount of funds requested.

Each grantee must adhere to the State's Citizen Participation Plan by adopting it as part of its Housing and Community Development Plan. Attachment 4-2 contains a Sample HCD Plan with a citizen participation plan component. Also, grantees should be aware that the HCD Plan, which will include the Citizen Participation Plan, is a required threshold document submitted with a CDBG application.

[Attachment 4-2: Sample HCD
Plan with Citizen Participation
Component](#)

REQUIRED PUBLIC HEARINGS

Grantees should pay particular attention to the Public Hearing Component of the Grant Process. No application will be reviewed if the grantee has not complied with the procedures established and outlined below for public hearing notices and meetings. Two (2) public hearings are required at separate phases of the project. (Additional hearings may be required if substantial changes or amendments occur.)

1. Notice of public hearings must be published in a daily newspaper of general circulation in the municipality. For example, the Union Leader is such a daily newspaper serving many communities beyond Manchester. Attachment 4-3 is a sample format for the public notice.

[Attachment 4-3: Sample Public Notice](#)
2. The public notice must be posted as a printed legal notice in three other public places within the municipality. Such other places may include:
 - a) Weekly papers can be used as an additional notice (not a primary notice in a daily newspaper of general circulation).
 - b) Use of internet, social media, or website calendars that announce public events (one of which may be the official municipal website).
3. The notice must be published no less than 10 days prior to the date of the public hearing. When counting the 10-day period, you may NOT count the day the advertisement runs or the day of the hearing.
4. Notice of the Public Hearing must include a contact person/ADA coordinator's name and telephone number. Citizens should be advised to contact that individual, so the Town can provide accommodations for any persons with disabilities and provide assistance if a significant number of non-English speaking persons are expected. See Section 4.5 in this chapter for requirements regarding Limited English Proficiency (LEP).
5. Hearings must be scheduled during a time when citizens are generally available to attend. Morning, early afternoon, or weekend sessions are unacceptable.
6. Grantees planning on earning Program Income (PI) must include a discussion on the use and approval of the Program Income Reuse Plan as part of the public hearings. The municipality must provide adequate information about this PI Reuse Plan at this hearing. Attachment 6-7 has information about the required content of a PI Reuse Plan. More information on Program Income can be found in [Chapter 6: Financial Management](#).

[Attachment 6-7: Sample Program Income Reuse Plan](#)

In addition to the required notices, applicants must also make every effort to inform those who might not be reached through the newspaper notice that the public hearing is to be held. Such efforts might include the distribution of leaflets, post notices on bulletin boards at town hall, notices to local organizations, clubs, and churches, and/or personal contact. These efforts should especially be conducted in the neighborhoods affected by the proposed project.

NOTE: If a hearing is cancelled due to inclement weather, the public noticing process must repeat. It is recommended that all public notices include potential rescheduling dates to avoid this situation.

FIRST PUBLIC HEARING CONTENT

The first public hearing is an opportunity to educate and inform local residents about the project, to provide a forum for citizen input, and to obtain any community development needs. This hearing must be held prior to submission of the application to CDFA. The following information should be made available at public hearings:

1. Goals and objectives of the CDBG program,
2. Total amount of CDBG funds available,
3. Community development and housing needs of the applicant,
4. Proposed activities for the project and the amount to be requested; estimated beneficiaries (such as approximate number of homes to be rehabbed, dwelling units connected to infrastructure, persons served), qualification requirements, how the program is managed, role of grantee and consultant, if any, type of improvements or construction proposed, timeframe to complete the project,
5. Proposed amount of funds to be used to benefit low- and moderate- income people,
6. Amount and source of local funds to be expended on the project, and
7. Adoption of a Residential Anti-displacement and Relocation Assistance Plan. See Attachment 9-17.
8. Review of the local Housing and Community Development Plan ([Attachment 4-2](#)). This plan needs to be re-affirmed only every 3 years.

[Attachment 9-17: Sample Residential Anti-displacement and Relocation Assistance Plan](#)

A copy, scan, or digital attachment of the newspaper posting for the first public hearing must be included as part of the application submitted to CFDA. The date that the posting was published must be clear on any submitted copy. Also, a final approved copy of the hearing minutes from the first public hearing must be included with the grant application. The grantee should retain the same information for the second or any additional hearings held prior to project completion for monitoring by CDFA. The final draft of the application must be made available to the public.

SECOND PUBLIC HEARING CONTENT

The second public hearing is for the municipality to review the results of the project with citizens and to take comments about the municipalities's performance. The public hearing must be held prior to the close out of the grant, but no earlier than the projected mid-point, to provide status of the program. The following information should be made available at public hearings:

1. Project progress/status of completion and expected timeframe to completion
2. Results to date and projected totals, such as number of beneficiaries assisted, housing units completed, portion of project in service, or persons served.
3. Funds expended, balance of funds available, and budget expectations to completion.

When a grantee is planning to conduct a second hearing from one grant in conjunction with the first hearing for a new grant, the advertisement language must be clear in the dual purpose of the hearing.

ADDITIONAL PUBLIC HEARINGS CONTENT

If the grantee is required or chooses to hold additional public hearings, they must provide citizens with reasonable advance notice of, and opportunity to comment on, proposed changes to activities in an application to the state as described in the required notices for the first and second hearing. Grantees that propose substantial changes are required to hold an additional hearing. Substantially changed means changes to:

- Purpose
- Scope, adding or removing an activity
- Location
- Increase or Decrease funding by 25% or more
- Beneficiaries

The content of the additional public hearing would encompass all of the same elements of the first hearing with two changes. Replace item #3 Community development and housing needs of the applicant with "3. Explanation for the change(s)." Then, all other content items from the original hearing should be revisited and discussed in comparison to the proposed revision or amendment to the project.

COMPLAINTS AND GRIEVANCES

Occasionally grantees receive complaints regarding their projects and activities. In order to respond, grantees must develop procedures for responding to complaints. See Section 4.9 Grievance Procedures in this chapter.

SECTION 4.2 AFFIRMATIVELY FURTHERING FAIR HOUSING (AFFH)

All recipients of federal funds must assure that they do not discriminate or permit others to discriminate in provision of housing for every individual regardless of:

- Race
- Color
- National Origin
- Religion
- Sex
- Familial Status
- Disability
- Age *

** The Age Discrimination Act prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance.*

Additionally, this list of protected classes has been expanded via HUD regulations and notices to include sexual orientation or gender identity, as well as persons who use service or support animals. Additionally, New Hampshire state law adds age, sexual orientation, gender identity, and marital status to the list of protected classes within the state. Every grantee must promote fair housing practices within its jurisdiction for anyone within these protected classes.

The New Hampshire Commission for Human Rights is a state agency established for the purpose of eliminating discrimination in employment, public accommodations and the sale or rental of housing or commercial property, because of age, sex, sexual orientation, gender identity, race, creed, color, marital status, familial status, physical or mental disability or national origin. The commission has the power to receive and investigate complaints of illegal discrimination. Grantees can consider coordinating their work to address discrimination with this state agency.

Going beyond prohibitions of discrimination, receipt of HUD funds requires that grantees affirmatively further fair housing. While there are many ways that grantees can promote fair housing practices, the following guidelines have been adopted by CDFA:

Step 1: Impediments to Fair Housing

Grantees are not required to perform their own Analysis of Impediments (AI) to Fair Housing but may use the analysis performed by New Hampshire Housing Finance Authority (NHHFA), a project partner, or by an adjacent entitlement community. The current AI can be found on the NHHFA's website. These documents are useful to help determine actions in Step 3.

[Attachment 4-4: NH Analysis of Impediments](#)

Step 2: Develop a Fair Housing Resolution

The grantee should work with its local solicitor to develop a Fair Housing Resolution. A sample resolution that also designates a local Fair Housing Officer has been provided as Attachment 4-5. The Fair Housing Resolution must be formally adopted by the grantee and retained with each CDBG project file. If the grantee has multiple CDBG grants with overlapping timeframes, a separate overall file should be maintained for fair housing.

[Attachment 4-5:
Sample Fair Housing
Resolution](#)

Step 3: Implement Fair Housing Activity

Each grantee must select and implement one Fair Housing Activity for each year that a grantee receives a grant award. If a grantee receives multiple grants in the same year, only one activity is required. If a grantee receives grant awards in sequential or nearly sequential years, the Fair Housing Activity selected by the grantee must be a different one each program year. Grantees must complete a Fair Housing Activity even if their projects do not entail housing activities. The AI may provide guidance and insight to grantees in the selection of their Fair Housing Activities. Attachment 4-6 provides Sample Fair Housing Activities.

[Attachment 4-6: Sample
Fair Housing Activities](#)

Fair Housing Activities must be sufficiently documented, including records on funds provided, if any for such activities, so their completion can be verified during CDFA's compliance review.

[Attachment 4-7: Fair
Housing Activity
Certification](#)

Accepted documentation would include copies of brochures provided, along with a distribution list, or minutes of meetings where fair housing is discussed. The grantee must complete the Fair Housing Activity Certification provided as Attachment 4-7 confirming the implementation of Fair Housing Activities.

Step 4: Display the Applicable Fair Housing Logo and Required Posters

The grantee and its grant administrator are responsible for placing the applicable fair housing posters in conspicuous locations of public buildings, including municipal offices, and the posters must always be displayed at the job site. The required fair housing posters may be found on the HUD website. See Attachment 4-8. Other posters required for Equal Employment Opportunity are described in Section 4.3 of this chapter.

[Attachment 4-8:
Fair Housing Posters](#)

All housing-related notices, advertising, and brochures must include the fair housing logo. CDFA also recommends that the logo be displayed on all municipal stationary.

Grantees must post the following documentation at the town/city hall in a prominent place for viewing by the general public:

- Civil Rights Act Title VI Certification
- Fair Housing Policy Statement with Discrimination Complaint Procedure (Local Resolution)
- Americans with Disabilities Act (ADA) Notice
- ADA Grievance Procedure
- Fair Housing Posters in both English and Spanish.
- Equal Employment Opportunity posters in both English and Spanish

Notices and posters may need to be provided in additional languages. See Section 4.5 on Limited English Proficiency in this chapter.

Step 5: Contract Provisions

Include provisions for non-discrimination in all contracts issued to all recipients of CDBG funds, including businessmen, developers, contractors, and homeowners. Contractors should include non-discrimination language in any subcontract issued for a CDBG project as well. A grantee should keep a copy of such provisions in its project file, along with any additional information documenting its own compliance. See [Chapter 7: Procurement](#).

Step 6: Affirmative Marketing Plans

Affirmative marketing plans must be developed and implemented for all CDBG-assisted housing with five or more units. An affirmative marketing plan must include:

- Methods for informing the public, property owners, and potential tenants about fair housing laws and the municipalities' policies (for example, use of the fair housing logo or equal opportunity language);
- Description of what owners and/or the grantee/sub-recipient will do to affirmatively market housing assisted with CDBG funds;
- Description of what property owners and/or the grantee/sub-recipient will do to inform persons not likely to apply for housing without special outreach;
- Maintenance of records to document actions taken to affirmatively market CDBG-assisted units and to assess marketing effectiveness; and
- Description of how efforts will be assessed and what corrective actions will be taken where requirements are not met.

Grantees and local administrators should assist municipal officials to become thoroughly familiar with the Fair Housing Activity undertaken, Fair Housing Resolution, and other fair housing provisions since the municipality is ultimately responsible for ensuring that the municipality complies with fair housing requirements. Failure to do so can result in the grantee being ineligible to apply for a grant in the future. Grantees may enlist public participation in carrying out the Fair Housing Activity and post information so that it is made available to the general public.

The grantee must pledge to carry out the Fair Housing Activity to overcome the identified impediments to fair housing choice. Too often, municipalities have made statements in contract assurances that they will fight housing discrimination but in actuality have done nothing to overcome housing discrimination or segregation in their communities.

[HUD Fair Housing Planning Guide](#)

For more information, please see the *HUD Fair Housing Planning Guide*. This document is a useful resource in understanding fair housing law and requirements.

SECTION 4.3 EQUAL EMPLOYMENT OPPORTUNITY (EEO) COMPLIANCE

Municipalities also are required by Title VI of the Civil Rights Act of 1964 to prohibit discrimination on the basis of race, color, or national origin in all federal assisted programs. This law and Executive Order 11246, as amended, specifically prohibits discrimination in employment practices. This Executive Order, applicable to any business or organization that has a federal contract/ subcontract or multiple contracts totaling greater than \$10,000, also imposes requirements for affirmative action. When procuring goods, construction contractors, or professional services, grantees should incorporate equal opportunity in employment clauses in solicitation (bidding) and contract documents.

Executive Order 11246 and other statutes require grantees, sub-recipients, contractors, and subcontractors to prohibit discrimination based on the following:

- Race
- Sex
- Creed
- Religion
- Color
- National Origin
- Age
- Disability
- Genetic Information
- Military History

Further, grantees are required to take “affirmative action” to overcome the effects of past discrimination in the administration of federally-funded programs. Affirmative action means promoting equal employment and income development opportunities by gaining support from all administrative levels in establishing practical action plans, maintaining continual evaluation, and retaining focus and progress toward stated goals.

EEO Posters must be displayed at the grantee and all job sites supported with CDBG funds. It is the responsibility of the grant administrator to provide the posters to the grantee, as well as any sub-recipient of CDBG funds, and to verify that the posters are displayed at the job site. See Attachment 4-9: Equal Employment Opportunity Posters.

[Attachment 4-9:
DOL Equal Employment
Opportunity Posters](#)

SECTION 4.4 ECONOMIC OPPORTUNITY – SECTION 3

Section 3 of the Housing and Urban Development Act of 1968 imposes requirements pertaining to employment/training opportunities and contracting arising from CDBG assistance, or other HUD funds, expended for rehabilitation, physical improvements, and public construction projects, both residential and non-residential.

Congress established Section 3 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.

The requirements of Section 3 are discussed in greater detail in [Chapter 7: Procurement](#), [Chapter 8: Labor Standards](#), and [Chapter 11: Reporting and Recordkeeping](#).

SECTION 4.5 LIMITED ENGLISH PROFICIENCY

Federally assisted grantees are required to make reasonable efforts to provide language assistance to ensure meaningful access for Limited English Proficient persons to the grantee's programs and activities. In compliance with Executive Order 13166, CDFA has conducted the four-factor analysis for statewide purposes and developed the following Language Access Plan (LAP) for Limited English Proficiency (LEP) persons.

In certain situations, failure to ensure that persons who have limited English proficiency can effectively participate in, or benefit from, federally assisted programs may violate the federal prohibition against national origin discrimination.

All municipalities are required to follow the measures outlined below.

Step 1: Conduct Analysis

Conduct the **Four Factor Analysis** prior to advertising the initial public hearing. The steps for a Four Factor Analysis are included in Attachment 4-10.

[Attachment 4-10: Four Factor Analysis for Limited English Proficiency](#)

Step 2: If Required, Provide Language Assistance during Application Process

If the Four Factor Analysis reveals one or more LEP populations (an LEP population of five percent but at least 50 persons or a LEP population of 1,000 or more persons) within the municipality or other factor in the analysis dictates the need for language assistance, the grantee will provide appropriate language assistance by 1) posting notices of the CDBG application public hearings in areas frequented by LEP persons of the threshold population(s) in the language(s) spoken, and 2) providing translation services at public hearings if requested to do so by LEP persons.

Step 3: Develop Language Access Plan (LAP)

If an application is funded and if the **Four Factor Analysis** dictates, the community will be required to develop a LAP and provide a description of outreach efforts. Particular attention will be given to plan details for projects including acquisition, relocation or housing rehabilitation. Guidance to develop a Language Access Plan has been included in this Implementation Guide as Attachment 4-11.

[Attachment 4-11: Sample Language Access Plan for LEP](#)

Step 4: Documentation of LAP

If a LAP is required, the LAP will include certifications that Plans have been developed, adopted, and will be implemented for all CDBG funded projects. The grantee's LAP will include an identification of all LEP populations exceeding 1,000 or five percent of total municipality population, whichever is less, or other factor requiring language assistance, the identification of materials to be made available to LEP persons, the means by which the materials will be made available to LEP persons, and the identification of any other translation services which may be necessary. Grantees will be monitored for implementation of their LAP.

SECTION 4.6 CONFLICT OF INTEREST

CDFA policy requires that conflicts of interest on CDBG projects be disclosed. These requirements apply to the procurement of supplies, equipment, construction services and professional services, the acquisition or disposition of real property, and providing direct benefits to municipal officials, sub-recipient officials, or persons administering the CDBG project. Federal and state guidelines stipulate that no person who performs any CDBG function or who has any CDBG responsibility, who is in a decision-making position, or who has inside information may obtain a financial interest or benefit from an activity funded in whole or in part with CDBG funds.

[24 CFR §570.611](#)

[24 CFR §570.489\(h\)](#)

In general, a conflict of interest would exist if any municipal employee or a person in a program decision-making capacity signs a contract funded with any portion of the CDBG State Program – including rehabilitation and consulting. This follows from the municipality's signed assistance agreement and from HUD regulations at 24 CFR §570.611.

In certain circumstances, CDFA may waive conflict of interest if specific criteria are met:

1. A disclosure of the nature of the conflict, including an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made.
2. A legal opinion (from local Counsel) is submitted stating that the potential for conflict of interest is minimal and that the situation does not violate either local or state conflict statutes or rulings.
3. The person applying for the waiver meets other program requirements. For example, low/moderate income guidelines for housing rehabilitation.
4. The person applying for the waiver is not in a decision-making position in the CDBG Program, either with the municipality or sub-recipient.
5. The municipality must certify to all of the above, and also demonstrate that a system has been established to guarantee that no preferential treatment to the applicant has occurred. This might require a numbered and dated system for accepting and processing applications, for example.
6. Finally, the municipality must submit a formal request to CDFA seeking a waiver of conflict of interest requirements based on the above criteria. The waiver request should describe the circumstances for all five elements above. See Attachment 4-12 for the CDFA Waiver Request Form.

[Attachment 4-12: CDFA
Waiver Request Form](#)

After review of the supporting documentation, if CDFA agrees that the potential for conflict of interest is minimal and if the applicant meets the above criteria for a waiver, staff will recommend approval.

SECTION 4.7 PROJECT SIGNAGE

All CDFA contracts require that CDFA's logo be displayed on all signage listing project funders. This signage informs citizens that the project is being funded by CDFA's CDBG Program, as well as listing the sponsor, architect and/or engineer, and contractor, as applicable.

When signs are posted, both the CDFA and the HUD logos must be used for any project signage. The CDFA and HUD logos may not be any smaller than 50% of the size of the largest logo displayed.

This signage requirement can be waived if *no other* partner/entity requires worksite signage and creating signage solely for CDFA poses a hardship. Alternatively, if none of these are applicable/feasible, an alternative display of the CDFA logo or public recognition must be approved by CDFA.

Photographic evidence of the signage must be made available at monitoring. Files of the required logos can be downloaded via Attachment 4-13.

[Attachment 4-13:
CDFA and HUD logos](#)

SECTION 4.8 DRUG-FREE WORKPLACE POLICY

A Drug-Free Workplace Policy must be formally adopted by the grantee, if one does not exist. The policy should include procedures for providing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition.

Grantees should work with their solicitor or other appropriate counsel to develop such a policy. Each municipality is likely to have differing circumstances to consider in developing the procedures in its own

[Attachment 4-14: Drug-Free
Workplace Toolkit](#)

local policy. The U.S. Department of Health of Human Services provides guidance and information to help develop and sustain a successful drug-free workplace via its website toolkit. That toolkit is available as Attachment 4-14.

SECTION 4.9 GRIEVANCE PROCEDURES

Several federal regulatory compliance requirements instruct grantees to develop and implement grievance procedures to address complaints or disputes that arise in administering CDBG or federal funds in general. The types of complaints include:

- discrimination
- citizen participation/public input
- contract and procurement disputes
- other program requirements such as acquisition and relocation actions or labor standards
- decisions about eligibility and providing assistance

Grantees must develop grievance procedures to address these situations. Attachment 4-15 contains Sample Grievance Procedures that municipalities can adopt to cover any of these complaints. Each complaint and the resolution of the complaint should be well documented in the grantee's files.

[Attachment 4-15: Sample Grievance Procedures](#)

If the grantee chooses to create its own procedure, the grantee must provide citizens with the name, address, and phone number of a contact person who can receive and respond to complaints. Complaints related to the scope and work of the project should be addressed by the grantee. Where practical, the grantee should respond to any complaints within 15 working days of its receipt. Because complaints and grievances are best handled at the local level, CDFA will forward any complaints it receives about a project to the grantee. CDFA will notify the person filing the complaint that it has been forwarded to the grantee and will direct the complainant to follow up directly with the grantee. It is the responsibility of the grantee to address the complaints regardless of whether a sub-recipient or consultant is managing the local project.

SECTION 4.10 GRANTEE CONTRACTUAL REQUIREMENTS

In accordance with RSA 162-L:16, I, CDFA and the grantee shall enter into contractual relationships which shall contain provisions that:

- Govern the use of CDBG funds and project activities which shall state that:
 1. The grantee shall comply with all applicable federal, state and municipal laws, regulations, rules, codes, orders, ordinances or standards issued pursuant to those laws as well as with any lawful direction(s) of a public officer(s);
 2. The grantee shall require each sub recipient, contractor and/or subcontractor to comply with the requirements in (1);
 3. In the performance of the project activities, the grantee shall be an independent contractor and shall not be considered by CDFA as an agent or employee of the CDFA;

4. Neither the grantee, its agents or employees, shall be entitled to any benefits, workers compensation or any profit or gain arising from the project;
5. The grantee shall provide the personnel needed either to directly perform the project activities or to supervise its:
 - a) Sub recipient(s);
 - b) Contractor(s); and
 - c) Subcontractor(s);
6. The grantee shall warrant that such personnel used to perform each activity shall be:
 - a) Professionally competent;
 - b) Qualified;
 - c) Properly licensed; and
 - d) Not employed by the subrecipient, contractor, or subcontractor
7. The grantee shall not employ nor shall it permit any sub recipient, contractor or subcontractor to employ, any elected state officials or state employees with project funds;
8. The grantee shall include such provisions in the contracts it negotiates with its sub recipient(s) and contractor(s) which are relevant in order to protect the interest of the State of New Hampshire, and/or required by federal or state law, rules or regulations;
9. The grantee shall submit a copy of its contract form to be approved by CDFA for consistency with all laws, rules and regulations, before executing any contract(s);
10. The grantee shall give CDFA at least 5 working days' notice of any preconstruction conference so that CDFA can attend and participate;
11. The grantee shall not assign or transfer any interest in the project;
12. No data produced in whole or in part with CDBG funds shall be subject to copyright in the United States or in any other country;
13. The grantee shall defend, indemnify and hold the state, its officers and employees harmless for any losses suffered or for any claims asserted against the state arising from the acts or omissions of the grantee, its officers, employees or subcontractors;
14. If the grantee seeks to change an activity(ies) representing 10 percent or less of the grant's original value, the grantee shall submit a written request for a contract revision to the CDFA;
15. The executive director shall consider the request and shall approve if the benefited cost is eligible under the federal act, federal regulations, state law or state administrative rules or deny the request in writing if it is not eligible;
16. If the grantee seeks to change an activity(s) by more than 10 percent of the grant's original value, the chief executive officer of the grantee municipality or county shall submit a written request for a contract amendment to the CDFA;

17. The executive director shall consider the request and shall, in writing, deny the request if the transfer is not eligible under the federal act, federal regulations, state law or state administrative rules or if eligible shall submit a proposed contract amendment to the governor and executive council for their approval;
18. If the grantee seeks a contract amendment under (16) that involves more than 25 percent of the grant's original value, the grantee shall hold a public hearing, to solicit public comment on the proposed amendment, in accordance with RSA 162-L:14;
19. CDFA shall provide a planned payment schedule for:
 - a) Project costs;
 - b) Progress and financial reports;
 - c) Completion, closeout and audit reports; and
 - d) Any other provisions which the department of justice shall require;
20. Cash advances by CDFA to a grantee shall be approved only:
 - a) To the extent necessary to satisfy the grantee's immediate cash requirements for the project; and
 - b) If their timing and amount shall coincide as closely as possible with the grantee's actual disbursements; and

21. Cash advances by the grantee to a subrecipient or contractor shall conform to the same standards in (20);

a) Require the grantees and their subrecipients to also adhere to the following requirements:

- i. The "Lead Paint Poisoning Prevention and Control Act" set forth in RSA 130-A and rules in He-P 1600; and
- ii. That prior to the effective date of the grant agreement, a recipient may obligate and spend local funds for:
 - 1) Environmental assessment;
 - 2) Planning and capacity building;
 - 3) Engineering and design costs associated with an activity;
 - 4) The provision of information and other resources to residents; and
 - 5) For relocation and/or acquisition activities;
 - That after the effective date of the grant agreement, the recipient shall be reimbursed with funds to cover those costs specified in (2), provided such locally funded activities were in compliance with the federal act;
 - That CDBG grant funds shall not be obligated prior to the effective date of the grant period or after its completion date without the prior written approval of CDFA in order to ensure compliance with the federal act;
 - That grantees shall only use CDBG funds for projects costs deemed allowable in accordance with 2 CFR 200 Subpart E-Cost Principles;
 - That non-profit subrecipients shall only use CDBG funds for project costs deemed allowable in accordance with 2 CFR 200, "Cost Principles for Nonprofit Organizations;"
 - That grantees shall maintain a financial management system which complies with 2 CFR 200 Subpart D and 24 CFR 570.;
 - That grantees shall comply with the procurement requirements set forth in 2 CFR 200.318 through 2 CFR 200.323;
 - That grantees shall comply with the conflict of interest provisions set forth in 2 CFR 200.112 for the procurement of the following:
 - i. Supplies;
 - ii. Equipment;
 - iii. Construction; and
 - iv. Services.
 - That grantees shall comply with the conflict of interest provisions set forth in 24 CFR 570.489(h) in all other cases not specified in (9), such as, but not limited to:
 - i. The acquisition and disposition of real property; and
 - ii. The provision of CDBG assistance to persons, households or businesses; and

22. That grantees shall, if applicable, develop a program design for the rehabilitation of housing including, but not limited to, the following:
 - a) Plans for grant administration;
 - b) Verification of household income levels;
 - c) Structural inspections;
 - d) Funding mechanisms for eligible households;
 - e) Payment schedules; and
 - f) Program outreach and marketing; and
23. Govern the use of CDBG funds upon completion of the project by requiring the grantee, its subrecipient and CDFA to enter into a project closeout agreement pursuant to RSA 162-L:16 which requires that:
 - a) The CDBG grant be closed out;
 - b) Proceeds from the sale of personal property comply with 2 CFR 200 for equipment and supplies;
 - c) Proceeds from the sale of real property comply with 24 CFR 570.489(j) and 2 CFR 200;
 - d) Outstanding obligations as of the completion date:
 - i. Be paid or otherwise resolved within 90 days;
 - ii. Be related to goods or services provided during the grant period;
 - iii. Be for reasonable costs associated with grant closeout, such as audits and final reports; and
 - iv. Be eligible to be incurred for up to 90 days after the completion date;
 - e) Disallowed and unspent CDBG funds be awarded to other municipalities or counties as part of the normal competition process, or to those applicants who applied in the same grant year;
 - f) Proceeds from program income comply with 24 CFR 570.489(e);
 - g) low and moderate income persons and households; and
 - h) Any other conditions that exists in the contractual relationship that are applicable after completion of the project, be described in the closeout agreement.

CHAPTER 5: ENVIRONMENTAL REVIEW

INTRODUCTION

All CDBG grantees are required to comply with federal environment laws and regulations. These laws and regulations are contained in the National Environmental Policy Act (NEPA) of 1969 and 24 CFR Part 58 (rev. October 29, 2003). The executed grant agreement requires an environmental review to be completed prior to the obligation, expenditure, or draw down of program funds. The environmental review, and applicable public notification, becomes part of a written environmental review record to be maintained by grantees. This record documents that CDBG funded and related activities are in compliance with NEPA, and other applicable federal laws, regulations, and executive orders. The goal of these federal laws is to ensure that federally assisted projects are compatible with the existing environmental conditions, that projects do not adversely impact the environment as a whole, and that the users of the project will be given a safe, healthy, and enjoyable environment.

In basic terms, grantees are required to determine the impact of the project on the environment as well as the impact of the environment on the project. A number of environmental review procedures and checklists have been developed to assist grantees in meeting this objective.

SECTION 5.1 RESPONSIBILITIES

GRANTEE RESPONSIBILITIES

- Develop Environmental Review Record (ERR)
- Determine project scope
- Determine if project is exempt, categorically excluded or whether an environmental assessment/impact statement is needed
- Publish findings in newspaper
- Hold public comment period
- Request release of funds (RROF)
- State's Responsibilities
- Receive RROF
- Review for compliance with 24 CFR Part 58
- Hold for public comment period
- Release funds as required
- Monitor ERR

APPLICABLE REGULATIONS

The HUD rules and regulations that govern the environmental review process can be found at 24 CFR Part 58. The provisions of the National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) regulations in 40 CFR Parts 1500 through 1508, and a myriad of other federal laws and regulations (some of which are enforced by state agencies) also may apply depending upon the type of project and the level of review required. These laws and authorities are referenced in the HUD and NEPA regulations and are cited in several of the chapter links to those requirements.

[40 CFR 1500-1508](#)
[24 CFR Part 58](#)

THE RESPONSIBLE ENTITY

Under 24 CFR Part 58, the term “responsible entity” (RE) means the grantee under the state CDBG Program. Therefore, these terms are used interchangeably with grantee throughout this chapter and the attachments. The responsible entity must complete the environmental review process. Environmental review responsibilities have both legal and financial ramifications. As part of the assurances and agreements signed by the responsible entity, the Authorized Official (AO) of the responsible entity agrees to assume the role of “responsible federal official” under the provisions of NEPA. This means that if someone brings suit against the responsible entity in federal court on environmental grounds, the AO will be named as the defendant. There may be financial implications associated with any lawsuit and, of course, any fines, judgments or settlements that may result.

NOTE: CDFA accepts no responsibility or liability for the quality or accuracy of the local environmental review process. CDFA’s responsibility is to inform the grantee of the proper procedural requirements of various environmental statutes, regulations, and executive orders and review that process.

ENVIRONMENTAL CERTIFYING OFFICER

Under Part 58, the authorized official must assume the role of the Environmental Certifying Officer (ECO) or formally designate another person to do so. If the AO does designate a staff person to serve as the ECO, this designation must be made by ordinance or signed resolution and placed in the Environmental Review Record. The ECO accepts full responsibility for the completeness and accuracy of the review and compliance with applicable laws and regulations. Local officials should review the municipal liability and indemnification statutes as well as the status and coverage of local liability insurance policies when accepting responsibility under environmental laws. The responsibilities of the ECO include making findings and signing required certifications.

Other key points regarding the ECO designation include:

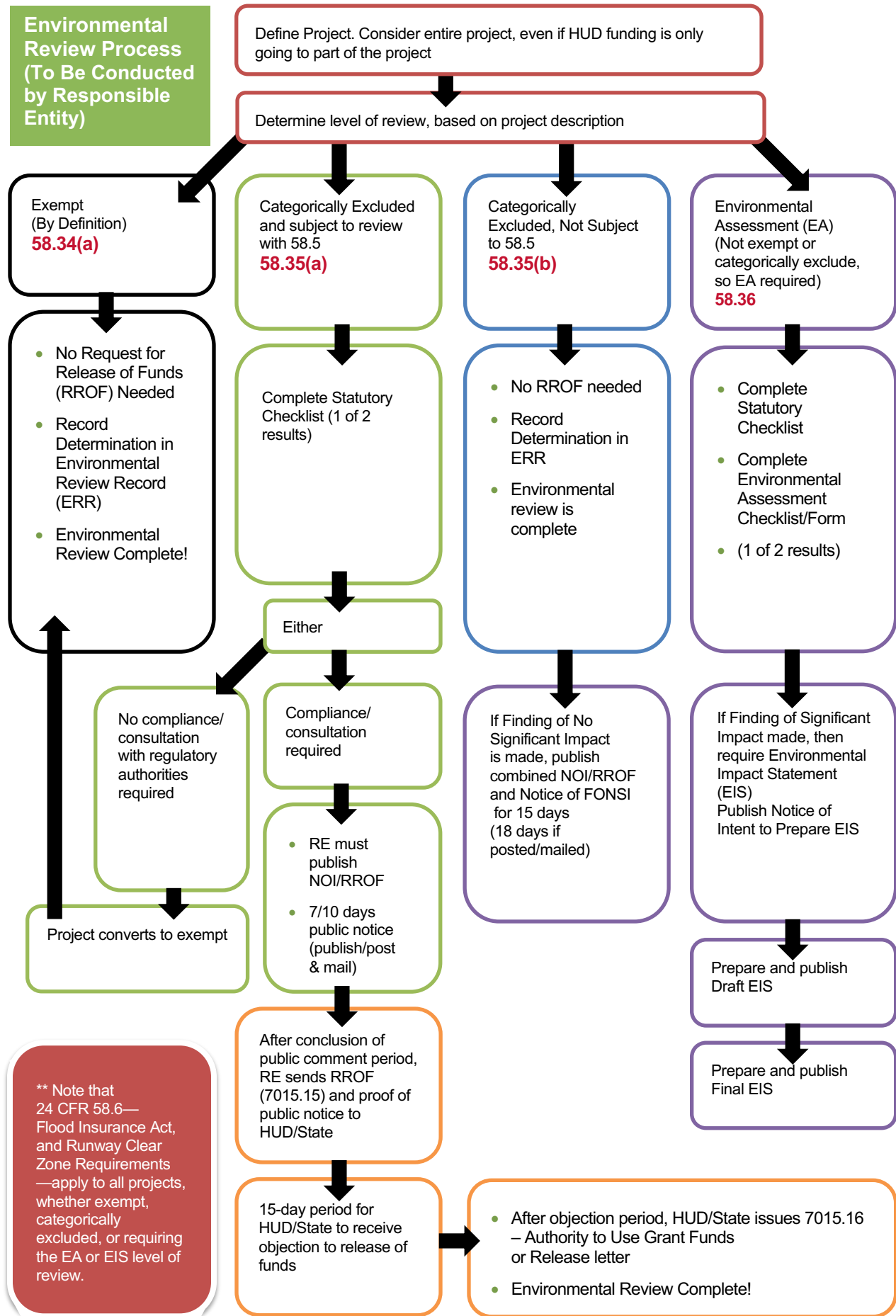
- The ECO must be a line officer of the responsible entity who is authorized to make decisions on behalf of the grantee. For example, a town administrator can serve as an ECO. The ECO cannot be a consultant.
- This person does not need to be a technical expert but should be credible if it becomes necessary to defend whether the required procedures were followed and completed. Further, that resolution and/or mitigation of adverse effect, if any, are incorporated into and accounted for in the project implementation.
- The ECO is not necessarily the one who actually conducts the review and completes the applicable documentation in the ERR. That responsibility is frequently given to a staff person or consultant that is hired by the grantee.

NOTE: If the grantee chooses to use a sub-recipient to complete its community development project, the sub-recipient or another agency or entity participating in the project may hire a consultant to complete the environmental review. While that sub-recipient or consultant may assist in performing the review and preparing documentation, it is still the responsibility of the grantee to assign an ECO to perform all of the above duties. A sub-recipient may never sign off on behalf of a grantee for any environmental review form.

The flowchart on the following page provides an overview of the environmental review process.

Chapter 5: Environmental Review

Environmental Review Process (To Be Conducted by Responsible Entity)



SECTION 5.2 TRIGGERS & ADVICE TO START ENVIRONMENTAL REVIEW

ACTIONS TRIGGERING ENVIRONMENTAL REVIEW AND LIMITATIONS PENDING CLEARANCE

All HUD-assisted activities must have some level of environmental compliance review completed for them. Compliance with the Part 58 requirements is initiated with the submission of an application from the grantee for CDBG funds.

NOTE: Do not be confused by the language of environmental review procedures, even exempt activities cannot be undertaken until HUD environmental review criteria are checked and they have been formally determined to be exempt.

Activities that have physical impacts or which limit the choice of alternatives cannot be undertaken, even with the grantee or other project participant's own funds, prior to obtaining environmental clearance. If prohibited activities are undertaken after submission of an application but prior to completing the environmental review and, if applicable, receiving environmental review approval from the state (a.k.a. environmental clearance), the applicant is at risk for the denial of CDBG assistance. The reason is that these actions interfere with the grantee's and the state's ability to comply with NEPA and Part 58. If prohibited actions are taken prior to environmental clearance, then environmental impacts may have occurred in violation of the federal laws and authorities and the standard review procedures that ensure compliance.

There are certain kinds of activities that may be undertaken requiring minimal effort to fulfill Part 58 compliance requirements. For example, the act of either hiring a consultant to prepare a Phase I Environmental Site Assessment (an investigative study for environmental hazards) or hiring a consultant to complete an engineering design study or plan, or a study of soil and geological conditions. Environmental compliance reviews for these activities may be completed early on, and even prior to the grantee's execution of a grant agreement with the state.

LIMITATIONS PENDING ENVIRONMENTAL CLEARANCE

According to the NEPA and Part 58, the RE is required to ensure that environmental information is available before decisions are made and before actions are taken. In order to achieve this objective, Part 58 prohibits the commitment or expenditure of CDBG funds until the environmental review process has been completed and, if required, the grantee receives a release of funds from the state. This means that the grantee may not spend either public or private funds (CDBG, other federal or non-federal funds), or execute a legally binding agreement for property acquisition, rehabilitation, conversion, repair or construction

[24 CFR §58.22](#)

pertaining to a specific site until environmental clearance has been achieved. In other words, grantees must avoid any and all actions that would preclude the selection of alternative choices before a final decision is made, that decision being based upon an understanding of the environmental consequences and actions that can protect, restore and enhance the human environment (i.e., the natural, physical, social, and economic environment).

NOTE: If any CDBG or federal funds will ultimately be used in a project, environmental review process must be observed even if the initial activities are funded by private or local sources. Start the environmental review process before expending any funds from any source or making any choice limiting decisions about the project.

Until the grantee has completed the environmental review process, these same restrictions apply to all sub-recipients, as well. It is the responsibility of the grantee to ensure sub-recipients and any other entity participating in this project (developers, homeowners, etc.) adhere to these restrictions.

For the purposes of the environmental review process, “commitment of funds” includes:

- Execution of a legally binding agreement (such as a property purchase or construction contract);
- Expenditure of CDBG funds (e.g., hiring a consultant to prepare a preliminary design and engineering specifications or a Phase I Environmental Site Assessment);
- Use of any non-CDBG funds on actions that would have an adverse impact—e.g., demolition, dredging, filling, excavating; and
- Use of non-CDBG funds on actions that would be “choice limiting.” This also includes the bidding on any work.

It is acceptable for grantees to execute legal agreements that do not financially bind the grantee prior to completion of the environmental review process and receiving CDFA approval. A non-financially binding agreement contains stipulations that ensure the sub-recipient does not have a legal claim to any amount of CDBG funds to be used for the specific project or site until the environmental review process is satisfactorily completed. It is also acceptable to execute an option agreement for the acquisition of property when the following requirements are met:

- The option agreement is subject to a determination by the grantee on the desirability of the property for the project as a result of the completion of the environmental review in accordance with Part 58; and
- The cost of the option is a nominal portion of the purchase price.

The use of option contracts and conditional contracts prior to completing an environmental review in acquisitions of existing single family and multifamily properties was clarified in a memo issued by HUD on August 26, 2011. A conditional contract for the purchase of property is a legal agreement between the potential buyer of a real estate property and the owner of the property. The conditional contract includes conditions that must be met for the obligation to purchase to become binding. Conditional contracts can be used in more limited circumstances than option contracts. As already mentioned, conditional contracts are allowed only for residential property acquisition.

HUD Memo: Conditional
Contracts and
Environmental Review

Secondly, for single family properties (one to four units), the purchase contract must include the appropriate language for a conditional contract; and

- No transfer of title to the purchaser or removal of the environmental conditions in the purchase contract occurs unless and until the grantee determines, on the basis of the environmental review, that the transfer to the buyer should go forward and the grantee has received release of funds and environmental clearance; and
- The deposit must be refundable or, if a deposit is non-refundable, it must be in an amount of \$1,000 or less.

Finally, for multi-family properties:

- The structure may not be located in a Special Flood Hazard Area (100-year floodplain or certain activities in the 500-year floodplain);
- The purchase contract must include the appropriate language for a conditional contract found in the August 26, 2011 HUD memo on Conditional Contracts;
- No transfer of title to the purchaser or removal of the environmental conditions in the purchase contract occurs unless and until the grantee determines, on the basis of the environmental review, that the transfer to the buyer should go forward and the grantee has received release of funds and environmental clearance; and
- The deposit must be refundable or, if a deposit is non-refundable, it must be a nominal amount of three percent of the purchase price or less.

SECTION 5.3 CLASSIFYING ACTIVITIES AND CONDUCTING THE REVIEW

To begin the environmental review process, the responsible entity must first determine the environmental classification of each activity in the project. This section discusses the types of classifications and the steps required for each classification to ensure compliance with the applicable requirements. The environmental regulations at 24 CFR section 58.32 require the responsible entity to "...group together and evaluate as a single project all individual activities which are related

geographically or functionally,” whether or not HUD- assistance will be used to fund all the project activities or just some of the project activities. This section will focus upon the five environmental classifications that are recognized under the CDBG program:

- Exempt activities;
- Categorically excluded activities not subject to section 58.5;
- Categorically excluded activities subject to section 58.5;
- Activities requiring an environment assessment (EA); or
- Activities requiring an environmental impact statement (EIS).

The level of environmental review will be dictated by whichever project activity that requires the higher level of review. For example, if one activity in a project requires an environmental assessment then the entire project must be assessed at this level of review.

