Louisiana

COMMUNITY DEVELOPMENT
BLOCK GRANT PROGRAM

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2010 Grantee Handbook

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This public document is published at a total cost of $3,064. 115 copies of this public document were published in this first printing at a cost of $3,064. The total cost of all printings of this document including reprints is $3,064. This document was published by the Office of Community Development, Division of Administration to provide technical assistance in grants management under special exception by the Division of Administration. This material was printed in accordance with standards for printing by State Agencies established pursuant to R.S. 43:31. Printing of this material was purchased in accordance with the provisions of Title 43 of the Louisiana Revised Statutes.

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COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

FY 2010 GRANTEE HANDBOOK

Table of Contents

A. PROGRAM ADMINISTRATION A-1

Introduction A-1

The Performance Schedule A-1

Completing Environmental Review Requirements A-1

Establishing the LCDBG Funds Account, Requesting Payments, Three-Day Expenditure Rule, and Disbursement of Funds A-15

Establishing Procedures for Financial Administration A-18

Changes in the Grant; Preparing Budget Reconciliations, Budget Revisions and Program Amendments A-23

Audits A-25

Removing Contract Conditions/Release of Funds A-27

Community Development (CD) Plan A-29

Procurement Requirements A-29

Equal Opportunity Requirements A-42

Section 3 Compliance A-45

Developing and Implementing a Fair Housing Program A-54

Developing a Citizen Participation Plan A-55

Section 504 Requirements A-59

Anti-displacement A-63

Disclosure Reports A-63

Record Keeping and Reporting A-63

B. LABOR COMPLIANCE B-1

Regulations/Requirements B-1

Responsibilities B-2

Wage Decisions B-2

C. PUBLIC FACILITY IMPROVEMENTS C-1

Preparing Contracting Procedures to Meet Equal Opportunity Requirements C-1

Preparing a Bid Package, Developing Bid Opening Procedures and Advertising for Bids C-3

Procedures for When Bids Exceed Cost Estimates C-9

Awarding a Contract, Notifying Contractors of Responsibilities and Issuing a Notice to Proceed C-10

Monitoring Contractor Progress and Making Progress Payments C-12

Inspecting and Accepting the Work, Closing Out the Project, and Making Final Payment C-14

Restrictions on Fire Protection Projects C-15

D. HOUSING: REHABILITATION/RECONSTRUCTION AND PHYSICAL ACCESSIBILITY D-1

Introduction D-1

LCDBG Rehabilitation/Reconstruction Program D-1

LCDBG Physical Accessibility Program D-45

E. ACQUISITION/ANTI-DISPLACEMENT/RELOCATION/DEMOLITION E-1

Acquisition E-1

Anti-Displacement E-14

Relocation/Demolition E-17

F. ECONOMIC DEVELOPMENT F-1

Introduction F-1

Program Administration F-1

Infrastructure Projects F-5

Acquisition F-5

Relocation F-6

Davis-Bacon and Related Acts F-6

Program Income F-7

Program Benefit/Tracking Job Requirements F-8

Financial Reporting Requirements F-8

Sources and Uses Report F-10

Loan Default F-11

Closeout F-12

Economic Development Record Keeping F-13

G. MONITORING AND CLOSEOUT G-1

Monitoring of LCDBG Programs by the State G-1

Preparing The Program Completion Report G-1

Audit and Financial Review Findings G-3

Sanction Policy G-3

KEYWORD INDEX ..... a

A. PROGRAM ADMINISTRATION

INTRODUCTION

The administrative requirements of the Louisiana Community Development Block Grant Program (LCDBG) are presented in this section. It describes each task that must be completed from the grant award date to project close out. Careful attention to these administrative tasks will assist grantees in avoiding or minimizing many of the problems experienced during implementation and audit. The text describes the steps required to complete each task and references required forms and examples contained in the exhibits.

THE PERFORMANCE SCHEDULE

A project performance schedule was developed as part of the application that shows each activity's major milestones and estimated expenditures. The performance schedule is referenced in the LCDBG contract and is used to monitor the program's progress. Grantees must adhere to this schedule. The schedule shows twelve quarters, as the contract allows thirty-six months for contract completion.

If a program amendment is approved or if the performance schedule changes significantly, a revised schedule must be prepared and submitted to the Office of Community Development's (OCD) Local Government Representative (LGR) assigned to the grant. A significant change is one that delays milestone accomplishments by more than one quarter (three months). Changes should be reported so that the OCD remains aware of the program's progress and can monitor performance against realistic goals. If the project is behind schedule, the OCD will request a revised schedule.

COMPLETING ENVIRONMENTAL REVIEW REQUIREMENTS

The purpose of the Environmental Review Record (ERR) is to document the environmental review process and all actions taken by the grantee during the course of the environmental review.

Each grantee must implement its program in compliance with the National Environmental Policy Act of 1969 (NEPA) and the environmental requirements of other federal laws. These policies and laws cover the following areas: Noise, Air Quality, Historic Properties, Floodplains, Wetlands, Coastal Zones, Water Quality, Sole Source Aquifers, Toxic and Radioactive Materials, Explosive and Flammable Operations, Airport Clear Zones, Coastal Barriers, Farmlands Protection, Endangered Species, Environmental Justice, and Wild and Scenic Rivers. Copies of 24 CFR Part 58 and other handouts that contain environmental regulations are provided. The

current regulations became effective October 29, 2003. Please refer to 24 CFR Part 58.5 for the laws and authorities pertaining to the above areas.

Certain environmental forms can be found on the internet at www.hudclips.org.

The LCDBG contract will indicate that an Environmental Review of the project must be conducted and submitted whether the project is for public facilities, economic development, or housing. The LCDBG contract and the letter of authorization to incur costs state that all contract conditions must be cleared within six months of the letter of authorization to incur costs. To ensure that the State has sufficient time to review the Environmental Review Record for completeness and to allow adequate time for revisions, the ERR must be received by the State within four calendar months of the date of the authorization to incur costs letter. If at the end of the six-month calendar period not all administrative conditions of the contract are cleared, $250 per working day will be deducted from the administrative line item budget and disallowed. The monies shall be deducted from the amount of LCDBG administrative funds allowed to pay an administrative consultant. If the grantee has chosen to administer the grant using its own staff, the penalty will be assessed against the LCDBG administrative funds, and disallowed. If the grantee is not using LCDBG administrative funds, the penalty will be assessed against awarded construction funds and disallowed. The State reserves the right to grant an extension where the reasons for not meeting the required timeframe were clearly beyond the control of the grantee. Part of this determination will be based on how quickly the grantee began the ERR process after receiving the authorization to incur costs. All grantees should begin the ERR process (including mailing letters to appropriate agencies requesting determinations) within four weeks of the authorization to incur costs date.

Please note, if the grantee fails to complete the Eight Step Process during the completion of the ERR and it is determined that this is required for the project, then the Notice of Intent to Request Release of Funds or the Combined Notice must be republished after the Eight Step Process is complete. This may result in the grantee not meeting the required timeframe for clearance of all contract conditions. This situation will not warrant an extension to the deadline as discussed in the previous paragraph. If you are not sure about whether the Eight Step Process should be completed during the ERR process, please contact OCD for assistance.

For all projects, especially economic development projects involving loans and/or infrastructure grants, particular attention must be given to 24 CFR Part 58.32 - Project Aggregation. All activities must be environmentally cleared including those funded by private funds.

For Economic Development projects, close attention must be given to 24 CFR Part 58.22. Neither a grantee nor any participant, including public or private nonprofit or for-profit entities or any of their contractors may commit LCDBG/HUD funds or non-LCDBG/HUD (private funds) funds or undertake an activity or project until the State has approved the recipient's Request

for Release of Funds. HUD has determined that this regulation regarding private funds is triggered at the time of the grantee's application being submitted to the State. In other words, the restriction does not apply to undertakings or commitments of non-federal funds before the grant application is submitted.

The Request for Release of Funds and Certification form and the ERR must be submitted to the State before a Release of Funds can be obtained. Project funds cannot be obligated or expended until the State clears all contract conditions. There are some exceptions. If the LCDBG grant budget includes administration and project design costs, these may be incurred prior to receiving a Notice of Release of Funds.

The grantee's Chief Elected Official will be the Environmental Certifying Official. He/she will assume overall responsibility for the environmental review process. He/she must sign all certification and findings; particularly the Request for Release of Funds and Certification, (HUD Form 7015.15), the Certification of Exemption for HUD funded projects, the Certification of Categorical Exclusion (not subject to 58.5), the Certification of Categorical Exclusion (subject to 58.5), the Statutory Checklist, and the Environmental Assessment Checklist.

ENVIRONMENTAL REVIEW CLEARANCE LEVELS

There are **five** levels of clearance available for the environmental review. A determination must be made concerning which of the five levels will apply to the project being cleared. There are specific requirements for each category of activities.

A project that clearly will have little negative impact on the environment is either exempt or categorically excluded from most environmental requirements. There are two levels of categorically excluded activities. In these cases, the ERR must document the recipient's determination that the project is free from either all environmental requirements or from the requirements of NEPA. Projects that are neither exempt nor categorically excluded will require a full environmental assessment. The results of the environmental assessment will determine if an environmental impact statement is required.

Exempt Activities - 58.34(a)

Certain activities are "exempt" from environmental review requirements of NEPA and the environmental requirements of other applicable federal laws. These activities include:

- environmental studies;
- project planning;
- administrative costs;
- project engineering and design costs for a proposed eligible activity;
- public services which will not result in any physical changes;

- assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair or restoration activities necessary only to control or arrest the effects from disasters, imminent threats or physical deterioration.

Activities correcting imminent threats to health and safety may be undertaken only to the extent necessary to alleviate emergency conditions as certified by the chief executive officer. The chief executive officer must notify the State within ten days of determining that a situation exists that poses an imminent threat to the public health and safety. The Office of Community Development must agree that the situation qualifies to be considered exempt under this regulation before LCDBG funds can be used to alleviate the emergency conditions.