5.3.1. EXEMPT ACTIVITIES

Certain activities are by their nature highly unlikely to have any direct impact on the environment. Accordingly, these activities are not subject to most of the procedural requirements of environmental review. Listed below are examples which may be exempt from environmental review. For complete details refer to the environmental regulations at 24 CFR section 58.34(a)(1) through (12).

24 CFR §58.34 (a)
(1) through (12)

- Environmental and other studies;
- Information and financial services;
- Administrative and management activities;
- Engineering and design costs;
- Interim assistance (emergency) activities if the assisted activities do not alter environmental conditions and are for temporary or permanent improvements limited to protection, repair or restoration actions necessary only to control or arrest the effects of disasters, or imminent threats to public safety, or those resulting from physical deterioration;
- Public service activities that will not have a physical impact or result in any physical changes;
- Inspections and testing of properties for hazards or defects;
- Purchase of tools or insurance;
- Technical assistance or training;
- Payment of principal and interest on loans made or guaranteed by HUD (does not include the initial project activity – only future year payments of P&I); and
- Any of the categorically excluded activities subject to section 58.5 (as listed in 58.35(a)) provided there are no circumstances which require compliance with any other federal laws and authorities listed at section 58.5 of the regulations. Refer to the section below on categorically excluded activities subject to section 58.5.

NOTE: The activities in this group must use a separate HUD form from all other exempt activities.

If a project is determined to be exempt, the responsible entity is required to document in writing that the project is exempt and meets the conditions for exemption. The responsible entity must complete the form titled “Environmental Review for Activity/Project that is Exempt,” (Attachment 5-1) for all but the last group of exempt activities in the list above. The form must be signed by the ECO and a copy sent to CDFA for review.

Attachment 5-1:
Environmental
Review for Exempt
Activity

NOTE: The last group of exempt activities in the list above actually is another classification that converts to Exempt. These activities are Categorically Excluded Subject to (CEST) Section 58.5. The responsible entity should use the form discussed in that category below to document the determination that they are exempt.

The RE does not have to complete the Notice of Intent to Request Release of Funds (NOI/RROF) for Exempt activities or CEST that convert to Exempt. The environmental review for Exempt activities is complete.

5.3.2. CATEGORICALLY EXCLUDED NOT SUBJECT TO SECTION 58.5 (CENST) ACTIVITIES

The following activities, listed at 24 CFR section 58.35(b), have been determined to be categorically excluded from NEPA requirements and are not subject to section 58.5 compliance determinations (CENST).

24 CFR §58.35(b)

- Tenant based rental assistance;
- Supportive services including but not limited to health care, housing services, permanent housing placement, short term payments for rent/mortgage/utility costs, and assistance in gaining access to local, state, and federal government services and services;
- Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training, recruitment, and other incidental costs;
- Economic development activities including but not limited to equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or expansion of existing operations;
- Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction such as closing costs, down payment assistance, interest buy downs and similar activities that result in the transfer of title to a property; and
- Affordable housing predevelopment costs with NO physical impact such as legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact.

- Approval of supplemental assistance to a project previously approved under Part 58, if the approval was made by the same RE that conducted the environmental review on the original project AND re-evaluation of the findings is not required under Part 58.47. See the section later in the chapter on re-evaluation of previously cleared projects for further guidance.

To complete environmental requirements for CENST activities, the responsible entity must make a finding that the activities qualify under that category by completing the form titled Environmental Review for Activity/Project that Categorically Excluded Not Subject to Section 58.5 (see Attachment 5-2). The form must be signed by the ECO and a copy sent to CDFA for review.

[Attachment 5-2:
Environmental Review
for CENST Activity](#)

The RE does not have to complete a Notice of Intent to Request Release of Funds (NOI/RROF). The environmental review for CENST activities is complete.

5.3.3. CATEGORICALLY EXCLUDED SUBJECT TO SECTION 58.5 (CEST) ACTIVITIES

The list of categorically excluded activities is found at 24 CFR Part 58.35 of the environmental regulations. While the activities listed in section 58.35(a) are categorically excluded from National Environmental Protection Act (NEPA) requirements, the grantee must nevertheless demonstrate compliance with the laws, authorities and Executive Orders listed in section 58.5.

[24 CFR §58.35\(a\)](#)

The following are categorically excluded activities subject to section 58.5:

- Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size, or capacity of more than 20 percent.
- Special projects directed toward the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and disabled persons
- Rehabilitation of buildings and improvements when the following conditions are met:
 - For residential properties with one to four units:
 - The density is not increased beyond four units, and
 - The land use is not changed.
 - For multi-family residential buildings (with more than four units):
 - Unit density is not changed more than 20 percent;
 - The project does not involve changes in land use from residential to non-residential; and
 - The estimated cost of rehabilitation is less than 75 percent of the total estimated replacement cost after rehabilitation.

- For non-residential structures including commercial, industrial and public buildings:
 - The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and
 - The activity does not involve a change in land use, e.g. from commercial to industrial, from non-residential to residential, or from one industrial use to another.
- An individual action on up to four-family dwelling 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;
- An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site;
- Acquisition (including leasing) or disposition of or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use.
- Combinations of the above activities.

To complete environmental requirements for CEST projects, the responsible entity must take the following steps:

1. Determine whether or not the project is located in or will have an impact on floodplains and/or wetlands.
 - It is highly desirable to avoid floodplains and wetlands when undertaking project activities. However, when this cannot be avoided, specific review procedures contained in 24 CFR Part 55 (Floodplain Management and Wetlands Protection) must be completed. Since development in these areas is clearly an environmental issue, the effects of these actions must be clearly articulated in one of the decision processes described in §§ 55.12(a)(3) and 55.20, whichever process is applicable. (See the Projects in Floodplains and Wetlands section.)
 - If the project is located in the floodplain or proposes construction in a wetland, the RE must provide written documentation of the decision process in the ERR. See the section, “Projects in Floodplains and Wetlands” later in this chapter for more information.

Attachment 5-3:
Environmental Review
for CEST Activity

2. Complete the form Environmental Review for Activity/Project that is Categorically Excluded Subject to (CEST) Section 58.5. (See Attachment 5-3) This form includes the statutory checklist and helps to comply with the other (non-NEPA) federal laws.
 - Seek a concurrence letter from the New Hampshire Division of Historic Resources, which serves as the State Historic Preservation Office (SHPO), Grantees should submit a Request for Project Review (RPR) Form to describe whether the activity (or activities) have an effect on historic preservation or not. The SHPO has 30 days for comments. Respond to these comments as required and file all correspondence and evidence of response in your ERR. Be sure reliable sources are cited on each line of the checklist. All historic property reviews must be done prior to the responsible entity making a final determination of environmental status.
3. The CEST form in Attachment 5-3 also documents when CEST activities can convert to Exempt status. As described above, the activities converting to Exempt status do not require publishing of the NOI or a RROF to complete the environmental certification. The form must be signed by the ECO and a copy sent to CDFA for review. For activities converting to Exempt status, the environmental review is complete.
4. For those projects that cannot convert to exempt, publish and distribute the Notice of Intent to Request a Release of Funds (NOI/RROF). The Notice informs the public that the grantee will accept written comments on the findings of its ERR and of the grantee's intention to request release of funds from the state. At least seven (7) calendar days after the date of publication must be allowed for public comment. The notice also says that CDFA will receive objections for at least 15 days following receipt of the grantee's request for release of funds (Attachment 5-4).
5. The NOI/RROF must be published in a daily newspaper of general circulation in the affected community. For example, the Union Leader is such a daily newspaper serving many communities beyond Manchester.
6. The RE must also send a copy of the notice (NOI/RROF) to interested parties (i.e., persons and entities that have commented on the environmental process or that have requested to be notified of environmental activities) and appropriate local/state/federal agencies. See Attachment 5-5 for the list of Environmental Contacts.

[Request for Project Review Form \(SHPO\)](#)

[Attachment 5-4:
Notice of Intent to
Request Release of
Funds](#)

[Attachment 5-5:
Environmental
Contacts](#)

NOTE: All time periods for notices shall be counted in calendar days. The first day of a time period begins on the day following the publication of the notice. Do NOT count the day the notice is published.

7. After the seven-day comment period has elapsed and the RE has addressed any comments received, the ECO must submit the following to CDFA:
- Signed CEST form (Attachment 5-3) including all attachments;
 - Publishers Affidavit of the Notice of Intent to Request Release of Funds (NOI/RROF) or “tear sheet” (which can be digital), and;
 - Request for Release of Funds and Certification - HUD Form 7015.15 (see Attachment 5-6).
8. The environmental review of CEST activities is complete. However, activities cannot be undertaken until CDFA issues an authorization of approval. CDFA will issue an Authority to Use Grant Funds - HUD Form 7015.16 (see Attachment 5-7).

Attachment 5-6:
Request for Release
of Funds
HUD Form 7015.15

Attachment 5-7:
Authority to Use
Grant Funds
HUD Form 7015.16

5.3.4. PROJECTS IN FLOODPLAINS AND WETLANDS (24 CFR PART 55)

24 CFR Part 55

When a project meets one or more of the following criteria, the implementation of a specific decision-making process is required for compliance with Executive Orders 11988 and 11990 and 24 CFR Part 55:

- The project is in the 100-year floodplain (Zones A or V mapped by FEMA, or best available information);
- The project is a “critical action” in a 500-year floodplain. A critical action is any activity where even a slight chance of flooding would be too great, because such flooding might result in loss of life, injury to persons, or damage to property. Critical actions include activities that create, maintain or extend the useful life of those structures or facilities that (1) produce, use or store highly volatile, flammable, explosive, toxic or water-reactive materials; (2) provide essential and irreplaceable records or utility or emergency services that may become lost or inoperative during flood and storm events; or (3) are likely to contain occupants who may not be sufficiently mobile to avoid loss of life or injury during flood or storm events (e.g., hospitals, nursing homes, etc.). For more details, refer to 24 CFR Part 55; or
- The project proposes construction in a wetland.

There are two decision-making processes identified in Part 55 concerning floodplains. They are the 8-step process (Sec. 55.20) and the 5-step process (Sec. 55.12(a)(3)). The 8-step process will apply unless a project falls under the allowed criteria for using the simplified 5-step decision making process, which are the following:

- Disposition of multifamily and single family (1-4 unit) properties (Sec. 55.12(a)(1)).
- Repair, rehabilitation, modernization, weatherization, or improvement of existing residential properties (multifamily, single family, assisted living, etc.) (Sec. 55.12.(a)(3))
 - Number of units is not increased more than 20%;
 - Does not involve conversion from non-residential to residential; and
 - Does not meet definition of “substantial improvement” (Sec. 55.2(b)(10)(i)(A)(2)).
- Repair, rehabilitation, modernization, weatherization, or improvement of nonresidential properties (i.e., public facilities, commercial/retail, and industrial) (Sec. 55.12(a)(4))
 - Does not meet the threshold of “substantial improvement” (i.e., the cost equals or exceeds 50% of the market value before damage occurred); and
 - The structure footprint and paved area is not increased more than 10%.
- Repair, rehabilitation, modernization, weatherization, or improvement of a structure listed on the National Register of Historic Places or on a State Inventory of Historic Places.
 (“Substantial improvement” does not apply to historic properties, Sec. 55.2(b)(10)(ii)(B)).

[Attachment 5-8:
Procedures for Making
Determinations on
Floodplain and Wetland
Management](#)

[Attachment 5-9:
Flowchart of 8-Step
Floodplain Process](#)

[Attachment 5-10:
Flowchart of 5-Step
Floodplain Process](#)

The grantee must document in writing which process is applicable and each step of the applicable process.

Attachment 5-8, Procedures for Making Determinations on Floodplain and Wetland Management, contains an explanation of the 8-Step decision process. When the 5-Step decision process is permissible for floodplains, only Steps 1, 4 through 6, and 8 are applicable.

5.3.5. ACTIVITIES REQUIRING AN ENVIRONMENTAL ASSESSMENT (EA)

Activities which are neither Exempt, CENST, nor CEST will require an Environmental Assessment (EA) documenting compliance with NEPA and with the environmental requirements of other federal laws. These activities generally include major rehabilitation, most new construction, reconstruction, or demolition, any change in land use, or whenever no exemption or exclusion applies. There is no specific regulatory listing of activities that require an EA but if no categorical exclusion applies, an EA is required by default. Generally, new construction, reconstruction, demolition, major rehab, or anything involving a change in land use will require an EA.

[24 CFR §58.40 - §58.45](#)

The RE must be aware that if a project consists of several activities that by themselves would fall under various levels as outlined above, the responsible entity must aggregate the review and conduct an environmental assessment on the entire project if one of the activities triggers an EA.

The RE must take the following steps to complete environmental requirements for projects requiring an environmental assessment:

1. Complete the Determination of Environmental Assessment form.
The responsible entity must ensure that reliable documentation sources are cited for every item on this assessment checklist (Attachment 5-11).

Attachment 5-11:
Determination of
Environmental
Assessment
2. Like CEST, complete the statutory checklist, including historic preservation and floodplain/wetlands requirements within the form.
3. Like CEST activities, seek a concurrence letter from the New Hampshire Division of Historic Resources, which serves as the State Historic Preservation Office (SHPO), Grantees should submit a Request for Project Review (RPR) Form to describe whether the activity (or activities) have an effect on historic preservation or not.

Request for Project
Review Form (SHPO)
4. The final step in the process involves making a determination as to whether the project will or will not have a significant impact on the environment. This can be done once the review has been completed and all comments have been addressed appropriately. The Responsible Entity must select one of the following two findings/determinations:
 - The project is not an action that significantly affects the quality of the human environment and, therefore, does not require the preparation of an environmental impact statement; or
 - The project is an action that significantly affects the quality of the human environment and, therefore, requires the preparation of an Environmental Impact Statement (EIS). Both the finding and the EA must be signed by your ECO and included in the ERR. See section below on EA Result: Finding Significant Impact & EIS.

EA RESULT: FINDING OF NO SIGNIFICANT IMPACT (FONSI)

In most instances, the environmental assessment will result in a finding that the project is not an action that significantly affects the quality of the human environment and, therefore, does not require an environmental impact statement. If this is the case, the responsible entity must complete the following:

1. Provide public notice called the Combined Notice of Finding of No Significant Impact (FONSI) and Notice of Intent to Request Release of Funds (NOI/RROF) from the CDFA. A sample notice that also includes the notice for Explanation of a Proposed Activity in the Floodway is provided as Attachment 5-12. (If the activities do not involve a floodplain/wetlands, that portion of the notice can be dropped.)

Attachment 5-12:
Combined FONSI,
NOI/RROF, &
Explanation of Activity in
Floodway

 - The FONSI and NOI/RROF must be published in a newspaper of daily general circulation that covers the project service area. For example, the Union Leader is such a daily newspaper serving many communities beyond Manchester.
 - The notice must also be distributed to interested parties (i.e., persons and entities that have commented on the environmental process or that have requested to be notified of environmental activities) and appropriate local/state/federal agencies. See Attachment 5-5 for the list of Environmental Contacts.
 - Provide a 15-day period for comments on the Combined Notice.

Attachment 5-5:
Environmental
Contacts
 2. After the 15-day comment period has elapsed and the RE has addressed any comments received, the ECO must submit the following to CDFA:
 - Signed Determination of Environmental Assessment form (Attachment 5-11) including all attachments;
 - Publishers Affidavit of the Combined Notice or “tear sheet” (which can be digital), and
 - Request for Release of Funds and Certification - HUD Form 7015.15 (see Attachment 5-6).

Attachment 5-6:
Request for Release
of Funds
HUD Form 7015.15
 3. The EA review process is complete. However, activities cannot be undertaken until CDFA issues an authorization of approval. CDFA must allow an additional 15-day comment period. If no comments are received, CDFA will issue an Authority to Use Grant Funds - HUD Form 7015.16 (see Attachment 5-7).
- Attachment 5-7:
Authority to Use
Grant Funds
HUD Form 7015.16

NOTE: It is very important to remember the EA process requires two separate 15-day review periods. A 15-day period for comment to the RE and, after CDFA has received the RROF, an additional 15-day period for comment to CDFA. The CDFA 15-day comment period does not commence until the date

CDFA receives the notice, or the date specified in the published notice, whichever is later. Call or email CDFA to verify dates on the combined notice before publishing.

EA RESULT: FINDING SIGNIFICANT IMPACT & ENVIRONMENTAL IMPACT STATEMENT (EIS)

24 CFR §58.37

An Environmental Impact Statement (EIS) is required when a project is determined to have a potentially significant impact on the environment. Consult with CDFA if an EIS is anticipated or results from an EA. Some examples of projects that require an EIS are as follows:

- Construction of new limited access highway.
- Construction or installation or demolition/removal or substantial rehabilitation of 2,500 or more housing units.
- Construction of, hospitals or facilities containing a total of 2,500 or more beds.
- Water or sewer project providing capacity to support 2,500 or more additional housing units.
- Project results in unacceptable noise levels (65 or 75 decibels, depending on site use).

SECTION 5.4 OTHER ENVIRONMENTAL REVIEW APPROACHES

TIERED REVIEWS

Tiering is a specialized form of conducting environmental reviews and is not appropriate for all activities, funding sources, or grantees. However, using tiered reviews may increase efficiency when at the planning level the RE does not yet fully know the specific timing, location, or environmental impacts. For HUD environmental reviews, tiering may be appropriate when the RE is evaluating a collection of projects that would fund the same or very similar activities repeatedly within a defined local geographic area and timeframe but where the specific sites are not yet known. Some examples include housing rehabilitation or homebuyer projects in a specific community or a redevelopment project with repeated activities such as sidewalk improvements for low- and moderate-income households. In such instances, the RE:

1. Completes an up-front programmatic completion of the environmental review form, often the Environmental Review for CEST form that identifies potential applicable compliance areas (Attachment 5-3). This is considered the Tier 1 review.
2. Performs Tier 2 review when specific properties are identified providing the address-specific review criteria. The RE may use the Statutory Checklist to complete the Tier 2 review (see Attachment 5-13). For many housing-related projects, the applicable Statutory Checklist compliance will be limited to historic preservation, floodplain protection, and wetlands protection.

Attachment 5-13:
Statutory Checklist

Using this process, grantees can publish a NOI/RROF and receive a Release of Funds based on the programmatic information. The Release of Funds for such situations will be conditional on the grantee completing an individual Statutory Checklist for each specific rehabilitation project. This site specific Statutory Checklist for each individual rehabilitation address must then be completed prior to incurring hard costs for that property.

RE-EVALUATION OF PREVIOUSLY CLEARED PROJECTS

Sometimes, projects are revised, delayed or otherwise changed such that a re-evaluation of the environmental review is necessary. RE must re-evaluate environmental findings when:

- Change in nature or extent of project,
- New environmental circumstances or conditions occur
- Selection of alternative not in original finding

The purpose of the RE's re-evaluation is to determine if the original findings are still valid. If the original findings and FONSI 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 this re-evaluation and its determination. CDFA will accept environmental reviews up to 3 years old.

A sample determination is provided as Attachment 5-14. It must document the following:

- Reference to the previous environmental review record,
- Description of both old and new projects' activities and maps delineating both old and new project areas,
- Determination if FONSI is still valid, and
- Signature of the certifying officer and date.

Attachment 5-14:
Re-Evaluation of
Environmental
Review

Place the written statement in the ERR and send a copy to CDFA with the Request for Release of Funds (RROF).

If the responsible entity determines that the original findings are no longer valid, it must prepare an EA or an EIS if the evaluation indicates potentially significant impacts.

ANOTHER AGENCY IS INVOLVED

When another federal or state agency has funds in the project, it will frequently conduct its own environmental review process. The grantee is free to use that agency's review to compile its own record. In fact, it makes some sense to avoid unnecessary duplication of effort. However, other federal agencies do not always cover all of the same environmental requirements as HUD. The grantee is reminded that:

- Use of another agency's documentation does not avoid or minimize its own responsibilities for fulfilling the compliance reviews for CDBG.
- Conduct of the public comment requirements must still be fulfilled.

Before making a finding based on another agency's review, the RE should check the review carefully against the requirements referenced in this chapter, to ensure that the contents are sufficiently inclusive to allow the grantee to meet its responsibilities. There are HUD-specific review criteria that are not performed by other federal agencies. If that review falls short in certain areas, it can be supplemented by the grantee to meet its requirements.

Remember, the grantee cannot simply substitute another agency's hearing and comment process for the notice requirements referenced here. The grantee must check that the public comment process and review requirements fulfil the format prescribed in this implementation guide.

If possible, it is encouraged that the grantee combines the comment process for funds from the same federal agency (HOME and CDBG, for example). Please contact CDFA for additional guidance on combining notices with other agencies.

SECTION 5.5 OTHER ENVIRONMENTAL REVIEW RESOURCES

HUD and other federal agencies provide a number of resources and tools to assist in preparing an environmental rule. See Attachment 5-15.

[Attachment 5-15:
Environmental
Review Resources
and Tools](#)

CHAPTER 6: FINANCIAL MANAGEMENT

INTRODUCTION

Accurate financial record-keeping, including the timely deposit, disbursement and accounting of Community Development Block Grant (CDBG) funds is crucial to the successful management of a CDBG funded project. Grantees must take the following steps to prepare a financial management system to receive and utilize CDBG grant funds:

1. Appoint a person to be responsible for Financial Management,
2. Establish accounting records,
3. Set up bank accounts or separate ledger accounts, and establish receipting procedures, and
4. Establish procedures for approving invoices, submitting claims, and issuing payment to vendors.

Financial record-keeping is the primary responsibility of the Grantee's Chief Financial Officer, i.e. the Clerk-Treasurer or Auditor, or any other authorized individual. It is the responsibility of the Grant Administrator to advise, assist and counsel the Chief Financial Officer on administrative requirements in regard to the receipt, disbursement and accounting of federal funds and the records to be maintained. Failure to comply with financial management standards may result in monitoring and audit findings. Depending on the infraction, the Grantee may be required to payback federal dollars. This chapter will focus on the records that must be maintained in order to receive and utilize CDBG funds. Specific topics include the following:

- Applicable Requirements
- Establishing a Financial Management System
- Line of Credit Establishment
- Required Financial Records
- Drawdown of Funds
- Grant Administration Costs

SECTION 6.1 APPLICABLE REQUIREMENTS

The CDBG regulations require grantees that are governmental entities or public agencies to adhere to certain administrative and financial management requirements. The CDBG regulations at 24 CFR 570.489 contain basic program administrative requirements.

In late December of 2013, the federal government published a new regulation that sets forth the financial management and related requirements for federal grants (2 CFR Part 200: Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards and adopted by HUD at 2 CFR 200). It is referred to as the Omni Circular (or

[24 CFR 570.489](#)
[2 CFR Part 200](#)

Super Circular) because it consolidated and replaced numerous previously applicable circulars and regulations, which include:

- OMB Circular A-87 "Cost Principles for State, Local and Indian Tribal Governments,"
- Specific provisions of 24 CFR Part 85, Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments (the Common Rule)
- OMB Circular A-133 "Audits of Institutions of States, Local Governments and Non-profit Institutions" for fiscal 2016 forward (refer to Section 3.10 in this chapter).

2 CFR Part 200 establishes principles and standards for determining allowable costs under federal grants. It also includes requirements for audits such as the type and level of audit required, reports issued by auditors, and audit review and resolution.

Finally, it includes requirements for financial management systems, reports, records, and grant closeouts for recipients of federal grant funding. Subjects covered include financial management standards, internal controls, budget controls, accounting controls, cash management, procurement, and contracting.

SECTION 6.2 ESTABLISHING A FINANCIAL MANAGEMENT SYSTEM

OVERVIEW

The fundamental purpose of financial management is to ensure the appropriate, effective, timely and honest use of funds.

Specifically, grantees must ensure that:

- Internal controls are in place and adequate;
- Documentation is available to support accounting record entries;
- Financial reports and statements are complete, current, reviewed periodically; and
- Audits are conducted in a timely manner and in accordance with applicable standards.

REQUIREMENTS

In establishing a financial management system, grantees are to follow both 24 CFR Part 570 and 2 CFR Part 200 which govern CDBG grantee financial management systems. In addition, the use and accounting for CDBG funds are governed by HUD Notice CPD-04-11 and 31 CFR Part 205. CDFA also imposes additional requirements that can be found throughout this chapter. Failure to account for and manage CDBG funds accordingly may result in sanctions imposed by CDFA and/or HUD.

[2 CFR 200.302](#)

[CPD-04-11](#)

[31 CFR Part 205](#)

A grantee's financial management system must provide for the following:

- Accurate, current, and complete disclosure of financial results;
- Records that identify adequately the source and application of grant funds;
- Comparison of actual outlays with amounts budgeted for the grant;
- Procedures to minimize the amount of time elapsed between the transfer of funds from the US Treasury and the disbursements by the grantee;
- Procedures for determining reasonableness and allowable costs;
- Accounting records that are supported by appropriate source documentation; and
- A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

The three basic functions, which must be served by the financial management system, are:

1. The financial management system must have an identified procedure for recording all financial transactions.
2. All expenditures should be related to allowable activities in the grant agreement approved by CDFA.
3. All expenditures of CDBG funds must be in compliance with applicable laws, rules, and regulations.

Tip: Use the Sample Financial Management Checklist as a tool to help your organization set up and maintain your financial management system.

[Attachment 6-1:
Financial Responsibilities
Checklist](#)

2 CFR Part 200 also requires that grantees take reasonable measures to safeguard personally identifiable information (e.g., social security or bank account numbers) and other information designated to be sensitive by HUD or the state, consistent with applicable federal, state, and local laws regarding privacy and obligations of confidentiality.

INTERNAL CONTROLS

Internal controls refer to the combination of policies, procedures, defined job responsibilities, personnel, and records that allow a grantee (or sub-recipient) to maintain adequate oversight and control of its cash, property, and other assets.

The soundness of any grantee's financial management structure is determined by its system of internal controls. Specifically, the main goals of internal controls are to:

- Ensure resources are protected against waste, mismanagement or loss.;
- Ensure that accounting information is accurate and reliable; and
- Ensure resources are used for authorized purposes and in a manner consistent with applicable laws, regulations, and policies.

As part of an effective internal control system, one person will be designated (per the financial management responsibilities checklist) as the primary person at the grantee organization responsible for the overall financial management of a CDBG project. This person should be familiar with their organization's present accounting system. Refer to 2CFR 200.303 for more information.

[2 CFR 200.303](#)

ACCOUNTING RECORDS

Each grantee should determine the accounting procedures that will assist in providing accurate and complete financial information. Grantees are required to maintain accounting records that sufficiently identify the source and use of the CDBG funds provided to them. All records must be supported by source documentation.

The grantee may have CDBG accounting records fully integrated into an existing accounting system. Grantees may also have partially integrated records into an existing system; however, ledgers should be developed to provide the required accounting information for the CDBG grant. Separate records eliminate potential conflicts with the grantee's usual record keeping systems.

At a minimum, a grantee's accounting system, must:

- Clearly identify all receipt and expenditure transactions of the grant; and
- Provide for budgetary control by tracking expenditures and accrued obligations by approved activity.

CFDA staff and the grantee's auditors should be able to readily trace all transactions through the accounting system at any time during the grant period of performance or after grant close-out.

BUDGET CONTROLS

The grantee must be able to report expenditures for each approved activity. A record of the account balances must be maintained for each approved activity that accounts for expenses accrued as well as obligations that have been incurred but not yet been paid out.

SOURCE DOCUMENTATION

Accounting records must be supported by source documentation. Source documentation includes items such as cancelled checks, paid bills, payrolls, time and attendance records, contract documents and other paperwork.

Tip: It is important that a grantee establishes a system in which all source documents pertaining to the project are clearly marked by an identifier on each source document. This will help assure that transactions are properly classified and segregated in the accounting records.

Source documentation should tell the story of the basis of the costs incurred and the actual dates of the expenditure. For example, source documentation on payments to contractors would include a request for payment, proof of inspection to verify work and materials, and, perhaps, cancelled checks. CFDA encourages the use of purchase orders or payment vouchers when preparing expenditures for payment of any cost associated with the project. These documents are prepared in accordance with local policies and procedures as well as those required by federal regulations.

ALLOWABLE COSTS

Any cost incurred must be allowed as per 2 CFR 200.402 - 202.475. It is a grantee's responsibility to ensure that CDBG funds are spent only on those costs which are approved in Exhibit B in the Grant Agreement.

[2 CFR 200.402 - .475](#)

The grantee must establish policies and procedures for determining cost reasonableness, allowability, and allocability of costs.

[CPD Notice 13-07](#)

ADMINISTRATIVE COSTS

There are two types of administrative costs. General administrative costs (GACs) are the costs associated with implementation of the grant. These costs may include salaries for personnel who devote full or part time to the grant, supplies used for grant activities, and the cost of administrative services provided by other agencies. Program activity costs (PACs) are those costs directly related to the implementation of grant requirements.

[Attachment 6-2:
Cost Categories for GACs
and PACs](#)

In charging administrative costs, grantees should keep in mind:

- All administrative costs charged to the project must be documented through timesheets, purchase orders, and invoices.
- For those projects directly administered by the grantee, employees paid in whole or in part from CDBG funds should prepare timesheets indicating the hours worked for each pay period.
 - Timesheets must show the exact hours each individual worked on the project, the hours worked on non-CDBG projects, the date on which the work was performed and a description of the work performed.
 - The employee and the employee's supervisor must sign the timesheet.

MATCHING FUNDS

Grant records should account for all matching funds committed to the project. The receipt and expenditure of the matching funds should be carefully documented. If matching funds are derived from a source outside the local government, project records should identify the source and amount.

ASSET MANAGEMENT

Grantees who maintain real or personal property paid in whole or in part with CDBG funds are required to properly manage these assets and to ensure that the assets continue to be used for their intended purposes in accordance with the CDBG regulations and 2 CFR 200.310-.316.

[24 CFR 570.489\(j\) and \(k\)](#)
[2 CFR 200.310-.316](#)

Grantees must maintain appropriate records of their assets, whether in their possession or in the possession of a sub-recipient organization. Specifically:

- In the case of real property, meaning land and any improvements to structures on the land, grantees must maintain a current real property inventory, updated at least biannually. In cases where the grantee is maintaining land, grantees should also describe the intended reuse of the land and the timeframe for improving the land so that it meets a CDBG national objective.
- For personal property, grantees should maintain a fixed assets ledger that includes the following: a description of the property; any identifying information such as a serial number; the funding source (grant number); the acquisition date and cost; the federal share of the cost; and the location, use, and condition of the property; and disposition data. Grantees are required to conduct a physical inventory of personal property biannually to ensure that the property is being maintained in good condition and that there are procedures in place to prevent loss, damage, or theft of the property.

Grantees must maintain records that properly document the disposition of any CDBG-funded property. It should be noted that real property purchased or improved with CDBG funds in excess of \$25,000 must continue to meet the CDBG national objective approved for the project for at least five years after close-out of the grant that funded the property purchase or improvement. Should the recipient choose to change the use of property they must contact CFDA to ensure that proper procedures are followed. Failure to do so can result in payback of the grant award. More information on Change of Use can be found in [Chapter 12: Monitoring and Closeout](#).

SECTION 6.3 REQUESTS FOR PAYMENT PROCEDURES

All requests for payment of CDBG funds are submitted via the Grants Management System (GMS). Grantees may submit one (1) Request for Payment per grant per month.

The request should outline the:

- Amount of federal funds previously requested;
- Amount of federal funds disbursed;
- Amount of program income (when applicable);
- Activities associated with this payment request; and
- Balance of federal funds on hand.

If a grantee has received more than one grant, a separate request should be completed for each grant. The requests for CDBG funds should be consolidated to the extent possible and timed to be in accordance with the actual, immediate cash requirements of the grantee in carrying out the approved activities.

[Attachment 6-3:
Sample Payment
Request](#)

[Attachment 6-4:
GMS Claim Instructions](#)

Program income must be disbursed by the grantee before additional funds are requested. See more about Program Income later in this chapter.

Funds drawn down will be deposited directly into the ACH Account, when an EFT Authorization Form has been submitted or a check will be mailed.

[Attachment 6-5:
EFT Authorization Form](#)

Grantee's should maintain a physical or digital copy of each payment request in chronological order. The amounts entered in each column should be capable of being verified against your financial and project records. All budget revisions and related correspondence should be maintained with these records.

SECTION 6.4 TIMELY EXPENDITURE

Grantees must minimize the time lapsing between the receipt of CDBG funds and their disbursement per 2 CFR 200.305, which states that grantees must adhere to Treasury Regulations at 31 CFR Part 205. To ensure that these requirements are met, all funds must be disbursed within 15 days of receipt.

CDFA processes claims every two weeks. AOs must certify that the funds requested are necessary to meet current project obligations and will be expended within a maximum of 15 days after receipt. It can take varying amounts of time for a Grantee to receive funds once a request is processed, dependent on the type of disbursement method they have chosen.

SECTION 6.5 BUDGET REVISIONS

From time to time, grantees may need to revise budget line items to meet actual costs. These revisions must be accomplished prior to submitting a payment request from CFDA. All budget revisions are handled by an amendment in GMS. Please contact your project manager to initiate the revision process.

Attachment 6-6:
GMS Amendment
Process

SECTION 6.6 PROGRAM INCOME

OVERVIEW

Any repayment of funds or proceeds generated from a CDBG activity will fall into one of two categories; 1) program income, or 2) miscellaneous revenue. Different rules apply for each of these categories. The following section defines each of these types of funds and the rules that will apply.

Under the CDBG Program, funds received back to the municipality as a result of a CDBG-funded activity are generally referred to as program income. Program income funds retain their federal identity in perpetuity and are subject to all federal requirements. Program income is defined in detail below. Funds not considered program income will be covered in the next section.

It is important to note that accounting for program income is conducted on a municipal basis rather than a project basis because a grantee has the ability to generate income from more than a single project or over more than one grant year.

NOTE: The regulations and requirements discussed in this chapter apply to all types of income generating activities, not just economic development.

WHAT IS PROGRAM INCOME?

Program income is defined as gross income received by a unit of general local government (municipality) or a sub-recipient of a municipality that was generated from the repayment of CDBG funds regardless of when the funds were appropriated and whether the activity has been closed out. Program income includes, but is not limited to, the following:

- Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG funds;
- Proceeds from the disposition of equipment purchased with CDBG funds;
- Gross income from the use or rental of real or personal property acquired by the municipality or a sub-recipient of a municipality with CDBG funds, less the costs incidental to the generation of the income;

[24 CFR Part 570.489\(e\)\(1\)](#)

- Gross income from the use or rental of real property owned by the municipality or a sub-recipient of a municipality, that was constructed or improved with CDBG funds, less the costs incidental to the generation of the income;
- Payments of principal and interest on loans made using CDBG funds;
- Proceeds from the sale of loans made with CDBG funds;
- Proceeds from the sale of obligations secured by loans made with CDBG funds;
- Interest earned on funds held in a Revolving Loan Fund (RLF) account (this would include any past or present Housing Rehabilitation Program);
- Interest earned on program income pending disposition of the income;
- Funds collected through special assessments made against non-residential properties and properties owned and occupied by households that are not low and moderate income if the special assessments are used to recover all or part of the CDBG portion of public improvements; and
- Gross income paid to a municipality or sub-recipient from the ownership interest in a for-profit entity acquired in return for the provision of CDBG assistance.

Program income does not include the following:

- The total amount of funds which does not exceed \$35,000 received in a single year from activities other than Revolving Loan Funds that is retained by the unit of local government and its sub-recipients; these funds are considered miscellaneous revenue;
- Amounts generated by activities eligible under Section 105(a)(15) of the Act and carried out by an entity under the authority of Section 105(a)(15) of the Act (non-profit organizations and local development organizations, when undertaking community economic development, neighborhood revitalization, or energy conservation projects); Payments of principal and interest made by a sub-recipient carrying out an activity on behalf of the unit of local government towards a loan from the local government to the sub-recipient to the extent that program income is used for the repayment;
- Certain types of interest income as outlined in 24 CFR 570.489(e)(2)(iv);
- Proceeds from the sale of real property purchased or improved with CDBG funds if the proceeds are received more than five years after expiration of the grant agreement between the state and the unit of local government.

Funds not considered program income will be identified as miscellaneous revenue. These funds do not retain their federal identity and federal requirements such as environmental review, procurement, and labor standards do not apply to the reuse of these funds. However, CFDA does require that grantees or sub-recipients generating miscellaneous revenue adopt guidelines related to the reuse of and reporting on those funds.

PRO-RATING PROGRAM INCOME

When income is generated by an activity that is only partially assisted by CDBG funds, the income shall be pro-rated to reflect the percentage of CDBG funds used. For example, if a parcel of land were purchased with 50 percent CDBG funds and 50 percent other funds, 50 percent of any program income from the sale or long-term lease of that property would be considered CDBG program income subject to CDBG rules and requirements.

24 CFR Part 570.489(e)(1)(ix)

PROGRAM INCOME FUNDS AND CLOSE-OUT

The State CDBG regulations as revised in April 2012 stipulate that program income received by the grantee or a sub-recipient both before *and* after close-out of the grant that generated such income is treated as additional CDBG funds and is subject to all applicable Title I and other federal regulations and state policies governing the state CDBG program. Any program income received before full programmatic close-out must be substantially expended, to the extent practical, before drawing additional CDBG funds from the state for *any* activity in *any* CDBG project that the grantee has open. The only exception is when program income is placed in a Revolving Loan Fund (RLF) in accordance with the requirements outlined later in this chapter, in which case it is not required to be expended for non-Revolving Loan Fund activities.

If the grant that generated the program income is closed, any program income permitted to be retained, will be considered part of the unit of local government's most recently awarded open grant.

USE OF PROGRAM INCOME

The accounting provisions and use of funds as described later in this chapter are applicable as long as funds are received or distributed. Appropriate documentation regarding the use of funds must be maintained along with the appropriate accounting documents (see "Reporting Program Income" later in this chapter for more information).

Program income must be used for eligible CDBG activities as listed in Title I, Section 5305(a) and this implementation guide. Program income is subject to all of the rules and regulations governing CDBG funds including, but not limited to, compliance with: national objective, procurement, equal opportunity, environmental, labor standards, lead-based paint hazard treatment, etc.

Program Income (PI) retained by the municipality must be substantially expended by the end of the Program Year (PY). A municipality cannot accumulate excessive amounts of PI, accordingly, this department will consider a PI balance of \$25,000 or less at the end of the PY to be substantially expended.

The grantee can expend up to 10% of the total program income received for general administration with approval from CFDA. Program activity costs are capped at 12% of total program income received.

The municipality has the option of retaining the PI and expending it in any of the following ways or returning the PI to this department.

PROGRAM INCOME REUSE PLAN

A PI Reuse Plan governs the municipality's ongoing use of PI. The PI Reuse Plan identifies all proposed uses of the PI and commits the municipality to comply with all CDBG program requirements. CDFA closes out its grants to municipalities upon satisfactory completion of the terms and conditions of the grant agreement. However, Federal statute requires CDFA to track PI beyond the closeout of the grant that generated the PI. To that end, the PI Reuse Plan satisfies the Federal requirement that local governments obtain advance State approval of a local plan governing PI. Essentially, the PI Reuse Plan fulfills the role of an ongoing contract with CDFA.

[Attachment 6-7:
Sample PI Reuse Plan](#)

The proposed reuses of the PI are disclosed in the PI Reuse Plan and a public hearing is held to allow for meaningful local citizen comments about the plan, prior to its adoption by the local governing body.

The PI Reuse Plan must also specify all revolving and non-revolving uses of funds, e.g., general administration, any grants, or any program activity costs. Only such costs that are associated with the specific activity of each RLF may be charged to a RLF.

If you choose to retain Program Income (PI) locally (instead of returning it to CDFA), then you must prepare and submit with your application for a CDBG grant a PI Reuse Plan that has already received local approval. The PI Reuse Plan may be amended at any time.

PI EXPENDED ON ACTIVITIES APPROVED IN THE PI REUSE PLAN

If you have an open CDBG grant, you may spend Program Income (PI) on the activity or activities specified in the open grant. CDFA's approval of the expenditure of CDBG funds would not be required, if the activity or activities were specified in the Program Income Reuse Plan. Program Income expended on an open grant activity or activities must be spent first (i.e. substantially disbursed- the balance must be reduced to \$25,000 or less), before drawing down the open grant funds. Prior approval is required from CDFA for expending PI on activities which were not approved or specified in the Program Income Reuse Plan.

For example, over the course of the program year (January 1 – December 31) a municipality receives \$80,000 in Program Income from a Housing Rehabilitation program and is currently administering a \$300,000 Public Facilities grant. At the end of the program year (December 31) or during the program year the municipality may expend \$55,000 ($\$80,000 - \$55,000 = \$25,000$ balance) on the open \$300,000 Public Facilities grant. However, the \$55,000 must be expended first before requesting additional funds from the \$300,000 grant.

Spending Program Income on an Open Grant Activity

In order to spend PI on an open grant activity, the PI Reuse Plan should specify this option. It also must be stated if the grantee wants to spend PI on an activity that is different than the original activity. The PI Reuse Plan must be submitted and approved as part of your application for funding. Consequently, the municipality is required to allow for meaningful local citizen comments about the plan, prior to submitting it with the application to CDFA for approval. The minutes of the public hearing must disclose the intended use of any potential PI, which may be earned on the grant activity or activities.

Once the PI Reuse Plan has been approved as part of the grant application and the grantee has obtained CDFA approval (required if different from the activity which generated the PI) of any post-application PI commitment, it may proceed to spend PI on the grant activity.

Expending Program Income on a Future Grant

The third method of complying with the requirement of substantially disbursing program income by the end of the Program Year is to apply the program income to a future grant request. The Municipality may obtain the approval of CFDA to combine the program income with a future grant request. For example, the municipality receives \$100,000 in program income during the program year (January 1 – December 31) and the municipality has identified a project, which it intends to submit an application for funding in the amount of \$500,000. The municipality may obtain the approval of CFDA to apply \$100,000 of program income to the future grant request. Accordingly, the municipality would request \$400,000 in new funding from CFDA and not the \$500,000 in future funding. Program Income expended on the future grant activity or activities must be spent first (i.e. substantially disbursed- the balance must be reduced to \$25,000 or less), before drawing down the open grant funds.