To complete environmental requirements for exempt activities, the grantee must make and document a certification that such activities are exempt. This involves completing the Certification of Exemption for HUD Funded Projects (**Exhibit A-1**) which identifies the activity and states the statutory authority for the exemption. The grantee must also comply with Part 58.6, and complete the 24 CFR 58.6 Compliance Documentation Checklist shown as **Exhibit A-2**.

The grantee does not have to submit the Request for Release of Funds and Certification form; however, all other contract conditions listed in the LCDBG contract must be cleared prior to the release of funds.

Categorical Exclusions Not Subject To 58.5 - 58.35 (b)

HUD has determined that certain categorically excluded activities would not alter any conditions that would require a review under 58.5. The grantee does not have to publish a Notice of Intent to Request Release of Funds, or submit a Request for Release of Funds and Certification form. A Certification of Categorical Exclusion (not Subject to 58.5) shown in **Exhibit A-3** must be completed. The grantee does have to comply with Part 58.6, and complete the 24 CFR 58.6 Compliance Documentation Checklist shown as **Exhibit A-2**. In addition, the grantee must clear all other contract conditions listed in the LCDBG contract prior to the release of funds. These activities include:

- supportive services;
- equipment (such as fire trucks);
- economic development activities not associated with construction;
- activities to assist homebuyers that result in the transfer of title.

Categorically Excluded Activities Subject to 58.5 - 58.35 (a)

These activities are "categorically excluded" from the environmental review requirements of NEPA, but must comply with the environmental requirements of other federal laws listed in 58.5. These activities include:

- acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements 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. See part 58.35 (a) (1). (Water and sewer line replacement will most likely not be categorically excluded. Hard surfacing of a gravel street is not categorically excluded.)
- special projects for removal of material and architectural barriers. See part 58.35 (a) (2).
- an individual action (rehab) on a one-to-four family dwelling or on a project of five or more units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four units on any one site. See Part 58.35 (a) (4).
- acquisition or disposition of an existing structure or acquisition of vacant land provided that the structure or land will be retained for the same use. See Part 58.35 (a) (5).

The activity of demolition alone is categorically excluded, only if the property is to be retained for the same use. The combined activities of demolition and replacement will require an assessment unless the replacement is to take place on the exact same foundation as the original structure.

The Certification of Categorical Exclusion (subject to 58.5), shown in **Exhibit A-4**, identifies the activity and states the statutory authority for the exclusion. **The OCD's environmental staff should be contacted before making a finding of exemption or categorical exclusion in order to avoid incorrect findings.**

The following items must be included in the ERR for categorically excluded projects:

1. Certification of Categorical Exclusion (subject to 58.5), **Exhibit A-4**;
2. Documentation of compliance with other federal laws through the Statutory Checklist (**Exhibit A-5**);
3. Documentation of compliance with Part 58.6 (**Exhibit A-2**);
4. A detailed description of the project, including location;
5. Evidence of publication or posting of the Notice of Intent to Request Release of Funds (**Exhibit A-6**);
6. Request for Release of Funds and Certification (**Exhibit A-7**); and
7. A map of the entire jurisdiction showing the specific location of the project area. In addition, a floodplain map delineating the target area is required.

Activities Requiring an Environmental Assessment - 58.36

For activities that are neither exempt nor categorically excluded, an environmental assessment is required which documents compliance with NEPA and with the environmental requirements of other federal laws. The Environmental Review Record must contain the following documentation:

1. Environmental Assessment Checklist (**Exhibit A-8**);
2. Documentation of compliance with the requirements of other federal environmental laws through the Statutory Checklist (**Exhibit A-5**);
3. Documentation of compliance with Part 58.6 (**Exhibit A-2**);
4. A detailed description of the project, including location;
5. Evidence of publication (or posting) and distribution of the Combined Notice of Finding of No Significant Impact and Intent to Request Release of Funds (**Exhibit A-9**) and the Notice of Finding of No Significant Impact Distribution List (**Exhibit A-10**);
6. Request for Release of Funds and Certification (**Exhibit A-7**);
7. Map of the entire jurisdiction showing the specific location of the project area. In addition, a floodplain map delineating the target area is required.

Environmental Impact Statement (EIS) – 58.37

In most instances, the environmental assessment will result in a finding that the proposed activity will not significantly affect the quality of the environment and therefore not require the preparation of an Environmental Impact Statement. However, if the proposed project is determined to have a potentially significant impact on the environment, an Environmental Impact Statement must be prepared. **This office should be contacted if it is determined that an EIS is required.**

GENERAL ENVIRONMENTAL REVIEW RECORD REQUIREMENTS

Project Description

The description must identify in detail the project type, area served, location, etc. The target area must be described by street name, highway name, or numbers for each street serving as a boundary for the project area being environmentally cleared. A legal description of the area being cleared may be included, but is not required. The description should include the project's dollar amount, especially for economic development projects. For these projects, the description should identify the items for which the LCDBG funds will be expended, and the items for which private funds will be expended. Housing rehabilitation/replacement projects should specify the number of housing units involved, the number of demolitions that will take place, etc. The description must indicate whether the rehabilitation/replacement funds are a

loan or a grant, who is eligible to receive the funds, the income limitations and the cost for each activity, i.e., rehabilitation, demolition or replacement. If the project includes replacement, state whether other property will be acquired or if the replacement will take place on the same property. A map clearly delineating the project area must also be included.

The project description must indicate whether the ERR is site specific for public facilities projects. For example, if the project involves the installation of a water well and the location of the well site is known, it should be indicated on the ERR map. The ERR map must also be sent to the agencies used as data sources, as they will be commenting on that particular site. However, if the exact location of the project has not been determined, but the well will be drilled somewhere within the project area, it is necessary to clear the entire project area. It must be clear to the data source, either by letter or verbally, whether the ERR is site specific. **If the ERR is site specific and the project site changes from what was originally cleared, an amendment to the ERR is required and must be submitted to the OCD for review. If this is necessary, please contact the OCD to ensure that proper measures are taken to amend the original ERR.**

Completing the Statutory Checklist—For Categorically Excluded (subject to 58.5) and Environmental Assessment Activities

For categorically excluded (subject to 58.5) activities and activities requiring an environmental assessment, the Statutory Checklist, **Exhibit A-5**, must be completed in order to document compliance with other federal laws. Particular attention must be given to the review requirements of floodplains and wetlands, historic preservation, farmlands protection, and noise. In addition, special attention should be paid to federal Executive Order 12898 issued February 11, 1994 concerning environmental justice.

Additional instructions for completing the Statutory Checklist and each area of compliance are included in **Exhibit A-5**, following the checklist itself.

Completing the Statutory Checklist — For All Clearance Levels

All areas of compliance require either contact with a qualified individual from a cognizant local, state, or federal agency, or other qualified information for the compliance documentation. If an individual is a data source for the compliance documentation, the person's name, title, State or Federal agency, and the date of correspondence or verbal contact must be indicated. State whether the contact was verbal or written and the degree of impact the project will have on the environment. If a contact is made verbally, a telephone log should be kept documenting the call, and included in the ERR. If a plan or publication is cited, the title, date and page number must be shown. If the preparer of the checklist will be making a statement of explanation concerning an area of compliance, it is imperative that the preparer is

knowledgeable of the area of compliance in the event that the validity of the ERR is ever questioned. All letters pertaining to the ERR must be included in the record.

If any compliance area of the Statutory Checklist involves a permit that is necessary in order to comply with the other federal laws and authorities listed under Section 58.5, or other requirements listed under 58.6, the permit must be included in the ERR's documentation. This includes permits such as Coastal Zone permits. In the past, it was required that if the U.S. Army Corps of Engineers required a permit under Section 404 of the Clean Water Act, the State required this permit to be obtained prior to the completion of the ERR. However, HUD has determined that since the Clean Water Act is not listed under the requirements of Sections of 58.5 and 58.6, this permit is not required prior to the completion of the ERR. Please keep in mind, however, that if the Section 404 permit is required by the Corps of Engineers for the project, the permit must be obtained prior to commencement of project construction.

Public facility rehabilitation activities, (such as hook-ups), will NOT require that they be environmentally cleared in the same manner as a regular housing rehabilitation project. This activity should be cleared in conjunction with the regular public facility activity.

Housing rehabilitation/replacement and economic development projects can be cleared on an area-wide basis depending on the size of the target area. Most of the housing projects under the LCDBG program will be able to do this, as those target areas are generally small, usually two or three streets, etc. However, the compliance areas of Noise and Manmade Hazards require special individual assessment as selection of specific sites are made during the course of the grant implementation process. The Statutory Checklist Completion Form for small target areas (**Exhibit A-11**) will assist in addressing these areas of compliance as the specific site selections are made. This form must be completed for each unit and filed in the ERR file. A copy must also be maintained in the individual file for each housing unit. In addition, a copy must be sent to the OCD. These areas of compliance are discussed in further detail on the following pages.

For housing rehabilitation/replacement projects that include large target areas, (in some cases, the entire jurisdiction) and the specific sites are not known, it may be necessary to complete a tiered review. This is necessary because when the specific sites are not known, certain areas of compliance (Floodplains, Noise, Historic Properties, and Manmade Hazards, or others that could not be cleared programmatically) within the Statutory Checklist cannot be addressed. If a tiered review is conducted, these four (or more) areas of compliance can be addressed as the specific sites are determined. The Statutory Checklist Completion form for large target areas (**Exhibit A-11**) must be completed for each unit. A copy of this form must be sent to the OCD. A copy must be retained in the ERR file and in the individual file for each housing unit.

Historic Preservation requirements are met by consulting with the Louisiana Historic Preservation Officer to determine if the project will impact a historic or culturally significant structure or site. This consultation is made by preparing a letter to the Historic Preservation Officer describing the project and the area in which it is located (**Exhibit A-12**). If the project involves residential rehabilitation, the Historic Preservation Housing Rehabilitation Certification provided as **Exhibit A-13** is also required. The letter to and the response from the Historic Preservation Officer must be included in the ERR.