Return the funds to CFDA

The final option is to return the program income to CFDA. The municipality may choose this option if it cannot comply with the requirement to substantially disburse program income by the end of the program year.

GENERAL ADMINISTRATIVE COSTS AND PROGRAM ACTIVITY COSTS

Up to 10 percent of the total PI expended during a Program Year (PY) may be used for CDBG general administrative costs (GAC's). Program activity costs (PAC's) may not exceed 12 percent of total program income expended in the PY.

REPORTING PROGRAM INCOMES

The grantee is required to report on the Program Income (PI) activities in the Semi-Annual Grantee Progress Report. The report contains semi-annual and annual PI forms. Both forms must be completed and submitted by all grantees even if the amount of Program Revenue (PR) received during the Program Year (January 1 –

December 31) was zero or less than \$35,000. In addition, the grantee is required to submit the Semi-Annual Grantee Progress Report whether or not the grantee has an existing open grant from CFDA.

At the end of each period, the grantee will report on all CDBG program revenue, PI actual expenditures, and PI account balances, regardless of whether or not your total program revenue exceeds the \$35,000 annual threshold. If your municipality has either: 1) made any loans that will be repaid, or; 2) is receiving income that has been directly generated from the use of State CDBG funds, then it must submit Grantee Progress Reports.

More information can be found in the [Chapter 11: Reporting and Recordkeeping](#).

TRANSFER OF PROGRAM INCOME

Due to a statutory provision mandating that CDBG funds benefit the eligible grantee that received the original funds, a grantee cannot transfer program income to another agency for use in other municipalities.

SECTION 6.7 REVOLVING LOAN FUNDS

Revolving Loan Funds are a special category of program income that allows the funds to be set aside for a designated use. A Revolving Loan Fund (RLF) is a separate fund (with a separate set of accounts that are independent of other program accounts) established to carry out specific activities that, in turn, generate payments that fund future activities.

[24 CFR Part 570.489\(f\)](#)

CFDA may approve the use of CDBG program income for the purpose of capitalizing a RLF for specifically identified activities.

- RLFs are typically established to continue housing or economic development activities.
- The establishment of a RLF must be in the evidentiary materials and approved by CFDA.

Payments to the RLF are considered program income and as such, must be substantially disbursed from the RLF before additional grant funds are drawn from CFDA. For example, if the grantee receives a loan payment on an RLF economic development activity, the loan payment back to the RLF is considered program income. The next draw request by the grantee for an economic development activity must substantially disburse the available economic development RLF before grant funds can be drawn from CFDA. If the grantee's next draw request is for a public service activity this would not require the use of the RLF funds since the drawn request does not match the specified purpose of the RLF. The grantee does not have to expend program income for non-Revolving Loan Fund activities.

If the RLF is established to continue the activities of the grant that generated the program income, the RLF is subject to all the requirements of program income (i.e., Title I, state policies, etc.), if the grant is open at the time the funds are received.

REVOLVING LOAN FUND (“RLF”) AS DESCRIBED IN A PROGRAM INCOME REUSE PLAN

A Revolving Loan Fund (RLF) is an account established to make loans, if the municipality will not be making any loans, then the account is simply called a program income account. A municipality will typically establish a RLF for program income earned on CDBG grant funds used to make loans. An RLF is established for carrying out only one specific activity (e.g., loans for housing rehabilitation, homeownership assistance, or business loans), which, in turn generates repayments to the fund for use in continuing to carry out that same activity. A municipality may establish several RLFs, but each must be for a single, CDBG-eligible, lending-type activity that meets a CDBG national objective. The name of the RLF should reflect this single activity name in order to avoid confusion on CDBG reports. Each RLF must also be “substantially revolving” (see next paragraph).

THE MOST COMMON USE OF PI IS PLACEMENT IN AN RLF

Each RLF must be “substantially revolving,” meaning that at least 51 percent of the RLF expenditures must be for loans. Amounts up to the remaining 49 percent may be spent on non-revolving activities, such as general administration, program activity, and grants for the same activity as the RLF. Repayments to the RLF on loans made from the RLF is program income and cannot be recorded as Miscellaneous Revenue.

For example, a municipality makes a \$20,000 residential rehabilitation loan from the RLF and receives \$5,000 in principal and interest payments for the program year. The entire \$5,000 is considered program income and is not subjected to the \$35,000 exemption as miscellaneous revenue.

If the Revolving Loan Fund (RLF) funds are expended on the same type of activity as an existing open grant (e.g., both the RLF and the open grant are funding residential rehabilitation loans in the entire municipality), then the RLF funds must be substantially disbursed before drawing down additional funds from the open grant. This situation may be avoided by defining the activity of an RLF to be different than activities funded by the existing open grants, such as for a target area which is different from the open grant or the RLF may be for emergency repairs and the open grant for code enforcement and general repairs.

RLF PROGRAM GUIDELINES

Each RLF must have an approved set of program guidelines. A single set of guidelines may be used to administer the RLF and a grant-funded activity of the same type. However, if the RLF activity is different than an open grant activity then the program guidelines need to clearly reflect the differences between them.

WHAT IS THE PROCESS FOR SPENDING PI IN THIS WAY?

Your PI Reuse Plan must specify that you will spend the PI in the revolving loan fund in this manner. The PI Reuse Plan must be submitted and approved as part of your application for the revolving loan fund activity that generated the PI. Consequently, you must allow for meaningful local citizen comments about the proposed use

of program income under the Plan during the public hearing that is held for the activity prior to submitting the Plan with the application to CFDA for approval. The minutes of the public hearing must indicate that the proposed use of program income was discussed during the hearing. You must also demonstrate compliance with all applicable federal overlay requirements, e.g. NEPA environmental review.

DEVELOPMENT OF REVOLVING LOAN FUND GUIDELINES

CFDA requires that written guidelines be developed for the administration of the Revolving Loan Fund. These guidelines must be prepared and submitted to CFDA for approval prior to any program income being expended and prior to release of funds of the grant. Revolving Loan Funds may not be expended until the project national objective has been met.

The local governing body must approve the written RLF guidelines. In addition, any substantive changes to local RLF guidelines must be submitted to CFDA prior to implementation. Failure to submit local RLF guidelines in a timely manner could result in the recapture of program income by CFDA.

Administration of a RLF involves three primary areas of responsibility:

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

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

- RLF Goals and Objectives
- Eligibility Requirements
 - Eligible and Ineligible Activities
 - Eligible Applicants
 - Eligible Types of Loans
- Loan Review, Selection and Approval
 - Loan Review Committee
 - Members and Terms
 - Procedures and By-Laws
- Application Requirements
 - Justification of Need
 - Beneficiaries
 - Necessary and Appropriate Documentation ⁿ Certifications
 - Loan Approval Procedures

- RLF Operations and Management
- Accounting System
- Reporting and Record keeping
- Loan Documentation, Disbursement and Servicing
- Title I Compliance and Monitoring
- Administrative Staffing, Costs and Fees
- Audits
- Conflict of Interest

SUB-RECIPIENTS AND REVOLVING LOAN FUNDS

If program income/miscellaneous revenue will be retained by a sub-recipient, the RLF guidelines must identify and describe the role of the sub-recipient, as appropriate. The sub-recipient's governing board must approve the RLF and the sub-recipient's participation prior to release of funds. Such approval must legally bind the sub-recipient to perform in accordance with the provisions of the Revolving Loan Fund guidelines and be submitted in writing to CFDA. It is a federal requirement that a sub-recipient be governed by the CDBG regulations in the same manner and to the same extent as the grantee. In any case, the grantee remains responsible for ensuring compliance with the RLF and is liable for any misuse of program income/miscellaneous revenue funds.

SECTION 6.8 AUDITS

One of the primary financial management requirements implicit with the use of Federal funds is the annual audit. 2 CFR Part 200 Subpart F provides requirements for audits of governmental entities and non-profit organizations.

[2 CFR Part 200 Subpart F](#)

AUDIT REQUIREMENTS

An audit is an official examination and verification of accounts and records. Audits are an important part of effective financial systems, as they produce useful financial reports and verify the reliability of a grantee's financial management systems. Only an independent CPA, with a current license to practice in New Hampshire, or the New Hampshire Auditor of Public Accounts can perform an audit.

Failure to comply with the audit requirements can jeopardize the grantee's ability to draw grant funds and receive future grants.

FEDERAL REQUIREMENTS

The type and level of audit required by 2 CFR 200 Subpart F is based on the amount of Federal funds expended by an organization in a given fiscal year. Federal awards include financial assistance provided by the Federal government to the entire organization in the form of grants, loans, property, contracts, loan guarantees, etc.

Organizations that have expended more than \$750,000 in Federal funds within a fiscal year are required to have a Single Annual Audit conducted. (For fiscal years prior to 2015, the threshold is \$500,000 per fiscal year). A single audit is an audit that includes both an entity's financial statements and its federal awards (from all applicable Federal programs).

Organizations that have expended less than \$750,000 a year in federal funds are exempt from the audit requirement; however, financial records must be made available if requested.

THE AUDIT PROCESS

The Single Annual Audit must be performed by an independent public accountant in compliance with the Single Audit Act of 1997. The grantee is required to permit the independent auditor access to the records and financial statements of the municipality as necessary.

In procuring audit services, grantees should follow the applicable procurement standards found in [Chapter 7: Procurement and Contracts](#). The grantee should ensure that the auditor is knowledgeable about specific accounting requirements that apply to local government.

All audits conducted in accordance with OMB A-133 (FYs prior to 2016) and 2 CFR Part 200 (FY 2016 forward) must be performed in accordance with Generally Accepted Government Auditing Standards (GAGAS) (refer to 2 CFR 200.514(a)). According to the GAGAS standards, a financial audit should determine whether:

- Financial information is presented in accordance with established or stated criteria;
- The entity has adhered to specific financial compliance requirements; or
- The entity's internal control structure over financial reporting and/or safeguarding assets is suitably designed and implemented to achieve control objectives.

In conducting an audit, the grantee must supply the following information to the auditor at the beginning of each audit:

- A copy of the Assistance Agreement;
- A copy of all claims/draws processed during the fiscal year;
- A copy of the monitoring letter, if one was issued during or affecting the fiscal year being audited;
- A copy of the community's most recent budget that includes the CDBG funds for the fiscal year; and
- The location of the records for the CDBG project and the person to contact along with their telephone number.

Tip: It is the responsibility of both the grantee and the grant administrator to ensure compliance with all audit requirements.

THE AUDIT REPORT

OMB Circular A-133, applied for fiscal years prior to FY16, and [2 CFR Part 200](#), applied for fiscal years FY16 forward, require that audit reports issued upon completion of an audit include:

- An opinion as to whether financial statements are presented fairly in all material respects in accordance with GAGAS.
- An opinion as to whether the schedule of expenditures is presented fairly in all material respects in relation to the financial statements taken as a whole.
- A report on internal controls related to financial statements and major programs.
- A report on compliance with laws, regulations, and the provisions of contracts or grant agreements.
- An opinion as to whether the auditee organization has complied with laws, regulations, and the provisions of contracts or grant agreements.
- A schedule of findings and questioned costs, which include a summary of the auditor's results and all "audit findings."
- The summary of audit results must include:
 - Type of report the auditor issued on financial statements;
 - A statement that reportable conditions in internal controls were disclosed by the audit (where applicable);
 - Statement on whether the audit disclosed any noncompliance which is material to the auditee financial statements;
 - Type of report the auditor issued on compliance for major programs;
 - Statement as to whether the audit disclosed any "audit findings";
 - Identification of major programs;
 - Dollar threshold used to distinguish between type A and type B programs; and
 - Statement as to whether the auditee qualifies as a low-risk organization.

DEADLINE AND SUBMISSION

The submission of all audit information is the responsibility of the grantee. It is the administrator's responsibility to inform the grantee of all audit requirements and to ensure that completed audit reports are submitted to CFDA and the appropriate offices on a timely basis.

STATE SUBMISSION REQUIREMENTS

Municipalities must submit an Annual Notification of Single Audit Requirement, signed by the AO no later than 60 days after their fiscal year end. Forms should be sent to the attention of:

**Community Development Finance Authority
Finance Department
14 Dixon Avenue, Suite 102
Concord, NH 03301**

[Attachment 6-8:
Annual Notification of Single
Audit Requirement](#)

FEDERAL SUBMISSION REQUIREMENTS

Under OMB Circular A-133 and 2 CFR Part 200, audits must be completed within nine months from the end of the fiscal year.

Grantees have no later than 30 days after receipt of the auditor's report or March 31st (whichever is earlier) to submit the final copies to the Federal Audit Clearinghouse (FAC).

According to 2 CFR 200 Subpart F, grantees must make copies of their audit available for public inspection, ensuring that protecting personally identifiable information is not included.

[Federal Audit Clearinghouse
Public User's Manual](#)

[All A-133/2 CFR Part 200 Audits
must be submitted to:](#)

[Federal Audit Clearinghouse](#)

CHAPTER 7: PROCUREMENT

INTRODUCTION

This chapter describes the policies and procedures that must be followed when entering into contractual agreements with other entities. Services often procured by grantees to complete CDBG projects include professional grant administrators, engineers, architects, and construction contractors.

SECTION 7.1 CDBG PROCUREMENT REQUIREMENTS

All procurements funded in whole or in part with CDBG funds must comply with the applicable federal requirements found in 2 CFR Part 200. The goal in using these procurement procedures is to achieve maximum open and free competition.

[2 CFR Part 200.318](#)

Each grantee (and sub-recipient) shall adopt and abide by the CDBG Procurement requirements set forth in this chapter, which shall apply only to procurements funded with CDBG dollars, as authorized in 2 CFR 200.318. The CDBG Procurement requirements include:

- A code of conduct to govern the performance of the grantee's officers, employees or agents in contracting with CDBG funds and to ensure adherence to the conflict of interest and disclosure requirements (outlined in [Chapter 4: Grantee Requirements](#)); and
- A requirement that positive efforts be made to use small, minority, female, and Section 3 businesses; and
- A requirement that contracts be awarded, to the greatest extent feasible, to businesses that provide economic opportunities for low and very low-income persons residing in the project area; and
- A requirement that cost estimate has been determined in advance of contract bidding, per 2 CFR 200.323(a). See Section 8.6 Cost Reasonableness below for more information on this process.

[2 CFR 200.323\(a\)](#)

SECTION 7.2 OVERALL PROCUREMENT REQUIREMENTS

ENVIRONMENTAL REVIEW AND BIDDING

As stated in [Chapter 6: Environmental Review](#), it is HUD policy as of April 2011 that the environmental review process be completed prior to bidding to allow for an unprejudiced decision about the action and to allow for any modifications or project cancellation based upon the environmental review.

EXCLUDED PARTIES

Grantees must not award any contract to any organization that is debarred or suspended or is otherwise excluded from or ineligible for participation in federally assisted programs. This applies to any CDBG-assisted contract at any tier in the process. Documentation proving verification of contractor eligibility will be checked at monitoring.

- Prior to contract execution, the grantee must check the organizations name against the federal System for Award Management (SAM). [System for Award Management \(SAM\)](#)
- The grantee must document that the organization (including all contractors and subcontractors) are not on this list with screenshots or other proof the organization is not debarred.

MINORITY BUSINESS ENTERPRISES/WOMEN BUSINESS ENTERPRISES (MBE/WBE)

Background

The regulations at 2 CFR Part 200.318 requires grantees to take affirmative action to contract with small and minority-owned firms and women business enterprises. CDFA does not require set asides or participation quotas, but grantees are expected to make special efforts to award contracts to MBE and WBE firms.

[2 CFR 200.321](#)

Requirements

The grantee must make good faith efforts to see that Minority Businesses and Women Business Enterprises are provided opportunities as a result of Small Cities funding. A separate file should be established and maintained with efforts clearly documented. In addition, grantees are required to notify the Department of Transportation (DOT) and several construction services firms of all procurements utilizing CDBG funds. Grantees must upload the MBE/WBE Services Form prior to submission of construction claims in GMS.

[Attachment 7-1: MBE/WBE Services Form](#)

[Department of Transportation Disadvantaged Business Program](#)

Suggested Outreach

It is the grantee's job to ensure the MBE/WBE firms are notified of any contracts ready for bid. Other specific measures a grantee may take to meet M/WBE goals include:

- Assuring that small businesses and MBE/WBEs are solicited whenever they are potential sources.
- Including MBE and WBE firms on solicitation lists and sending them an Invitation to Bid.
- When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum participation by small businesses and MBE/WBEs.
- Where the requirements permit, establishing delivery schedules which will encourage participation by small businesses and MBE/WBEs.
- If any subcontracts are to be let, requiring the prime contractor to take the above affirmative steps.
- Setting aside a percentage of CDBG funds to be awarded to MBE/WBEs.
- Including MBE/WBE criteria with additional points in selection criteria for professional services procurement.

SECTION 7.3 ECONOMIC OPPORTUNITIES

Background

Section 3 of the Housing and Urban Development Act of 1968, as amended and implemented at 24 CFR Part 135, requires the provision of training, employment and other economic opportunities that arise through certain HUD-financed projects to lower-income residents of the project area, particularly residents of government-subsidized housing, to the greatest extent feasible and consistent with federal, state and local laws and regulations. Also required is that contracts be awarded to businesses that provide economic opportunities for low- and very low-income persons residing in the project area. Amendments to Section 3 in 1992 included requirements for providing these opportunities in contracts for housing rehabilitation, including lead-based paint abatement, and other construction contracts.

Requirements

Section 3 applies to recipients of \$200,000 or more in CDBG assistance. The types of projects that are covered by Section 3 are housing construction, demolition, rehabilitation or other public construction (e.g., infrastructure or community facilities).

[24 CFR Part 135](#)

Contractors or subcontractors that receive contracts in excess of \$100,000 for housing construction, demolition, rehabilitation or other public construction are required to comply with the Section 3 regulations in the same manner as the grantee that provided the funding to them.

In cases where a grantee receives CDBG assistance of over \$200,000 for a project or activity, but no housing or other construction contracts exceeds \$100,000, the Section 3 requirement applies only to the grantee.

[Attachment 7-2:
Section 3 Report
\(HUD Form
60002\)](#)

In this instance, the grantee must still complete Attachment 7-2: Section 3 Report.

The recipient and, if applicable, its contractors/subcontractors must attempt to reach the Section 3 minimum numerical goals found at 24 CFR Part 135.30 by:

1. Awarding 10% of the total dollar amount of covered construction contracts to Section 3 businesses; and
2. Hiring Section 3 residents for 30% of *new* employment opportunities.

[Attachment 7-3: Section 3 Resident Certification Form](#)

[Attachment 7-4: Section 3 Business Certification Form](#)

In order to satisfy the Section 3 requirements, a grantee must develop and implement a Section 3 Plan that outlines how it will achieve these goals. The plan must state the grantee's commitment to Section 3 and outline steps to implement it. This *could* include setting aside dollar amounts or a number of contracts to be awarded to businesses that employ low-income residents in the area. CDFA has provided the minimum required Section 3 Plan as Attachment 7-5.

[Attachment 7-5: Grantee Section 3 Plan](#)

It is important to document efforts made to comply with Section 3. Files should contain memoranda, correspondence, advertisements, etc., illustrating attempts to meet Section 3 goals (e.g., to reach out to eligible persons regarding employment or training and/or business concerns). Documentation will show the steps taken to implement the plan, and will most likely cross-reference information in other files, such as procurement and construction contracting. The mere existence of a Section 3 Action Plan is not sufficient. Affirmative attempts to reach Section 3 goals must be made. Finally, grantees are required to report on Section 3 as a part of the semi-annual report.

Caution: Compliance with Section 3 does not supersede other applicable laws and regulations. The 1992 amendments specifically state that Section 3 requirements will be consistent with federal, state, and local laws and regulations. Therefore, the federal procurement standards cannot be violated to comply with Section 3.

SECTION 7.4 CONFLICTS OF INTEREST

Background

Nothing is more detrimental to a successful procurement operation than to have the relationship between the grantee and the contractor questioned regarding real or apparent conflicts of interest. Conflict of interest issues deal with the relationship between the parties and financial gain. Those that could be judged to have conflicts include local officials, employees, consultants, family members, and business partners. Also, see [Chapter 4: Grantee Requirements](#) for information on conflict of interest.

SECTION 7.5 METHODS OF PROCUREMENT

Grantees must select from one of four methods of procurement based on the type of products and/or services being procured and their cost.

MICRO PURCHASE PROCEDURES

Procurement by micro-purchase is the acquisition of goods or supplies, the aggregate dollar amount of which does not exceed the current micro-purchase threshold of \$10,000. To the extent practicable, the municipality must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the municipality considers the price to be reasonable.

SMALL PURCHASE PROCEDURES

Small purchase procedures entail a relatively simple and informal process that can be used when cost of goods or supplies, in the aggregate, are no more than \$150,000. Under this process, the grantee must:

- Obtain price or rate quotations either by phone or in writing from an adequate number of qualified sources (at least two sources).
- Maintain documentation regarding the businesses contacted and the prices quoted.
- Make the award to the lowest responsive and responsible source.
- If applicable, prepare and sign a contract formalizing the scope of work and the terms of compensation.

COMPETITIVE SEALED BID

The Competitive Sealed Bid method is the required method for procuring CDBG-funded construction work. (See [Chapter 8: Labor Standards](#) for detailed information on preparing construction bid documents.) The following requirements apply to the competitive sealed bid procurement process:

- Competitive sealed bids are initiated by publishing an Invitation to Bid (IFB).
- The IFB must be advertised in the newspaper of daily general circulation at least one time not less than fourteen days before the date set for the opening of bids.
- The IFB must also be distributed to all trade publications (construction services).
- The grantee must provide a copy of the Invitation for Bids to the New Hampshire Department of Transportation EEO Coordinator.

[Department of Transportation Disadvantaged Business Program](#)
- The IFB will include specifications that define the services or items required in order for the bidder to properly respond.
- 2 CFR Part 200 requires a bid guarantee from each bidder equal to five percent of the bid price. This guarantee serves as an assurance that the chosen contractor will execute the contract within the time specified.
 - Bid guarantees can be in the form of a Bond or Cashier's check that are returned to the unsuccessful bidders.
- All bids must be publicly opened at the time and place stated in the Invitation for Bids.
- The bids must be tabulated and reviewed.
- The contract is awarded to the lowest, responsible and responsive bidder.
- Preparation and signing of a contract formalizing a scope of work and the terms of compensation is required.
 - The contract must be a firm-fixed-price contract (lump sum or unit price with a maximum amount identified).
- If alternates (additives or deducts) will be taken, the bid documents must be clear as to the priority order in which those alternates will be applied.

COMPETITIVE NEGOTIATION

This method of procurement is used if the selection can be based on factors other than cost, such as experience and capacity. Procurement of architectural, engineering, planning and administrative services fall under this category. Grantees shall seek permission from CDFA prior to using competitive negotiation for contracts other than architectural, engineering, planning or administrative services. Only fixed-price contracts or hourly contracts with a not-to-exceed figure may be awarded.

Caution: Cost plus a percentage of cost contracts are not acceptable. This means that standard architectural and engineering contracts cannot be used without changing the fee structure that is based on a percentage of costs.

NOTE: Consultants must not assist the grantee with procurement if they intend to respond to the solicitation for services.

Competitive negotiations are initiated by publishing a Request for Proposals (RFP) or Request for Qualifications (RFQ). The RFP is used when price is a factor in selection; the RFQ is used when price is considered after selections (RFQ may ONLY be used for architectural or engineering services). In both the RFP and RFQ, all significant evaluation factors and their relative importance should be clearly stated. In addition, the grantee should provide or make available any materials such as reports, maps, and site plans to assist interested firms in preparing responsible submissions. A sample RFQ is provided as Attachment 7-8 to this Chapter.

The following requirements apply to the competitive negotiations procurement process:

- The RFP or RFQ must be advertised in a newspaper of daily general circulation in the area at least one time not less than fourteen days before the date set for the opening of proposals.
- The grantee must provide a copy of the Invitation to Bid to the DOT.
- If an RFP is used, it should specify the scope of services to be provided and the type of contract to be used: fixed price, or an hourly rate with a not to exceed figure.
- An RFP should also:
 - Specify that cost and pricing data is required to support the proposed cost;
 - State anticipated start and completion dates; and
 - List evaluation criteria that will be used in ranking proposals.
- All proposals received must be reviewed and ranked according to the selection criteria, and the review must be documented in writing. Attachment 7-11 provides a sample Professional Services Evaluation.
- For both RFPs and RFQs, selection is made on the basis of the most responsible offer or price with consideration given to the factors identified in the Request for Proposal or Qualifications.
- For RFQs, an invitation is then made to one or more respondents to negotiate a price or fee. Document the reason the firm is chosen and that the price established is reasonable.
- The grantee must maintain documentation for all services and reasons for selection.
- The grantee must send an award letter to the selected contractor and document the file with it.
- The grantee must prepare and sign a contract formalizing a scope of work and the terms of compensation.
- The grantee should promptly notify unsuccessful bidders in writing and document the file with the rejection letters.

NON-COMPETITIVE NEGOTIATIONS

Non-competitive negotiation is procurement through solicitation of a proposal from one source and is often referred to as sole source procurement. A contract may be awarded by noncompetitive negotiation **only** when the award is infeasible under small purchase procedures, competitive sealed bids, or competitive negotiations and one of the following circumstances applies:

- There is some public emergency that will not permit delay resulting from competitive solicitation (the grantee must declare an emergency as authorized by law); or
- The results of the competitive negotiations are inadequate; or
- The product or service is available only from a single source.

Caution: The use of the non-competitive negotiation procurement method must be authorized in advance by CDFA.

The following requirements apply to the non-competitive negotiation procurement process:

- Negotiations must be conducted with the selected company regarding a scope of work and price; and
- Preparation and signing of a contract formalizing a scope of work and the terms of compensation is required.

SECTION 7.6 OTHER PROCUREMENT ISSUES

COST REASONABLENESS ESTIMATES

2 CFR 200.323 requires grantees to perform a cost or price analysis in connection with every procurement action in excess of the Small Purchase 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 Grantee must make independent estimates before receiving bids or proposals. Documentation of a cost estimates and cost/price reasonableness will be checked at monitoring.

[2 CFR 200.323\(a\)](#)

Attachment 7-6: Creating
Cost Estimates

NOTE: Contractors/consultants that provide a price estimate to assist the Grantee with a Cost Reasonable Estimate are NOT allowed to bid on the RFP/RFQ.

OVER BUDGET BIDS

Despite careful cost analyses and safeguards, there are occasions when all bids will exceed available project funds. This section governs the process for dealing with such a situation.

OPTIONS

The following options are available for awarding a bid following an overage:

1. Obtaining additional funds from another source and continuing with the original IFB.
2. Rejecting all bids, revising project scope and bid specifications, and issuing a revised IFB (competitive sealed bid) open to the entire public.

LOW BIDS AND CHANGE ORDERS

To maintain the integrity of the bidding process, the change order process must only be used when (1) the change order work fits within the scope of the original project and (2) the reason for the change is something that was unanticipated or unforeseen at the time the original contract was awarded.

Change orders cannot be used for fundamental redesign of a project and cannot be used to “fix” problems in the project specifications if the municipality was aware of the problems before awarding the contract. (If your specifications have problems, it’s better to issue an addendum—if the problems were discovered before bids are due—or to re-bid the contract.) Change orders also cannot be used to take advantage of a good deal on a construction project—in other words, if you’ve awarded a contract for 500 linear feet of street paving work, you can’t then use a change order to double the number of linear feet included in the contract just because the successful bidder gave you a really great price on the original contract.

NOTE: Total change orders must not exceed 15% of the original contract price.

ADD/DEDUCT ALTERNATES

Grantees are encouraged to use add and deductible alternates for inclusion unless doing so is not practical or not feasible. When deductible alternates are requested, the bid document issued by the grantee must specify the method and order in which alternates will be applied in determining the low bid. Drawings must also clearly show the alternates.

For example, a project might involve the construction of a new community center that includes a portico and a small out-building to accommodate future expansion. The bidding instructions would indicate which items are to be bid as deductible alternates and the order of priority in which they are to be deducted. In this example, assume the portico and out-building are to be bid as deductible alternates,

and the order of priority for deducting is first, the out-building, and second, the portico. The grantee would go back through each bid (not just the lowest one) and first subtract the amount each bidder estimated for the out-building from the total amount she/he bid for the project. The grantee would then check to see if any of the adjusted bids are within budget. If so, the grantee can award the bid to the bidder with the lowest adjusted bid. If not, the grantee would repeat the process, this time deducting the cost of the portico from the adjusted bid of each bidder. Depending on the number of deductible alternates specified, the process can be repeated until one of the adjusted bids is within budget.

It is imperative that the grantee's IFB explicitly state the method of award, including use of any deductible alternates. Failure to be clear and precise on the procedures that will be utilized can cause confusion or disputes among bidders that could, at the very least, cause project delays.

GRANT ADMINISTRATION SERVICES

By Contractors/Consultants

Professional grant administrators are often procured by grantees to undertake CDBG projects. Note that any person contracted to perform grant administration services to be paid with grant funds, must be procured following CDBG procurement requirements.

By Regional Planning Commission Staff

A grantee may choose to contract with their Regional Planning Commission (RPC). As quasi-governmental entities, municipalities that have standing contracts with an RPC are not required to procure grant administration services following CDBG procurement requirements. However, a cost estimate must still be completed prior to contracting.

By Grantee Staff

A grantee may instead choose to perform some or all of these services with their own staff member and can be reimbursed for the time an employee spends working on the CDBG project. It is important to note that time sheets must demonstrate the time spent solely on the CDBG project. This method requires source documentation of all costs at time of monitoring.

SECTION 7.7 PROCUREMENT OF PROFESSIONAL SERVICES

This section describes steps that are required to help ensure grantees comply with federal and state procurement requirements in the procurement of professional services.

Step 1: Prepare the RFP/RFQ The Grantee must prepare an (RFP). An example of an RFP and RFQ are provided as Attachment 7-7 and Attachment 7-8.

[Attachment 7-7:
Sample Request for
Proposals](#)

[Attachment 7-8:
Sample Request for
Qualifications](#)

Step 2: Solicit Responses In order to meet the goals of MBE/WBE participation; the Grantee must submit the RFP/RFQ to the New Hampshire Department of Transportation.

Step 3: Publish RFP/RFQ The Grantee must advertise the RFP/RFQ publicly by publishing in local newspaper of daily general circulation.

[Attachment 7-9:
Sample RFP Publication](#)

[Attachment 7-10:
Sample RFQ Publication](#)

- 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 locality and other clients, including quality of work, timeliness, cost control, and citizen's complaint resolution in a timely manner.
- 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.
- An evaluation consideration to small, local, minority or female owned firms. These firms may be awarded extra points in order to promote the employment of these firms.

The relative importance of each of these factors should be determined beforehand by assigning values to each (e.g., experience may be assigned 30 points out of a possible 100 points).

Step 4: Establish Evaluation Committee Appoint an evaluation team of knowledgeable members (town council, board of public works members, etc.) and develop an evaluation plan to rank respondents and provide guidance during the selection process. Typically, three to five people make up the Evaluation Committee. At least one of the committee members should be the Authorized Official (AO) or designee. An example of a scoring criteria evaluation document is Attachment 7-11: Professional Services Evaluation.

[Attachment 7-11
Professional Services
Evaluation](#)

Step 5: Open Responses Proposals must be received at the address stated in the legal advertisement, logged in and marked with the date and time received prior to being opened and submitted to the Evaluation Committee for review. Any proposal not received by the date and time stated in the legal advertisement must be returned, unopened to the submitter.

Step 6: Make Vendor Selection If interviews are conducted, each member of the Evaluation Committee must complete an Interview Evaluation and Score Sheet for each vendor short listed. Each scorer must use the same scoring and weighting criteria making their best effort to score each proposal fairly and without bias. These documents will be required at monitoring. Following the Evaluation Committee's review, the vendor whose proposal is determined to be the most advantageous to the project, based upon qualifications, price and other factors may be selected.

Caution: Be aware of potential conflicts of interest. Some firms have the capacity to administer projects and design buildings or public facilities systems. It is considered a conflict of interest for the firm in charge of administration to also be in the position to oversee the engineering for a project. There can also be conflicts in the areas of rehab inspection, lead based paint testing, surveying, etc.

Step 7: Notify Successful and Unsuccessful Proposer(s) The Grantee must notify all successful and unsuccessful vendors, in writing.

Step 8: Prepare a Contract: Once a firm is chosen and the basis of selection is documented along with the reasonability of cost, it is time to start the preparation of a contract with the successful individual or firm. See Section 7.10: Contract Requirements below for information.

Step 9: Execution of Contract(s) The Grantee may execute contracts with the successful vendor after they have received Release of Funds from CDFA.

SECTION 7.8 PRE-BIDDING REQUIREMENTS

The first step in effective management of CDBG-funded construction projects is the preparation of a bid package. This requires the writing of the technical bid specification – usually by an architect or engineer on the basis of prepared plans or working drawings. These specifications must provide a clear and accurate description of technical requirements for materials and products and/or services to be provided in the contract. The contract must be consistent with applicable building codes. Additionally, the plans and specifications for non-residential construction must be stamped by an architect or engineer registered in New Hampshire. While the engineer/architect prepares the technical specifications, the Grant Administrator must determine the applicability of Labor Standards and request the necessary wage decisions.

NOTE: The environmental review must be completed prior to publishing the bid advertisement. Please refer to [Chapter 5: Environmental Review](#) for more information.

PROPERTY ACQUISITION ISSUES

At this stage of the process, the grantee must have obtained all lands, rights-of-way, and easements necessary for carrying out the project. All property to be acquired for any activity, funded in whole or in part with CDBG funds, is subject to the Uniform Relocation Assistance and Real Property Acquisitions Policies for Federal and Federally Assisted Programs (42 U.S. Code Chapter 61), also referred to as the Uniform Act or URA. Included in the definition of property, among other things, are rights-of-way and easements. If the construction project involves real property acquisition, the grantee should contact its CDFA Program Manager very early and make sure the acquisition is done according to the provisions of the Uniform Act. See [Chapter 9: Acquisition](#) for additional information.

SECTION 7.9 PROCUREMENT OF CONSTRUCTION SERVICES

This section describes certain key steps that are required to help ensure grantees comply with federal and state procurement requirements when procuring construction services:

Step 1: Obtain the Appropriate Wage Decision

The DOL has issued a directive that the Davis-Bacon Wage Determination that is in effect on the day the bid opening is the wage decision that must be used for all construction on federally funded projects. In order to comply with that requirement, CDFA has assigned the responsibility of obtaining the appropriate wage decision(s) for a project to the Grantee or its designee. An initial wage decision should be obtained prior to issuing the IFB and provided to the Architect or Engineer to be included in the project bid specifications. The Grantee will need to access the DOL website in order to obtain the Davis-Bacon Wage Determination for the project. The printed copy of the effective wage decision will be required at monitoring.

[Department of Labor Online
Wage Determinations
https://www.wdol.gov/](https://www.wdol.gov/)

Step 2: Prepare Invitation for Bid (IFB)

The grantee must develop an IFB that clearly identifies the services required including: all technical specifications required, any other requirements that apply to the contract, and instructions for preparing and submitting a bid. Bid specifications may not identify a specific name brand or provider except if required to identify a piece of equipment necessary for completion of the project. In this instance, the name brand or provider must be followed with the terminology, 'or approved equals.' It is the responsibility of the Grantee to provide the bid specifications preparer with the required contract provisions, as specified in the Assistance Agreement, and the Davis Bacon or State Prevailing Wage Decision applicable to the project. The bid specifications must include a statement that the Wage Decision is subject to change and the one that is in effect on the date of the bid opening will be applicable to the total project if the contract is awarded within 90 days of bid opening. If not, the applicable Wage Decision becomes the one that is in effect on the date that contracts are signed.

Step 3: Publish Invitation for Bid (IFB)

The IFB must be advertised in the newspaper of general circulation in the jurisdiction at least one time not less than 14 days before the date set for the opening of bids. This 14-day minimum bidding period is accepted by CDFA but it is advised that communities give bidders more time. The IFB must state the date, time and location for submission of bids. The legal advertisement must provide information pertaining to where the project plans and specifications may be obtained or reviewed. In order to obtain the highest level of free and open competition, publishing the IFB in well-known trade journals and/or sending a copy of the IFB to the area's local contractors may increase the number of responses received. An example of an IFB advertisement is provided as Attachment 7-12: Sample IFB Publication.

[Attachment 7-12:
Sample IFB Publication](#)

Step 4: Solicit MBE/WBE Responses

The CDBG program requires Grantees to include MBE/WBE contractors to the best of their ability. To that end, a copy of the IFB advertisement must be submitted to the Department of Transportation EEO Coordinator and construction trade publications.

[Department of
Transportation
Disadvantaged Business
Program](#)

Step 5: Confirm Wage Rates

Six (6) days before bid opening, the grantee must check DOL Online to determine if there have been any modifications or revisions to the Davis-Bacon wage rate decision. If it is determined during the "six day call" that there has been a modification, the grantee will then send it as an addendum to all contractors who received the original bid package.

Step 6: Issuing Addenda

If the bid document is amended during the advertisement period, addenda must be sent to all bidders who have received bid documents. However, addenda may be issued only up to 72 hours of bid opening. All bidders must be sent copies of each addendum and evidence of notification must be maintained in the bid files.

Step 7: Conduct Pre-Bid Meeting

CDFA recommends Grantees conduct a pre-bid meeting on all sealed bid procurements. The pre-bid meeting gives the Grantee an opportunity to explain all state and federal requirements of a CDBG funded project to prospective bidders. A sample Pre-Bid Guide is attached as Attachment 7-13: Sample Pre-Bid Guide.

[Attachment 7-13:
Sample Pre-Bid Guide](#)

Step 8: Receive Bids

As bid packets arrive, the time and date the bid was received from the vendor is written on the outside of the bid packet. Any bid received after the date and time due must be rejected and returned to submitter unopened.

Step 9: Open Bids

Bids must be opened and read aloud at a public meeting, at the date, time and location stated in the legal advertisement. The bidder's name and amount of bid must be read and recorded in the minutes of the bid opening meeting. No action should be taken at the bid opening meeting except by order of the AO to take the bids under advisement. Bid opening meeting minutes and a sign in sheet of all attendees must be maintained for the project records and will be required prior to drawing down any CDBG funds for construction.

Step 10: Make Vendor Selection

The Competitive Sealed Bid method of procurement requires that the construction contract be awarded to the lowest bidder, provided that the lowest bidder is found to be a responsive and responsible bidder. If the bids received are within the project budget, the Architect or Engineer will review all bid packages to determine if each one is responsive and responsible and verify that the bonding and certification requirements outlined in the bid specifications have been included. Upon completion of these reviews, the Architect or Engineer will prepare a bid tabulation sheet, and a written statement to the Grantee or Subrecipient making a recommendation of the lowest responsive and responsible bidder. The bid tabulation must be certified (stamped) by the project Architect or Engineer. If the low bidder is found to be unresponsive or irresponsible and is not recommended by the project Architect or Engineer, the Grantee's legal counsel must be consulted prior to making the determination to reject the lowest bid and consider the second lowest bidder. A written legal opinion must accompany all procurement documents where the low bidder was not selected in case of a formal bid protest or possible litigation.

Step 11: Award the Contract

After review of the bids, the grantee or subrecipient must award the contract to the lowest responsible and responsive bidder if his/her bid is within the budgeted amount, preferably within 30 days of the opening.

Caution: Contracts are to be **awarded within a 90-day period**. If contracts are not awarded within 90 days of bid opening, any wage rate modifications that occurred within that 90-day period will apply to the contract. If bids are held longer than 90 days, the grantee must make a "90- Day Call" to CDFA to determine if any modifications have occurred.

If the contract is awarded to a bidder other than the low bidder, the grantee must prepare a written statement explaining why each lower bidder was deemed non-responsible or non-responsive.

- To be responsive, the bidder must have submitted all required documentation. However, the responsiveness criteria must be uniformly applied to all bidders. If one bidder is rejected for failing to submit a particular document, for example, all bidders failing to submit that documentation must be rejected.
 - The grantee must check the contractor and all subcontractors' names against the Federal Excluded Parties List System (available at <https://www.sam.gov/portal/public/SAM/>). The grantee will document that the contractors and subcontractors are not on this list.
 - The grantee must check the contractor and all subcontractors' names against the HUD Limited Denial of Participation List (available at https://www5.hud.gov/Ecpcis/main/ECPCIS_List/main/ECPCIS_List.jsp). The grantee will document that the contractor and subcontractors are not on this list.
 - The grantee must check the contractor and all subcontractors' names against the New Hampshire Debarred Parties List (available at <https://das.nh.gov/purchasing/Docs/Info/Debarred-Parties-List.pdf>). The grantee will document that the contractor and subcontractors are not on this list.
 - Documentation must be submitted in GMS prior to submission of construction claims.
- The bidder may also be determined non-responsible if, in the grantee's judgment and the judgment of the consulting professional, the bid is so unreasonably low that the project cannot be constructed for the amount bid. This is often a problem with inexperienced contractors. The grantee should always contact its attorney and its CDFA Program Manager if the grantee must award to other than the low bidder.

Step 12: Execute the Contract

Once the bidder is accepted and the reasonability of cost is established, the grantee may execute the contract (provided they have received Release of Funds from CDFA) and schedule the mandatory Preconstruction Conference.

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. [See Chapter 4: Grantee Requirements.](#)

SECTION 7.10 CONTRACT DEVELOPMENT

All work and services to be accomplished for the completion of a Community Development Block Grant (CDBG) funded project must be covered by a legally enforceable, fully executed contract, regardless of the source of funds to be used for payment of the contract amount.

Before any contract may be fully executed, it is the Grantee's responsibility to ensure that the contract complies with applicable federal and state laws, provides complete and full provision of the project scope, and avoids any real or implied Conflict of Interest concerns.

Contracts paid with State and Small Cities CDBG funds must utilize a Firm, Fixed-Price Contract. A Firm, Fixed-Price Contract requires that the contractor deliver the product or service for the agreed-upon price. This type of contract is required for:

- Professional services, including Grant Administration, Labor Standards, and Environmental Review,
- Engineering or Architectural services,
- Legal fees, rate consultant, or any other type of professional services required, and
- Construction of the project activities.

Costs Plus Percentage of Cost contracts are specifically prohibited by CDBG regulations for any type of work or services to be performed on CDBG funded projects.

2 CFR 200.323(d)

SECTION 7.11 CONTRACT REQUIREMENTS

All contracts executed for performance of CDBG related activities must include a full and complete description of the federal and state requirements for contract compliance. The following documents must be physically attached to each contract as applicable:

- Professional Service Contracts must include all required Federal Contract Provision as outlined in the Grantee's Assistance Agreement.
- Housing and Urban Development (HUD) Form 4010. (see HUD 4010 in [Chapter 8: Labor Standards](#))

BONDING REQUIREMENTS

Bonds are negotiable instruments required by federal and state law from construction contractors as a form of insurance. The bonds are available to contractors from surety companies, which are then turned over to the grantee to protect against situations that may arise. Some of these situations include:

[2 CFR 200.304](#)

- Work not completed as specified and/or the contractor refuses to finish the work without a change order or price escalation;
- Laborers or subcontractors are not being paid for work and are suing the grantee to recover their loss; or
- Payment of liquidated damages is required, arising from labor standards violations.

Construction contracts must include the following documents either physically or by reference to the project bid specifications and any addendums:

1. Applicable Davis-Bacon and Related Acts (Davis-Bacon) Wage Decision assigned to the project.
2. Bid Bond (submitted with the bid), Payment Bond and Performance Bond obtained by contractor and provided to Grantee to insure contract fulfillment.
 - The Bid Bond guarantees that the selected bidder will execute the required contract documents within the specified period of time. The Bid Bond must be equal to 5% of the bid price (contracts over \$50,000).
 - The Labor & Material Payment Bond is binding upon the contractor, subcontractors and their successors or assigns, for the payment of all indebtedness to a person for labor and service performed, material furnished, or services rendered. The payment bond must be for 100% of the contract price (contracts over \$100,000).
 - The Performance Bond ensures that the contractor will fulfill all obligations under the contract within one year of substantial completion. The performance bond must be for 100% of the contract price (contracts over \$25,000).
 - If a construction manager is employed, each subcontract exceeding \$100,000 shall be bonded or a certified check required.

The bonding company issuing the bonds must hold a 'Certificate of Authority' as acceptable sureties.

INSURANCE REQUIREMENTS

- Contractor's Certificate of Insurance shall be required. The grantee is responsible for ensuring that the levels are adequate.

CONTRACT CONTENTS AND PROVISIONS

All contracts for work or services on CDBG funded projects must include the CDFA Combined Front End Docs, as well as the following:

[Attachment 7-14:
CDFA Front End
Docs](#)

1. Effective date of contract,
2. Detailed description of the work or services to be performed,
3. Specifications of materials or other services to be provided,
4. Time for performance and completion of contract services,
5. Method of Compensation,
6. Conditions and terms under which the contract may be terminated, and remedies for violation or breach of contract, and
7. Printed and signed names and titles of Signatories for all contract parties.

RETAINAGE REQUIREMENTS

A retainage account may be set up to ensure the project is satisfactorily completed, all suppliers have been paid in full, and all contractors, subcontractors and suppliers have submitted lien waivers. The amount of retainage withheld may not exceed 10% of the total contract amount.

A Retainage Agreement must be reached, and included in the contract, between the Grantee and the prime contractor to establish a procedure for holding the retained funds until all parties agree that the retainage may be released to the contractor upon satisfactory completion of the project.

Retainage Account funds may be:

1. Deposited into a mutually agreed upon financial institution, in a separate account. If deposited to an interest-bearing account, any accrued interest belongs to the contractor
2. Deducted from amounts of drawdowns for payments due contractor so that the State is holding the retainage funds until they become due and payable to the contractor.

If the contractor has provided Contractor's Affidavit of Release of Liens (AIA Form G706A) and lien waivers from major subcontractors and suppliers, a contractor may request the balance of retainage.

CHAPTER 8: LABOR STANDARDS

OVERVIEW

Construction projects funded with CDBG require that certain procedures be followed in order to comply fully with applicable federal and state requirements. For example, federal labor standards require recipients and contractors to meet and document compliance with certain rules associated with the employment and wages of workers on construction projects.

This chapter describes the policies and procedures that must be followed when undertaking construction projects with CDBG funds, including bid preparation, compliance with labor standards, pre-construction meetings, on-site interviews, and approval procedures. This chapter overlaps significantly with [Chapter 7: Procurement](#) and slightly with [Chapter 4: Grantee Requirements](#) (for equal opportunity).

Essentially, the Labor Standards requirements consist of the following elements:

- Determining Applicability
- Incorporating Required Wage Rates into Bidding and Contracting Documents
- Assuring Contractor Compliance through Reporting & Employee Interviews
- Corrective Actions (if necessary)
- Recordkeeping & Reports

SECTION 8.1 GRANT ADMINISTRATOR RESPONSIBILITIES

The grant administrator is responsible for obtaining wage determinations (also called “wage decisions”), verifying contractor and subcontractor eligibility, conducting pre-bid and pre-construction conferences, verifying all federal contract provisions are in contracts, obtaining all required documentation, reviewing weekly Certified Payroll Reports, conducting site visits for employee interviews, monitoring project compliance, and maintaining appropriate files. Once a construction project becomes subject to federal Labor Standards Provisions (see Section 8.3 of this chapter), the steps outlined in this chapter must be taken to ensure compliance. The grantee should designate a specific staff person, usually the grant administrator, to serve as the Labor Standards Officer who will be responsible for ensuring compliance with Labor Standards Provisions. (This chapter refers to the Labor Standards Officer but these duties may be completed by other local staff of the grantee, sub-recipient, or a consultant.)

Even if the project is not subject to federal Labor Standards provisions, there are Equal Employment Opportunity provisions that must be imposed for such construction contracts – typically smaller housing projects of less than eight units.

SECTION 8.2 PRE-BIDDING REQUIREMENTS

The first step in effective management of CDBG-funded construction projects is the preparation of a bid package. This requires the writing of the technical bid specification - usually by an architect or engineer on the basis of prepared plans or working drawings. These specifications must provide a clear and accurate description of technical requirements for materials and products and/or services to be provided in the contract. Please refer to [Chapter 7: Procurement](#) for more guidance on bidding.

[Chapter 7: Procurement](#)

During this phase, the engineer/architect should be preparing construction documents, and, for infrastructure projects, the grantee should secure the approval/permits of applicable state agencies. While the engineer/architect prepares the technical specifications, the grant administrator must assess the applicability of Labor Standards and obtain the necessary wage determinations, including the Wage Determination Lock-In Notice (see Section 8.3 of this chapter). If the project is subject to labor standards, the bidding package must contain information about required wage rates and labor standards for the project (see Section 8.4 of this chapter).

NOTE: The environmental review must be completed and, if applicable, release of funds obtained prior to publishing the bid advertisement. Please refer to [Chapter 5: Environmental Review](#) for more information.

SECTION 8.3 ASSESS THE APPLICABILITY OF LABOR STANDARDS PROVISIONS

FEDERAL REQUIREMENTS

Most construction projects including alteration, repair or demolition, funded in whole or in part with federal dollars, must comply with federal Labor Standards Provisions. Applicable laws include the following:

- The Davis-Bacon Act requires that workers receive no less than the prevailing wages being paid for similar work in the same locality. The CDBG regulations apply this Act to construction, alteration, or repair work of more than \$2,000 that is financed in whole or in part with CDBG or other federal funds, regardless of the CDBG amount. See (Section 8.10 of this chapter for clarification regarding construction versus installation in determining wage rate requirements.)

[Attachment 8-1
Making Davis Bacon Work](#)

[Davis-Bacon Act: 40 USC,
Chapter 3,
Section 276a-276a-5](#)

[Copeland Anti-Kickback Act:
40 USC, Chapter 3,
Section 276c
and
18 USC, Part 1, Chapter 41,
Section 874](#)

- The Copeland Anti-Kickback Act requires that workers be paid weekly, that deductions from their pay be permissible, and that contractors keep and submit weekly payrolls and Statements of Compliance.
- The Contract Work Hours and Safety Standards Act requires that workers receive overtime compensation for hours they have worked in excess of 40 hours in one week. This Act applies to all CDBG-assisted construction contracts of \$100,000 or more. The Act also imposes a financial penalty for failure to pay such overtime wages and requires overtime for traditionally exempt salaried construction workers. (NOTE: Overtime is required for ALL workers via the Fair Labor Standards Act including projects without federal funds.)

[Contract Work Hours and Safety Standards Act: 40 USC Section 3701-3707 and 24 CFR Part 5](#)

Tip: HUD has two guides and a handbook that are available for downloading on labor standards requirements. These documents are "Making Davis Bacon Work: A Practical Guide for States, Indian Tribes and Local Agencies" and "Davis Bacon Labor Standards: A Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects." HUD Handbook 1344.1 also provides detailed guidance on labor standards requirements. HUD also provides links on its website to many forms and instructions used in labor standards administration.

[Attachment 8-2 Davis Bacon Labor Standards: Contractor's Guide](#)

[HUD's Davis-Bacon Forms and Instructions](#)

[HUD Handbook 1344.1](#)

EXCEPTIONS

There are certain exceptions to the Davis-Bacon and Copeland Anti-Kickback Acts. These acts do not apply to:

- Construction contracts at or below \$2,000. Note that arbitrarily separating a project into contracts below \$2,000 in order to circumvent the requirements is not permitted.
- Rehabilitation or new construction of residential properties containing less than eight units with CDBG funds. (**NOTE:** The HOME Program exempts projects of less than 12 units.)
- Non-construction related activities will not cause Davis-Bacon to apply to the whole project. These are activities such as real property acquisition, procurement of furnishings, architectural and engineering fees, procurement of modular (industrialized) and manufactured housing components, and certain pieces of equipment that would not become permanently affixed to the real property. See Installation Work in Section 8.10 below.
- Contracts solely for demolition, when no construction is anticipated on the site.
- Force account labor (construction carried out by municipal employees or, in certain instances, a sub-recipient's employees).
- Volunteers. However, volunteering for part of the project and working part of the project is prohibited.

CDFA should be contacted if there is any situation where Davis-Bacon applicability is in question.

SECTION 8.4 BIDDING AND CONTRACTING REQUIREMENTS

A grantee or the grant administrator must be sure to include all applicable labor standards, equal opportunity, and other language in the bid specifications and contract documents, in addition to verifying contractor/subcontractor eligibility (as described in [Chapter 7: Procurement](#)). The grantee is responsible for obtaining all required documentation, monitoring project compliance, and maintaining appropriate files.

PREPARING BID PACKAGES TO MEET FEDERAL AND STATE LABOR STANDARDS PROVISIONS

Once a construction project becomes subject to federal labor standards provisions, the following steps must be taken to ensure compliance. The Labor Standards Officer typically takes responsibility for these steps.

Step 1: Obtain Applicable Federal Wage Rate Decision

The grantee should access the federal wage rate decisions through the Internet at www.wdol.gov. Note that federal wage determinations are issued for four categories: Building, Residential, Heavy, and Highway. When evaluating the type of wage determination to request, it is important to understand the differences to avoid paying wages from an inappropriate determination.

Building construction generally includes construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment or supplies; all construction of such structures; the installation of utilities and of equipment, both above and below grade levels; as well as incidental grading, utilities and paving. Such structures need not be "habitable" to be building construction. Also, the installation of heavy machinery and/or equipment does not generally change the project's character as a building.

Residential projects involve the construction, alteration or repair of single-family houses or apartment buildings no more than four stories tall. This includes all incidental items such as site work, parking areas, utilities, streets, and sidewalks.

NOTE: Floors below ground level used for storage, parking, mechanical systems/equipment, etc., are considered basement floors which are **not** used in determining a building's height. If the usage of the lowest floor does not meet this definition, contact CDFA for assistance in determining its classification.

Highway projects include construction, alteration or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas, and other similar projects not incidental to building or heavy construction

Heavy construction includes those projects that are not properly classified as either "building," "highway," or "residential." Unlike these classifications, heavy construction is not a homogenous classification. Because of this catch-all nature, projects within the heavy classification may sometimes be distinguished on the basis of their particular project characteristics, and separate schedules may be issued for dredging projects, water and sewer line projects, dams, major bridges, and flood control projects.

CDFA staff should be consulted if there are questions about properly identifying the type of construction on the project and the wage determination necessary, including those instances where the grantee is required to request "multiple" wage determinations from the Department of Labor. Multiple wage determinations may be required when the project contains separate and distinguishable components that fall into different categories of construction, for example a large mixed-use project.

If the website does not contain a wage decision applicable for your project, the grant administrator should submit a Request for Wage Determination Form to DOL, see Attachment 8-3.

[Attachment 8-3:
DOL Request for Wage
Determination Form](#)

Step 2: Add Federal Construction Contract Provisions to the Bid Package

The wage rate decision must be a part of the bid package. The bid package must contain the labor standards requirements, which are summarized below and separately in Attachment 8-4.

- Davis-Bacon provisions;
- Contract Work Hours and Safety Standards clause;
- Copeland Anti-Kickback clause;
- Employment of Apprentices/Trainee clause;
- Equal Employment Opportunity requirements.

[Attachment 8-4:
Federal Labor Standards
Provisions \(HUD 4010\)](#)

Caution: If the grantee fails to include the correct wage rate determination(s), the grantee will be responsible for paying any difference between the applicable wage rates and the wages paid by the contractor based upon the information provided in the bid package. The grantee's financial obligation for such restitution is specified in federal regulations.

Step 3: Procurement Requirements

Once the bid document is prepared, it is time to advertise for construction bids. Refer to [Chapter 7: Procurement](#) for specific instructions on how to proceed with the bidding process.

Step 4: Wage Determination Lock-in and Contracting

Because the U.S. Department of Labor (DOL) continually monitors the economic conditions of the construction contracting profession, the wage rates are subject to change. It is essential that the grant administrator verify that the most current rates are being utilized. The Davis-Bacon Wage Determination that is in effect no more than 6 days prior to the bid opening is the wage decision that must be used for

all construction related activities on that federally funded project. Therefore, the following actions must be taken:

1. The federal Department of Labor does not require modification of wage rates for any updated wage determination issued when there is insufficient time to notify potential bidders. CDFA has determined that it will not require modifications of wage rates updated less than 6 days prior to bid opening. Therefore, the grant administrator must obtain the wage decision no earlier than 6 days prior and provide it to the project architect or engineer to be forwarded to all prospective bidders.
2. The Labor Standards Officer must maintain documentation of the wage decisions at lock-in date. The Wage Determination Lock-In Notice should be used for documentation and reporting to CDFA (see Attachment 8-5).
3. Wage Determinations are only effective for 90 calendar days after the bid opening. On the 91st day, the previously issued determination expires. If the contract is not awarded within 90 calendar days of the bid opening, the wage decision that is in effect on the date that the construction contract is signed is the decision that will be utilized for the entire project. The Labor Standards Officer must obtain an updated wage determination and notify the contractor and engineer or architect of the new wage decision that is applicable to the project. The Labor Standards Officer must maintain record of the new lock-in decision, revising the Wage Determination Lock-In Notice if that procedure is used by the grantee.
4. The construction contract must contain the lock-in wage decision and labor standards clauses required by DOL (Attachment 8-4).

[Attachment 8-5: Wage Determination Lock-In Notice](#)

SECTION 8.5 PRE-CONSTRUCTION REQUIREMENTS

PRE-CONSTRUCTION CONFERENCES

Before any work is performed by a contractor, CDFA requires that the grantee, the grant administrator, the engineer or architect, and any other technical advisors to the grantee conduct a pre-construction conference with the contractor, and any identified subcontractors, to explain contractual requirements and performance schedules.

The grantee should prepare an agenda, and plan to utilize and distribute the pre-construction checklist as a guide to ensure that all areas are properly addressed. (See Attachment 8-6) The grantee should clearly present the federal statutory compliance requirements as well as performance expectations. It is required that a copy of the Pre-Construction Meeting Checklist (Attachment 8-6) is signed by all parties to the contract and placed in the contract files. Items to be covered at the pre-construction conference include, but are not limited to:

[Attachment 8-6: Pre-Construction Meeting Checklist](#)

- Explain to the contractors their responsibilities with respect to labor standards and equal opportunity requirements as well as the technical job requirements.
- Obtain the contractor's Federal Identification Number and Data Universal Numbering System (DUNS) number that is registered in the System for Award Management (SAM).
- Explain that the contractor must submit weekly payrolls and statements of compliance signed by an officer of the company or person authorized by owner/officer, and that the prime contractor is responsible for securing, checking, and reviewing payrolls and Statements of Compliance from all subcontractors.

[Attachment 8-7
DOL Payroll Form &
Statement of Compliance
\(WH 347\)](#)

NOTE: Attachment 8-7 contains the Payroll form with statement of compliance and Attachment 8-8 contains a copy of the Owner Authorization Form.

[Attachment 8-8:
Owner Authorization Form](#)

- Explain that wages paid must conform to those included in the wage rate decision included in the contract. Discuss the classifications to be used. If additional classifications are needed, contractors can request them using HUD Form 4230-A (see Attachment 8-9). However, the grant administrator must submit the form to the U.S. Department of Labor at whd-cbaconformance_incoming@dol.gov.
- Explain that employee interviews will be conducted during the project.
- Emphasize that both a copy of the wage rate decision and the wage rate poster "Employee Rights under the Davis Bacon Act" must be posted in clear view of all employees at the job site.
- Explain that apprentice or trainee rates cannot be paid unless the apprentice or training program is registered and approved by the U.S. Department of Labor. In New Hampshire, the state Department of Education and New Hampshire's State Apprenticeship Advisory Council administer the registration of apprenticeship programs. If apprentices or trainees are to be used, the contractor must provide the grantee with a copy of the state registration of his/her apprentice program and a copy of the apprentice card for the worker.
- Foremen or supervisors that regularly spend more than 20% of their time performing construction work must be paid at least the hourly rate of any job that they perform.
- If the contract is \$100,000 or greater, explain that workers must be paid overtime if they work more than 40 hours in one week, including otherwise exempt salaried construction workers. Only a waiver from the Secretary of Labor can override the Contract Work Hours and Safety Standards Law.
- Indicate that failure to pay workers at least time and a half whenever overtime occurs violates the Contract Work Hours and Safety Standards law (more than 40 hours per week) and makes the contractor liable for not only restitution but also liquidated damages of \$27 per day for every day each worker exceeded 40 hours a week without being paid time and

[Attachment 8-9:
Report of Additional
Classification and Rate \(HDU
Form 4230-A\)](#)

[Attachment 8-10:
Required Davis Bacon
Contracting Poster](#)

[CWHSS Liquidated
Damages Penalty](#)

a half. (The \$27 penalty amount is applicable as of January 24, 2019 and adjusts annually. See web link for current liquidated damages amount.)

- Explain that no payroll deductions can be made that are not specifically listed in the Copeland Anti-kickback Act provisions as permissible payroll deductions. In addition, some of the permissible deductions require written permission of the employee. An unidentified payroll deduction is a method used by unethical contractors to get their workers to "kickback" a portion of their pay. This is a particularly common problem in times of high unemployment and in areas of minority concentrations. Unspecified payroll deductions are a serious discrepancy and should be resolved prior to further contractor payments.
- Explain debarment proceedings relative to violation of labor standards and equal opportunity requirements. Obtain any outstanding documents including Contractor/Subcontractor Eligibility Certifications Regarding Debarment, Suspension and Other Responsibilities.
- Provide contractor with posters for the site, including "Employee Rights under the Davis Bacon Act," as well as other worksite posters such as "Notice to All Employees Working on Federal or Federally Financed Construction Projects," "Safety and Health Protection on the Job," and "Equal Employment Opportunity is the Law." These posters are available via the DOL website. The website also contains a feature called "elaws Poster Advisor" that will help employers determine all posters that they are required to display at their business. Posters, available in English and other languages, may be downloaded free of charge and printed directly from the DOL website.
- Inform the contractor that it is his/her responsibility to employ only eligible subcontractors who have certified eligibility in a written subcontract containing federal labor standards and equal opportunity provisions.
- Provide handouts explaining everything covered and obtain the contractor's signature to document receipt in Pre-Construction Meeting Checklist (see Attachment 8-6 above).
- The grantee should also describe the compliance review that will be conducted during the project and indicate that discrepancies and underpayments discovered as a result of compliance review must be resolved prior to making further payment to the contractor. Remind the contractor that labor standards provisions are as legally binding as the technical specifications, and failure to pay specified wages will result in contractor payments being withheld until all such discrepancies are resolved.

Other DOL Required
Posters

SECTION 8.6. CERTIFIED PAYROLL REPORT REQUIREMENTS

Once construction is underway, the general contractor must obtain weekly payrolls (including signed Statements of Compliance) from all subcontractors as they work on the project. The payrolls must be reviewed by the general contractor to ensure that there are no discrepancies or underpayments. Remember that the prime contractor is responsible for the full compliance of all subcontractors on the project and will be held accountable for any wage restitution that may be found. This includes underpayments and potentially liquidated damages that may be assessed for overtime violations.

NOTE: A construction manager that executes the contracts with other construction firms is considered a general contractor. The references in this chapter to general contractor include such construction managers or construction management firms. These construction managers have the same responsibilities to comply with labor standards as a general contractor.

CERTIFIED PAYROLL REPORTS

Grantees must obtain copies of all general contractor and subcontractor weekly payrolls (accompanied by the Statements of Compliance that include completed statements of how fringe benefits will be paid), and review them to ensure that there are no discrepancies or underpayments in accordance with HUD guidelines. See Attachment 8-11: Payroll Falsification Indicators, for HUD guidance on detecting falsification through frequent payroll review and interview comparison. If contractor/subcontractors use an approved apprentice or training program, verify that the ratio between trade journeymen and apprentices complies with the approved apprenticeship program.

[Attachment 8-11:
Payroll Falsification
Indicators](#)

Certified Payroll Reports must be submitted by the contractor to the grantee within seven to eleven working days of the end of the payroll period. A Payroll Form and Statement of Compliance is provided as Attachment 8-7. This form is also commonly called a Certified Payroll Report (CPR). Note that an employee's full social security number and address are not to be included on these Certified Payroll Reports. Instead, an alternative individual identity number should be used, such as the last four digits of the employee's social security number or an employee ID. This form does not have to be used, but alternative payroll documentation must include all of the same elements in order to determine compliance with applicable regulations. A Statement of Compliance must accompany each payroll submission.

[Attachment 8-7
DOL Payroll Form &
Statement of Compliance
\(WH 347\)](#)

Payroll reports must be reviewed by the grantee upon receipt so that any necessary corrective action can be initiated before the problem multiplies. Payroll forms must be initialed by the grantee to indicate that they have been reviewed.

In addition to the falsification indicators described in the HUD guidance, items to be spot-checked should include:

- The correct classification of workers;
- A comparison between the classification and the wage determination to determine whether the rate of pay is at least equal to the rate required by the determination;
- A review to ensure that work by an employee in excess of 40 hours per week is being compensated for at rates not less than one and one-half times the basic rate of pay;
- Review of deductions for any non-permissible deductions; and
- The Statement of Compliance (part of the weekly Certified Payroll Report form in Attachment 8-7) has been completed and signed by the owner or an officer of the firm.

[HUD Handbook 1344.1](#)

HUD Handbook 1344.1 is a good resource for labor standards information.

Any discrepancies and/or willful falsification indicators resulting in underpayments of less than \$1,000 should be addressed by the grantee. Where underpayments of wages have occurred, the grantee is responsible to make sure the correct wages are paid and that the employer will be required to pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less permissible and authorized deductions. As part of this process the grantee must request that the employer submit a Correction Certified Payroll Report (Form 347) showing the restitution and a signed restitution form. Whenever an employer is found to have underpaid its employees by \$1,000 or more or committed willful falsification, grantees should contact CDFA staff for assistance. See Taking Corrective Actions and Wage Restitution in Section 8.7 Labor Standards Compliance Requirements.

The contractor and subcontractor(s) must number and date each Certified Payroll Report. The first week in which work is performed, the Certified Payroll Report must be marked 'Initial' or 1 and the last payroll report must be marked 'Final'. Contractor(s) and subcontractor(s) are required to submit a Certified Payroll Report for each consecutive week from the Initial Report to the Final Report. 'No work' Certified Payroll Reports must be submitted whenever there is a temporary break in the work on the project. If a contractor completes a portion of the work identified in his contract and is required to be off the job site for a period of time while project construction continues to the point where he can complete the remainder of the work identified in his contract, this contractor may submit a written statement to the grant administrator, signed by the owner or officer of the company that no work will be performed on the job site from Month, Day, and Year to Month, Day and Year. When this statement is received, the contractor is not required to submit weekly Certified Payroll Reports until their work on the project resumes.

All Certified Payroll Reports must have an original signature by the owner, or an owner designated representative. DOL has authorized the acceptance of certified electronic signatures. Please contact CDFA for further guidance if you have contractors that wish to utilize electronic signatures.

Caution: Owner-operators of power equipment, like self-employed mechanics, may not submit their own payrolls certifying to the payment of their own wages but must instead be included on the responsible contractor's Certified Payroll Report.

FRINGE BENEFITS

Fringe Benefits listed on the applicable wage determination must be paid to the employee or for the employee for every hour worked on the federally assisted project. Those benefits may be provided to the employee in the form of a fringe benefit package or the cash equivalent of the fringe benefits due may be added to the amount of the base wage with the total amount due reflected in the hourly rate column on the Certified Payroll Report.

Paragraph (a) or (b) on the Statement of Compliance must be marked on every Certified Payroll Report to indicate the method by which fringe benefits will be paid. If the fringe benefits are being paid to a bona fide fringe benefit plan, the grant administrator must obtain verification from the contractors or subcontractors of the calculation of benefits paid and proof of plan validity. Bona fide fringe benefit plans are identified at 29 CFR 4.171. Examples include but are not limited to:

1. **Health, life or other similar insurance premiums paid by the employer.** Documentation includes:
 - a) Most recent insurance statement with a breakdown of each covered employee's premium, and
 - b) A signed letter by an officer of the company that states how much of the premium they cover (percentage or dollar amount).
2. **Pension or retirement contributions recognized by the Internal Revenue Service (IRS) and contributed by the employer.** Documentation includes:
 - a) Letter from Pension Provider stating which employees participate in the program,
 - b) Signed letter by an officer of the company that states what percentage of contributions they match, or if it is automatically given to the employee even if they do not contribute, and
 - c) Monthly statements throughout the project that show how much the employee contributed and how much the employer contributed.
3. **Holiday and/or vacation pay contributed by the employer.** Documentation includes:
 - a) Copy of Employee Handbook that states the number of paid vacation and holidays provided to employees and
 - b) Copy of employer's calculations for the amount of fringe benefit credit claimed for vacation and holiday pay listed by employee.
4. **Union Fringe Benefit Packages.** Documentation includes:
 - a) Copy of the Union Benefits Breakdown provided by each specific Union to the contractor, and
 - b) Monthly statement listing covered employees and verifying payment to the plan.

Fringe benefits do not include employer payments or contributions required by other federal, state, or local laws, such as the employer's contribution to Social Security or Workmen's Compensation. The grant administrator must verify that the base rate plus fringe benefit amount paid to each employee is equal to or greater than the amount stated in the wage determination assigned to the project. To determine the hourly amount of fringe benefits being paid by the contractor for the employee, the annual amount paid must be divided by 2080 hours.

SECTION 8.7 LABOR STANDARDS COMPLIANCE REQUIREMENTS

GENERAL

During construction, the grantee is responsible for monitoring the labor standards and equal opportunity requirements described in this chapter. This role for the Labor Standards Officer may be fulfilled by the architect/engineer or grant administrator, and if so, should be included in the scope of services for that professional services contract.

LABOR STANDARDS REQUIREMENTS

[HUD's Davis-Bacon Forms](#)

Construction management requirements include conducting job site interviews with workers using Record of Employee Interview Form (HUD Form 11). HUD's website provides links to many of HUD's Davis-Bacon Forms. Attachment 8-12 is a direct link to HUD Form 11.

The grantee should use on-site interviews as a proactive enforcement tool rather than as a means to meet a "representative sampling" quota. Instead of conducting interviews randomly for the sake of assembling a sample, the Labor Standards Officer is encouraged to target interviews to groups of workers where violations are suspected or alleged, being especially attentive to Attachment 8-12: Payroll Falsification Indicators. The targeting approach is a more efficient and effective means of utilizing on-site interview resources. The Labor Standards Officer must also ensure that a sufficient sampling of all trades included in the project are interviewed.

[Attachment 8-12:
Record of Employee Interview
\(HUD Form 11\)](#)

The grantee should ensure the following actions are performed:

- CDFA requires that interviews be conducted periodically during each phase of construction on each project.
- Payrolls should be used to verify data obtained during on-site interviews. Check to see that employees are being paid the amounts specified in the wage determination, the amount shown on the payrolls, and the hours shown on the payrolls. Include hours of the supervisor.
- Identification and correction of any discrepancies between on-site interviews, payrolls, and wage rates.

- A fully completed and signed Record of Employee Interview form is maintained in the contract file.

INTERVIEW PROTOCOLS

The following guidelines should be observed by persons conducting job site interviews:

- The interview should take place on the job site if it can be conducted properly and privately (this is a one-on-one process). If there is reason to suspect falsification or intimidation, the employee interview can be conducted by mail.
- The interviewer should see that the wage determination and other required posters are properly displayed.
- The interviewer should observe the duties of workers before initiating interviews. Employees of both the prime and subcontractors should be interviewed.
- This should be posted adjacent to the wage determination and other required posters on the job site at a location readily accessible to workers.

To initiate the interview, the authorized person shall:

- Properly identify himself/herself;
- Clearly state the purpose of interview; and
- Advise the worker that information given is confidential, and his/her identity will be disclosed to the employer only with the employee's written permission.

A grantee may need to seek language assistance to interview non-English speaking workers or may seek to gather information using the Labor Standards Questionnaire, HUD Form 4730, either in person or requesting it back by mail. (See Attachment 8-13.) The results from the questionnaire must be transferred to a Record of Employee Interview, HUD Form 11. (See Attachment 8-12.) When conducting employee interviews, the interviewer should pay particular attention to:

[Attachment 8-13:
Labor Standards
Questionnaire Form \(HUD
Form 4730\)](#)

[Attachment 8-12:
Record of Employee Interview
Form \(HUD Form 11\)](#)

- The employee's full name.
- The employee's permanent mailing address.
- The last date the employee worked on that project and number of hours worked on that day.
- The interviewer should make it clear that these questions relate solely to work on the project and no other work.
- The employee's hourly rate of pay. The aim is to determine if the worker is being paid at least the minimum required by the wage determination.

The interviewer should be sure the worker is not quoting their net hourly rate or "take-home" pay. If it appears the individual may be underpaid, the interviewer should closely question the worker:

- Ask for any records.
- Arrange to re-interview the employee.
- Enter the worker's statement of his/her classification.
- Observe duties and tools used:
 - Enter any comments necessary.
 - Enter date interview took place.

If the interviewer senses that the employee is reluctant to offer honest answers or appears to be under pressure from the employer about answering questions on the job site, the interviewer can provide or mail a questionnaire to gather information needed. See Attachment 8-13.

[Attachment 8-13:
Labor Standards
Questionnaire Form \(HUD
Form 4730\)](#)

The payroll examiner must compare information on the Record of Employee Interview form with the Certified Payroll Report submission: If no discrepancies appear, "None" should be written in the comment space of the Record of Employee Interview form. If discrepancies do appear, appropriate action should be initiated. When necessary action has been completed, the results must be noted on the interview form.

TAKING CORRECTIVE ACTION AND WAGE RESTITUTION

Where underpayments of wages have occurred, the employer will be required to pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less permissible and authorized deductions. All wages paid to laborers and mechanics for work performed on the project including wage restitution, must be reported on a Certified Payroll Report. Whenever an employer is found to have underpaid its employees by \$1,000 or more or committed willful falsification, grantees should contact CDFA staff for assistance.

Notification to the Prime Contractor

The Labor Standards Officer will notify the prime contractor in writing of any underpayments that are found during payroll or other reviews. The notice will describe the underpayments and provide instructions for computing and documenting the restitution to be paid. The prime contractor is allowed 30 days to correct the underpayments. If wage violations are not corrected within 30 days after notification to the prime contractor, the grantee may withhold payment due to the contractor of an amount necessary to ensure the full payment of restitution. Note that the prime contractor is responsible to the Labor Standards Officer for ensuring that restitution is paid. If the employer is a subcontractor, the subcontractor will usually make the computations and restitution payments and furnish the required documentation through the prime contractor.

Computing Wage Restitution

Wage restitution is simply the difference between the wage rate paid to each affected employee and the wage rate required on the wage determination for all hours worked where underpayments occurred. The difference in the wage rates is called the adjustment rate. The adjustment rate times the number of hours involved equals the gross amount of restitution due.

Correction Certified Payroll Reports

The employer will be required to report the restitution paid on a Correction Certified Payroll Report. The correction payroll will reflect the period of time for which restitution is due (for example, Payrolls #1 through #6, or payrolls for a specified beginning date through a specified ending date). The Correction Certified Payroll Report will list:

- Each employee to whom restitution is due and their work classification,
- The total number of work hours,
- The adjustment wage rate (the difference between the required wage rate and the wage rate paid),
- The gross amount of restitution due,
- Deductions, and
- The net amount to be paid.

A properly signed Statement of Compliance must be attached to the Correction Certified Payroll Report.

Pay and Document Restitution Wages

The employer should pay and document payment of restitution wages. Attachment 8-14 contains instructions on paying restitution wages and an affidavit to be signed by workers receiving restitution wages.

[Attachment 8-14:
Restitution Wages &
Affidavit](#)

Review of Correction Certified Payroll Report

The LSO or contractor administrator will review the Correction Certified Payroll Report to ensure that full restitution was paid. The prime contractor shall be notified in writing of any discrepancies and will be required to make additional payments, if needed. Additional payments must be documented on a supplemental Correction Certified Payroll Report within 30 days.

UNFOUND WORKERS

Sometimes, wage restitution cannot be paid to an affected employee because the employee has moved or otherwise cannot be located. After wage restitution has been paid to all of the workers who could be located, the employer must submit a list of any workers who could not be found and paid including name, employee identification

number, last known address and the gross amount due. At the end of the project, the prime contractor will be required to establish a deposit or escrow account in an amount equal to the total amount of

restitution that could not be paid. The grantee must continue to attempt to locate the unfound employee(s) for three years after completion of the project. After three years, any amount remaining in the account must be credited and/or forwarded to HUD.

SECTION 8.8 ENFORCEMENT REPORTS

The U.S. Department of Labor regulations require all agencies administering labor standards to submit two reports. CDFA coordinates the submission of those reports for CDBG grantees.

- **Section 5.7 Enforcement Report:** DOL requires a report regarding all enforcement actions where underpayments by a contractor or subcontractor occurred in excess of \$1,000 or where there is reason to believe that the violations were willful. Grantees, generally the LSO, must prepare and submit such reports called Section 5.7 Enforcement Reports to CDFA to then be forwarded to HUD. The Section 5.7 Enforcement Report should be submitted after completing an investigation and after final disposition is reached at the local level. An example report and the instructions for filling out the report itself can be found in Attachment 8-15.

[Attachment 8-15:
Section 5.7
Enforcement Report](#)
- **Semi-Annual Labor Standards Enforcement Report:** All enforcement activities, including any activities described in a Section 5.7 Enforcement Report AND enforcement activities that did not reach the threshold requiring a Section 5.7 Enforcement Report are listed and summarized in the semi-annual report. This report also lists all contracts that were issued during the six-month reporting period that are subject to Davis-Bacon wage decisions. This semi-annual report is sent to CDFA. Attachment 11-16 contains the Semi-Annual Labor Standards Enforcement Report (HUD Form 4710).

[Attachment 8-16:
Semi-Annual Labor
Standards
Enforcement Report \(HUD
Form 4710\)](#)

Labor standards reporting requirements are also referenced in [Chapter 11: Reporting and Recordkeeping](#).

LIQUIDATED DAMAGES FOR OVERTIME VIOLATIONS

As mentioned previously, failure to pay workers at least time and a half whenever overtime violates the Contract Work Hours and Safety Standards Act (more than 40 hours per week) makes the contractor liable for liquidated damages of \$27 per day (updated annually) for every day each worker exceeded 40 hours a week without being paid time and a half. Grantees should contact their CDFA staff for assistance if a violation occurs. See the web link for current CWHSS penalty amount.

[CWHSS Liquidated
Damages Penalty](#)

SECTION 8.9 ECONOMIC OPPORTUNITY REQUIREMENTS DURING CONSTRUCTION

Economic Opportunity is different than the non-discrimination in hiring requirements described in [Chapter 4: Grantee Requirements](#). Section 3 of the Housing and Urban Development Act of 1968 requires that contracting and employment opportunities be offered to businesses located in and lower-income people residing in the area of the project. (Additional information regarding provisions of Section 3 impacting a grantee's contracting and contractor hiring is discussed in [Chapter 7: Procurement](#).) This section briefly summarizes the duties of prime contractors related to subcontracting and employment efforts for both prime contractors and subcontractors.

For covered projects, Section 3 establishes goals for job training, employment and contracting that the grantee must track and report. For construction activities, the grantee should develop procedures to track the following:

- Employment and Job Training: new hires of Section 3 Residents
- Contracting for Construction: total dollar amount of construction contracts and subcontracts with Section 3 Businesses

Businesses seeking to confirm whether a resident meets the definition of Section 3 Resident or a firm meets the definition of Section 3 business should consult with the LSO or other project contact identified by the grantee or sub-recipient during the Pre-Construction Meeting.

SECTION 8.10 GUIDANCE & BEST PRACTICE

INSTALLATION WORK

Construction, alteration, or repair work of more than \$2,000 that is financed in whole or in part with CDBG or other federal funds, regardless of the CDBG amount will trigger Davis-Bacon wage rates for the project. Installation work does not require payment of Davis-Bacon wage rates if it involves only incidental construction work. The applicability also may depend on the location of the incidental work. Attachment 8-17 provides additional clarification regarding construction versus installation to help determine whether Davis-Bacon wage rates must be paid for the work performed.

[Attachment 8-17:
Construction versus
Installation](#)

REFERENCE GUIDE

It is recommended that the grant administrator shares a copy of the Davis Bacon Labor Standards: Contractor's Guide with the contractor (Attachment 8-2). This reference manual can be provided either at the pre-bidding conference (optional) or the pre-construction conference.

LABOR STANDARDS DOCUMENTATION

While the following steps are not required, CDFA recommends them as best practices to facilitate labor standards compliance. If used, this documentation should be when conducting the Pre-Construction Conference.

- Have the contractor complete Attachment 8-18: Wage/Fringe Benefit Certification Form, listing each anticipated job classification and salary/wage rate anticipated to work on the project. This form also provides opportunity to document that a fringe benefit plan is bona fide DOL-approved benefit plan.
- Have contractor also provide a current employee roster, listing all persons currently employed prior to the start of the project. (See Attachment 8-19: Roster of Assigned Employees.) The contractor should update this roster as work progresses and employment hires are made.

[Attachment 8-18:
Wage/Benefit
Certification Form](#)

[Attachment 8-19:
Roster of Assigned
Employees](#)

This roster then can be used to cross check against future job opportunities for the project to determine completeness and accuracy of weekly payroll reports and if Section 3 hiring goals are being achieved. The roster is also helpful determining random selection of employees for interviews and assisting in paying back wages to workers if an employer fails to do so.

INTERVIEW RESOURCE

When conducting interviews, administrators may choose to complete the Project Wage Rate Sheet found in HUD Form 4720. Attachment 8-20 provides a link to that form. This form will facilitate interview questions with workers and completion of the required Record of Employee Interview.

[Attachment 8-20:
Project Wage Rate Sheet
\(HUD Form 4720\)](#)

CHAPTER 9: ACQUISITION

OVERVIEW

The Uniform Relocation and Real Property Acquisition Policies Act of 1970 (URA or sometimes Uniform Act for short) applies to acquisition activities and displacement (temporary or permanent). URA imposes requirements on HUD-assisted projects carried out by public agencies, non-profit organizations, private developers or others; AND, real property acquisition for HUD-assisted projects (whether publicly or privately acquired) must adhere to URA-established provisions. This chapter covers the acquisition requirements of:

- URA: CDBG projects involving acquisition, rehabilitation, or demolition may be subject to the provisions of the Uniform Act (URA).
- Section 104(d): Section 104(d) of the Housing and Community Development Act of 1974 (also known as the “Barney Frank Amendments”) requirements may be triggered by demolition or conversion of residential units with CDBG funds. This law modifies and supplements requirements imposed by URA. This law has an impact on both acquisition and determining relocation benefits for low- and moderate-income households.

These laws include requirements for relocation assistance to be provided to displaced persons, businesses, non-profit organizations, and farms. Those requirements are covered in [Chapter 10: Relocation](#).

The explanation of this chapter on Acquisition is broken into the following sections:

- General Acquisition Requirements
- Voluntary Acquisition
- Involuntary Acquisition
- Eminent Domain
- Donations
- Easements
- Appraisals & Just Compensation
- Section 104(d) One-for-One Replacement

There may be situations in which other federal agencies (e.g., USDA Rural Development) or local agencies (such as an authority) participate with a grantee using CDBG funds in a project. In such cases involving a federal agency, typically that federal agency takes responsibility to fulfill URA requirements, not the CDBG grantee. The grantee should either execute an MOU that clearly assigns this responsibility to another public entity or clearly delineate that responsibility in the agreement transferring funds to that other entity.