The area of Floodplain Management must comply with federal Executive Order No. 11988 and is covered in HUD regulations 24 CFR Part 55. Any physical action taken in a 100-year floodplain is subject to Part 55, including structures, roads, pipelines, anything except minor clearing and grubbing. Part 55.12(b)(2) states that minor rehabilitation that does not meet the threshold for substantial improvements is not subject to Part 55. However, the definition of substantial rehabilitation is given in Part 55.2(b)(8). As described in this definition, the rehabilitation activities normally funded under the LCDBG Program are substantial.

On the checklist, indicate as to whether the project is located within a 100 year floodplain (Zones A or V) identified by FEMA maps, and whether it involves a critical action (emergency facilities or facilities for mobility impaired persons) within a 500 year floodplain, (Zone X-500). **It has been determined by HUD that water and sewer treatment plants are considered critical actions and must complete the Eight Step Process if located in the 500-year floodplain.**

The data source to show for the compliance documentation would be the floodplain map panel number and date, or contact with another source if there is no FEMA map. If FEMA has not published flood maps of the area, the grantee must make a finding based on best available data, such as the municipality/parish engineer, or local Flood Control Agency.

If the activity is located in the 100-year floodplain, and/or it involves a critical action (emergency facilities, facilities for mobility impaired persons, or water or sewer treatment plants) within a 500 year floodplain, Part 55.20 applies, and the grantee must complete an **Eight Step Process** shown below. Documentation must be provided in the ERR for each of the following steps:

1. Determine if the project is located in a 100-year floodplain by locating the project on a floodplain map. Record the results and date of this examination in the ERR.
2. Involve the public in the decision making process by publishing an Early Public Review Notice (**Exhibit A-14**) in a local newspaper to make the public aware of the grantee's intention of conducting a project within the floodplain. This notice requires a fifteen (15) day comment period.

3. Determine if there is a practical alternative to locating the project in a floodplain through: alternative sighting, an alternative action that would minimize damage to or within the flood plain, or no action.
4. Identify adverse impacts on the base flood plain, whether it will directly or indirectly support flood plain development, whether the impact is concentrated or dispersed, and short or long lived.
5. Identify methods to be used to minimize, restore, and preserve the floodplain.
6. Re-evaluate alternatives taking into account identified impacts and minimization measures. Is it possible to modify or relocate the project to eliminate or reduce these effects, or should no action be taken?
7. Announce and explain decision to the public by publishing a Notice of Explanation (**Exhibit A-15**) in a local newspaper. This notice requires a seven (7) day comment period. *This notice can be published simultaneously with the Notice of Intent to Request Release of Funds (This notice can only be published simultaneously if the project is categorically excluded subject to 58.5, **not** if the project requires a full environmental assessment)*.
8. Implement the project with appropriate mitigation.

If an *incidental* portion of a project site is in the floodplain, then Part 55 does not apply.

<u>The ERR must include a copy of the floodplain map indicating the area being cleared, even if the project is not within the floodplain.</u>

The area of <u>Wetlands Protection</u> must comply with federal Executive Order 11990. The Executive Order only applies to **new construction**. Housing replacement activities are considered to be new construction. Although HUD regulations found at 24 CFR Part 55 only cover floodplain management, it is to be used as a guide for wetlands protection as well. In the future, the regulation will be revised to include wetlands. **Therefore, if the project is for new construction and is located within a designated wetland, the Eight Step Process as described in 24 CFR Part 55.20 is required.** The Eight Step Process can be conducted jointly if the project is also located in a floodplain. The grantee must contact the USDI Fish and Wildlife Service **and** the US Army Corps of Engineers to make the determination. The U.S. Corps of Engineers' designated wetland areas are not all inclusive, as their information only covers wetlands within their jurisdiction. The National Wetland Inventory defines wetland areas more broadly and is maintained by the USDI Fish and Wildlife Service. The maps are available on a website located at http://wetlands.fws.gov. The grantee must check this website for information; however, not all areas of the State have been added to the website map at this time. If the project area is not included in the information on the website, then the grantee must make a determination if there are any wetlands in the project area. Federal Executive Order 11990 (section 7(c))

defines wetlands as follows: "Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds." If it is obvious to the ERR preparer and Certifying Official and the determination is made that no wetlands exist in the project area, then this determination is acceptable. However, if the grantee is unable to make this determination themselves, then a wetlands specialist should be hired to make a determination or the grantee can complete the Eight Step Process as if there are wetlands present in the project area.

For Coastal Areas, review **Exhibit A-16** (Coastal Zone Boundary Map) to determine if the project is within the nineteen coastal zone parishes. If it is, the grantee must contact the Louisiana Department of Natural Resources, Coastal Zone Management for comment. If the project is not within the coastal zone, the grantee may use as a reference the Coastal Zone Act, Louisiana Legislation Act 361, Revised, from which this map originated.

The area of Sole-Source Aquifers requires contact with the EPA for comment for projects located in the Southern Hills or Chicot Aquifer systems that involve any facility that disposes its wastewater into dry wells, retention ponds, or methods other than a treatment plant. A map designating the location of these aquifers is shown as **Exhibit A-17**.

The grantee must contact sources such as the Louisiana Department of Wildlife and Fisheries (DWF), or the U.S. Department of the Interior-Fish and Wildlife Service for the area of Endangered Species. There will be a fee involved when you contact DWF. If the local government makes the request, the charges are reimbursable from the grant.