SECTION 9.1 GENERAL ACQUISITION REQUIREMENTS

For the purposes of this chapter, "property to be acquired" refers to any kind of permanent interest such as fee simple title, land contracts, long-term leases (50 years or more), and rights-of-way (including both temporary and permanent easements). Grantees should also be aware that all methods of acquisition (e.g., purchase by willing sellers and donations) are covered by the URA.

[49 CFR 24.101](#)

Grantees must understand the critical difference between voluntary and involuntary sales to ensure compliance with all applicable rules. There are protections for sellers in both voluntary and involuntary sales. This chapter describes those differences and the protections for sellers.

Grantees should not be confused by the terminology of acquisition for URA.

- Voluntary acquisition is not the same as just a willing seller. Voluntary acquisition must meet several requirements that are clarified in Section 9.2 of this chapter.
- Involuntary acquisition is not the same as eminent domain. Involuntary acquisition may occur with or without eminent domain. Also, involuntary acquisition may occur even if the buyer does not have eminent domain powers. Involuntary acquisition is defined and the required procedures described in Section 9.3 of this chapter.

NOTE: The use of federal funds may not be originally anticipated during the conceptual phase or at the beginning of a project. Therefore, grantees should proceed with caution if federal resources could be introduced later in the project. If an acquisition took place prior to application submission, it can be subject to the URA if CDFA finds clear evidence that the purchase was done in anticipation of obtaining CDFA funds for an activity. The URA also applies if an agency has reimbursed itself for the acquisition with non-federal funds (i.e., general funds) if the project's end result is a federally assisted project.

[Handbook 1378,](#)
[Chapter 2,](#)
[Paragraph 2-3 H](#)
and
[Chapter 5,](#)
[Paragraph 5-4 A](#)

Acquisition activities are subject to the URA if there is intent to acquire property for a federal or federally-assisted project at any point during the course of a project.

[49 CFR 24.101](#)

Acquisition rules must be followed whenever the grantee uses CDBG money to:

- Undertake the purchase of property directly; or
- Hire an agent, private developer, etc. to act on their behalf; or
- Provide a non-profit, or for-profit entity organization with funds to purchase a property; or
- Provide federal assistance to individuals who are acquiring their own home (i.e. homebuyer assistance program); or
- Accept donations of property for a CDBG-assisted project.

Also, grantees should be aware of restrictions on using CDBG funds for acquisitions via eminent domain which are detailed in this chapter. Most notably, CDBG funds can only be used for eminent domain if the property is acquired for a public use.

There are three major types of requirements that cover relocation and acquisition activities in CDBG programs:

- The Federal Highway Administration (FHWA), within the U.S. Department of Transportation, is the lead agency for administering URA. FHWA regulations, effective February 2005, implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) of 1970, as amended (49 CFR Part 24);
- Section 104(d) of the Housing and Community Development Act of 1974 and the implementing regulations at 24 CFR Part 570.488, 24 CFR 42; and,
- 24 CFR 570.606 of the CDBG Regulations, which requires compliance with the regulations, listed above.

[49 CFR Part 24](#)

[Housing and Community
Development Act of 1974](#)

[24 CFR 488](#)

[24 CFR 42](#)

[24 CFR 570.606](#)

Grantees must also adhere to environmental review requirements as they relate to acquisition including the requirements regarding options and conditional contracts. Refer [to Chapter 5: Environmental Review](#) for detailed guidance.

Tip: HUD Handbook 1378 is a resource available for acquisition and relocation information and is available at HUD's web site. Additional guidance and resources can also be downloaded from the FHWA URA website.

[Handbook 1378](#)

[FHWA URA Website](#)

SECTION 9.2 VOLUNTARY ACQUISITIONS

Sometimes there is confusion about what is actually considered "voluntary." A common misconception is that "willing seller" or "amicable agreement" means a transaction is "voluntary." This is not true under URA. The applicable requirements of the regulations at 49 CFR 24.101(b)(1)-(5) must be satisfied for a transaction to be considered voluntary.

49 CFR
24.101(b)(1)-(5)

Three requirements define voluntary acquisitions, all three must be in place for a voluntary acquisition to occur:

- No use of eminent domain power or threat to use it, even if the entity acquiring the property is a municipality with such authority.

AND

- Projects in which no specific site or property needs to be acquired.

AND

- All or substantially all of the property within the area will NOT be acquired within a specified time frame.

Below are several examples of projects or situations and how they meet or do not meet the requirements for a voluntary acquisition. Those that do not meet the requirement become involuntary acquisitions:

- No Eminent Domain Requirement:
 - **Voluntary Example:** Sub-recipient working on behalf of a municipality issues notice to owner of intent to acquire a property that includes a commitment in the notice that the municipality will not use eminent domain powers to acquire if the sub-recipient cannot reach an agreement on sale of property. The municipality may not change the decision on use of eminent domain even if no agreement is reached with the property owner.
 - **Involuntary Example:** Municipality issues notice to owner of intent to acquire a property but does not include a commitment to not invoke eminent domain. The owner is a willing seller and agrees to the offer of just compensation from the municipality.

Handbook 1378,
Chapter 5, Paragraph 5-3
A

- **Not Site-Specific Requirement:**
 - **Voluntary Example:** Municipality plans to build a new community center but will seek an alternative site if negotiations fail to result in an amicable agreement.
 - **Involuntary Example:** Non-profit that is expanding an existing community center by acquiring an adjacent property is a site-specific project.
 - **Involuntary Example:** Non-profit conducts a feasibility study that shows only one site is possible/feasible to meet program requirements.
 - **Voluntary Example:** Non-profit conducts a feasibility study and multiple properties are possible, but one is most desirable due to financial reasons.
- **Not Acquiring All Properties:**
 - **Involuntary Example:** Municipality plans to acquire 15 of 20 homes in a redevelopment plan area for new housing construction.
 - **Voluntary Example:** Non-profit is acquiring 15 homes as part of a city-wide rehab for resale program.

The steps of voluntary acquisitions and the URA requirements are generally described as follows:

1. **Determine Property and Ownership:** The first step should include a review every to determine property acquisition needs and identify any 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 may necessitate acquiring easements. The grantee must provide proof of ownership for the easement, land, or building by conducting a title search of properties and easements to be acquired for the project. The grantee should obtain either an attorney title opinion letter, or purchase title insurance. Grantees should require owners to transfer the property with clear title.
2. **Notify Owner:** As soon as feasible, the grantee shall notify the owner in writing of the grantee's interest in acquiring the real property or easement using federal funds. The grantee may want to add explanation of the process and steps prior to closing on the acquisition. The Voluntary Acquisition Notice (VAN) must state that if a mutually satisfactory agreement cannot be reached, the grantee will not buy or condemn the property for the same purpose.

Attachment 9-1 contains a sample VAN letter for grantees with the power of eminent domain or sub-recipients acting on the behalf of such grantees. Attachment 9-2 contains a sample letter for sub-recipients that do not have the power of eminent domain and are not representing a municipality that does. Both sample letters in Attachment 9-1 and 9-2 include a proposed sales price. This provision may be removed when providing early notice before the determination of value has occurred.

[Attachment 9-1:
Voluntary Acquisition
Notice \(VAN\) with Power
of Eminent Domain](#)

[Attachment 9-2
VAN without Power of
Eminent Domain](#)

The grantee should indicate that owner-occupants are not eligible for relocation benefits in the VAN and the acknowledgement form should be attached to the purchase offer.

While owner-occupants of a property acquired through voluntary acquisition are not eligible for relocation benefits, all tenants in legal occupancy (including non-residential occupants are protected by the URA and are eligible for relocation benefits under the URA. (See several sections below regarding relocation for more information.)

3. **Determine Value:** A formal appraisal is **not required** by the URA in voluntary acquisitions. However, the purchase may involve a private lender requiring an appraisal. While an appraisal for voluntary transactions is not required, grantees may still decide that an appraisal is necessary to support their determination of market value. Grantees must have some reasonable basis for their determination of market value.

If an appraisal is not obtained, someone with knowledge of the local real estate market must make this determination and document the file. That person should demonstrate knowledge through holding a real estate broker license recognized by the state of New Hampshire.

Additional explanation about appraisals and determining value is found in Section 9.7 Appraisals and Just Compensation later in this chapter.

4. **Make Offer:** Grantee shall make a written offer to the owner to acquire the property for the amount determined. There is nothing in the regulations to preclude negotiations resulting in agreements at, above, or even below the agency's estimate of market value after the property owner has been so informed. Grantees cannot take any coercive action in order to reach agreement on the price to be paid for the property. Again, additional explanation is found in Section 9.7 Appraisals and Just Compensation later in this chapter. When making a written offer to the owner to acquire a property, the notice should include all the following:
 - Amount offered which also must inform the property owner of what the grantee believes to be the market value of the property. The offer amount may be different than fair market value based on negotiations.
 - Description, location, and identification of the real property and the interest in the real property to be acquired (e.g., fee simple, easement, etc.).
5. **Complete Acquisition or Decide Not To Acquire:** The grantee should discuss the offer to purchase the property, including the basis for the fair market value and offer made. The owner should be given a reasonable opportunity to consider the offer and present material that the owner believes is relevant to determining the value of the property and/or to suggest modifications in the proposed terms and conditions of the purchase.

Once the property owner has accepted the written offer, a purchase option agreement must be signed. No binding purchase agreements may be signed until the environmental review process has been completed. (See Chapter 5: Environmental Review)

If the seller refuses to accept the offer, the buyer/individual must look for another property to purchase.

Tip: Homebuyers assisted with CDBG funds to purchase a home fall under voluntary acquisition. Homebuyers must provide the requisite information to the sellers of homes to be purchased.

NOTE: Regardless of the form of acquisition used, it is strongly recommended that the grantee maintain a log of contacts with the owner in the acquisition file.

SECTION 9.3 INVOLUNTARY ACQUISITIONS

Involuntary transactions are those that do not meet the requirements previously described for voluntary transactions. Many of the basic provisions for involuntary acquisitions are similar to voluntary, but there are important differences in the requirements. As discussed above, even a “willing seller” may require that the involuntary acquisition process be used. This section addresses the requirements and process of involuntary acquisitions, which includes acquiring with or without eminent domain.

[Handbook 1378,
Chapter 5,
Paragraph 5-5](#)

INVOLUNTARY REQUIREMENTS

In accordance with the requirements of the URA, for involuntary transactions, the grantee must:

- Determine Property and Ownership:** The first step should include a review every to determine property acquisition needs and identify any properties to be obtained. The grantee should conduct a title search of properties and easements to be acquired for the project. The grantee should obtain either an attorney title opinion letter, or purchase title insurance. Grantees should require owners to transfer the property with clear title.
- Notify Owner:** As soon as feasible, the grantee shall notify the owner in writing that the grantee may acquire the real property or easement using federal funds and the basic protections provided to the owner by law, which includes specific notice that the agency does not represent the rights of the property owner and that he/she may want to obtain legal counsel. This additional notice about securing legal counsel is necessary if the grantee anticipates the possibility that the acquisition will require use of New Hampshire’s eminent domain/condemnation process. All tenants in legal occupancy (including non-residential occupants are protected by the URA and are eligible for relocation benefits under the URA. (See several sections below regarding relocation for more information.)

[Handbook 1378,
Chapter 5, Paragraph
5.4](#)

10 SEP 24 103

[Handbook 1378,
Chapter 5 Paragraph 5-
4\(A\)\(1\)](#)

The grantee should send either a “Notice to Owner” or a “Notice of Intent to Acquire” and the HUD brochure informing the owner about the process and his/her rights:

- The Notice to Owner should advise all occupants not to move. The Notice only informs the property owner of the grantee's initial interest in acquiring their property, but it is not a commitment to provide relocation benefits at this point.

[Attachment 9-3:
Sample Notice to
Owner](#)

- Some grantees choose to send a Notice of Intent to Acquire instead of a Notice to Owner. A Notice of Intent to Acquire (Attachment 9-4) must contain all the information included in a Notice to Owner, but would also state that the agency does intend to acquire the property, rather than expressing a preliminary statement of interest. Grantees should exercise caution if they choose to send a “Notice of Intent to Acquire” rather than a “Notice to Owner.” The Notice of Intent triggers relocation eligibility for owner-occupants and tenants. The Notice should advise all occupants not to move until notification of relocation benefits is provided.

[Attachment 9-4:
Sample Notice of
Intent to Acquire](#)

- The grantee may assure compliance with all of the regulatory requirements of information that must be included in the notice by sending HUD's brochure (HUD Form 1041- CPD) entitled, "When a Public Agency Acquires Your Property." Refer to Attachment 9-5 of this chapter or download it from the HUD website. The booklet explains the basic protections afforded the property owner by law, provides additional explanation of the acquisition process, and relocation benefits.

[Attachment 9-5:
“When a Public Agency
Acquires Your Property”
Brochure](#)

3. **Determine Value:** Determine the value of the property based on the appraised value (reviewed by a Review Appraiser) in compliance with the URA and invite the seller to accompany the appraiser. Additional explanation about appraisals and determining value is found in Section 9.7 Appraisals and Just Compensation later in this chapter.

4. **Notify Owner of Just Compensation:** Provide a written offer to the owner contains the just compensation and summary statement sent after an appraisal is complete and the agency has determined just compensation. This written offer must include an offer for the full amount of the just compensation. Once this amount has been determined, this written offer should be delivered promptly. A sample is provided as Attachment 9-6.

[Attachment 9-6:
Sample Statement of the
Basis for the
Determination of Just
Compensation](#)

A statement must be included that summarizes the basis for just compensation and should provide:

[Handbook 1378,
Chapter 5, Paragraph 5-4
L\(4\)](#)

- The amount offered as just compensation, and
- A description and location of the property to be acquired, and
- Identification of the buildings, structures, equipment, and fixtures that are included in the offer.

[49 CFR 24.102\(e\)](#)

5. **Close the Sale or Condemnation or Decide Not To Acquire:** The grantee must determine whether it can go forward and close the sale, move to condemnation, or decide not to acquire. The decision will be dependent on the seller's willingness as well as project necessities.
- **Willing Seller:** If negotiations are successful in an involuntary acquisition, a contract for sale must be prepared and executed, and transfer documents secured. Remember, the environmental review process must be completed before entering into a binding sales agreement. (See [Chapter 5: Environmental Review](#))
 - **Condemnation:** If seller is not willing to convey the property, the grantee must determine whether it will pursue condemnation through eminent domain powers. If taking the property through condemnation, the grantee must deposit the full amount of just compensation with the court. Additional details about condemnation and eminent domain are provided in Section 9.4 of this chapter.
 - **Decide Not to Acquire:** If the grantee decides not to buy or condemn a property, notice must be provided to the owner as described below.

[49 CFR 24.102\(j\)](#)

NOTICE OF INTENT NOT TO ACQUIRE

If the grantee decides not to buy or condemn a property at any time after the Notice of Intent to Acquire or Notice to Owner has been sent to the property owner, the grantee must send written notification, "The Notice of Intent Not to Acquire" to the owner and any tenants occupying the property. This written notice must be sent within 10 days of the decision not to acquire. Sending this notice will assist in keeping all affected persons informed of the grantee's actions.

[49 CFR 24.5](#)

Attachment 9-7 provides a sample Notice of Intent Not to Acquire. The grantee should document the reason(s) for deciding against acquiring the property.

[Attachment 9-7](#)
[Sample Notice to Not](#)
[Acquire](#)

ADMINISTERING NOTICES

Notices should be sent by certified or registered mail, return receipt requested, or hand delivered by agency staff. Grantees must document receipt of the notices by the owner or occupant. If the owner or occupant does not read or understand English, the grantee must provide translations and assistance. Each notice must give the name and telephone number of agency staff that may be contacted for further information.

SECTION 9.4 EMINENT DOMAIN

Eminent domain is the power of the government to take private property for public purposes with payment of just compensation. The U.S. Constitution and state laws govern the process of determining just compensation and taking of property through eminent domain procedures.

Involuntary acquisitions may or may not require eminent domain procedures. The municipality pursuing involuntary acquisitions must determine upfront whether it may pursue a property through the eminent domain process even if choosing later to not do so.

No CDBG funds may be used to support any federal, state or local projects that seek to use the power of eminent domain unless eminent domain is employed for a public use. This restriction is based on both federal and state laws.

The types of projects that meet the definition of public use include: mass transit, railroads, airports, seaports or highway projects, as well as utility projects which benefit or serve the general public or other structures designated for use by the general public or which have other common carrier or public utility functions that serve the general public and are subject to regulation and oversight by the government, and projects for the removal of an immediate threat to public health and safety or brownfields as defined in the Small Business Liability Relief and Brownfield Revitalization Act. Public use cannot include economic development projects that primarily benefit private entities. Grantees contemplating the use of eminent domain for any use or project should contact CDFA for further guidance prior to proceeding.

CONDEMNATION THROUGH EMINENT DOMAIN PROCEDURES

If negotiations are unsuccessful, condemnation proceedings may be initiated. Condemnation is a legal action and must be carried out by municipality entities authorized by New Hampshire statutes, which should authorize the proceeding by resolution. Grantees should utilize an attorney to coordinate and represent the grantee in the condemnation process. The requirements and procedures for condemnation, which are allowed only for public uses, are detailed in state law and supplemented by information found on the New Hampshire Board of Tax & Land Appeals website. See Attachment 9-8 for the Eminent Domain Procedure Act.

[Attachment 9-8:
Eminent Domain
Procedure Act](#)

[New Hampshire Board of
Tax & Land Appeals
Eminent Domain
Procedures](#)

Before filing a condemnation procedure with the New Hampshire Board of Tax & Land Appeals, the municipality (condemnor) must document the following steps were taken with the property owner (condemnee), which are consistent with the URA acquisition process described in this chapter:

- Reasonable efforts to negotiate with the condemnee or his/her personal representative

- At initial contact with a property owner, the condemnor provided to the condemnee information regarding acquisition and relocation. Such information shall include a disclosure, conspicuously located, which states that the condemnor does not represent the rights of the condemnee and that the condemnee may want to obtain independent advice or unbiased counsel.
- Impartial, qualified appraiser must make at least one appraisal of all property proposed to be acquired.
- Condemnor provided a copy of the appraisal, and if requested, any official appraisal review notes upon which the negotiations are based, to the condemnee at the time of negotiation or at least 45 days prior to making the Notice of Offer.
- Provide a “Notice of Offer” to condemnee by certified mail within reasonable period of time after the governmental entity votes to condemn the property. If the condemnee is unknown or one whose whereabouts are unknown, such notice shall also be published once in a newspaper of general circulation in the county where the property is located.
- If the offer is accepted, the transfer of title shall be accomplished within 30 days after acceptance, including payment for taking of the property. If the offer is not accepted within 30 days after the service of the Notice of Offer, the condemnor shall commence condemnation proceedings within 90 days after the expiration of the 30-day offer period.

Condemnation can then proceed by the municipality filing a Declaration of taking with the Board of Tax & Land Appeals. After a Declaration is filed:

1. Board issues an “order of notice” to be served by either certified mail or sheriff on each condemnee, along with a copy of the Declaration, plan of the property and a copy of the Board’s Administrative Rules. The order notifies the condemnee(s) of the Declaration and explains their rights to file a “preliminary objection” within thirty (30) days of the return date given on the order.
2. The Condemnee has the right to challenge the necessity of the taking by filing a preliminary objection, which the Board, by statute, will transfer to the Superior Court in the county where the property is located to decide that particular issue. If the Court agrees with the preliminary objection, it will dismiss the Declaration. If the Court denies it, the Board will schedule the case for a hearing on the issue of just compensation.
3. The burden of proof is on the condemnor to show the estimated just compensation is proper. The condemnor is entitled to possession of the property once it has deposited the damages with the Board. The condemnee is entitled to withdraw the damages on file with the Board at any time after the Declaration is filed. The withdrawal of the deposit of damages does not waive the right to seek greater compensation from the Board.
4. A just compensation hearing is scheduled approximately one (1) year after the Declaration is filed. The hearing will be held in the county where the property is located, and a view of the property will be taken. The Board typically has questions of both parties and the parties are allowed to cross examine witnesses. The Board is not bound by the technical rules of evidence and has the discretion to admit testimony which has reasonable probative value on the issue of just compensation.

5. After the hearing, the Board will issue a decision in the matter. If neither party appeals the decision of the Board, costs are awarded (upon motion) to the prevailing party

An appeal of the Board's award must be made within twenty (20) days from the date of the Board's decision to the Superior Court of the county the property is located in. The proceedings before the superior court are de novo (anew). The petition to appeal will request to have the damages reassessed, and the court shall assess the damages by jury, or by trial without jury if jury trial is waived, and award costs to the prevailing party. The condemnor and the condemnee have a right of review to appeal the final judgment of the Superior Court to the Supreme Court.

- After an appraisal is complete (and reviewed by a review appraiser), the grantee must determine the amount of the offer and send the owner a Notice of Just Compensation (the full amount of the determined value). This Notice establishes the definite date for relocation benefits eligibility for all persons with legal residency, including non-residential occupants.

SECTION 9.5 DONATIONS

Donations of property are permitted for most HUD funded projects. However, like all other acquisitions, the process is dictated by whether the acquisition is subject to the voluntary acquisition requirements at 49 CFR 24.101 (b) or involuntary acquisition procedures outlined at 49 CFR 24.102. The grantee must first assess whether the acquisition would fit the definition of voluntary or involuntary if it was not a donation. Then, the grantee should adhere to essentially the appropriate acquisition procedures with certain modifications due to the donation. Those modifications are as follows:

- **Notice:** The owner must be fully informed of his or her rights under the URA, including the VAN or Notice to Owner at the earliest possible point in the project. The owner also must be informed of the right to receive a payment for the property. In addition, the owner must acknowledge his or her URA rights and release the grantee, in writing, from its obligation to appraise the property. The grantee must keep this acknowledgement in the project file. Attachment 9-9 provides a sample form entitled "Sample Notice to Owner and Request for Donation" to supplement the notices required under the voluntary and involuntary process.
- **Property Value:** If owner requests either that fair market value be set or just compensation established as applicable, provide that information to the owner. Once informed of the value, the owner can donate the property without having the appropriate value offered. Even in a donation, the property owner has the right to have the value (just compensation or fair market value) established, and then to be offered that amount just so that they can know what they are not accepting.
- **Complete Acquisition:** If the owner decides to seek a part of the offer, or all of the offer and not a donation after all, that is the owner's choice. The owner must be fully informed and make his or her own decision. Proceed to closing once the owner has agreed to either donate or make a partial donation of property.

Attachment 9-9:
Sample Notice to Owner
- Request for Donation

If the property would be an involuntary acquisition, grantees should follow the acquisition procedures, including the steps to determine just compensation. Adhering to those steps is particularly helpful in case the owner changes his/her mind to either not donate or only partially donate the property.

Also, grantees should avoid giving tax advice that the property amount donated can be used for tax purposes. Instead, if asked, refer the owner to an accountant or the IRS regarding whether a donation can be used for tax purposes.

SECTION 9.6 EASEMENTS AND URA REQUIREMENTS

Easements provide “rights-of-way” access that may be permanent or temporary. Permanent and temporary easements are acquisitions that are subject to URA provisions. Grantees must determine whether the acquisition of the easement is considered a voluntary, involuntary, or donation acquisition. Then, the grantee should adhere to the applicable acquisition procedures imposed by URA. Easements, both temporary and permanent, are only very rarely considered voluntary. Once a project is planned or designated project site selected, it is generally a site-specific acquisition requiring that involuntary acquisition procedures be used.

Temporary easements have one exception that exempts them from the same rules as other forms of acquisition. The exception is a situation where the easement is for the exclusive benefit of the property owner. For example, if a grantee obtained a temporary easement for parking construction equipment in the yard of the home that is being rehabilitated with CDBG funds, the easement would exclusively benefit the owner and would not be subject to the URA.

Examples of easements in which the URA applies include, but are not limited to, the following:

- Installing a new water or sewer line and requires easements from property owners along the path of the line to install the line and ensure access for maintenance and repairs over time, permanent easements will be required.
- Building a water tower that would benefit a low- and moderate-income (LMI) area and a temporary right of way will be required for construction vehicles while it is being built, temporary easement will be required.

A grantee must obtain an appraisal for any property, including easements, estimated to be worth more than \$10,000. The grantee may also seek a donation from property owners to acquire easements that do not solely benefit the property owner. Guidance on appraisals and just compensation for easements and rights-of-way as well as potential steps to seek donations of such easements may be found later in this chapter. See Section 9.7 Appraisals and Just Compensation.

SECTION 9.7 APPRAISALS AND JUST COMPENSATION

This section describes the requirements and procedures to establish the value of property for either voluntary or involuntary acquisitions under the URA. This section also addresses requirements for appraisals in that process.

MARKET VALUE FOR VOLUNTARY ACQUISITIONS

To estimate market value in a voluntary acquisition, grantees must follow specific procedures:

- A formal appraisal is *not* required by the URA in voluntary acquisitions. However, the purchase may involve a private lender requiring an appraisal.
- While an appraisal for voluntary transactions is **not required**, grantees may still decide that an appraisal is necessary to support their determination of market value. Grantees must have some reasonable basis for their determination of market value.
- If an appraisal is not obtained, someone with knowledge of the local real estate market must make this determination and document the file. That person should demonstrate knowledge through holding a real estate broker license recognized by the state of New Hampshire.

After a grantee has established a market value for the property and has notified the owner of this amount in writing, a grantee may negotiate freely with the owner in order to reach an agreement. Since these transactions are voluntary, negotiations may result in agreement for the amount of the original estimate, or for a lesser amount. CDFA must approve a waiver for use of CDBG funds in any acquisition for an amount greater than market value.

WAIVER VALUATION

An appraisal is not required under two circumstances: (1) when a property is being donated and owner has waived his/her rights; or (2) when a property has a value estimated at \$10,000 or less. (See Easements below for rights-of-way and easements less than \$10,000.)

[49 CFR 24.102\(c\)\(2\)](#)

If a grantee determines that a formal appraisal is not required, then the valuation process used is called a waiver valuation.

[Handbook 1378, Chapter 5,
Paragraph 5-4 F](#)

The determination that a property has a value less than \$10,000 must be based on a review of available data by someone who has sufficient understanding of the local real estate market. That person should demonstrate knowledge through holding a real estate broker license recognized by the state of New Hampshire. This decision must be documented in the project file.

[49 CFR
24.102\(c\)\(2\)\(ii\)\(B\)](#)

[49 CFR 24.2\(a\)\(33\)](#)

A waiver valuation is not appropriate when the following situations arise:

- The use of eminent domain is anticipated;
- The anticipated value of the proposed acquisition is expected to exceed \$10,000;
- Possible damages to the remainder property exist;
- Questions on highest and best use exist;
- The valuation problem is complex; or
- Hazardous material/waste may be present.

Handbook 1378, Chapter
5,
Paragraph 5-4.F (1)

NOTE: If the entity acquiring a property offers the property owner the option of having the property appraised, and the owner chooses to have an appraisal, the agency shall obtain an appraisal and not use the waiver valuation method described above.

EASEMENTS

As outlined above, a grantee must obtain an appraisal for any property, including easements, estimated to be worth more than \$10,000. For easements and rights-of-way worth less than \$10,000, the grantee can use the Easement Valuation

Attachment 9-11:
Easement Valuation Form

Form. This form, which is Attachment 9-11, summarizes the information that the grantee must have on file to document the estimated value of the property.

APPRAISALS

For acquisitions requiring the estimation of fair market value, the URA requires only one appraisal and a review of this appraisal by a qualified person. The following sections describe the contents of an appraisal and appraiser qualifications.

APPRAISER QUALIFICATIONS

For properties estimated to be worth more than \$10,000, an appraisal must be conducted. There are several minimum requirements for appraisers, including:

- Procurement of appraisers and review appraisers shall be carried out in accordance with procurement or small procurement policies as described in Chapter 7: Procurement. (For additional guidance on preparing a scope of work see Contracting for Appraisal section below.)

- New Hampshire State Appraisal Board has established licensing and certification levels for appraisers doing business in the state. The level of appraiser required is based on either the kind of property or, if residential, the value of the property. Attachment 9-12 displays the kind of appraiser classification required. [Attachment 9-12 Appraisal Requirements](#)
- A fee appraiser must be state licensed or certified in accordance with title XI of the Financial Institutions Reform Recover and Enforcement Act (FIRREA) of 1989. [49 CFR 24.103\(d\)\(2\)](#)
- Appraisers, or persons performing the waiver valuation, must not have any interest—either direct or indirect—with the owner or property they are to review. This would be a conflict of interest. [49 CFR 24.102\(n\)\(1\)](#)
- No person shall attempt to unduly influence or coerce an appraiser or waiver valuation preparer regarding any valuation or other aspect of an appraisal.
- Persons functioning as negotiators may not supervise nor formally evaluate the performance of any appraiser or waiver valuator. [49 CFR 24.102\(n\)\(2\)](#)
- No appraiser may negotiate on the agency's behalf if he or she performed the appraisal, review or waiver valuation, on the property. There is an exception for properties valued at \$10,000 or less [49 CFR 24.102 \(n\)\(3\)](#)

CONTRACTING FOR AN APPRAISAL

In order to procure an appraiser, the grantee should request statements of qualifications from a number of local appraisers, review those qualifications, and employ only qualified appraisers. (See **Chapter 7: Procurement** for more information on procurement of professional services.)

The grantee must execute a professional services contract with an independent appraiser. The contract must include a detailed scope of services that the appraiser will perform. See Attachment 9-13 Guide for Preparing Appraisal Scope of Work. Payment for the appraiser's services, or waiver valuation, must not be based on the amount of the resulting property value.

[Attachment 9-13:
Guide for Preparing
Appraisal Scope of Work](#)

APPRAISAL PROCESS & CRITERIA

Appraisals must meet nationally/state-recognized industry standards. The appraiser may not use race, color, religion, or the ethnic characteristics of a neighborhood in estimating the value of residential property. The contract must also specify the content requirements of the appraisal report.

The grantee or the appraiser must invite the property owner in writing to accompany the appraiser during inspection of the property. This notice should be given before the appraisal is undertaken. A copy of the notice should be placed in the property acquisition file along with evidence of receipt by the owner.

At a minimum, all appraisals must contain the following:

- The purpose and function of the appraisal.
- A statement of the assumptions and limiting conditions affecting the appraisal.
- An adequate legal description of the property, any remnants not being acquired, and its physical characteristics.
 - This should also include key information such as title information, location, zoning, present use, highest and best use, and at least a five-year sales history of the property.
- An explanation of all relevant approaches to value.
 - If sales data are sufficient, the appraiser should rely solely on the market approach.
 - If more than one method is used, the text should reconcile the various approaches to value and support the conclusions.
- A description of comparable sales.
- A final statement of the value of the real property.
 - For partial acquisitions, the appraisal should also give a statement of the value of damages and benefits to the remaining property.
- The effective date of the valuation appraisal.
- A signature and certification of the appraiser.
- The report will be consistent with the Uniform Standards of Professional Appraisal Practice (USPAP).

[Handbook 1378,
Chapter 5, Paragraph 5-
4 J\(11\)](#)

CONDUCT REVIEW APPRAISAL

After the initial appraisal is conducted, a review must be made by a New Hampshire licensed appraiser under written contract. The appraiser must fulfill the requirements described in the Appraiser Qualifications section above. The review must be written, signed and dated. (See Attachment 9-14 for a sample Review of Appraisal document.)

[Attachment 9-14:
Sample Review Appraisal](#)

The review appraiser must examine all appraisals to check that the appraisal meets all applicable requirements, and to evaluate the initial appraiser's documentation, analysis, and soundness of opinion.

[49 CFR 24.104](#)

If the review appraiser does not approve or accept an appraisal, it may be necessary to seek a second full appraisal. If the review appraiser does not agree with the original appraisal and it is not practical to do a second appraisal, the review appraiser may re-evaluate the original appraisal amount.

ESTABLISHING JUST COMPENSATION

After a review of the appraisal, the grantee must establish just compensation and present this in a written offer to the owner.

Just compensation cannot be less than the appraised market value. In determining this amount, the grantee (not the appraiser) may take into account the benefit or detriment that the upcoming project will have on any remaining property at the site.

[49 CFR 24.102\(d\)](#)

If the owner retains or removes any property improvements, (for example, permanent fencing) the salvage value of the improvement should be deducted from the offer of just compensation.

If an entire parcel is not being acquired, and the agency determines that the owner would be left with an uneconomic remnant, the agency must offer to purchase this remnant. An uneconomic remnant is defined as a parcel of real property with little or no value to the owner. An example of this might be a remnant not large enough for future use or without access to a street.

[49 CFR 24.102\(k\)](#)

The grantee must prepare a written Statement of the Basis for the Determination of Just Compensation to be provided to the property owner (see Attachment 9-6). In addition to the initial written purchase offer, this Statement must also include:

[Attachment 9-6:
Sample Statement of
the Basis Just](#)

- A legal description and location identification of the property;
- Interest to be acquired (e.g., fee simple, easement, etc.);
- An inventory of the buildings, structures, fixtures, etc., that are considered to be a part of the real property;
- A statement of the amount offered as just compensation;
- If there are tenant-owned improvements, the amount determined to be just compensation for the improvements and the basis for the amount;
- If the owner keeps some of the property improvements, the amount determined to be just compensation for these improvements and the basis for the amount;
- Any purchase option agreement should be attached; and
- If only a part of the parcel is to be acquired, a statement apportioning just compensation between the actual piece to be acquired and an amount representing damages and benefits to the remaining portion.

A copy of this Statement should be placed in the property acquisition file.

NEGOTIATING THE PURCHASE

As soon as feasible after establishing just compensation, the grantee must send the owner a Written Offer to Purchase which includes the Statement of the Basis for the Determination of Just Compensation (see the sample provided as Attachment 9-15). As with all notices, receipt must be documented. If the property is occupied by a tenant, owner or business, the grantee must issue a written Notice of Eligibility for Relocation Benefits as soon as possible after the written offer to purchase (also called the "Initiation of Negotiations") is made.

[Attachment 9-15:
Sample Written Offer to
Purchase](#)

The most recent URA regulations emphasize that the agency should make reasonable efforts to conduct face-to-face negotiations with the owner or the owner's representative. The owner may present relevant information that bears on the determination of value and may suggest modifications to the proposed terms and conditions of the purchase. The agency must give these suggestions full consideration.

[48 CRF 24.102\(f\)](#)

If the owner's information or suggestions would warrant it, the agency may ask the appraiser to update the current appraisal or order another appraisal. If this results in a change in just compensation, the agency must adjust the offer.

[Handbook 1378,
Chapter 5, Paragraph 5-4
M](#)

The owner must be paid for costs to transfer title to the agency. These costs may be advanced instead of reimbursed and they include recording fees, legal fees, prepayment penalties, and incidental costs.

Documentation of negotiation proceedings should be placed in the project acquisition file. Grantees should be sure to thoroughly document the justification for payment if it is more than the original offer of fair market value.

CDFA will only allow CDBG funds to pay up to the fair market value established by a formal appraisal and review appraisal. Any cost above that amount must be derived from local funds or another source of funding included in the project. However, CDFA may allow CDBG funds to be expended that exceed fair market value if a court orders a higher amount through eminent domain procedures or other extenuating circumstances. The grantee will need to use an administrative settlement for any acquisition that exceeds fair market value. Attachment 9-16 contains a sample of a settlement agreement. Consult with CDFA in such circumstances.

[Attachment 9-16: Sample
Administrative Settlement](#)

If payment exceeds the fair market value and CDFA accepts the acquisition, the acquisition file must include documentation of the funding sources other than CDBG that covered the amount paid which exceeds fair market value. The grantee should also retain a copy of the administrative settlement.

SECTION 9.8 SECTION 104(D) ONE-FOR-ONE UNIT REPLACEMENT (PROJECT REQUIREMENTS)

The basic concept behind the Section 104(d) requirements (also known as the “Barney Frank Amendments”) is that CDBG funds may not be used to reduce a municipality's stock of affordable housing. These requirements supplement and overlap the provisions of URA both for the grantee's activities in undertaking a project and relocation benefits provided to displaced persons.

This section focuses on requirements imposed as part of the acquisition, design, and resulting construction of any project that was previously available as residential units for low- and moderate-income households. Section 104(d) also imposes additional requirements regarding relocation of tenants. [Chapter 10: Relocation](#) addresses those relocation requirements.

The 104(d) regulations state that: "All occupied and vacant occupiable low- and moderate-income dwelling units that are demolished or converted to a use other than as low- and moderate-income dwelling units in connection with an assisted activity must be replaced with comparable low-income dwelling units."

[24 CFR 42.375\(a\)](#)

Before obligating or expending funds that will directly result in demolition or conversion, the grantee must make public and submit to CDFA the information required in the grantee's Residential Anti-displacement and Relocation Assistance Plan. Attachment 9-17 contains a sample plan that should be adopted by the grantee and submitted with project application.

[Attachment 9-17: Sample Residential Anti-displacement and Relocation Assistance](#)

There are four key issues in understanding the one-for-one replacement requirement.

- Which dwelling units must be replaced (and which need not be replaced)?
- What counts as a replacement dwelling unit?
- What information must be made public and submitted to the state before execution of contracts?
- What is the exception to one-for-one replacement rules?

All replacement housing must initially be made available for occupancy at any time during the period beginning one year before the grantee makes public the information required under the Residential Anti-displacement and Relocation Assistance Plan and ending three years after the commencement of the demolition or rehabilitation related to the conversion. Also, a One-for-One Replacement Summary Grantee Performance Report must be submitted before relocation activities can begin and kept updated (informing CDFA of updates) for the low- and moderate-income units demolished or converted in the project. See Attachment 9-18 for a sample of the One-for-One Replacement Summary Grantee Performance Report.

[Attachment 9-18: One-for-One Replacement Summary Grantee Performance Report](#)

DWELLING UNITS THAT MUST BE REPLACED

Grantees must replace a housing unit if the unit meets all three conditions listed below:

- Condition 1: It meets the definition of low/moderate dwelling unit. A low/mod dwelling unit is defined as a dwelling unit with a market rent (including an allowance for utilities) that is equal to or less than the Fair Market Rent (FMR) for its size. A reduced rent charged to a relative or on-site manager is not considered market rent. Fair Market rents may be found on the HUD website at:
<http://www.huduser.org/portal/datasets/fmr.html>.

HUD Fair Market Rents

AND

- Condition 2: It is occupied or is a vacant occupiable dwelling unit. A vacant occupiable dwelling unit is defined as:
 - A dwelling unit in standard condition (regardless of how long it has been vacant); or
 - A vacant unit in substandard condition that is suitable for rehabilitation (regardless of how long it has been vacant); or
 - A dilapidated unit, not suitable for rehabilitation, which has been legally occupied within three months from before the date of agreement.

AND

- Condition 3: It is to be demolished or converted to a unit with a market rent (including utilities) that is above the FMR or to a use that is no longer for permanent housing (including conversion to a homeless shelter).

It is important to note that the income of the particular occupant is irrelevant in one-for-one replacement. It is also important to note that local funds used to match a CDBG grant (including those in excess of the required match amount) are defined as any monies expended to support CDBG activity, which means that the use of the matching funds for the demolition or conversion of a unit that meets the criteria listed above would also trigger the Section 104(d) replacement requirements.

CRITERIA FOR REPLACEMENT UNITS

Replacement low- and moderate-income dwelling units may be provided by any public agency or private developer. Replacement units must meet all of the following criteria:

- Replacement units must be located within the grantee's municipality and, to the extent feasible and consistent with other statutory priorities, the units shall be located within the same neighborhood as the units lost. (Applicable statutory priorities include those promoting housing choice, avoiding undue concentrations of assisted housing, and prohibiting development in areas affected by hazardous waste, flooding, and airport noise.)
- Replacement units must be sufficient in number and size to house no less than the number of occupants who could have been housed in the units that are demolished or converted.
- The number of occupants who could have been housed in units shall be determined in accordance with applicable local housing occupancy codes. The grantee may not replace those units with smaller units (e.g., a 2-bedroom unit with two 1-bedroom units) unless the grantee, before committing funds, provides information to citizens and to CDFA demonstrating that the proposed replacement is consistent with the housing needs of lower-income households in the municipality.

Provided in standard condition and vacant; rehabilitation of occupied units toward replacement does not count. Replacement low- and moderate-income dwelling units may include units that have been raised to standard from substandard condition if:

- The unit must have been vacant for at least three months before execution of the agreement covering the rehabilitation (e.g., the agreement between the grantee and the property owner); and
- No one was displaced from the unit as a direct result of the assisted activity.

Provided within a four-year timeframe:

- Replacement units must be initially made available for occupancy at any time during the period beginning one year before the grantee's submission of the information required under 24 CFR 570.606(c) and ending three years after the commencement of the demolition or rehabilitation related to the conversion. A grantee that fails to make the required public submission, described below under Grant Submission Requirements, will lose the year before submission for counting replacement units.
- This period may slightly exceed four years. However, CDFA requires all replacement units to be available before the project is closed.
- Affordable for 10 years.
- Replacement units must be designed to remain LMI dwelling units for at least 10 years from the date of initial occupancy.
- A key factor in projecting affordability is the character of the neighborhood in which the replacement units are located (i.e., neighborhood where current market rents are moderate and projected future rents are expected to remain within future FMRs).
- Replacement low- and moderate-income dwelling units may include, but are not limited to, public housing, existing housing receiving Section 8 project-based assistance, HOME or CDBG- funded units that have at least a 10-year affordability period.