For Wild and Scenic Rivers, check with the USDI National Park Service to determine if the project is within one mile of a river in the National Wild and Scenic Rivers System. According to their website located at http://www.nps.gov/rivers, the Saline Bayou is the only river in Louisiana listed in the National Wild and Scenic Rivers System.

For the area of Air Quality, (Clean Air Act), it must be determined if the community meets the National Ambient Air Quality Standards. The compliance documentation should state if the community is attainment or non-attainment, and whether the project will affect the air quality.

To minimize the extent to which federally-assisted actions and projects convert farmland to nonagricultural uses, the Farmlands Protection Policy Act (FPPA) was enacted in 1981. On July 5, 1984, the Department of Agriculture (USDA) issued final regulations implementing the Act. The FPPA (7 USC Sec. 4201 et seq.) defines prime farmland, unique farmland, and farmland of state or local importance.

When a proposed project converts farmlands to nonagricultural uses, the Farmland Conversion Impact Rating Form AD-1006 must be completed. Form AD-1006 can be obtained from the USDA Natural Resources Conservation Service (NCRS). A copy of the form is included as **Exhibit**

A-18. Before undertaking the farmland conversion impact rating process, a determination of farmland type must be made. This determination should be made using the Natural Resource Inventory (NRI) or countywide maps available from the NCRS District Conservationists.

If neither the entire site nor any part of the site is located on farmland subject to the Act, the Act will not apply. The OCD suggests that the local soil conservationist be contacted for comment, and reference the contact indicated on the Checklist. If any part of the proposed project site includes farmland subject to the Act, the Act and implementing regulation will apply, and the grantee must initiate the impact rating process using Form AD-1006 as follows:

1. Complete Parts I, III, and VI of Form AD-1006 and send the form (keep copy) and project site map to the NCRS.
2. The NCRS has a maximum of 45 days to evaluate the land type, complete Parts II, IV, and V, and return the form to the grantee.

The Act encourages Federal agencies to consider the effects of the project on farmland conversion. <u>The final decision to convert farmland to non-agricultural uses rests with the agency or, in this case, the LCDBG recipient.</u>

For housing rehabilitation/replacement projects, the area of <u>Noise Abatement and Control</u> should receive special attention. This area is covered by 24 CFR Part 51. The compliance documentation must contain a statement that noise assessments will be prepared for any property located within 1000 feet of a street having four (4) lanes of traffic, 3000 feet of railroad, five (5) miles of a civil airport, or fifteen (15) miles of a military airfield. When selected, if the unit requires the noise assessment, this will be indicated on the Statutory Checklist Completion form (**Exhibit A-11**), and a noise assessment must be conducted for each site within these areas. If the noise assessment for a rehabilitation only project indicates that the site is in an area above the acceptable decibel range, (acceptable being 65 decibels or less), noise attenuation measures should be recommended, such as double-paned windows, insulation, et cetera. If the project includes replacement housing, this is considered to be "new" construction, and noise attenuation measures must be implemented to achieve interior noise levels at 45 decibels or less. A noise handbook is available upon request from the OCD. It includes detailed instructions for the noise assessment. The noise assessment is ONLY required for projects that are noise sensitive, such as places where people sleep or congregate.

24 CFR Part 51 also covers the area of <u>Explosive and Flammable Operations</u>. This requires that, for housing rehabilitation (where there is an increase in density), economic development projects (where a building will be changing in use or increasing in density), or new construction (such as fire stations and community centers) an Acceptable Separation Distance (ASD) be determined for properties within one mile of above-ground storage facilities containing explosive materials. The Checklist should indicate under compliance documentation that this

will be accomplished for each property selected. For housing projects, it will be indicated on the Statutory Checklist Completion form for each property if the calculation is required. If so, the calculation should also be attached. If the property is not within the ASD, the grantee must provide mitigating measures unless they are already in place. A copy of the guidebook for calculating the ASD is available from the OCD.

Notice of Intent to Request Release of Funds

When the Statutory Checklist is COMPLETE, which means all comments have been received and floodplain notices' comment periods have expired, the grantee can request a release of grant funds. For categorically excluded projects, it is ONLY necessary to publish or post the "Notice of Intent to Request Release of Funds" (**Exhibit A-6**). Do NOT use the "Combined Notice" discussed later. The "Combined Notice" is necessary for environmental assessment activities.

The "Notice of Intent to Request Release of Funds" informs interested parties that the grantee intends to submit to the State a "Request for Release of Funds and Certification" (**Exhibit A-7**) no sooner than seven full days after publication or ten days after posting. The comment period begins the day AFTER the notice is published or posted. For publication, the actual day to submit the request for funds would be day eight. For posting, it would be day eleven. The notice must give a projected date of not less than fifteen days from receipt of the ERR by the State as the State's last day to receive objections to the request for release of funds. If the projected date for the State's fifteen-day comment period should fall on a holiday or a weekend, the projected date given in the notice should be the next working day. After the seven or ten-day period has elapsed, the grantee must prepare and submit the "Request for Release of Funds and Certification" to the State. The stated comment period should be extended two days to allow for mailing, as the State's comment period does not begin until the day following receipt of the "Request for Release of Funds and Certification". Copies of the Notice of Intent, "Request for Release of Funds and Certification", and public comments received must be included in the Environmental Review Record.