24 CFR 570.606(c)(1)(iii)

GRANTEE SUBMISSION REQUIREMENTS

Before a grantee executes a contract committing to provide CDBG funds for any activity that will directly result in either the demolition of low- and moderate-income dwellings units or the conversion of low- and moderate-income dwelling units to another use, the grantee must make public by posting in the municipality Authorized Official's office and submit the following information in writing to CDFA for monitoring purposes:

24 CFR 42.375(c)

- Description: A description of the proposed assisted activity.
- Location and number of units to be removed: The location on a map and number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than as a LMI dwelling units as a direct result of the assisted activity.
- A time schedule for the commitment and completion of the demolition or conversion.
- Location and number of replacement units – the location on a map and the number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units.
- If such data is not available at the time of the general submission, the submission shall identify the general location on an area map and the approximate number of dwelling units by size. Information identifying the specific location and number of dwelling units by size shall be submitted and disclosed to the public as soon as it is available.
- Basis for concluding that each replacement dwelling unit will remain a lower-income dwelling unit for at least 10 years from the date of initial occupancy,
- Information demonstrating that any proposed replacement of dwelling units with smaller dwelling units is consistent with the housing needs of lower-income households in the municipality.

EXCEPTION TO ONE-FOR-ONE REPLACEMENT

Replacement is not required if CDFA determines that enough standard, vacant, affordable housing serving the municipality is available. A grantee may not execute a contract for demolition or rehabilitation of dwelling units for which an exception is sought until the exception is authorized in writing by CDFA.

The one-for-one replacement requirement does not apply to the extent CDFA determines, based upon objective data, that there is an adequate supply of vacant lower-income dwelling units in standard condition available on a non-discriminatory basis within the grantee's jurisdiction.

In determining the adequacy of supply, CDFA will consider whether the demolition or conversion of the low- and moderate-income dwelling units will have a material impact on the ability of lower-income households to find suitable housing. CDFA will consider relevant evidence of housing supply and demand including, but not limited to, the following factors:

- Vacancy rate: The housing vacancy rate in the municipality.
- Number of vacancies: The number of vacant LMI dwelling units in the municipality (excluding units that will be demolished or converted).
- Waiting list for assisted housing: The number of eligible families on waiting lists for housing assisted under the United States Housing Act of 1937 in the municipality. However, CDFA recognizes that a community that has a substantial number of vacant, standard dwelling units with market rents at or below the FMR may also have a waiting list for assisted housing. The existence of a waiting list does not disqualify a community from consideration for an exception.
- Consolidated Plan: The needs analysis contained in the State's Consolidated Plan and relevant past predicted demographic changes.
- Housing outside the municipality: CDFA may consider the supply of vacant low- and moderate-income dwelling units in a standard condition available on a non-discriminatory basis in an area that is larger than the grantee's jurisdiction. Such additional dwelling units shall be considered if CDFA determines that the units would be suitable to serve the needs of lower-income households that could be served by the low- and moderate-income dwelling units that are to be demolished or converted to another use. CDFA will base this determination on geographic and demographic factors, such as location and access to places of employment and to other facilities.

PROCEDURE FOR SEEKING AN EXCEPTION

The grantee must submit a request for determination for an exception directly to CDFA. Simultaneously with the submission of the request, the grantee must make the submission public and inform interested persons that they have 30 days from the date of submission to provide to CDFA additional information supporting or opposing the request. If CDFA, after considering the submission and the additional data, agrees with the request, CDFA must provide its recommendation with supporting information to HUD.

SECTION 9.9 APPEALS

The grantee must develop an appeals procedure.

APPEALS

Grantees must promptly review all appeals in accordance with the requirements of applicable laws and the URA. Grantees must develop written procedures to resolve disputes relating to their acquisition, relocation, and demolition activities. These written procedures must be communicated to all potentially affected parties prior to the initiation of negotiations.

49 CFR 24.10

WHO MAY APPEAL

Any person, family, or business directly affected by the acquisition and/or relocation activities undertaken by a grantee may appeal. All appeals must be in writing and must be directed to the Authorized Official of the grantee and the highest official of the administering agency undertaking the acquisition, relocation or demolition activity. A protestor must exhaust all administrative remedies as outlined in the grantee's written procedures prior to pursuing judicial review.

BASIS FOR APPEALS

Any person, family, or business that feels that the grantee failed to properly consider his or her written request for financial or other assistance must file a written appeal with the agency personnel identified within 60 days of the date of receipt of the administering agency's written determination denying assistance.

REVIEW OF APPEALS

The grantee shall designate a Review Officer to hear the appeal. The administrative officer of the municipality or his/her designee provided neither was directly involved in the activity for which the appeal was filed. The grantee shall consider all pertinent justification and other material submitted by the person and all other available information that is needed to ensure a fair and full review of the appeal.

49 CFR
24.10(e)(f)(g)(h)

Promptly after receipt of all information submitted by a person in support of an appeal, the grantee shall make a written determination on the appeal, including an explanation of the basis on which the decision was made and notify the person appealing a grantee's decision.

If the appeal is denied, the grantee must advise the person of his or her right to seek judicial review of the grantee's decision.

Attachment 4-15 contains sample procedures that can be used by the grantee to address potential complaints or appeals for decisions about URA and related laws.

Attachment 4-15:
Sample Grievance
Procedures

See [Chapter 4: Grantee Requirements](#).

CHAPTER 10: RELOCATION

OVERVIEW

The Uniform Relocation and Real Property Acquisition Policies Act of 1970 (URA or sometimes Uniform Act for short) applies to acquisition activities and displacement (temporary or permanent). URA imposes requirements on HUD-assisted projects carried out by public agencies, non-profit organizations, private developers or others; AND, real property acquisition for HUD-assisted projects (whether publicly or privately acquired) must adhere to URA-established provisions. This chapter covers the displacement and relocation benefit requirements of:

[49 CFR Part 24](#)

- URA: CDBG projects involving acquisition, rehabilitation, or demolition may be subject to the provisions of the Uniform Act (URA).
- Section 104(d): Section 104(d) of the Housing and Community Development Act of 1974 (also known as the “Barney Frank Amendments”) requirements may be triggered by demolition or conversion of residential units with CDBG funds. This law modifies and supplements requirements imposed by URA. This law has an impact on both acquisition and determining relocation benefits for low- and moderate-income households.

These laws include requirements for acquisition (including easements and long-term leases), conversion, and demolition of real property. Those requirements are covered in [Chapter 9: Acquisition](#).

The explanation of this chapter on Relocation is broken into the following sections:

- Relocation and Displacement
- General Relocation Requirements under URA
- Residential Relocation under URA
- Temporary Relocation
- Non-Residential Relocation under URA
- Relocation Assistance Requirements under Section 104(d)
- Appeals

There are three major types of requirements that cover relocation and acquisition activities in CDBG programs:

- The Federal Highway Administration (FHWA), within the U.S. Department of Transportation, is the lead agency for administering URA. FHWA regulations, effective February 2005, implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) of 1970, as amended (49 CFR Part 24);
- Section 104(d) of the Housing and Community Development Act of 1974 and the implementing regulations at 24 CFR Part 570.488, 24 CFR 42; and,
- 24 CFR 570.606 of the CDBG Regulations, which requires compliance with the regulations, listed above.

[FHWA URA Website](#)

[Housing and Community
Development Act of 1974](#)

[24 CFR 488](#)

[24 CFR 42](#)

[24 CFR 570.606](#)

There may be situations in which other federal agencies (e.g., USDA Rural Development) or local agencies (such as an authority) participate with a grantee using CDBG funds in a project. In such cases involving a federal agency, typically that federal agency takes responsibility to fulfill URA requirements, not the CDBG grantee. The grantee should either execute an MOU that clearly assigns this responsibility to another public entity or clearly delineate that responsibility in the agreement transferring funds to that other entity.

NOTE: The use of federal funds may not be originally anticipated during the conceptual phase or at the beginning of a project. Therefore, grantees should proceed with caution if federal resources could be introduced later in the project. For example, if an acquisition took place prior to application submission, it can be subject to the URA and relocation requirements if CDFA finds clear evidence that the purchase was done in anticipation of obtaining CDFA funds for an activity. The URA relocation requirements also apply if an agency has reimbursed itself for the acquisition with non-federal funds (i.e., general funds) if the project's end result is a federally-assisted project.

[Handbook 1378,
Chapter 2,
Paragraph 2-3 H](#)

[Chapter 5,
Paragraph 5-4 A](#)

Tip: HUD Handbook 1378 is a resource available for acquisition and relocation information and is available at HUD's web site. Additional guidance and resources can also be downloaded from the FHWA URA website.

[Handbook 1378](#)

SECTION 10.1 RELOCATION AND DISPLACEMENT

The URA applies to all federally assisted activities that involve the acquisition of real property, easements, or the displacement of persons, including displacement caused by rehabilitation, and demolition activities. If CDBG assistance is used in any part of a project, the URA governs the acquisition of real property and any resulting displacement, even if local funds were used to pay the acquisition costs.

49 CFR Part 24

DISPLACEMENT OVERVIEW & DEFINITIONS

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 displaced 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. All acquisitions made in order to support a CDBG activity are 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 URA, unless the grantee shows that the acquisition was unrelated to the proposed CDBG activity. Acquisition that takes place before the date of submission of the application will be subjected to the URA if CDFA determines that the intent of the acquisition was to support a subsequent CDBG activity. The URA provisions apply to all types of long-term acquisition of property, including when acquiring full fee title, fee title subject to retention of a life estate or a life use, long-term leases (including leases with options for extensions) of 50 years or more, and to permanent and temporary easements necessary for the project.

Displacement results when people or a non-residential entity moves permanently as a direct result of the acquisition, demolition, or rehabilitation of property for CDBG-funded projects.

In order to understand applicable relocation requirements, it is necessary to understand some key terminology.

WHO IS DISPLACED UNDER THE URA AND CDBG?

The URA, the CDBG regulations and Section 104(d) each address specific circumstances that would qualify someone as a "displaced person."

Under the URA, the term "displaced person" means:

- A person who moves permanently from the real property after the property owner (or person in control of the site) issues a vacate notice to the person. An owner who refuses to renew an expiring lease in order to evade the responsibility to provide relocation assistance will also trigger URA coverage for the tenant.

[49 CFR 24.2\(a\)\(9\)](#)
[Handbook 1378,](#)
[Chapter 1, Paragraph 1-4 I](#)
- The effective move date of the displaced person is based on whether the grantee:
 - Has site control at the time the grantee submits an application for CDFA funds for the project that is later approved, then the household is considered displaced on the submission date of the application; or
 - Does not have site control when the application for CDFA funds, the effective date will be the date the grantee obtains site control.
- A person who moves permanently from the real property after the initiation of negotiations, unless the person is a tenant who was issued a written notice of the expected displacement prior to occupying the property (otherwise known as a "Move-In Notice")
- A person who moves permanently and was not issued a Notice of Non-displacement after the application for CDFA funds is approved.

[Handbook 1378:](#)
[Chapter 1-4, Paragraph I- 4](#)

Even if there was no intent to displace the person, if a Notice of Non-displacement was not provided, HUD has taken the position that the person's move was a permanent, involuntary move for the project since the person was not given timely information essential to making an informed judgment about moving from the project.

Under CDBG, the regulations define a "displaced person" as someone who moves after a specific event occurs:

- This event establishes a presumption that a project may begin (e.g., date of submission of an application). It is presumed that displacement before this date did not occur "for the project" and is not covered by the URA, unless rebutted by convincing evidence to the contrary.
- It is also presumed that a permanent, involuntary move on or after that date is a displacement "for the project," unless the grantee or state determines otherwise.

HUD must concur in a determination to deny a person relocation benefits on this basis:

- When an owner either evicts a tenant or fails to renew a lease in order to sell a property as "vacant" to a grantee for a HUD-funded project, HUD will generally presume that the tenant was displaced "for the project." (Evictions for serious or repeated violations of the lease are permissible, but the owner must follow state tenant-landlord laws governing eviction.)

- In cases where the tenant was not notified of their eligibility for URA benefits, the grantee is responsible for finding the displaced tenant and providing appropriate relocation assistance, unless the grantee can demonstrate that the move was not attributable to the project.
- CDBG regulations also define a "displaced person" as:
 - A tenant who moves permanently after the CDFA-funded acquisition or rehabilitation, and the increased rent is not affordable (they are "economically displaced").

The CDBG program regulations cover "economic displacement," while the URA is silent on this issue. If rents are increased after a CDBG project is completed, and the new rent exceeds 30% of the tenant's gross monthly income, they would be "economically displaced."

Handbook 1378:
Chapter 1; Paragraph 4-5:
24 CFR 570.606(b)(2)(D)

- The URA also protects the following "displaced persons":
- A tenant-occupant of a dwelling who receives a Notice of Non-displacement but is required to move to another unit in the building/complex may be considered displaced, if the tenant moves from the building/complex permanently and either:
 - The tenant was not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move within the project; or
 - Other conditions of the move within the project were not reasonable.
- A tenant who moves permanently after the building has a change from residential use to a public use as a direct result of a CDBG-assisted project (for example, the building now leases units to serve persons who were homeless or require supportive housing). Under the CDBG program, leases of 15 years or more are considered acquisitions for the purposes of the URA.
- A nonresidential tenant who receives a Notice of Non-displacement, but moves permanently from the building/complex, if the terms and conditions under which the tenant may remain are not reasonable.

It is expected that the grantee or property owner will negotiate these terms and conditions. A tenant who believes the offer is unreasonable may relocate and file an appeal seeking assistance as a "displaced person."

When Section 104(d) is triggered:

The term "displaced person" means any lower-income household that moves from real property permanently as a direct result of the conversion of an occupied or vacant occupiable low- and moderate-income dwelling unit or the demolition of any dwelling unit, in connection with a CDFA- assisted activity.

24 CFR 570.606(b)(2)(i)

PERSONS NOT CONSIDERED DISPLACED

A person does not qualify as a "displaced person" (and is not entitled to relocation assistance at URA levels), if:

- The person has no legal right to occupy the property under state or local law, specifically not meeting the requirements of adverse possession (see Attachment 10-1); or
- The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement or other good cause, the grantee determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance; or
- The person moves into the property after the date of the application for CDFA funds and, before moving in, was provided a "Move-In Notice," which consist of a written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase) and the fact that he or she would not qualify for assistance as a "displaced person" as a result of the project. See Attachment 10-2 for a sample notice to provide to prospective tenants.

[49 CFR 24.2\(a\)\(9\)\(ii\)\(k\)](#)

[Attachment 10-1:
Adverse Possession](#)

[Handbook 1378,
Chapter 1, Paragraph 1-4 J \(1\)](#)

[Handbook 1378,
Chapter 1, Paragraph 1-4 J \(2\)](#)

[Attachment 10-2: Sample
Notice to Prospective Tenants](#)

People are also not considered displaced if:

- The person occupied the property for the purpose of obtaining relocation benefits.
- The person retains the right of use and occupancy of the property for life following its acquisition (life estates).
- The person is determined not to be displaced as a direct result of the project. Grantees may not make this determination on their own. Contact CDFA for determination assistance.
- The person is an owner-occupant of the property who moves as a result of a voluntary acquisition. (Refer to Chapter 5 of HUD Handbook 1378 and Voluntary Acquisition section in [Chapter 9: Acquisition](#) for more information on voluntary acquisition.) (NOTE: Tenants living in properties that are acquired via a voluntary acquisition are covered by the URA regardless of their willingness to move.)

[49 CFR 24.2\(a\)\(9\)\(ii\)\(C\)](#)

[49 CFR 24.2\(a\)\(9\)\(ii\)\(I\)](#)

[Handbook 1378,
Chapter 1, Paragraph 1-4 J \(3\)](#)

- The person leaves due to code enforcement, unless the code enforcement results in rehabilitation or demolition for an assisted project. There should be sufficient separation of time and activities, otherwise an owner-occupant or tenant who is required to move permanently as a direct result of this rehabilitation or demolition may be eligible for relocation assistance. Consult with CDFA if activities occur close together.

[Handbook 1378, Chapter 5](#)
[49 CFR 24.2\(a\)\(9\)\(ii\)\(E\)](#)
- The person, after receiving a notice of eligibility, is notified in writing that he or she will not be displaced.
 - Such a notice cannot be delivered unless the person has not moved, and the agency agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of eligibility.
- The person is an owner-occupant who voluntarily applies for rehabilitation assistance on his or her property. When the rehabilitation work requires the property to be vacant for a period of time, this assistance is considered optional.

[49 CFR 24.2\(a\)\(9\)\(ii\)\(G\)](#)
- The person is not lawfully present in the United States unless denial of benefits would result in "exceptional and extremely unusual hardship" to a lawfully-present spouse, child, or parent. This prohibition covers all forms of relocation assistance under the URA including both replacement housing payments (RHP) and moving assistance.

[49 CFR 24.2\(a\)\(9\)\(ii\)\(H\)](#)

The current URA regulations include a definition of the phrase "exceptional and extremely unusual hardship," which focuses on significant and demonstrable impacts on health, safety, or family cohesion. This phrase is intended to allow judgment on the part of the grantee and does not lend itself to an absolute standard applicable in all situations. When considering whether such an exemption is appropriate, a displacing agency may examine only the impact on an alien's spouse, parent, or child who is a citizen or lawful resident alien.

An "alien not lawfully present in the United States" is defined as an alien present in the United States who has not been admitted or paroled into the United States pursuant to the Immigration and Nationality Act (8 United States C.1101 et seq) and whose stay in the United States has not been authorized by the United States Attorney General. It includes someone who is in the United States after the expiration of the period of stay authorized by the United States Attorney General or who otherwise violates the terms and conditions of admission, parole, or authorization to stay in the United States.

When a household contains some members, who are present lawfully but others are present unlawfully, there are two different computation methods, one for moving expenses and one for replacement housing payments (RHP). For moving expenses, the payment is to be based on the proportion of lawful occupants to the total number of occupants. For example, if four out of five members of a family to be

displaced are lawfully present, the proportion of lawful occupants is 80 percent and that percentage is to be applied against the moving expenses payment that otherwise would have been received.

For the RHP, the unlawful occupants are not counted as a part of the family and its size is reduced accordingly. Thus a family of five, one of whom is a person not lawfully present in the U.S., would be counted as a family of four. The comparable for the family would reflect the makeup of the remaining four persons and the Replacement Housing Payment (RHP) would be computed accordingly.

INITIATION OF NEGOTIATIONS (ION)

The date of the Initiation of Negotiations ("ION") serves as a milestone in determining a person's eligibility for relocation assistance, including moving costs and a replacement housing payment. CDBG regulations establish a program-specific definition of ION as the trigger for issuance of the Notice of Eligibility for Relocation Assistance or Notice of Non-displacement.

For CDBG programs, the term "initiation of negotiations" is defined as the following:

- If the displacement results from privately undertaken rehabilitation, demolition or acquisition, the execution of the grant or loan agreement between the grantee and the person owning or controlling the real property.
- If the displacement results from grantee demolition or rehabilitation and there is no related grantee acquisition, the notice to the person that he or she will be displaced by the project (or the person's actual move, if there is no such notice).
- When there is voluntary acquisition of real property by a grantee, the term "initiation of negotiations" means the actions described above, except that the ION does not become effective, for purposes of establishing eligibility for relocation assistance, until there is a written purchase agreement between the grantee and the owner. (See Voluntary Acquisition section in [Chapter 9: Acquisition](#).)

Whenever real property is acquired by a grantee that has eminent domain/condemnation powers under the statutes of New Hampshire and the acquisition is an involuntary transaction, the initiation of negotiations means the delivery of the Notice of Offer of just compensation by the grantee to the owner to purchase the real property for the project.

[24 CFR 570.606](#)

After the ION, any person who seeks to rent a unit in the project must be issued a Move-in Notice before executing a lease; otherwise, the project will incur liability for relocation costs if the persons are found to be eligible as displaced persons.

[49CFR 24.2\(a\)\(15\)](#)

PROJECT

The definition of what is a "project" differs for URA and for Section 104(d):

- The term project is defined under URA as an activity or series of activities funded with federal financial assistance received or anticipated in any phase. In addition, URA states that program rules will further define what is considered a project.
- Under Section 104(d), a project is an activity or series of activities undertaken with HUD financial assistance received or anticipated in any phase. Section 104(d) benefits are triggered if the activity is a CDBG or HOME funded activity and the HUD assisted activity is part of a single undertaking.

Handbook 1378,
Chapter 1, Paragraph
1-4 DD

49 CFR 49.2(a)(22)

In order to determine whether a series of activities are a project, look at:

- Timeframe: Do activities take place within a reasonable timeframe of each other?
- Objective: Is the single activity essential to the overall undertaking? If one piece is unfinished, will the objective be incomplete?
- Location: Do the activities take place on the same site?
- Ownership: Are the activities carried out by, or on behalf of, a single entity?

SECTION 10.2 GENERAL RELOCATION REQUIREMENTS UNDER URA

The URA covers all types of displaced persons, including both residents and businesses. It also covers the temporary relocation of existing occupants. The following sections of this chapter sorted by: (1) URA requirements that apply to all persons; (2) URA requirements that apply to displaced residential occupants; (3) URA requirements that apply to temporary relocation; and (4) URA requirements that apply to non-residential (commercial, non-profit, farm) occupants.

Acquisition and/or relocation of mobile homes is also covered by the URA. Since there are many variables in the ownership and tenancy of mobile homes, grant administrators are asked to consult with CDFA before proceeding with the acquisition or relocation of mobile homes.

After covering the URA requirements for relocation, this chapter covers Section 104(d) relocation requirements.

The requirements in this section apply to all projects where the URA is triggered. The URA relocation process can differ greatly depending upon the funding used in a project and whether an involuntary sale will be involved in the process.

PLANNING FOR RELOCATION

If CDFA funds will involve relocation, the grantee must develop written policies and procedures for managing the anticipated relocation caseload in the form of a "relocation plan."

These procedures must be in compliance with all elements of the Final Rule implementing changes to the URA and the Residential Anti-displacement and Relocation Plan, previously developed as part of the application for CDBG assistance.

The plan must contain two components:

- A commitment to replace all low- and moderate-income dwelling units that are demolished or converted to a use other than low- and moderate-income housing as a direct result of the use of CDFA funds, and
- A commitment to provide relocation assistance required under Section 104(d) of the Housing and Community Development Act.

The plan must be adopted by the local governing body.

A sample of this plan is included as Attachment 9-17 in [Chapter 9: Acquisition](#).

[Attachment 9-17: Sample Residential Anti-displacement and Relocation Assistance Plan](#)

ADVISORY SERVICES, INCLUDING RELOCATION NOTICES

The next step in the process is to provide relocation advisory services. This process requires the grantee to first personally interview the person to be displaced. The purpose of the interview is to explain the:

- Various payments and types of assistance available,
- Conditions of eligibility,
- Filing procedures, and
- Basis for determining the maximum relocation assistance payment available.

Grantees may use Attachment 10-3: Sample Household Case Record to collect the required information for residential occupants. It is very important that all significant contact with displacees be logged into Section 5 of the Household Case Record.

[Attachment 10-3: Sample Household Case Record](#)

As a part of advisory services, the URA requires that all occupants receive notices informing them of their various rights.

GENERAL INFORMATION NOTICE

The General Information Notice is referred to in this chapter as one of the required notices when there is involuntary acquisition. This is a **very important notice!**

As soon as feasible after grant application, the project administrator must notify each household and/or business that the potential for displacement exists and provide them with a General Information Notice (GIN). The GIN informs residential and non-residential occupants of a possible project, including potential acquisition of the property. A sample of the GIN is provided as Attachment 10-4 of this chapter. The GIN also informs the occupant prior to the initiation of negotiations not to move prematurely, because doing so will jeopardize any assistance that they may be due. By providing occupants with the GIN, the grantee protects themselves from claims for relocation benefits that could have been avoided if the person would not have been displaced.

[Attachment 10-4:
General Information
Notices for
Residential Tenants](#)

NOTICE OF ELIGIBILITY AND NOTICE OF NON-DISPLACEMENT

After grant approval, the grantee should determine who must be displaced and who will be allowed to remain in (or return to) the project. After making these determinations, the grantee should issue the appropriate relocation notices: either a Notice of Eligibility (for relocation assistance) or a Notice of Non-displacement.

- The Notice of Eligibility informs occupants who will be displaced of their rights and levels of assistance under the URA. See Attachment 10-5
- The Notice of Non-displacement informs occupants who will remain in or return after completion of their rights under URA and of the terms and conditions of their remaining in the property. See Attachment 10-6.

[Attachment 10-5:
Notice of Eligibility](#)

[Attachment 10-6:
Notice of Non-Displacement](#)

In addition to these notices, copies of the HUD brochures,

"Relocation Assistance to Displaced Homeowner Occupants" and "Relocation Assistance to Tenants Displaced from Their Homes" should be provided to displaced persons (see Attachments 10-7 and 10-8 these brochures can also be found on the HUD website.)

Note that these two brochures are for residential relocation only.

There are different requirements for relocation of businesses, farms, and non-profit organizations. Contact CDFA for guidance on non-residential relocation.

[Attachment 10-7: Relocation
Assistance to Displaced
Homeowners Brochure](#)

[Attachment 10-8: Relocation
Assistance to Displaced Tenants
from Their Homes Brochures](#)

NOTICE TO MOVE

The grantee may issue a 90-Day Move Notice after a Notice of Eligibility has been sent and when the grantee wants to establish the move-out date (see Attachment 10-9). The 90-Day Notice may not be issued until at least one comparable unit has been identified and presented to the residential displaced person.

The 90-day notice must either state a specific date as the earliest date by which an occupant will be required to move, or state that the occupant will receive a further notice, at least 30 days in advance, indicating the specific date by which to move. A flow chart summarizing the relocation process can be found as Attachment 10-11 of this chapter. The 90-Day Move Notice may be a combined notice with the Notice of Eligibility or delivered at the same time.

[Attachment 10-9:
Sample 90 and 30-Day Move
Notices](#)

[Handbook 1378, Chapter 2,
Paragraph 2-3\(c\)](#)

[Attachment 10-11:
Tenant Assistance/Relocation
Process Flow Chart](#)

DISCRIMINATION IN RELOCATION

Obviously, grantees must ensure that there is no discrimination in the relocation process. Individual displacees who have been discriminated against may not know how to take action on their own. Legal action is often too expensive to be a practical solution for them. The grantee must provide assistance in cases of discrimination. There are also different equal opportunity protections for businesses and additional protections for Fair Housing for displaced persons. See [Chapter 4: Grantee Requirements](#) of this implementation guide for additional information.

If a displacee has been discriminated against, there are two alternatives:

The displacee can send a complaint to CDFA within 180 days of the incident, simply telling CDFA what happened. The relocation officer and grant administrator should advise the displacee of this option and assist in preparing the complaint if the displacee desires to make one. The grantee's Grievance Procedures should be adhered to in addressing such complaints. See [Chapter 4: Grantee Requirements](#).

[Attachment 4-15:
Sample Grievance
Procedures](#)

Upon receipt of the complaint, CDFA may take one or more of the following steps:

- Investigate to see if the law has been broken per the grantee's Grievance Procedures;
- Contact the person accused of the violation and try to resolve the discrimination complaint;
- Refer the complaint to the New Hampshire Commission for Human Rights, www.nh.gov/hrc, (phone number 603-271-2767).
- Recommend that the displacee go to court.

A suit may be filed in federal court, in which case the displacee should consult either an attorney or the local Legal Aid Society for assistance. The relocation officer should advise the displacee regarding both sources of help. If the court finds in favor of the displacee, it can stop the sale of the house or the rental of the apartment to someone else, and award the displacee damages and court costs.

SECTION 10.3 RESIDENTIAL RELOCATION UNDER URA

Residential occupants who will be displaced are entitled to receive a range of benefits under the URA. These include: (1) advisory services; (2) offer of a comparable replacement unit; (3) replacement housing payments; and (4) moving expenses. The following sections highlight each of these requirements.

ADVISORY SERVICES FOR DISPLACED HOUSEHOLDS

The grantee should work with the household that will be displaced throughout the process to ensure the household is provided appropriate and required advisory services.

- Grantees must provide counseling and appropriate referrals to social service agencies, when appropriate.
- Grantees must offer or pay for transportation (e.g., taxi, rental car) to inspect comparable units or the actual unit selected by the displaced person.
- When a displacee is a minority, every effort should be made to ensure that referrals are made to comparables located outside of areas of minority concentration, if feasible.
- The grantee must provide current and continuing information on the availability, purchase price or rental cost and location of "comparable replacement dwellings." (See the section below for more information on comparable replacement dwellings.)

COMPARABLE REPLACEMENT DWELLING UNITS

The grantee must make referrals to the replacement housing units (comparables) for displaced residential households. It is also recommended that the grantee inspect the comparables to determine if they are in decent, safe and sanitary condition (including ensuring they are lead safe) prior to making referrals.

The regulations stipulate that no person is to be displaced unless at least one, and preferably three, comparable dwellings are made available to the potential displacee. Grantees should document if three comparable dwellings are not identified and provide justification. Grantees should identify comparable units that meet the following conditions:

- A comparable replacement dwelling means a dwelling which meets local relevant housing codes and standards for occupancy;
- The replacement unit must be functionally equivalent to the displacement dwelling. The term "functionally equivalent" means that it performs the same function, and provides the same utility. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. In determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the grantee may consider reasonable trade-offs for specific features when the replacement unit is equal to or better than the displacement dwelling;
- Adequate in size to accommodate the occupants;
- If the displaced household were over-crowded, the comparable must be large enough to accommodate them;
- In an area not subject to unreasonable adverse environmental conditions;
- In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment;
- On a site that is typical in size for residential development with normal site improvements, including customary landscaping;
- Currently available to the displaced person on the private market (unless they are displaced from subsidized housing as described below); and
- Within the financial means of the displaced person. A replacement dwelling is considered to be within the person's financial means if a grantee pays the appropriate replacement housing payment.

For a person receiving government housing assistance before displacement, a comparable dwelling unit that has similar government housing assistance must be offered. (For example, a comparable unit for a tenant who had a Housing Choice Voucher prior to displacement must be offered another unit where the Voucher could be used or is accepted.) When the government housing assistance program has requirements relating to the size of the replacement dwelling, the rules for that program apply.

Grantees may use Attachment 10-12: Section 8 Existing Housing Program Inspection Checklist to determine whether a comparable unit is decent, safe and sanitary. Since replacement housing units must meet all local codes and housing standards, an inspector must be familiar with these requirements to ensure that displaced persons move to standard housing.

[Attachment 10-12:
Section 8 Existing Housing
Program Inspection Checklist](#)

Attachment 10-13: HUD Form 40061 should be used to identify the most representative comparable replacement dwelling units for purposes of computing a replacement housing payment.

[Attachment 10-13:
Most Representative
Comparable Replacement
for Computing an RHP](#)

The grantee must then provide the potentially displaced household with a Notice of Eligibility for relocation assistance (Attachment 10-5 contains a sample of that notice). The notice must identify the cost and location of the comparable replacement dwelling(s).

[Attachment 10-5:
Notice of Eligibility](#)

REPLACEMENT HOUSING PAYMENTS

In some instances, a comparable replacement dwelling may not be available within the monetary limits for owners or tenants. This is the purpose of the Replacement Housing Payment (RHP).

[49 CFR 24.401](#)
&
[49 CFR 24.402](#)
&
[49 CFR 24.404\(a\)](#)

Relocation payments are not considered "income" for purposes of the IRS or the Social Security Administration.

The regulations do not allow a grantee to encourage or ask a displaced person to waive their relocation assistance; however, a fully informed person may choose not to apply for financial benefits and must acknowledge that decision in writing by clearly describing the assistance for which he/she will not apply. Grantees are encouraged to contact CDFA if this situation is likely to occur.

[49 CFR 24.209](#)
&
[49 CFR 24.207\(f\)](#)

REPLACEMENT HOUSING ASSISTANCE FOR 90-DAY HOMEOWNERS

Only homeowner-occupants who were in residency for 90 days prior to an offer to purchase their home (Initiation of Negotiations – "ION") USING INVOLUNTARY ACQUISITION are eligible for a replacement housing payment as "displaced persons". If homeowners were in occupancy for less than 90 days prior to the ION, they are protected by the URA as "displaced persons" but the calculation is made using the same method used for tenants.

NOTE: If an owner occupies a property acquired using voluntary acquisition requirements, they are NOT eligible for relocation benefits.

For involuntary acquisitions, the ION is defined as the delivery of the written offer of just compensation by the grantee to the owner.

- The RHP made to a 90-day homeowner is the sum of:
- The lesser of: the cost of the comparable or the cost of the actual replacement unit.
- Additional mortgage financing cost; and
- Reasonable expenses incidental to purchase the replacement dwelling.

[42 U.S.C. 4623\(a\)\(1\)](#)
and
[42 U.S.C. 4624\(b\)](#)

To calculate the replacement housing payment for a 90-day homeowner, grantees should use the HUD claim form in Attachment 10-14. If an owner elects to become a renter, the RHP can be no more than the amount would otherwise have received as an owner. The maximum payment is \$31,000.

[Attachment 10-14:
Claim for Replacement
Housing for 90-day
Homeowner](#)

The displaced homeowner must purchase and occupy the replacement unit in order to qualify for an RHP as a displaced owner-occupant of 90 days.

REPLACEMENT HOUSING PAYMENTS FOR DISPLACED TENANTS

The amount of the replacement housing payment paid to a displaced tenant does not vary depending upon whether the household was in occupancy more or less than 90 days prior to the date of execution of the agreement.

The replacement housing payment is intended to provide affordable housing for a 42-month period. Although the URA regulations establish a \$7,200 limitation on rental assistance payments, it also requires that persons receive the calculated payment under: replacement "Housing of Last Resort." Therefore, low and moderate-income households are entitled to the full 42 months of assistance even though the amount may exceed \$7,200. See Section 10.6: Relocation Requirements under Section 104(d) to determine if applicable.

[42 U.S.C. 4624\(a\)](#)

For all tenants, the replacement housing payment makes up (for a 42-month period) the difference between:

- Housing cost, defined as the lesser of rent and estimated utility costs at the replacement dwelling or comparable unit; and
- Tenant obligation, defined as the lesser of:
 - Thirty percent of the tenant's average monthly gross household income (applicable only if the household is classified as low income—within 80% Area Median Income—using HUD's income limits), or
 - The monthly rent and estimated average utility costs of the displacement dwelling.

URA cash rental assistance must be provided in at least 3 installments, unless benefit is \$500 or less or the tenant wishes to purchase a home. If \$500 or less, 2 installments are permitted. If the displaced tenant wishes to purchase a home, the payment must be provided in a single lump sum so that the funds can be used for a down payment, including incidental expenses.

The amount of cash rental assistance to be provided is based on a one-time calculation. The URA RHP payment is not adjusted to reflect subsequent changes in a person's income, rent/utility costs, or household size. See Attachment 10-15 for the claim form that must be used to calculate rental assistance or down payment assistance.

Attachment 10-15:
Claim for Rental Assistance or
Downpayment Assistance

HOUSING OF LAST RESORT

When undertaking relocation activities, grantees must be sure to provide a comparable replacement dwelling in a timely manner. If the grantee cannot identify comparable replacement housing, they must seek other means of assisting displacees under the "Last Resort Replacement Housing" provisions of the regulations. This situation can occur in communities where there is a limited supply of available comparable units. Grantees should contact CDFA to confer on how to proceed.

49 CFR 24.404

The Last Resort sections of the URA require grantees to take alternate measures to assist displaced persons to be able to afford to move to a decent, safe and sanitary comparable unit. Such alternatives include rehabilitation of, and/or additions to, an existing replacement dwelling; a replacement housing payment in excess of regulatory limits; construction of new units; relocation of a replacement dwelling; and removal of barriers to the disabled in a replacement dwelling.

Handbook 1378,
Chapter 3, Paragraph 3-6

EARLY MOVERS: RELOCATION PRIOR TO NOTICE OF ELIGIBILITY

Some displaced persons will not wait for the grantee to locate comparable units and offer replacement housing assistance. These households may search for their own units and relocate themselves.

The implication of the early move will depend on when it occurs. If the move occurs after a General Information Notice (GIN) was sent to the household but before the Initiation of Negotiations, the household may have jeopardized their eligibility or payment amount for relocation assistance.

However, after the Initiation of Negotiations, (the date that triggers eligibility for relocation assistance) relocation eligibility can be triggered for all occupants. So, it is vital that the grantee immediately send the Notice of Eligibility or Non-displacement. If these notices are not sent in a timely or complete manner and the household moves out, HUD may require that the replacement housing be based on the actual

unit they have chosen (if that exceeds a possible comparable), if that unit qualifies as decent, safe and sanitary. The budgetary consequences can be substantial.

RELOCATION INTO A SUBSTANDARD UNIT

If an individual locates or moves into a replacement unit that is not decent, safe and sanitary and that move occurred because the grantee was not timely in the delivery of the required URA notices, the grantee may try to upgrade the unit to the decent, safe and sanitary standard. Alternately, the grantee can offer the household the opportunity to move to a decent, safe and sanitary unit and the grantee must pay for that move.

In the event the grantee was timely in the delivery of the Notice of Eligibility but the household moved anyway to a substandard unit, the grantee must inform the displacee that if they remain in a substandard unit, they will be eligible only for moving expenses and not for replacement housing payments. The grantee must also inform the displacee that if he or she moves into standard housing within a year from the date he or she moved from the displacement dwelling and files a claim within 18 months of the date of displacement, he or she will be eligible for a replacement housing payment. A sample letter is provided as Attachment 10-16 of this chapter.

Attachment 10-16:
Sample Letter to Relocatee in a
Substandard Unit

PAYMENT FOR RESIDENTIAL MOVING AND INCIDENTAL EXPENSES

Displaced homeowners and tenants may choose to receive payment for moving and related expenses either by:

- Commercial mover selected through competitive bids obtained by the grantee paid directly to the mover or reimbursed to the household; OR
- Reimbursement of actual expenses for a self-move, OR
- Receipt of a fixed payment based upon a schedule established by the Department of Transportation, Federal Highway Administration (FHWA), for the current payment level established for New Hampshire, which is available on the FHWA website.

The updated regulations at 49 CFR 24.301(b) clarified that grantees cannot allow residential self-moves based on the lower of two bids.

49 CFR 24.301(b) & (g)(1-7)

If reimbursement of actual expenses for a self-move is chosen, the grantee must determine that the expenses are reasonable and necessary and include only eligible expenses, which are:

- Transportation of the displaced person and personal property. (This may include reimbursement at the current mileage rate for personally owned vehicles that need to be moved.) Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

- Packing, crating, uncrating and unpacking of the personal property.
- Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.
- Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, and other personal property.
- Insurance for the replacement value of the property in connection with the move and necessary storage.
- The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft or damage is not reasonably available.
- Credit checks.
- Utility hook-ups, including reinstallation of telephone and cable service.
- Other costs as determined by the agency to be reasonable and necessary.

[49 CFR 24.301\(h\)](#)

The following are ineligible expenses:

- Refundable security and utility deposits; or
- Interest on a loan to cover moving expenses; or
- Personal injury; or
- Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Agency; or
- The cost of moving any structure or other real property improvement in which the displaced person reserved ownership; or
- Costs for storage of personal property on real property owned or leased by the displaced person before the initiation of negotiations.

If the displaced homeowner/tenant chooses a fixed payment based upon a schedule established by the Department of Transportation, Federal Highway Administration (FHWA), the following applies:

- A person displaced from a dwelling or a seasonal residence may, at his or her discretion, choose to receive a fixed moving expense payment as an alternative to a payment for actual reasonable moving and related expenses.

[Attachment 10-17: Fixed Residential Moving Cost Schedule](#)

The payment reflects the number of rooms in the displacement dwelling and whether the displaced person owns and must move the furniture. If a room or an outbuilding contains an unusually large amount of personal property (e.g., a crowded basement), the Agency may increase the payment accordingly (i.e., count it as two rooms). A current schedule is accessible on HUD's website.

The fixed payment does not require that the grantee document costs, receipts, or payments by the displaced person, nor does the displaced person need to account for the use of the fixed payment.

Whether the displaced household choose reimbursement of actual costs or fixed payment based on the FHWA schedule, grantees should use Residential Claim for Moving and Related Expenses (HUD Form 40054) to calculate and document such payments. See Attachment 10-18 for this form.

[Attachment 10-18: Residential Claim for Moving and Related Expenses \(HUD Form 40054\)](#)

Occupant of Dwelling with Congregate Sleeping Space (Dormitory): The moving expense for a person displaced from a permanent residence with congregate sleeping space ordinarily occupied by three or more unrelated persons is \$100.

Homeless Persons: A displaced "homeless" person (e.g., the occupant of an emergency shelter) is not considered to have been displaced from a permanent residence and, therefore, is not entitled to a fixed moving expense payment. (Such a person may, however, be eligible for a payment for actual moving expenses.)

In addition to the moving expenses, the updated regulations at 49 CFR 24.401(e)(4) added professional home inspection to the list of eligible incidental expenses for displaced owner-occupants only. This will only apply when a property is involuntarily acquired, and owner occupied for a period of at least 90 days.

[49 CFR 24.401\(e\)\(4\)](#)

[49 CFR 24.301\(h\)\(12\)](#)

The URA also allows grantees to pay for non-refundable security deposits but clarifies that refundable security and utility deposits are ineligible.

SECTION 10.4 TEMPORARY RELOCATION

Agencies administering housing rehabilitation programs should establish written policies for temporary relocation of both owner-occupants and tenants.

Any temporary relocation may not exceed 12 months, or the household is considered displaced.

Agencies must administer their temporary relocation activities consistently and treat all people in similar circumstances the same. All terms must be "reasonable" or the temporarily relocated household may become eligible as a "displaced person".

LEAD-BASED PAINT HAZARDS REQUIREMENTS AND RELOCATION

The Lead Safe Housing Rule, 24 CFR Part 35, contain rules concerning the temporary relocation of occupants (renters and owners) before and during hazard reduction activities.

[24 CFR Part 35](#)

[24 CFR 570.608](#)

Under the lead regulations, circumstances when temporary occupant relocation is **not required** include:

- Treatment will not disturb lead-based paint or create lead-contaminated dust; or
- Treatment of interior will be completed within one period in eight daytime hours, the site will be contained, and the work will not create other safety, health or environmental hazards; or
- Only the building's exterior is treated; the windows, doors, ventilation intakes, and other openings near the work site are sealed during hazard reduction activities and cleaned afterward; and a lead-free entry is provided; or
- Treatment will be completed within five calendar days; the work area is sealed; at the end of each day, the area within 10 feet of the contaminant area is cleared of debris; at the end of each day, occupants have safe access to sleeping areas, bathrooms, and kitchen facilities; and treatment does not create other safety, health or environmental hazards.

If these above conditions are not met, then the temporary relocation of the household is required. However, because the rehabilitation of owner-occupied units is considered voluntary, the relocation requirements of the URA do not apply regardless of whether the unit is being treated for lead-based paint. Any payments made on an owner-occupants' behalf would be addressed in an Optional Relocation Policy.

Again, note that the rehabilitation of tenant-occupied units is not considered voluntary and the URA requirements detailed earlier in this section apply.

NOTE: Elderly residents living in units undergoing lead hazard reduction activities may waive the requirement to relocate but only if the grantee obtains a written and signed waiver. (See Attachment 10-19.)

[Attachment 10-19:
Sample Elderly Waiver for
Relocation](#)

The lead rule further requires that temporary dwellings not have lead-based paint hazards. Therefore, grantees are required to ensure that units used for temporary relocation are lead safe. This means that temporary housing units that were built after 1978 or have undergone a visual assessment and dust wipe sampling to ensure no lead hazards are present.

TEMPORARY RELOCATION OF OWNER-OCCUPANTS IN REHABILITATION PROJECTS

An owner-occupant who participates in a CDBG grantee's housing rehabilitation program is considered a voluntary action under the URA, provided code enforcement was not used to induce an owner-occupant to participate.

If a grantee chooses to provide temporary relocation assistance to owner-occupants, the grantee must adopt an Optional Temporary Relocation Assistance Policy.

GUIDANCE FOR OWNER-OCCUPANT TEMPORARY RELOCATION IN REHABILITATION PROJECTS

The grantee should develop written policies as early as possible in the application stage so occupants can make suitable arrangements to move from of their homes with the least amount of disruption. Because the URA does not cover owner-occupants who voluntarily participate in housing rehabilitation programs, the grantee has broad discretion regarding payments to owners during the period of temporary relocation. If a grantee chooses to provide temporary relocation assistance to owner-occupants through a "voluntary" CDBG Program, the grantee must adopt an optional relocation assistance policy.

[24 CFR 570.488](#)
&
[24 CFR 570.606\(d\)\(2\)](#)

The owner-occupant may be encouraged to stay with family or friends (noting the requirement to inspect these units to ensure the units are decent, safe and sanitary and lead-safe), but if there are circumstances in which there is no suitable alternative, and the owner would be faced with a hardship, the agency may set a policy that describes what constitutes a "hardship" and provide a certain level of financial assistance.

An agency may negotiate with various hotels to establish an attractive rate and pay the negotiated rate on the owner's behalf. The hotel units must be decent, safe and sanitary, and cannot present a lead-paint hazard to occupants. Agencies should inspect the hotel units prior to signing an agreement to use them as a resource. In addition, agencies may provide a stipend for meals if the temporary unit does not have cooking facilities.

TEMPORARY RELOCATION OF TENANTS IN REHABILITATION PROJECTS

Tenants are protected by the URA during temporary relocation. HUD's Handbook 1378 suggests that at least 30 days advance notice be given to tenants prior to the temporary move. In addition, the tenant must be provided:

[HUD Handbook 1378, Chapter 2, Paragraph 2-7](#)

- Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent/utility costs at such housing. (They are still responsible for paying their share of the rent for the unit undergoing renovation.)
- Appropriate advisory services, including reasonable advance written notice of:
 - The date and approximate duration of the temporary relocation;
 - The address of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;
 - The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe and sanitary dwelling in the building/complex upon completion of the project; and
 - The provisions of reimbursement for all reasonable out-of-pocket expenses.

The tenant must receive a Notice of Non-displacement (Attachment 10-6) which advises a person that they may be or will be temporarily relocated.

Once it becomes evident that the tenant will need to be temporarily relocated, the grantee should send a Temporary Relocation Notice to inform households who will be temporarily relocated of their rights and of the conditions of their temporary move. (See Attachment 10-20 for a Sample Temporary Relocation Notice.)

[Attachment 10-6:
Notice of Non-Displacement](#)

[Attachment 10-20: Sample
Temporary Relocation Notice](#)

Tip: The Notice of Non-displacement is very important when dealing with temporary relocation because it helps prevent temporary moves from becoming permanent.

GUIDANCE ON TENANT TEMPORARY RELOCATION

To assist with the temporary relocation of tenants, the grantee could encourage tenants to identify their own temporary housing (within the established guidelines), but ultimately the agency is responsible for finding suitable shelter until rehabilitation is complete. In addition, the agency could use hotel rooms and provide a meal stipend if there are no cooking facilities. The stipend could vary depending on the age of the children in the household (if any).

The terms and conditions of the temporary move must be reasonable, or the tenant may become "displaced." The grantee should be aware that the temporary unit need not be comparable,

[Attachment 10-12:
Section 8 Existing Housing
Program Inspection Checklist](#)

but it must be suitable for the tenant's needs. It must be inspected, found to be decent, safe, sanitary, and lead safe. Attachment 10-12: Section 8 Existing Housing Program Inspection Checklist may be used to document the inspection. If the tenant claims to be paying rent to a friend or family member, the grantee should document that rent was paid and the housing was suitable. The tenant must be provided adequate advance notice to move out of their unit and back when rehabilitation work is complete. A good rule of thumb suggested by CDFA is that temporary relocation is reasonable for six months or less. Anything in excess of one year is considered permanent displacement.

If the owner of the property is planning to raise the rent or offer a different unit in the property (that exceeds the greater of their former rent or 30% of gross monthly income), the tenant must be notified of these changes before moving back. If the cost of rehabilitation including lead hazard control work causes the rent to be increased and creates a rent burden ("economic displacement"), the tenant is protected by the URA and could be eligible for relocation assistance.

The term "economic displacement" is used to cover households who lived in the project prior to the federally-funded activity (acquisition or rehabilitation) and whose rent is raised resulting in a move because they can no longer afford to remain.

If the rent will be increased and the household can no longer afford to stay, the grantee should treat the household as a displaced person and provide them with all of the assistance outlined under Section 8-D including: Advisory Services, Moving Expenses, and a Replacement Housing Payment as needed.

SECTION 10.5 NON-RESIDENTIAL RELOCATION UNDER URA

Displaced businesses (including non-profit organizations and farm owners) are entitled to advisory services and relocation assistance under the URA. A business is defined for this purpose as:

[49 CR 24.2\(a\)\(4\)](#)

- A for-profit business, engaged in any lawful activity involving purchase, sale of goods or services, manufacturing, processing, marketing, rental of property, or outdoor advertising when the display must be moved;
- To qualify for assistance, the business must meet the definition of a "displaced person" discussed earlier in this chapter. It must move permanently as a direct result of an assisted project involving acquisition, rehabilitation, or demolition.

[Handbook 1378,](#)
[Chapter 1,](#)
[Paragraphs 1-4](#)

The URA provides coverage for business owners (whether they are on-site or not), for owner/occupants of a business, and for tenants operating a business in rented space.

BUSINESS VERSUS RESIDENTIAL ASSISTANCE

URA coverage for moving expenses is similar for residential and non-residential displacees. Qualified businesses may choose between a fixed payment or actual moving expense. The fixed payment is based on a formula, rather than a schedule.

[Handbook 1378,](#)
[Chapter 4, Paragraphs 4-2 &](#)
[4-5](#)

A displaced business is eligible to choose a fixed payment if the grantee determines that:

- The business either (a) discontinues operations, or (b) it relocates but is likely to incur a substantial loss of its existing patronage (The URA presumes this unless there is a preponderance of evidence to the contrary.); and
- The business is not part of a commercial enterprise having more than three other entities which are not being displaced by the grantee, and which are under the same ownership and engaged in the same or similar business activities; and
- The business contributed materially to the income of the displaced person; and
- The business operation at the displacement property is not solely for the rental of that real property to another property management company.
- Actual moving expenses provide for reimbursement of limited reestablishment expenses.
- There are differences between coverage for residential and non-residential displaces.
- A 90-day Notice to Move may be issued without a referral to a comparable site.
- Businesses are entitled to temporary moving expenses; however, displaced businesses are not eligible for 104(d) assistance.

[Handbook 1378,](#)
[Chapter 4, Paragraph 4-3](#)

Owners or tenants who have paid for improvements will be compensated for their real property under acquisition rules. A complete, thorough appraisal is essential to making these decisions.

ADVISORY SERVICES

Non-residential moves are often complex. Grantees must interview business owners to determine their relocation needs and preferences. Displaced businesses are entitled to the following:

- Information about the upcoming project and the earliest date they will have to vacate the property;
- A complete explanation of their eligibility for relocation benefits and assistance in understanding their best alternatives;
- Assistance in following the required procedures to receive payments;
- Current information on the availability and cost to purchase or rent suitable replacement locations;
- Technical assistance, including referrals, to help the business obtain an alternative location and become reestablished;
- Referrals for assistance from state or federal programs, such as those provided by the Small Business Administration, that may help the business reestablish, and help in applying for funds; and
- Assistance in completing relocation claim forms.

NOTICES AND INSPECTIONS

The grantee must provide a business to be displaced with written information about their rights, and provide them with a General Information Notice (GIN) tailored to the situation when a Notice of Interest is issued to the property owner. See Attachment 10-21 for a sample GIN to use for businesses (non-residential tenants). The General Information Notice should include:

- An explanation that a project has been proposed and caution the business not to move until they receive a Notice of Eligibility for Relocation Assistance. (See Attachment 10-22 for a sample of this notice.)
- A general description of relocation assistance payments they could receive, the eligibility requirements for these payments, and the procedures involved. The HUD Information Booklet, Relocation Assistance to Displaced Businesses, Non-profit Organizations, and Farms (HUD 1043-CPD) includes this general information and should be given to the business. See Attachment 10-23 for a copy of this HUD information booklet for businesses.

[Handbook 1378,
Chapter 2, Paragraph 2-3 B](#)

[Attachment 10-21
Sample GIN Non-Residential
Tenant](#)

[Attachment 10-22:
Notice of Eligibility for Business
Relocation Assistance](#)

[Handbook 1378,
Chapter 7, Paragraph 7-7](#)

[Attachment 10-23:
Relocation
Assistance to Displaced
Businesses, Non-profit
Organizations and Farms](#)

- Information that they will receive reasonable relocation advisory services to help locate a replacement site, including help to complete claim forms;
- Information that they will not be required to move without at least 90 days' advance written notice; and
- A description of the appeal process available to businesses.

If a business must be displaced, a tailored Notice of Relocation Eligibility (NOE) must be provided as soon as possible after the ION (see Attachment 9-38 for a sample notice). This Notice should:

- Inform the business of the effective date of their eligibility.
- Describe the assistance available and procedures.
- If necessary, a 90-day Notice to Move may be sent after the initiation of negotiations.

The business must be told as soon as possible that they are required to:

- Allow inspections of both the current and replacement sites by the grantee's representatives, under reasonable terms and conditions;
- Keep the grantee informed of their plans and schedules;
- Notify the grantee of the date and time they plan to move (unless this requirement is waived); and
- Provide the grantee with a list of the property to be moved or sold.

[Handbook 1378, Chapter 4, Paragraphs 4-7](#)

Grantees need to be aware of when a property will be vacated. In many situations, the grantee must be on-site during a business move to provide technical assistance and represent the grantee's interests. In accordance with state law, any property not sold, traded or moved by the business becomes the property of the grantee. To be certain that the move takes place at a reasonable cost, an inventory containing a detailed itemization of personal property to be moved should be prepared and provided to the grantee. The grantee should verify this inventory and use it as a basis of comparison with bids or estimates and eventual requests for payment.

REIMBURSEMENT OF ACTUAL MOVING EXPENSES

Any displaced business is eligible for reimbursement of reasonable, necessary actual moving expenses.

- Only businesses that choose actual moving expenses—versus a fixed payment—are eligible for a reestablishment expense payment.
- Grantees should not place additional hardships on businesses, but they can limit the amount of payment for actual moving expenses based on a least-cost approach.
- Businesses may choose to use the services of a professional mover or perform a self-move. Eligible expenses include:

[Handbook 1378, Chapter 4, Paragraphs 4-2 and 4-3](#)

- Transportation of personal property;
- Packing, crating, uncrating, unpacking of personal property;
- Disconnecting, dismantling, removing, reassembling, and reinstalling machinery, equipment, and personal property;
- Storage of personal property;
- Insurance for replacement value of personal property in connection with the move and/or storage;
- Any license, permit or certification required at the new location;
- Professional services to plan the move, move the personal property or install the personal property at the new location;
- Provision of utility service from the Right of Way to the business;
- Professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation including but not limited to, soil testing, feasibility and marketing studies (excluding any fees or commissions directly related to the purchase or lease of such site).
- Impact fees or one-time heavy utility use assessments;
- Re-lettering signs and replacing existing stationery that are obsolete due to the displacement; and
- Reasonable costs incurred while attempting to sell items that will not be relocated.

[Handbook 1378,
Chapter 4, Paragraph 4-3](#)

A business is eligible for either a "Direct Loss" or "Substitute Equipment" payment if the displacee will leave or replace personal property. A business can accept either of these (but not both) for an item.

A "Direct Loss" payment can be made for personal property that will not be moved. Payments can also be made as a result of discontinuing the business of the non-profit or farm. The business must make a good faith effort to sell the personal property (unless the grantee determines it is unnecessary) in order to be eligible for a Direct Loss payment. A Direct Loss payment is based on the lesser of:

[49 CFR 24.301\(g\)\(14\)](#)

- The fair market value of the item for continued use at the displacement site, minus the proceeds from the sale, or
- The estimated cost to move the item, with no allowance for the following: storage, or reconnecting a piece of equipment if the equipment is in storage or not being used at the acquired site. If the business is discontinuing, the cost to move is based on a moving distance of 50 miles.

A "Substitute Equipment" payment can be made when an item used by the business, non-profit, or farm is left in place, but is promptly replaced with a substitute item that performs a comparable function at the new site. A Substitute Equipment payment is based on the lesser of:

- The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or
- The estimated cost to move and reinstall the item, but with no allowance for storage.

Certain costs incurred while searching for a replacement location are also eligible. Businesses are entitled to reimbursement up to \$2,500. Grantees can pay more than this if they believe it is justified.

Costs may include reasonable levels of such items as:

- Transportation;
- Meals and lodging away from home;
- Time spent while searching, based on a reasonable pay salary or earnings; and
- Fees paid to a real estate agent or broker while searching for the site. (Note that commissions related to the purchase are not eligible costs.)

The grantee may pay other moving and related expenses that the grantee determines are reasonable and necessary and are not listed as ineligible. Payment of other reasonable and necessary expenses may be limited by the grantee to the amount determined to be least costly without causing the business undue hardship.

There may be instances where a person is required to move personal property from real property but is not required to move from a dwelling (including a mobile home), business, farm or non-profit organization. Eligible expenses for moving the personal property are listed above.

[49 CFR 24.301 \(e\)](#)

Businesses may have personal property that is considered low value, high bulk such as stock piled sand, gravel, minerals, metals or other similar items in stock. When the personal property to be moved is of low value and high bulk, and the cost of moving the property would be disproportionate to its value in the judgment of the grantee, the allowable moving cost payment shall not exceed the lesser of:

- The amount which would be received if the property were sold at the site; or
- The replacement cost of a comparable quantity delivered to the new businesses location.

See Attachment 10-24 for a sample claim form for moving and related expenses for businesses.

[Attachment 10-24: Claim for Actual Reasonable Moving and Related Expenses - Non-Residential](#)

REESTABLISHMENT EXPENSES

Only certain small businesses are eligible for reestablishment expenses, up to \$25,000. "Small businesses" for this purpose are defined as those with at least one, and no more than 500 people, working at the project site. Businesses displaced from a site occupied only by outdoor advertising signs, displays, or devices are not eligible for a reestablishment expense payment.

Eligible items included in the \$25,000 maximum figure are:

- Repairs or improvements to the replacement site, as required by codes, or ordinances;
- Modifications to the replacement property to accommodate the business;
- Modifications to structures on the replacement property to make it suitable to conduct business;
- Construction and installation of exterior advertising signs;
- Redecoration or replacement at the replacement site of soiled or worn surfaces, such as paint, paneling, or carpeting;
- Other licenses, fees, and permits not otherwise allowed as actual moving expenses;
- Feasibility surveys, soil testing, market studies;
- Advertisement of the replacement location;
- Estimated increased costs of operation for the first two years at the replacement site for such items as:
 - Lease or rental charges,
 - Utility charges,
 - Personal or property taxes, and
 - Insurance premiums.
- Other reestablishment expenses as determined by the grantee to be essential to reestablishment.

[Handbook 1378,](#)
[Chapter 4, Paragraph 4-6](#)
[and 4-7](#)

[49 CFR 24.304](#)

[42 U.S.C. 4622\(a\)\(4\)](#)

INELIGIBLE EXPENSES

The following are ineligible for payment as an actual moving expense, as a reestablishment expense, or as an "other reasonable and necessary expense":

- Loss of goodwill;
- Loss of profits;
- Personal injury;
- Interest on a loan to cover any costs of moving or reestablishment expense;

[49 CFR 24.301\(h\)](#)
[49 CFR 24.304\(b\)](#)

- Any legal fees or other costs for preparing a claim for a relocation payment, or for representing the claimant before the grantee;
- The cost of moving any structure or other real property improvement in which the business reserved ownership;
- Costs for storage of personal property on real property already owned or leased by the business before the initiation of negotiations;
- Costs of physical changes to the replacement site above and beyond that required to move and reestablish the business;
- The purchase of capital assets, manufactured materials, production supplies, or product inventory, except as permitted under "moving and related costs;" or
- Interior and exterior finishes solely for aesthetic purposes, except for the redecoration or replacement of soiled or worn surfaces described in "reestablishment expenses."

FIXED PAYMENTS

A displaced business may select a fixed payment instead of actual moving expenses (which include reestablishment expenses) if the grantee determines that the displacee meets the following eligibility criteria:

[Handbook 1378,](#)
[Chapter 4, Paragraph 4-7](#)
[49 CFR 24.305](#)

- The nature of the business cannot solely be for the purpose of renting the site/property to others.
- The business discontinues operations or it will lose a substantial portion of its business due to the move. (The latest regulations state that a business is presumed to meet this test unless the grantee can demonstrate it is not "location sensitive".)
- The business is not part of an operation with more than three other entities that are not being acquired/displaced and:
 - The ownership is the same as the displaced business, and
 - The other locations are engaged in similar business activities.
- The business contributed materially to the income of the displaced business. The term "contributed materially" means that during the two taxable years prior to the taxable year in which the displacement occurred (or the grantee may select a more equitable period) the business or farm operation:
 - Had average gross earnings of at least \$5,000; or
 - Had average net earnings of at least \$1,000;
 - Contributed at least 33 1/3 percent (one-third) of the owner's or operator's average annual gross income from all sources;
 - If the grantee determines that the application of these criteria would cause an inequity or hardship, it may waive these criteria.

The amount of the fixed payment is based upon the average annual net earnings for a two-year period of a business or farm operation.

Net earnings include any compensation obtained from the business that is paid to the owner, the owner's spouse, and dependents. Calculate net earnings before federal, state, and local income taxes for a two-year period. Divide this figure in half. The minimum payment is \$1,000; the maximum payment is \$40,000.

[Handbook 1378,](#)
[Chapter 4, Paragraph 4-7](#)
[and](#)
[42 U.S.C. 4622\(c\)](#)

The two-year period should be the two tax-years prior to the tax year in which the displacement is occurring, unless there is a more equitable period of time that should be used:

- If the business was not in operation for a full two-year period prior to the tax year in which it would be displaced, the net earnings should be based on the actual earnings to date and then projected to an annual rate.
- If a business has been in operation for a longer period of time, and a different two-year period of time is more equitable within reason, the fixed payment should be based on that time period.
- When income or profit has been adjusted on tax returns to reflect expenses or income not actually incurred in the base period, the amount should be adjusted accordingly.
- When two or more entities at the same location are actually one business, they are only entitled to one fixed payment. This determination should be based on:
 - Shared equipment and premises, and
 - Substantially identical or inter-related business functions and financial affairs that are co-mingled, and
 - Entities that are identified to the public and their customers as one entity, and
 - The same person or related persons own, control, or manage the entities.

[49 CFR 24.305\(b\)](#)

Businesses must furnish grantees with sufficient documentation of income to justify their claim for a Fixed Payment. This might include:

- Income tax returns,
- Certified or audited financial statements,
- W-2 forms, and
- Other financial information accepted by the grantee.

The HUD form "Claim for Fixed Payment in Lieu of Payment for Actual Reasonable Moving and Related Expenses" (HUD Form 40056) should be used to claim the fixed payment. If another form is used, it should provide the same information in at least the same level of detail (see Attachment 10-25).

[Attachment 10-25: Claim for Fixed](#)
[Payment in Lieu of Actual Moving](#)
[and Related Expenses –](#)
[Nonresidential](#)

SECTION 10.6 RELOCATION ASSISTANCE REQUIREMENTS UNDER SECTION 104(D)

The relocation requirements of Section 104(d) differ from URA requirements. The grantee is required to provide certain relocation assistance to any lower-income person displaced as a direct result of

[24 CFR 42 Subpart C](#)

(1) the demolition of any dwelling unit, or (2) the conversion of a low- and moderate-income dwelling unit to a use other than a low- and moderate-income dwelling in connection with an assisted activity. The rules implementing the Section 104(d) relocation requirements for the State CDBG program are found at 24 CFR 42.

Such 104(d) replacement housing payments are available only to low- or moderate-income households. In addition, Section 104(d) relocation assistance is not triggered for a project, but rather for a household within a specific unit. The benefit determination requires additional, multiple calculations to arrive at the relocation benefits paid. Attachment 10-26 to this chapter summarizes the major differences between URA and Section 104(d) relocation assistance.

[Attachment 10-26:
Summary of Major Differences
between 104\(d\) and URA
Relocation Assistance](#)

ELIGIBILITY

To be eligible for Section 104(d) relocation assistance, a person must meet certain criteria. Under Section 104(d), a displaced person is a lower-income tenant who moves permanently, in connection with an assisted activity, as a direct result of conversion of a low- and moderate-income dwelling unit or demolition of any dwelling unit.

[24 CFR 42.305](#)

AMOUNT OF ASSISTANCE

Under Section 104(d), each displaced household is entitled to choose either assistance at URA levels (detailed earlier in the chapter) or the following relocation assistance:

- Advisory services (same as under URA) - Includes notices, information booklets, explanation of assistance, referrals to comparable housing and counseling.

- In general, both 104(d) and the URA require that a General Information Notice, and a Notice of Non-displacement or a Notice of Eligibility for Relocation Assistance be provided. (See Attachments 10-4, 10-5, and 10-6.)
- The Notice of Non-displacement informs residential occupants who will remain in the project area after completion of the assisted activity of their rights and of the terms and conditions of their remaining in the property.
- The Notice of Eligibility for Relocation Assistance informs residential occupants who will be displaced of their rights and levels of assistance under 104(d). Note that the availability of Section 8 assistance to a displaced person will reduce the level of replacement housing payment provided. See details provided below.

[Attachment 10-4: General Information Notices for Residential Tenants](#)

[Attachment 10-5: Notice of Eligibility](#)

[Attachment 10-6: Notice of Non-Displacement](#)

- Payment for moving and related expenses (the same as under URA). Payment for actual reasonable moving and related expenses or a moving expense and dislocation allowance based on a schedule that is available in Attachment 10-17: Fixed Residential Moving Cost Schedule. Also, see Attachment 10-18 for the claim form to use for moving costs and related expenses.

[Attachment 10-17: Fixed Residential Moving Cost Schedule](#)

[Attachment 10-18: Residential Claim for Moving and Related Expenses](#)

- Security Deposits (not required under URA) - The reasonable and necessary cost of any security deposit required to rent the replacement dwelling unit.
- Credit checks (not required under URA) - Required to rent or purchase the replacement dwelling unit (also eligible under URA).
- Interim living costs (same as for URA) - The person shall be reimbursed for actual reasonable out-of-pocket costs incurred in connection with temporary relocation, including moving expenses and increased housing costs if the person must relocate temporarily because continued occupancy of the dwelling unit constitutes a substantial danger to the health or safety of the person or the public.

- Replacement Housing Assistance: The 104(d) replacement housing payment is intended to provide affordable housing for a 60-month period. There is no cap on the 104(d) replacement housing payment. As with URA, the 104(d) payment is calculated using the cost of the tenant's actual, decent, safe and sanitary replacement dwelling (including utilities) or a comparable replacement dwelling.
- The replacement housing payment makes up (for a 60-month period, not 42 months as in URA) the difference between:
 - The rent and utility costs for the actual replacement dwelling (or comparable), and
 - The tenant's Total Tenant Payment, calculated as the greater of either:
 - ✓ Thirty percent of adjusted income;
 - ✓ ten percent of gross income;
 - ✓ the welfare rent (see 24 CFR 5.628(a)(3)); and
 - ✓ minimum rent in accordance with 24 CFR 5.630.

[24 CFR 5.628\(a\)\(3\)](#)

[24 CFR 5.630](#)

NOTE: The amount of the rent at the displacement unit is NOT used in calculating the RHP under 104(d).

Persons eligible for assistance under Section 104(d) are also eligible for URA assistance. In order for such persons to make an informed decision, grantees must determine and inform the person of the amount of replacement housing assistance available under Section 104(d) housing assistance and available under the URA.

The grantee has the option to offer all or a portion of this 104(d) rental assistance through a Section 8 Housing Choice Voucher, if the grantee has access to a Voucher and provides referrals to comparable replacement dwelling units where the owner is willing to participate in the Section 8 Existing Housing Program.

If a person then refuses Section 8 assistance, the grantee has satisfied the Section 104(d) replacement housing assistance requirements. In such case, the displaced person may seek URA replacement housing assistance.

Cash rental assistance must be provided in installments, unless the tenant wishes to purchase a home. If the displaced tenant wishes to purchase a home, the payment must be provided in a lump sum so that the funds can be used for a down payment, including incidental expenses. The amount of cash rental assistance to be provided is based on a one-time calculation. The payment is not adjusted to reflect subsequent changes in a person's income, rent/utility costs, or household size. (Note: This guidance is also applicable under the URA.) Use Attachment 10-27 to calculate and document replacement housing payments made under Section 104(d) benefits.

[Attachment 10-27:
Claim for Rental or Purchase
Assistance Section 104\(d\)](#)

Under Section 104(d), only housing cooperatives or mutual housing are eligible forms of ownership for down payment assistance. If someone eligible for Section 104(d) wants to purchase another form of homeownership with the replacement housing benefits, they must accept URA relocation benefits instead of Section 104(d).

TOTAL TENANT PAYMENT (TTP)

Under the URA, a displaced person's gross monthly income and old rent are used to calculate the replacement housing payment. However, under Section 104(d), the Total Tenant Payment (TTP) is used to establish the amount of replacement housing assistance.

[Handbook 1378,
Chapter 7, Paragraphs 7-8
and 7-10](#)

Under Section 104(d), a displaced person is eligible for financial assistance sufficient to reduce the monthly rent and estimated average monthly utility costs for a replacement dwelling to the Total Tenant Payment (TTP).

To verify income in determining eligibility for assistance, a person must sign a release authorizing any financial institution or source of income to furnish the grantee with income information. In order of acceptability, the three methods of verifying a person's income are:

- Third party written or oral verification. Such written verification/documentation should not be transmitted through the displaced person to the grantee.
- Review of documents, when third party verification is unavailable. Documents may include items such as pay stubs, government benefits statements like social security, and income tax returns provided they are updated to project income.
- Notarized self-certification, unless the grantee determines notarization is unnecessary.

Caution: The method of verifying income for the purposes of determining eligibility for housing assistance ([Chapter 2: National Objectives and Eligible Activities](#)) varies from what is described above.

SECTION 10.7 APPEALS

The grantee must develop an appeals procedure.

[49 CFR 24.10](#)

APPEALS

Grantees must promptly review all appeals in accordance with the requirements of applicable laws and the URA. Grantees must develop written procedures to resolve disputes relating to their acquisition, relocation, and demolition activities. These written procedures must be communicated to all potentially affected parties prior to the initiation of negotiations.

WHO MAY APPEAL

Any person, family, or business directly affected by the acquisition and/or relocation activities undertaken by a grantee may appeal. All appeals must be in writing and must be directed to the Authorized Official of the grantee and the highest official of the administering agency undertaking the acquisition, relocation or demolition activity. A protestor must exhaust all administrative remedies as outlined in the grantee's written procedures prior to pursuing judicial review.

[Attachment 4-15:
Sample Grievance
Procedures](#)

BASIS FOR APPEALS

Any person, family, or business that feels that the grantee failed to properly consider his or her written request for financial or other assistance must file a written appeal with the agency personnel identified within 60 days of the date of receipt of the administering agency's written determination denying assistance.

REVIEW OF APPEALS

The grantee shall designate a Review Officer to hear the appeal. The administrative officer of the municipality or his/her designee, provided neither was directly involved in the activity for which the appeal was filed. The grantee shall consider all pertinent justification and other material submitted by the person and all other available information that is needed to ensure a fair and full review of the appeal.

[49 CFR
24.10\(e\)\(f\)\(g\)\(h\)](#)

Promptly after receipt of all information submitted by a person in support of an appeal, the grantee shall make a written determination on the appeal, including an explanation of the basis on which the decision was made and notify the person appealing a grantee's decision.

If the appeal is denied, the grantee must advise the person of his or her right to seek judicial review of the grantee's decision.

Attachment 4-15 contains sample procedures that can be used by the grantee to address potential complaints or appeals for decisions about URA and related laws. See [Chapter 4: Grantee Requirements](#).

CHAPTER 11: REPORTING AND RECORDKEEPING REQUIREMENTS

OVERVIEW

It is important that the grantee fully document compliance with all applicable regulations. This is accomplished through maintaining comprehensive records and submitting all necessary reports.

The filing system should be easy to use and provide a historic account of activities for examination and review by the State, auditors and local staff. All records must be available to the following entities upon request:

- U.S. Department of Housing and Urban Development,
- The Inspector General,
- The General Accounting Office,
- The Comptroller General of the United States, and
- NH Community Development Finance Authority (CDFA) .

These entities must have access to any pertinent books, records, accounts, documents, papers, and other property that is relevant to the grant. Certain records must be available to the public as well. However, grantees must keep files that contain personal information, such as social security numbers, in a secure place. Grantees must keep their own records separate from CDFA's Grants Management System (GMS) in compliance with Section 11.3 below.

The submission of timely reports as outlined in Sections 11.1-11.2 below is essential for compliance with the grant agreement with CDFA.

NOTE: NH has enacted RSA Chapter 91-A, the Right to Know Law. All CDBG documents are considered governmental records. All grantees should bear this in mind and consult with their legal counsel to ensure appropriate levels of documentation and retention. See the Right-to-Know section in this chapter.

11.1 SEMI-ANNUAL REPORTING

Semi-Annual Progress Reports (submitted via the Grants Management System or GMS) will be used to assess program progress, timeliness and to justify needs. It is important because it provides CDFA with information that is required to be provided to the U.S. Department of Housing and Urban Development (HUD). Therefore, reports must be submitted on time and accurately.

These Semi-Annual Progress Reports gather important information that is not extracted from the GMS system in any other way. Some of this information includes Section 3 beneficiaries, MBE/WBE contracting, and lead based paint activities. Providing timely and accurate information helps CDFA produce better reporting to HUD that justifies the effectiveness of the CDBG Program.

The timeline for submission is as follows:

Semi-Annual Reporting Period	Due Date
-------------------------------------	-----------------

Jan 1 – June 30	July 15
-----------------	---------

July 1 – December 31	January 15
----------------------	------------

[Attachment 11-1:
Semi-Annual Progress
Report](#)

All grantees should submit a report regardless of the month in which their project is implemented or the grant contract initiated, unless otherwise noted in the grant contract. This should be completed and submitted via GMS. The semi-annual covers nearly all required reports that must be submitted on a regular basis by CDBG grantees. The other regularly required reporting is covered in the next section.

11.2 LABOR STANDARDS REPORTING

The grantee is responsible for submitting two regularly scheduled Labor Standards reports as described in **Chapter 8: Labor Standards**.

- Semi-Annual Labor Standards Enforcement Report – HUD Form 4710

[HUD 4710 Form](#)

These reports must be submitted to CDFA as follows:

Form 4710 Reporting Period	Due Date
-----------------------------------	-----------------

Oct 1 – Mar 31	Apr 1
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April 1 – Sept 30	Oct 1
-------------------	-------

- Additionally, if enforcement actions involving in excess of \$1,000 or willful violations occur, grantees must complete a Section 5.7 Enforcement Report found in Attachment 9-17.

[Attachment 8-15:
Section 5.7
Enforcement Report](#)

NOTE: These enforcement actions appear in two reports. A separate Section 5.7 Enforcement Report is to be submitted to CDFA and those incidents are reported again in a summarized fashion in the Form 4710. The Section 5.7 Enforcement Report does not replace the need to include that same incident in the Form 4710 report.

11.3 MAINTAINING RECORDS

Grantees must establish a system for record keeping that assists CDFA with the review of files for compliance. In other words, records should be kept in a manner that clearly tells the whole story of a Community Development Block Grant (CDBG) project from beginning to end.

The grantee is responsible for maintaining all records pertinent to a grant, including supporting documentation, for three years after the date CDFA closes out the applicable program year with HUD.

Because this required record retention period could exceed ten years, the CDFA will notify grantees when a program year has been closed with HUD and include the end date of the record retention period.

This chapter identifies major file categories and the materials that should be maintained in each file. This list is not all-inclusive; therefore, refer to applicable laws and regulations as well as the other chapters for more detailed information.

The following suggestions are provided as procedural guidelines to be considered when designing a grantee's filing system:

- Separate files should be maintained for each grant contract
- Files should be coded for each area of compliance to allow for easier access
- Responsibility for file-keeping should be delegated to a specific individual to provide consistency
- Files should be secured at all times

11.3.1 APPLICATION AND GRANT CONTRACT FILE

- Copy of original application
- Grant Agreement
- All correspondence/info prior to the signing of the grant agreement, including comments from other state agencies application/project revisions (if applicable)
- Approved Implementation Plan and Budget (and revisions)

11.3.2 NATIONAL OBJECTIVES

Grantees must maintain records that funded activities meet one of the national objectives. Depending on the objective, the files must contain the specific documentation below. This documentation can also be used in reporting performance measures information.

- Low/Mod Area Benefit
 - Boundaries of service area
 - Census data including total persons and percentage low/mod
 - Evidence area is primarily residential
 - Survey documentation (if applicable)
- Low/Mod Limited Clientele
 - Documentation that the beneficiaries are low/mod or presumed to be low/mod (by category)
- Low/Mod Housing
 - Income verification of households (using the Section 8 definition) including source documentation
- Low/Mod Job Creation and Retention
 - Number of jobs created or retained
 - Type and title of jobs created or retained
 - Income of persons benefiting from the jobs created or retained
- Slum and Blight
 - Area designation (e.g., boundaries, evidence area meets State slum/blight requirements)
 - Documentation and description of blighted conditions (e.g., photographs, structural surveys, or development plans)
 - If applicable, evidence that the property meets spot designation requirements (e.g., inspections)
- Urgent Need
 - Documentation of threat to health and safety
 - Documentation of recent origin
 - Certification that other financing resources were unavailable and CDBG had to be used (including ability to borrow, etc.)

11.3.3 CITIZEN PARTICIPATION FILE

- Citizen Participation Plan (and Housing and Community Development Plan)
- Evidence that citizens were furnished appropriate information (as required in application process)
- Publishers Affidavit or tear sheet of the notices of public hearings
- Minutes from both public hearings
- Citizen outreach techniques, including evidence of marketing effort for direct benefit activities such as housing rehabilitation
- Citizen complaints and relevant correspondence (if applicable)

11.3.4 ENVIRONMENTAL REVIEW RECORD (ERR)

For all projects:

- Scope of Work for Project/Activity
- Copy of any environmental studies (e. g. archaeological surveys, etc.)
- Copy of all maps and drawings, if any
- Copy of signed Request for Release of Funds (RROF), if any
- Copy of Authority to Use Grant Funds - release of funds from CDFA, if any

Exempt and Categorically Excluded Not Subject To (CENST) Activity Projects

- Copy of the signed Environmental Review for Exempt or CENST Activity

Categorically Excluded Subject To (CEST) Projects

- Copy of signed Environmental Review for CEST Activity and supporting documentation (including written determinations from relevant agencies such as SHPO and NH Department of Environmental Services)
- Copy of all consultation letters and responses
- Copy of Floodplain Process documentation (if applicable)
 - If CEST activity converts to Exempt (skip all below)
- Copy of the Notice of Intent to Request Release of Funds (NOI/RROF) advertisement (and Floodplain if applicable)
- Copy of Publishers Affidavit for Floodplain NOI/RROF
- Copies of any letters received and responses following the NOI/RROF

Environmental Assessment Projects

- Copy of Determination of Environmental Assessment Form and supporting documentation (including written determinations from relevant agencies such as SHPO and NH Department of Environmental Services)
- Copy of all consultation letters and responses

- Copy of Floodplain Process documentation (if applicable)
- Copy of the Combined Notice of Intent with “Finding of No Significant Impact” (FONSI) advertisement (and Floodplain if applicable)
- Copy of Publishers Affidavit for Floodplain / NOI/ROFF / FONSI
- Copies of any letters received and responses following the NOI/RROF/FONSI

11.3.5 FAIR HOUSING & CIVIL RIGHTS

- Local Fair Housing Resolution
- Documentation of completion of the required Fair Housing Activity
- A copy of the provisions for nondiscrimination given to developers, contractors, etc.
- Demographic statistics on all beneficiaries and denied applicants of site-specific activities (i.e., housing rehab)
- Documentation that contractors complied with the Civil Rights/Equal Employment requirements as explained at the Pre-Construction Conference
- Documentation of all other efforts to further local fair housing and equal opportunity

11.3.6 FINANCIAL

- Cash Receipts Journal
- Cash Disbursement Journal
- General Ledger
- Property Management Register
- Subsidiary Ledger on Rehabilitation Loans
- Journal Entry Voucher (optional)
- Federal Cash Control Register (optional)
- Expenditure Summary Report (optional)

Payment File

- Copies of all Contractor/Consultant/Vendor Invoices
- Copies of Payment Requests in Chronological order
- Approved Cost Summary (and revisions)
- Authorized Signature for Request for Payment form
- Original Project Expenditure Account Agreement

Audit File

- Copy of Audit Reports (if applicable)
- Responses to Audit Findings (if applicable)

11.3.7 PROCUREMENT

All Procurements utilizing CDBG funds

- Documentation of Cost Reasonableness Estimate for all procurements
- Copy of the Contractor/Subcontractor Verification form (not debarred)

Supplies/Materials

- Copy of Request for Quotation (RFQ) (email, telephone notes, etc.)
- Documentation of Notice/Solicitation for M/WBE participation and amounts procured
- Documentation of all quotes received
- Justification of selection

Professional Services

- Copy of the Request for Proposal (RFP) or Request for Qualifications (RFQ)
- Copy of the RFP/RFQ newspaper advertisement
- Documentation of notification/solicitation for M/WBE participation
- M/WBE contracts and amounts procured
- List of companies who submitted Statements of Qualifications or Proposals
- RFP/RFQ evaluation and scoring documents
- List of short-listed firms and documentation of interview process
- Short-listed firms evaluation and scoring documents
- Justification for selection of contractor

Construction and Related Services

- Copy of Invitation for Bid (IFB)
- Copy of IFB newspaper advertisement
- Section 3 Plan
- Certified mail receipts from M/WBE and Section 3 firms
- M/WBE and Section 3 contracts and amounts procured
- Minutes from public meeting where IFB's were opened
- Copy of the bid tabulation sheet, certified by the project architect/engineer
- Justification of selection

11.3.8 CONTRACT FILE

Professional Services

- Notice of Contract Award
- Copy of Contract with the required federal contract provisions (outlined in the CDFA Grant Agreement)
- Disclosure Report for each contract

Construction – Related Services

- Notice of Contract Award
- Copy of Contract with the required federal contract provisions (outlined in the CDFA Grant Agreement)
- Copy of the Pre-construction Meeting Checklist – signed by all attendees
- Copy of the Bid Guarantee
- Copy of the Performance Bond
- Copy of the Payment Bond
- Copy of contractor(s) insurance policy
- Disclosure Report for each contract
- Proof of the established Retainage Account (if applicable)
- Documentation on all Change Orders

11.3.9 ACQUISITION AND RELOCATION FILES

Acquisition

A separate file must be maintained for each property acquired and must include:

- Property owner name and address
- Address of property to be acquired
- For property valued under \$10,000, a copy of market estimate and document real estate broker's license
- Document Appraiser's license and certification (when applicable)
- Preliminary Acquisition Notice to Owner Invitation to accompany appraiser Appraisal Reports
- Review of Appraisal
- Copy of written purchase offer
- Purchase agreement
- Copy of donation/waiver forms (if applicable)
- The deed to the property to be acquired
- All notices sent to property owner, business owner(s), and tenant(s), if any

Replacement Units

- Copy of Notice to HUD and public that documents the number and nature of replacement housing units required by Section 104(d) due to demolition or conversion of low-income housing units
- One Replacement Summary Grantee Performance Reports
- Documentation of local housing needs if replacement includes smaller units than those demolished or converted

Relocation

A separate file must be maintained for each household relocated and must include:

- A household survey, which should include the names, ages and demographic information (including income verification) of the household to be relocated
- A description of the nature of the advisory services offered, including the dates they were offered and any brochures or pamphlets explaining their rights
- Evidence of correspondence concerning the rights and payments available to displaced persons
- 90 day advance Relocation Notice (and evidence of delivery)
- 30 day Displacement Notice (and evidence of delivery)
- Evidence of at least three referrals to comparable units and Comparable Replacement Dwelling (HUD Form 40061) Inspection report on referral units
- Documentation on the types and amounts of benefit payments made, including:
 - Claim for Rental Assistance or Down Payment Assistance (HUD Form 40058)
 - Residential Claim for Moving and Related Expenses (HUD Form 40054)
 - Claim for Temporary Relocation Expenses-Residential Moves (HUD Form 40030)
 - Claim for Replacement Housing Payment for 90-Day Homeowner-Occupant (HUD Form 40057)
 - Claim for Actual Reasonable Moving and Related Expenses –Nonresidential (HUD Form 40055)
 - Claim for Fixed Payment in Lieu of Payment for Actual Nonresidential Moving and Related Expenses (HUD Form 40056)
- Evidence that payment was made (canceled check or the like) and payment schedule
- All notices sent to property owner, business owner(s), and tenant(s) if any.