The following is an example of dates for the "Notice of Intent to Request Release of Funds":

	Publication	Posted
Notice of Intent Date	6/4/xx (7 days)	6/4/xx (10 days)
Date of "Request for Release of Funds and Certification"	6/12/xx	6/15/xx
Date ERR and request for funds mailed to State	6/12/xx	6/15/xx
ERR received by State	6/14/xx	6/17/xx
State's 15-day Public Comment Period	6/15/xx to 6/29/xx	6/18/xx to 7/1/xx

Completing the Environmental Assessment Checklist

The environmental assessment must be prepared on the format provided as **Exhibit A-8**. The grantee will determine and indicate whether the request for release of funds IS an action which will significantly affect the quality of the environment and therefore will require the preparation of an Environmental Impact Statement (EIS), or whether the request for release of funds IS NOT an action that will significantly affect the environment and therefore will not require the preparation of an Environmental Impact Statement (EIS).

Combined or Concurrent Notice

This notice (**Exhibit A-9**) is necessary for projects requiring an environmental assessment. The notice combines the "Notice of Finding of No Significant Impact" (FONSI), and the "Notice of Intent to Request Release of Funds" (NOIRRF). The notice can be published or posted. The "Combined Notice" identifies the project, gives the reason for the decision of no significant impact to the environment, invites public comment for a fifteen or eighteen-day review period, notifies the public of the community's intent to request a release of funds, and includes a fifteen-day period for the State to receive comments. After the first local comment period (FONSI) has elapsed, the "Request for Release of Funds and Certification" and the environmental review record (ERR) and any comments received may be submitted. The dates at the beginning of this notice should indicate the date of publication or posting, and the FINAL date of the State's comment period, not the final date of the FONSI's comment period.

The State's fifteen-day comment period begins the day after the State receives the request for release of funds and the ERR. If the projected date for the State's fifteen-day comment period should fall on a holiday or a weekend, the projected date given in the notice should be the next working day. The following is an example of dates and comment periods for the "Combined Notice":

	Publication	Posted
"Combined Notice" Date	6/4/xx (15 days)	6/4/xx (18 days)
Date of "Request for Release of Funds and Certification"	6/20/xx	6/23/xx
Date ERR and request for funds mailed to State	6/20/xx	6/23/xx
ERR received by State	6/22/xx	6/25/xx
State's 15-day Public Comment Period	6/23/xx to 7/6/xx	6/26/xx to 7/11/xx

If published, the "Combined Notice" must be published in a general circulation newspaper and proof of publication must be included in the ERR. Proof of publication means that either the

actual dated newspaper article or an original notarized copy of the published notice is provided. If posted, send a copy of the posted notice with documentation signed by the chief elected official stating where the notice was posted and the dates of posting. The "Combined Notice" must also be distributed to appropriate tribal, State and federal agencies and, particularly, to the national and regional offices of the Environmental Protection Agency and FEMA. Do not send a copy of the notice to the HUD Area Office in New Orleans. **Exhibit A-10** is a sample distribution list. Any written comments received in response to the notices must be addressed and filed in the ERR.

Request for Release of Funds and Certification

This form shown as **Exhibit A-7** must be completed and submitted to the State following the final publications discussed above.

Once the State receives and reviews the ERR documentation and Request for Release of Funds and Certification form, the OCD will notify the grantee for any necessary revisions, or inform the grantee that no objections to the release of grant funds were received by the OCD.

*For a Summary of Environmental Review Requirements, see **Exhibit A-19**.

ESTABLISHING THE LCDBG FUNDS ACCOUNT, REQUESTING PAYMENTS, THREE-DAY EXPENDITURE RULE, AND DISBURSEMENT OF FUNDS

ESTABLISHING THE LCDBG FUNDS ACCOUNT

Receiving Contract

One copy of the LCDBG contract will be provided that identifies the activities funded, budgeted cost, general terms and conditions, and identification of any activities with conditional approval and the conditions that must be met before the State will release funds for those activities. The contract should be carefully reviewed, signed, and returned to the Office of Community Development. One copy will be returned to the grantee for its records when the contract has been executed by the State. The contract is fully executed only after all State signatures have been obtained.

Necessary Forms

The following forms will be provided to the grantee along with the unsigned contract. The forms must be completed as per the instructions and returned to the Office of Community Development in order for the State to establish the grantee's LCDBG account in the State accounting system. No funds can be drawn until this account is established.

1. Authorized Signature Card — One Authorized Signature Card (**Exhibit A-20**) with original signatures must be completed carefully with no erasures or corrections. Signatures

must match the typed or printed names. The certifying officer must apply a date to the card by his/her signature. The card designates authorized persons to sign the community's Requests for Payment. Detailed line-by-line instructions are included on the back of the card. If persons authorized to sign Requests for Payment should change at any time during the project, a new Authorized Signature Card must be submitted to the State. (See, also, section on Signatures on Checks and Signatures on Request for Payment (RFP) Form.)