11.3.10 LABOR STANDARDS

- Copy of Wage Determination Notice
- Copy of Wage Determination Lock-in Notice
- Justification of Wage Determination effective other than at bid opening (if applicable)
- Copy of Pre-Bid Conference Sign-in sheet (if applicable)
- Copy of the construction-related contract(s) with the HUD 4010 form and Federal Construction Contract Provisions referenced or attached
- Copy of the Pre-Construction Conference Checklist – signed by all attendees
- Copy of contractor(s) fringe benefit programs
- Copy of any apprenticeship certification programs, if applicable
- Copy of Contractor(s) Certification forms, if applicable
- Copy of Subcontractor(s) Certification forms, if applicable
- Copy of all weekly Certified Payroll Reports for contractor(s)/subcontractor(s) and any Correction Certified Payroll Reports
- Copy of all employee interviews
- Documentation of any wage deficiencies and copies of restitution payments, if any, including employee-signed affidavits acknowledging receipt of restitution.
- Copy of any Section 5.7 Enforcement Reports (if applicable)
- Copy of all Semi-Annual Labor Standards Enforcement Report – HUD Form 4710
- Section 3 Resident employment records

11.3.11 REPORTING FILE

- Copies of CDFA Semi-Annual Progress Reports
- Copy of HUD Disclosure Form 2880 Updates (if applicable)

11.3.12 MONITORING FILE AND CLOSEOUT

- Closeout Certification and Documentation Form
- Closeout Agreement
- CDFA monitoring letter
- Evidence of corrective actions in relation to CDFA findings (if applicable)

11.4 ACCESS TO RECORDS AND MAINTAINING CONFIDENTIALITY

Except for confidential records, all documents required to be maintained by, or reasonably considered as pertinent to, the grant agreement must be available for viewing and/or examination by any citizen, pursuant to the requirements of the New Hampshire *Right to Know Law*. Additionally, the grantee must provide access to records by the federal and state agencies identified at the beginning of this chapter. This section also addresses requirements that confidential records be maintained securely.

11.4.1 RIGHT TO KNOW LAW

The New Hampshire's Right to Know Law establishes requirements for governmental or public records. These requirements are applicable to municipalities, regional planning commissions, and other entities established through intermunicipal agreements, as well as non-profit corporations that have a government entity as their sole member or non-profit corporations that are composed of units of government and carry out the work of government with public funds.

Any information created, accepted, or obtained by, or on behalf of any public agency in furtherance of its official function is considered a governmental or public record. Those governmental records must be made available for public inspection and copying upon reasonable request. Public entities must respond to requests within five business days. Certain records are exempt from disclosure, but New Hampshire courts generally assume everything is available to the public unless the governmental agency proves otherwise. The New Hampshire Attorney General's Office published a comprehensive memorandum regarding the Right to Know Law. That memo provides guidance on what information can be classified as confidential and exempt from disclosure. See Attachment 11-2.

[Attachment 11 -2:
Attorney General's
Office Memorandum on
Right to Know Law](#)

Electronic and digital records also are defined and covered in the Right to Know Law. Electronic governmental records must be available in the same manner as records stored in public files if access to such records would not reveal work papers, personnel data, or other confidential information. These electronic records must be kept for the same length of time as a paper counterpart.

11.4.2 CONFIDENTIAL RECORDS

Grantees are also responsible for maintaining confidential records, which includes but is not limited to:

- staff personnel files
- labor and civil rights complaints
- Personally Identifiable Information (PII)

The grantee must undertake appropriate steps to demonstrate that such information is secure within both its physical records and electronic files. Physical records of such confidential information are to reside in a locked file cabinet separate from other records accessible only to the Grant Administrator. If a grantee delegates responsibility to a consultant or sub-recipient for tasks which may yield confidential records, very specific controls must be established in the contract to assure that the contractor understands the responsibility for maintaining confidential records.

Guidance for securing PII has been developed by the U.S. Department of Commerce and provided to all federal agencies. These recommended standards to assure confidentiality of this information are outlined in the Guide To Protecting Personally Identifiable Information (PII). This document provides six steps to assist grantees in working with their IT staff or provider to assure protection of PII. See Attachment 11-3.

[Attachment 11-3](#)
[Guide to Protecting](#)
[Personally Identifiable](#)
[Information \(PII\)](#)

CHAPTER 12: MONITORING AND CLOSEOUT

OVERVIEW

The Community Development Finance Authority (CDFA) conducts a monitoring process that is on-going throughout the implementation of each CDBG grant. This process is comprised of a series of activities that verify the requirements of the agreement between CDFA and the grantee have been completed. Additionally, the grantee is responsible for undertaking its own monitoring of all subrecipients that administer CDBG grant projects.

The closeout process and closeout agreement is the final phase of the Community Development Block Grant (CDBG) project administration. After activities are completed, funds drawn down, and monitoring issues (if any) are addressed, closeout can begin. This chapter will discuss the steps associated with both the monitoring and grant closeout process.

SECTION 12.1 MONITORING PROCESS

OVERVIEW

The purpose of the monitoring is to verify the project has met the stated goals and objectives of all federal CDBG regulations and that all contractors, subcontractors and suppliers have been paid in full and have provided final lien waivers. The primary objectives of monitoring are:

- Review Grant Recipient performance. A Grant Recipient's performance will be monitored to ensure that activities have been completed and beneficiaries served in accordance with the contract and that funds have been expended as identified in the budget.
- Identify any necessary corrective actions. Compliance monitoring performed through a desk review or on-site review could result in prescribed corrective measures to be carried out by the Grant Recipient in order to remediate non-compliance or to address performance deficiencies.
- Identify technical assistance needs.

Successful monitoring meetings largely depend upon the organization and accuracy of record keeping by the Grant Administrator.

MONITORING APPROACH

CDFA does not view monitoring as a one-time event. To be an effective tool for avoiding problems and improving performance, monitoring must be an on-going process. CDFA undertakes monitoring checks at multiple stages of a project's implementation. These monitoring steps are triggered by various events

including, payment draw requests, Semi-Annual Progress Reports, and ongoing communication with grantees regarding issues and activities undertaken to implement their CDBG projects.

These monitoring checks during the grant project may be unobserved by the grantee unless a problem arises or until a monitoring letter is issued. The monitoring review may be a comprehensive evaluation of all aspects of compliance for the project or it may be oriented toward assessing compliance in a specific area or areas. The reviews may be conducted at CDFA's offices or on-site. The depth and location of the monitoring will depend upon which compliance areas needed to be reviewed. Note, however, that any project could be subject to full scope monitoring of all compliance areas.

SCHEDULING AN ON-SITE VISIT

A visit is scheduled in advance. The Authorized Official (AO) of the grantee, as well as the grant administrator, is notified of the date, time, location and purpose of the review visit in writing. The scheduling process and notice should also outline which files and documentation will be needed during the monitoring visit.

ENTRANCE MEETING/INTERVIEW

Once on-site, the first thing that typically occurs is an entrance meeting/interview. CDFA staff will conduct an entrance meeting/interview to state the purpose of the review and summarize the documents and items that will be reviewed. Grantees should be prepared to provide an overview of the project as well as its status and any issues prior to the beginning of the reviews. CDFA staff will also ask about particular concerns or needs regarding the project so that technical assistance can be scheduled, if appropriate.

MONITORING OF FILES AND OTHER DOCUMENTATION

Utilizing appropriate checklists, the CDFA staff will review the files to determine if all requirements have been met. The primary areas being examined are consistency with the specific terms of the grant agreement and compliance with state and federal requirements.

Recordkeeping is the most important component of monitoring. Grantee files pertaining to the CDBG project must be orderly and complete. In addition, if files are maintained by or located in another office such as an engineer or clerk, these files should be obtained and available for review.

If required materials are not available on the date of the monitoring, CDFA will request that the Grantee or Grant Administrator submit the required documentation. If not submitted within the deadline established by CDFA, the issues will be listed on the official monitoring letter described in the subsection titled “Monitoring Letter and Follow-Up.”

- **Finding:** If there are areas that are discovered during the monitoring visit or other monitoring reviews that indicate noncompliance with the laws, regulations or other requirements, this may result in a finding. A finding of non-compliance must be remedied. A finding can result in punitive actions, like pay back of a portion or total of grant funds awarded or inability to apply for grant funds for a period of time, if corrective action is not taken in a specified manner and/or timeframe. For each finding, CDFA will indicate a corrective action, either to correct a past problem or to avoid a future problem, which must be taken by the grantee.
- **Concern:** A deficiency in program performance not based on a statutory, regulatory, or other program requirement is a concern. Corrective actions are not required for concerns, but CDFA may recommend actions.

MONITORING LETTER AND FOLLOW-UP

The grantee will receive a formal review letter giving the results of CDFA's monitoring review. This letter will generally be within 30 days of the conclusion of the monitoring visit; however, a longer timeframe may be appropriate based on workload and the complexity of the issues at hand. The letter will:

- Summarize the area(s) reviewed and performance expectations,
- Provide a summary and an analysis of what was discovered during the review, and
- List all findings and recommended corrective actions to resolve the findings and the timeframe in which the corrective actions must be carried out.

The review letter may also include one or more concerns. These are matters that, if not properly addressed, can become a finding and can ultimately result in sanctions. Concerns are often used to point out operational or management problems, or patterns of performance that could lead to larger problems later, even if they are not evident at the time of the review. Concerns may require some form of response on the part of the grantee.

The grantee must respond in writing within 30 days to any findings listed in the monitoring review letter.

- The grantee will describe all corrective actions taken or provide new information not reviewed during the visit. The corrective actions must be consistent with the recommendations made by CDFA in the monitoring letter.
- The grantee's authorized official must certify that all regulations will be observed in future transactions and provide written assurance that no adverse effects occurred to the project for failure to observe said regulations.

If issues are not resolved, CDFA may impose a progressive level of punitive actions that include:

- Additional reporting
- Suspension of funding
- Additional special conditions
- Return of disallowed expenditures
- Termination of the grant

CDFA will inform the grantee if the response is sufficient to clear the findings and will provide any assistance necessary to ensure that the project is completed according to the grant agreement and all state and federal rules and regulations. No project will be closed if there are outstanding findings, including audit issues.

SECTION 12.2 SUBRECIPIENT MONITORING

Many projects or programs will be carried out by a subrecipient. Although the grantee will contract with the subrecipient to carry out the CDBG activities and pass through funds, this does not mean that the grantee can transfer or "assign" its responsibilities as a grantee. Since the state's contract is with the grantee, it is the grantee's performance which the state will monitor. It then becomes the grantee's responsibility to ensure that its subrecipient is carrying out the project in conformance with the certifications and requirements that it has inherited as a result of receiving CDBG funds. As a result, grantees need to assure such compliance by undertaking monitoring of all subrecipients.

A subrecipient must be monitored to ensure compliance with all of the requirements outlined in its agreement with the grantee. A well thought out and clear agreement is essential in avoiding problems. Most agreements are project-specific, with many of the general requirements only referenced. Monitoring is, in effect, a method of determining if the subrecipient is either in default of the agreement or will be in default (if things are allowed to continue).

Grantees may want to develop a plan and procedures to monitor subrecipients. Attachment 12-1 provides guidance on how to develop such a monitoring plan and procedures. The subrecipient monitoring process, which is consistent with the monitoring that CDFA performs of grantees, should include the following:

[Attachment 12-1:
Subrecipient Monitoring Plan
and Procedures](#)

1. Monitoring Schedule: There is no required frequency, except that there must be at least one formal monitoring during the life of the project.
2. Monitoring Checklist: This list will vary, depending on the activities to be monitored. See Attachment 12-2 for CDFA's example checklist to use in performing monitoring.
3. Perform Monitoring Visit: While there is no formal requirement as to how to conduct the monitoring visit, Attachment 12-1 provides suggested steps to set up and undertake the monitoring visit.
4. Send Formal Monitoring Letter and Follow-Up: The grantee should issue a summary of the visit and monitoring process. The grantee should address any problems or areas of non-compliance with the subrecipient prior to closing out its contract/agreement.

[Attachment 12-2:
Subrecipient Monitoring
Checklist](#)

SECTION 12.3 INITIATION OF CLOSEOUT PROCESS

The closing out of your grant can begin in one of two ways. Either the grantee can contact CDFA to inform the agency that the grantee is ready to closeout or CDFA may initiate closeout, particularly if the grant is within 30-45 days of its expiration date. No matter who initiates the process, the first step toward closeout should be to review all project records to determine that the following activities have been completed and are documented in the grantee's files:

- All costs to be covered by the CDBG grant have been incurred or obligated, including payment of a final audit, if necessary, and any unsettled third party claims or contract commitments. Costs are considered incurred when goods and services are received and contract work is performed. With respect to activities which are carried out through a revolving loan account or escrow account, costs are considered incurred when initially used for the purpose described in the grant contract with CDFA.
- All Semi-Annual Progress Reports are submitted and CDFA has accepted them as complete.
- All financial and program monitoring findings have been resolved to the satisfaction of CDFA.
- All prior audit findings have been resolved.
- At least one public hearing (mid-grant hearing) was held since initiating the project and all comments received have been placed in the project files.
- All other responsibilities under the CDBG contract, including any special conditions, have been carried out to the satisfaction of CDFA.

SECTION 12.4 CLOSEOUT PROCEDURES

The grantee should prepare and submit the Close-Out Certification and Documentation form. (See Attachment 12-3.) The Authorized Official (AO) of the grantee must sign the signature page of the form. The grantee must also complete the Financial Management Component in CDFA's Grants Management System (GMS).

[Attachment 12-3:
Close-Out Certification and
Documentation Form](#)

There should only be two types of cash remaining in your account:

1. cash to pay unliquidated obligations, such as that last audit or final payment on any other third party contracts;
2. if you have more cash than that, write a check to CDFA for the unobligated amount and to any third party contractors (they must be paid before the Closeout Form is submitted).

If the balance on hand represents future audit or contractor costs, explain this on the comment lines. Please use the comment lines to explain any unusual financial issues and list all outstanding obligations and amounts.

When CDFA approves your Closeout Certification Form, your grant administrator will send you a Closeout Agreement. The form you receive will be tailored to your specific grant status. The different forms vary primarily according to whether the grantee expects program income and/or if grantee will still have to submit an audit(s). When this arrives, read the agreement carefully because grantees may have a few continuing responsibilities after closeout. For example, with any expected program income that accrues, CDFA will want to hear from you before you spend it. If you built a senior citizens' center, HUD regulations, and your security documents, will restrict its use being changed to a bowling alley or City Hall. (See Change of Use section later in this chapter.)

The grantee should sign the Close-out Agreement and return it to CDFA via mail or electronically. When received, CDFA will sign the agreement and return a fully signed copy. The grantee should put the signed copy with its grant files.

SECTION 12.5 RECORD RETENTION

Once the project has received final closeout, the grantee is required to retain all records pertaining to the project until notified from CDFA that records may be destroyed. Refer to [Chapter 10: Reporting and Recordkeeping](#) for more information on the records that must be maintained.

SECTION 12.6 CHANGE OF USE RESTRICTIONS

The CDBG regulations contain provisions regarding changing the use of real property within the grantee's control that was acquired or improved, in whole or in part, with CDBG funds. These provisions require that the property be maintained for the original eligible use and to continue to meet a national objective for at least five years after the local unit of governments has received a signed Closeout Agreement from CDFA.

[24 CFR 570.489\(j\)](#)

If the project involved acquisition or improvement of real property using CDBG funds in excess of \$250,000 (the federal small purchase threshold), during the five years following receipt of a signed Closeout Agreement:

- A grantee may not change the use or planned use of any such property from that for which the acquisition or improvement was made, unless CDFA and grantee provide affected citizens with reasonable notice of and opportunity to comment on any proposed change.
- The grantee must have a security document that references the use restrictions.
- The new use of the property must qualify as meeting one of the national objectives and is not a building for the general conduct of government. However, if CDFA and the grantee determine, after consultation with affected citizens, that the reuse of the property is deemed appropriate but is not a CDBG eligible activity and does not meet a national objective, it may retain or dispose of the property for the changed use. CDFA will require reimbursement in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property. Following the reimbursement to CDFA for the CDBG program, the property no longer is subject to any CDBG requirements.

GLOSSARY OF TERMS AND ACRONYMS

These terms are used frequently throughout the handbook. Please reference these terms for an explanation of commonly used names, acronyms, and phrases.

ACH Routing Number: The number assigned to each bank by the Federal Reserve for the routing of financial transactions.

Action Plan: The state's annual submission to HUD required by 24 CFR Part 91.

Affirmative Action: A specific action or activity to eliminate or prevent discrimination. Affirmative action is often designed to remedy past discrimination and to ensure it does not reoccur.

Allowable Costs: Costs that are acceptable under 2 CFR 200 and are approved as part of an activity in the grant agreement.

Amendment: A written revision or change to the contract/grant agreement.

American Indian/Alaskan Native: A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.

ADA: Americans with Disabilities Act of 1991.

Applicant: The municipality or county applying for a CDBG grant.

Assessed Value: The valuation of property for the purpose of levying a tax.

Application and Program Guide: The instructions for completing an application for CDBG grants and information on the review and scoring of applications.

Appraised Value: An estimate and opinion of the value of property resulting from the analysis of facts. The three generally accepted approaches to real estate value estimates are: (1) market approach - comparison with known sales of other properties in the same area and classification; (2) cost approach - reproduction costs less depreciation; and (3) income approach - capitalization of the estimated net income.

Assurance: A written statement or contractual agreement signed by the chief executive officer in which a grantee agrees to administer Federally-assisted programs in accordance with laws and regulations.

Authority: *The Community Development Finance Authority (CDFA)*

Authorized Official: Chief Elected Official of municipality.

Beneficiaries: Persons to whom assistance, services or benefits are ultimately provided.

Business and Employment Commitment Agreement: Agreement between the municipality and assisted business.

Change Order: A written revision or change to a contract.

Chief Executive Officer: The "chief executive officer" as defined in RSA 162-L:11, II.

Collateral: Security given as a pledge for the fulfillment of an obligation normally in the form of fixed assets (i.e., land, building, equipment, etc.).

Committee: The community development advisory committee.

Community Based Development Organization (CBDOs): A locally based non-profit that is certified by the CDBG program to implement CDBG activities under Section 105(a)15 and retain CBDO proceeds which are not considered program income and are not federal funds.

Community Development Grant: A CDBG grant in either subcategory of housing or public facilities.

Community Development Block Grant (CDBG): The Federal entitlement program that provides funds to States and cities/counties for community development programs and projects.

Competitive Negotiation: Discussion regarding technical and price proposals with offers in the competitive range for a contract being awarded using the competitive proposals or noncompetitive proposal method of procurement.

Condemnation: The act of taking private property for public use by a political subdivision.

Congregate housing" means low income housing, predominantly for elderly, handicapped, disabled or displaced families, which might or might not have kitchen facilities but is connected to a central dining facility.

Consolidated Plan (Con Plan): The State's planning document submitted to HUD every 5 years required under 24 CFR Part 91. It describes needs, resources, priorities and proposed activities to be undertaken with respect to HUD's CPD formula programs, including CDBG.

Contract Amendment: Any written alteration in the specifications, delivery point, day of delivery, contract period, price, quantity or other provision of an existing contract, between the local unit of government and any consultants, contractors or sub-recipients.

Contractors: A contractor is an entity paid with project funds in return for a specific service (e.g., construction). Contractors must be selected through a competitive procurement process.

Cost Reimbursable: A type of contract where contractors are paid for the work accomplished. The contract specifies an estimate of total costs and designates a maximum dollar amount that cannot be exceeded without the approval of the contracting officer.

Discrimination: Unequal treatment of a class of persons. An action, policy or practice is discriminatory if the result is unequal treatment of a particular protected class.

Displaced Person or Business: When a person or business is forced to move permanently as a direct result of acquisition, demolition or rehabilitation of HUD-assisted projects carried out by public agencies, non-profit organizations, private developers, and others.

DUNS Number: The Data Universal Numbering System (DUNS) is a unique numeric identifier assigned to a single business entity, developed and regulated by Dun & Bradstreet (D&B).

Easement: The right, privilege or interest one party has in the land of another and is an encumbrance against the property that is subject to it. An easement may be permanent or temporary.

Economic development entity (EDE) " means an organization that:

1. Is incorporated for the primary purpose of providing economic development services to a defined geographic area;
2. Administers a revolving loan fund;
3. Is not an agency or instrumentality of the grantee or grantees;
4. Has broad membership on its representative body, and elects its governing board by vote of its membership;
5. Has the power to fill vacancies which arise on its governing body with its own nominees, approved by the membership of its governing body;
6. Is not subject to requirements under which its assets revert to the grantee upon dissolution;
7. Is free to contract for goods and services from vendors of its own choosing; and
8. Is registered with the New Hampshire secretary of state as a not-for-profit organization.

Economic Development Grant: The awarding of CDBG funds to create or retain employment for low and moderate income persons by business financing techniques, providing needed public facilities or increasing the expertise and capacity of non-profit regional development corporations to capitalize and manage revolving loan funds for economic development.

Effectively exclude" means that the net result of the combination of ordinances, codes and written policies of a municipality or county:

1. Exclude certain kinds of housing;
2. Discriminate against low and moderate income persons or households; or
3. Benefit moderate income persons or households to the exclusion of low income persons or households; even though the ordinances, codes, and policies, when taken individually, do not.

"Efficiency housing unit" means an apartment unit consisting of one room and therefore, one without a separate bedroom.

Eligible Costs: The costs of a project that are acceptable according to Section 105 of the Housing and Community Development Act and that are consistent with the Assistance Agreement.

Eminent Domain: The power of the government to take private property for public use upon just compensation. The power extends to all lands acquired for the purpose of a higher public character deemed necessary for the proper performance of governmental functions essential to the life of the State.

Entitlement municipality" means the cities of Manchester, Nashua, Portsmouth, Dover, and Rochester which receive funds directly from HUD under 42 U.S.C. 5306 (b) of the federal act.

"Entity" means a distinct governmental unit.

Environmental Assessment (EA) Checklist: A concise public document to aid in a grantee's compliance with the National Environmental Policy Act.

Environmental Certifying Officer (ECO): The Authorized Official or other officially designated staff of the municipality who is authorized to make decisions on behalf of the grantee.

Environmental Clearance: A clearance given by CDFA to indicate a grantee has met the CDBG environmental procedures and sufficient documentation and certification have been provided.

Environmental Impact Statement (EIS): The documentation that is required when a project is determined to have a potentially significant impact on the environment.

Environmental Review: The technical process of identifying and evaluating the potential environmental effects of a specific project within each impact category and as a whole.

Environmental Review Record (ERR): Documentation of the environmental review process including all assessments or environmental impact statements, published notices, notifications and correspondence relating to a specific project.

Equal Employment Opportunity (EEO): Refers to a number of laws and regulations that together require that CDBG grantees provide equal opportunity to all persons without regard to race, color, religion, age, familial status, disability, sex, sexual orientation, gender identity, or national origin in the administration of their programs.

Equity: Funds that will be invested in a project by a private company designated as the participating party in the grant agreement.

Executive director" means the executive director of the community development finance CDFA.

Extremely Low-Income: As defined in the Consolidated Plan regulations and Section 8 Program, a family whose annual income does not exceed 30 percent of the area median family income.

Fair Housing: Refers to a number of Federal and State laws and regulations that prohibit a wide range of discriminatory practices and require that CDBG programs be administered in a manner that affirmatively furthers fair housing.

Fair Market Value: The price at which a willing seller would sell and willing buyer would buy a piece of real estate with neither being under abnormal pressure. As defined by the courts, the highest estimated price a property would bring if exposed for sale in the open market.

Family: As defined in the Entitlement program a group of persons residing together, and includes but is not limited to: a family with or without children, an elderly family; a near-elderly family; a disabled family; or a displaced family. An individual living in a housing unit that contains no other person(s) related to him/her is considered to be a one-person family for this purpose (means all persons living in the same household who are related by birth, marriage or adoption).

Feasibility grant" means a CDBG grant to determine whether or not a proposed CDBG project is feasible and/or to recommend specific action(s) to be undertaken to support feasibility of a project.

Federal act" means Title I of the Housing and Community Development Act of 1974, as amended, codified at 42 U.S.C. 5301 et seq.

Federal Assistance: Any funding, property or aid provided for the purpose of assisting a beneficiary.

Federal Tax ID Number: The number assigned to the grantee by the Internal Revenue Service (IRS) for the purpose of filing tax information.

Fee Simple: Absolute ownership of real property with unrestricted rights of disposition during the owner's life.

Firm Fixed-Price Contract: A contract that provides for a price that is not subject to any adjustment in the performance of the contract.

Firmly committed matching funds" means a binding pledge of cash, and also includes the value of real property if donated through transfer or lease to a subrecipient for a minimum period of 20 years, but does not include anticipated money, previously expended money or sweat equity.

Finding of No Significant Impact (FONSI): A public document by a Federal agency or a CDBG grantee briefly presenting the reasons why an action not otherwise excluded (40 CFR 1508.4) or exempt will not have a significant effect on the human environment and for which an environmental impact statement will not be prepared.

Full-time job" means a job that requires at least 1820 work hours per year.

Funding Agency: Term used to refer to the entity that provides funding for an activity, project or program, as used particularly when completing environmental requirements. In the case of CDBG funds, CDFA is the funding agency.

Governing body" means the city council or board of alderman of a city or the board of selectmen or town council of a town or the county delegation of a county.

Grantee: Refers to a municipality or county that receives CDBG funds under the State of New Hampshire's CDBG Program.

Hispanic or Latino: A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.

Household: As defined in the Entitlement program, all persons occupying the same housing unit, regardless of their relationship to each other. The occupants could consist of a single family, two or more families living together, or any other group of related or unrelated persons who share living arrangements. (means all the people who occupy a housing unit. A household includes the related family members and all the unrelated people, if any, such as lodgers, foster children, wards, or employees who share the housing unit. A person living alone in a housing unit, or a group of unrelated people sharing a housing unit such as partners or roomers, is also counted as a household)

Housing grant" means a CDBG grant awarded to acquire, expand, improve or construct occupied housing.

"Housing unit" means a single room, an apartment, cooperative or condominium, a single family home or a residential unit which forms part of an independent group residence, congregate housing or shared housing.

"HUD" means the U.S. Department of Housing and Urban Development.

Implementation guide" means CDFA publication which explains and recommends ways to administer a community development block grant award and lists the applicable state and federal laws, regulations and rules.

Income" means all wages and salaries, interest, social security, pensions, net business income, rental income, transfer, welfare payments, veterans' benefits, educational assistance and alimony received, but not alimony paid of adults living in the same family or household.

"Independent group residence" means a dwelling unit consisting of a living room, kitchen, dining area, bathroom and bedroom(s) for up to 12 elderly, handicapped or disabled but ambulatory persons and their families who are unable to live independently and who need a planned program of continual support services provided by a resident assistant.

Inspection: The examination and testing of supplies and services to determine if they conform to contractual requirements.

Internal Controls: Policies and procedures that ensure project transactions will be carried out in conformity with applicable regulations and agency policy.

Invitation for Bids (IFB): Under the sealed bidding method of procurement, the written solicitation document that explains what the grantee is buying and requests bids from potential contractors.

Language Assistance Plan (LAP): A plan developed by organizations to address other-than-English language service capabilities for limited-English proficient (LEP) individuals.

Lease: A contract in which a property owner (lessor) transfers the possession of an asset to another party (lessee), usually in exchange for the payment of rent.

Legally Binding Agreement: Document entered into between the grantee and the non-profit and/or participating party that defines and delineates each party's responsibilities as contained in the grant agreement.

Lien Position: The order in which creditors will be satisfied in case of default.

Life Estate: An estate or interest held during the term of a particular person's life.

Limited English Proficiency (LEP) Individuals: Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English.

Local Match: Funds provided by the locality/grantee as a condition of award/use of CDBG funds. Local match can come from a variety of non-grant, cash sources.

Long term benefit" means the project will provide a benefit, primarily to low and moderate income persons or households, for a minimum of 20 years and that the grantee has the administrative capacity to ensure that this benefit is maintained

Low and Moderate Income (LMI): As defined in the Consolidated Plan means a family or household annual income less than the Section 8 Low Income Limit, generally 80 percent of the area median income, as established by HUD. The 80% limit is calculated as 80% of the non-metro statewide median or the county median, whichever is greater. In metropolitan areas, the median income for the entire metropolitan area is used.

Low-income Households: A household/family having an income below 50 percent of the area median income.

Low-income Person: means an individual or a member of a family whose income is equal to or less than the Section 8 Very Low Income limit (50% of the area median income) as established by HUD

Moderate-income Person: means an individual or a member of a family whose income is equal to or less than the Section 8 Low Income limit (80% of area median income) established by HUD, but greater than the Section 8 Very Low Income limit (50% of area median income) established by HUD

Microenterprise: A commercial enterprise that has five or fewer employees, including the owner (or owners) of the business as defined at 42 U.S.C. 5302(a)(22) of the federal act.

Microenterprise development assistance: means providing microenterprises with technical assistance, credit and business support services for establishment, stabilization and expansion

Minority: A person or groups of persons differing from others in some characteristics such as race, color, national origin, religion, sex, disability or familial status.

Minority Business Enterprise/Woman-owned Business Enterprise (MBE/WBE): Companies owned by minorities or women, that are certified by Department of Administrative Services.

Miscellaneous Revenue: Revenue recaptured by a grantee that is not program income and not subject to Federal requirements.

Moderate-income: A household/family having an income above 50 percent but below 80 percent of the median income for the area.

Monitoring: A routine review of projects during and after Federal assistance has been provided to the grantee.

Municipality: means "municipality" as defined in RSA 162-L:11, VIII, and includes a county consisting of its non-entitlement areas and its unincorporated areas, if any

National Objective(s): Refers to the three main goals of the CDBG Program—(1) benefit to LMI persons, (2) prevent or eliminate slums/blight, or (3) meet a need having a particular urgency. All funds expended under the program must meet one of the three national objectives.

National Origin: Can be defined as a person's ancestry, nationality group, lineage or country of birth of parents and ancestors before their arrival in the United States.

Native Hawaiian/Other Pacific Islander: A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

Necessary and Appropriate: The process used by the grantee to ensure that private firms benefiting from CDBG projects will not be unduly enriched.

Net job creation: means the number of permanent full-time jobs plus the number of annualized permanent part-time jobs created by a business as a result of CDBG assistance, excluding seasonal, temporary and previous jobs

New Hampshire Alliance of Regional Development Corporations, Inc: means the registered New Hampshire nonprofit corporation whose membership consists of regional development corporations and whose purpose is to advocate for and support the efforts of the regional development corporations

Non-competitive Proposals: The method of procurement in which the grantee solicits proposal(s) from one source or a limited number of sources. This process may be used only under very limited circumstances and CDFA must approve the use of noncompetitive proposals.

Non-compliance: Failure or refusal to comply with an applicable law or regulation or CDFA requirement.

Non-entitlement area: means "non-entitlement area" as defined in 42 U.S.C. 5302(a)(7) of the federal act

Notice of Intent/Request Release of Funds (NOI/RROF): The notice the grantee completes and submits to CDFA once it is determined that a project will not require an environmental impact statement.

Nursing facility: means "nursing facility" as defined in RSA 151-E:2, V.

OMB" means the U.S. Office of Management and Budget

Persons with Disabilities: Persons who have physical or mental impairments that substantially limit one or more of their major life activities (i.e., talking, walking, working, etc.), have histories of those impairments, or are regarded as having those impairments under provisions of the ADA.

Private debt financing: means underwritten, risk-assessed commercial financing that is firmly committed matching funds to a project by a third party who is independent from the business

Proforma: means a statement of projected annual operating income and expenses.

Program Income: Gross income received by a municipality or a sub-recipient that was generated from the use of CDBG funds, as defined by 24 CFR 570.489(e).

Program Income Reuse Plan: A plan which describes how program income and income from program income will be expended. See also "Reuse Plan" below.

Proposal: In the competitive/noncompetitive proposal method of procurement, the offer submitted by a potential contractor.

Protected Class(es): A person or persons who, by virtue of race or color, national origin, religion or creed, sex, disability, age, familial status, gender identity, or marital status are protected and given redress by the law when discriminated against.

Public facilities grant: means the awarding of CDBG funds to provide a public service or acquire, construct, reconstruct, rehabilitate, or install:

1. Water and sewer systems;
2. Public property such as streets, sidewalks, parks, historic sites, open space and recreation areas; or
3. Homeless shelters and neighborhood or community centers in which to offer or provide public services;
4. Any other public infrastructure CDFA deems eligible.

Public Notification: Process of publicizing information about CDBG projects. This is attained through the use of newspapers, newsletters, periodicals, radio and television, community organizations, grassroots and special needs directories, brochures, and pamphlets.

Public Posting: Display of information in prominent locations throughout the community.

Public services: means those activities which provide or improve some aspect of a community's welfare or needs. These include, but are not limited to, the operation of child day care, elderly and handicapped activities, recreation, health programs and educational programs on health, substance abuse, energy conservation and crime prevention.

Quotation: The price or offer submitted by a business in the small purchase method of procurement.

Recipient: Municipality that is awarded a CDBG grant (also referred to as grantee). The term recipient can also be used to refer to beneficiaries of certain programs, like housing programs.

Regional Development Corporation: means an organization that:

1. Is incorporated for the primary purpose of providing economic development services to an area covering at least 3 municipalities;
2. Administers a revolving loan fund;
3. Is not an agency or instrumentality of the grantee or grantees;
4. Has equal membership on its representative body available to each of the municipalities in its chartered area and elects its governing board by vote of its membership;
5. Has the power to fill vacancies which arise on its governing body with its own nominees, approved by the membership of its governing body;
6. Is not subject to requirements under which its assets revert to the grantee upon dissolution;
7. Is free to contract for goods and services from vendors of its own choosing;
8. (h) Is registered with the New Hampshire secretary of state as a not for profit organization; and
9. Is a member of the New Hampshire Alliance of Regional Development Corporations, Inc. as of January 1, 2006.

Regional Planning Commissions (RPC's): Regional planning and development organizations in which counties and cities work together to accomplish common goals and receive shared benefits.

Regular funding competition: means the annual application process for CDBG grants

Regulations: Refers to the implementing requirements that are developed and issued by the agency responsible for a certain program or requirement. In the case of CDBG, the regulations are issued by HUD and can be found at 24 CFR Part 570.

Release of Funds: The date on which the grantee has received environmental clearance and CDFA has received and approved all the items listed in the evidentiary section of the grant agreement.

Request for Proposals (RFP): Under the competitive proposal method of procurement, the offeror's written solicitation to prospective firms to submit a proposal based on the terms and conditions set forth therein. Evaluation of the proposal is based on the factors for award as stated in the solicitation.

Request for Qualification (RFQ): A form of procurement of professional services by competitive proposals in which price is neither requested in the advertisement nor used as an evaluation factor. Only technical qualifications are reviewed and a fair and reasonable price negotiated with the most qualified firm.

Request for Quotations: Under the small purchase method of procurement, a brief written request for a price quotation from potential contractors.

Responsible Bidder: A bidder who has the technical and financial capacity to secure the necessary resources in order to deliver the goods or services including meeting all the conditions as required by the bid.

Responsible Entity (RE): Term used to refer to the entity responsible for completing and certifying an environmental review record, as required under 24 CFR Part 58. In the case of CDBG funds, municipalities (that are grantees of CDBG) are the responsible entity.

Responsive Bid: A bid that conforms exactly to the requirements in the invitation for bids (IFB).

Reuse plan: means a plan which describes how program income and income from program income will be expended.

Revolving Loan Fund: A separate fund that is independent of other program accounts established to carry out specific activities that, in turn, generate payments to the fund for use in carrying out such activities. Commonly used under CDBG program income funds for ongoing housing rehabilitation or economic development activities. Principal repayments are deposited for future re-lending to new borrowers.

Right of Way: A privilege operating as an easement upon land whereby the owner has given to another the right to pass over the land to construct a roadway or use as a roadway a specific part of the land. The right to construct through or over the land telephone, telegraph or electric power lines, or the right to place underground water mains, gas mains or sewer mains.

Sanctions: Measures that may be invoked by HUD to exclude or disqualify someone from participation in HUD programs (e.g., debarment and suspension) or to address situations of noncompliance.

Sealed Bidding: The procurement method for requesting competitive sealed bids. This method of procurement requires specifications be written clearly, accurately and completely describing the requirements. A public bid opening is held and evaluation of bids and award of the contract are based on the lowest responsible bid submitted by a responsive and responsible contractor.

Section 3: Refers to Section 3 of the Housing and Urban Development Act of 1968, as amended in 1992, which requires that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, be directed to low- and very low-income persons, and/or to businesses that provide economic opportunities to low- and very low-income persons.

Section 8: means that section of the United States Housing Act of 1937, as amended, codified at 42 U.S.C. 1401 et seq.

Serious and immediate threat: means that the condition proposed to be corrected with CDBG funds will be a detriment to the health and welfare of the community if not corrected, that no other funds are available, and that the unforeseeable condition became critical within the most recent 18 months.

Service area: means the geographic area served by a water or sewer public facilities grant.

Shared housing: means a housing unit occupied by 2 or more families, or up to 12 people consisting of some common space, a living room, kitchen, dining area and bath, and an appropriate number of bedrooms.

Single Annual Audit: The Single Annual Audit is a rigorous, organization-wide audit or examination of an entity that expends \$750,000 or more of Federal assistance (commonly known as Federal funds, Federal grants, or Federal awards) received for its operations.

Single room occupancy unit: means a housing unit for one individual capable of living independently which contains no kitchen or bathroom, or one, but not both, is located in a structure of 4 or more units, and is recognized as a boarding or rooming house on the tax records of the municipality.

Slum: means "slum" as defined in RSA 204-C:1, XXVI

Specifications: Clear and accurate description of the technical requirements of a service or supply contract.

Special needs group: means those persons who are part of any group that includes but is not limited to:

1. Elderly;

2. Physically handicapped;
3. Persons with AIDS;
4. Persons with terminal illnesses;
5. Persons with mental illness; and
6. Persons with development disabilities or persons with alcohol and/or drug abuse dependency which require special services and/or housing.

State Historic Preservation Office (SHPO): The State office that determines whether a grantee's project includes historically significant properties under applicable environmental review requirements. In New Hampshire, this office is within the New Hampshire Division of Historical Resources.

Scope of Work: Written definition of work to be performed that establishes standards sought for the goods or services to be supplied, typically used for service contracts.

Statute/Statutory: Refers to requirements that have their basis in the law passed by Congress. In the case of CDBG, the statute is Title I of the Housing and Community Development Act of 1974. Statutory provisions cannot be waived by HUD, except in cases of a natural disaster, and must be changed or approved by Congress.

Statutory Checklist: A checklist covering environmental compliance required by other Federal agencies, executive orders and other HUD regulations (24 CFR 58.5).

Sub-recipient: A village district, school district, housing, for-profit or nonprofit organization or corporation which receives CDBG funds from the grantee to implement the project for which the funds were awarded.

Substandard housing unit: means a residential housing unit which does not meet physical condition standards for HUD housing that is decent, safe, sanitary and in good repair as defined in 24 CFR 5.703.

Sweat equity: means the value of the labor of volunteers working on CDBG activities.

System for Award Management (SAM): An information system tool that streamlines the Federal acquisition business processes by acting as a single authoritative data source for vendor, contract award, and reporting information.

Target area: means the geographic area encompassing the neighborhood or community of the low and moderate income persons or households who are expected to benefit from a CDBG activity.

Termination for Convenience: Termination of a contract on a unilateral basis when the grantee no longer needs or requires the products or services or when it is in the best interest of the grantee.

Termination for Cause: Termination of a contract when the contractor fails to perform or make progress so as to endanger performance.

Time Delay: An interruption during which services, supplies or work are not delivered in accordance with the performance time schedule stated in the contract.

Title VI of the Civil Rights Act of 1964: Federal law (USC 2000d-4) prohibiting discrimination based on race, color or national origin.

Underwriting Guidelines: Uniform minimum standards for the review of assistance to business projects to ensure no for-profit entity or person is unduly enriched by CDBG assistance.

Uniform Federal Accessibility Standards (UFAS): Uniform standards for the design, construction and alteration of buildings so that physically disabled persons will have ready access to and use of them in accordance with the Architectural Barriers Act.

Uniform Relocation Act (URA): The Federal regulation governing the acquisition of real property and the relocation or displacement of persons from Federally-assisted projects.

Urgent Need grant: means a CDBG grant awarded in response to unpredictable events or circumstances.

US Department of Housing and Urban Development (HUD): HUD establishes the regulations and requirements for the program and has oversight responsibilities for the use of CDBG funds.

US Department of Labor (DOL): Department of the U.S. Government that is responsible for Federal labor regulations and requirements.

US Environmental Protection Agency (EPA): Department of the U.S. Government that is responsible for Federal environmental regulations and requirements.

Very Low-income: As defined by the Consolidated Plan regulations and Section 8 Program, a family whose annual income falls in the range of 31 to 50 percent of the area median family income.