2. Designation of Depositary Card — Two Designation of Depositary Cards with original signatures (**Exhibit A-21**) must be prepared and submitted. The cards identify the federally insured financial institution into which the funds are deposited.

3. Electronic Funds Transfer Enrollment Form — An Electronic Funds Transfer (EFT) Enrollment Form is located at **http://www.doa.louisiana.gov/osrap/EFTforWebSite.pdf** (**Exhibit A-22**). This form designates where the LCDBG funds will be deposited. This form is sent to the Office of Statewide Reporting and Accounting Policy (OSRAP).

   These forms can be revised at any time during the project, by providing the State with two revised depositary cards with original signatures and a revised Electronic Funds Transfer Enrollment Form. It takes approximately fourteen days to process a revision. The revision process must be complete prior to the next Request for Payment's approval. Additional cards are available from the Office of Community Development.

4. Request for Vendor Information

5. W-9 Request for Taxpayer Identification Number and Certification

ACCOUNT RULES

1. Non-Interest Bearing Account—Funds are to be deposited into a separate non-interest bearing account that is to be balanced on a monthly basis. Pre-printed, pre-numbered checks, not counter checks must be utilized. After the grant is closed, the same account can be used for subsequent grants by voiding three to four checks. If the grantee uses computer generated checks, appropriate safeguards must be in place.

2. Central Bank Account or Clearing Account —Prior written approval from this office must be obtained in order for a grantee to use its general bank account. Separate financial statements for the LCDBG grant must be produced. If utilizing this procedure, all invoices for which payment is requested must be paid in advance, and the checks must be cleared prior to reimbursement by this office. Please contact Laurie Durnin at (225) 342-7412 to discuss this matter. If interest is accrued on LCDBG funds, the State must collect it from the grantee.

3. Drawing Funds—Funds can be drawn when the Notice of Removal of Contract Conditions and a Release of Funds form and executed contract are received from the State.
4. Signatures on Checks—Checks must be signed by two authorized persons. The use of a signature stamp for one of the names is allowed as long as the other signature is original. This signature must be someone who is not in control of the signature stamp. If the checks are computer generated, there must be adequate controls with at least two authorized persons approving checks.

REQUESTING PAYMENT

Request for Payment Form (RFP)

Funds are requested using the LCDBG RFP form, **Exhibit A-23**. The RFP form can be completed in Excel and printed, or printed and filled in. The form and instructions are located on the Office of Community Development's website at (**http://www.doa.louisiana.gov/cdbg/cdbgHome.htm**). The form must be completed accurately or it cannot be processed. Requests should be made only in amounts necessary to meet current disbursement needs and approved invoices must be attached.

The form should be sequentially numbered for each separate request that is submitted. If the request is a resubmission of a previous request that was rejected or returned for errors, the resubmission would have the same request number as the original submission with an A or sequential letter after it, i.e., 2.A. Where dollar amounts are indicated, show a decimal and cents (do not round off).

The form must show the exact amount of cash on hand at the time of the request if all previously requested project funds have not been distributed. Funds disbursed to date on RFP Line 1D should include all invoices paid with LCDBG funds since the beginning of the grant.

Request Frequency

Funds may be requested a maximum of three times per month for housing rehabilitation grants and twice a month for other grants.

Signatures on Request for Payment Form (RFP)

Two of the people listed on the authorized signature card must sign the RFP. Signatures on the request form must be **identical** to those on the Authorized Signature Card, including grantee's middle initials. Any questions regarding the RFP Form should be directed to the Local Government Representative (LGR) in this office.

Invoices

Invoices must be submitted with all Requests for Payment that indicate the date the goods or services were received. If services are rendered, the vendor must state the time period covered by the invoice, from XX-XX-20XX to XX-XX-20XX. Invoices included with the RFP must be signed by the chief elected official or other designated party showing approval of the invoice amount. This should be the person listed with that responsibility on the Financial Management Questionnaire discussed under *Program Administration: Establishing Procedures for Financial Administration.*

Submitting a Request for Payment (RFP)

An original and two copies must be sent to the State. After processing the request, the State will return one copy to the grantee.

Receipt of Requested Funds

Requests for funds should be received by the Office of Community Development with appropriate signatures and invoices by Friday at noon for payment on Friday of the following week. The grantee should check with its financial institution when expecting LCDBG funds to see that the funds were deposited in its account. Contact this office if funds are not received. If there is a holiday during the request period, an extra day may need to be added to the anticipated receipt date.

THREE DAY EXPENDITURE RULE

The State has defined current disbursement needs as the funds to be expended in three working days. This procedure minimizes the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees (24 CFR 85.20 (b) (7)). This "three-day-rule" means that all draws will be expended within three working days of the deposit. If LCDBG funds are deposited on a Friday, checks totaling the entire amount must be written by close of business the following Wednesday. In order to comply with the "three-day-rule," the grantee should arrange to be notified the day an LCDBG deposit is received by the bank or check to verify the deposit. If LCDBG funds are received and not disbursed within three working days, contact the grantee's LGR to discuss the situation and determine whether funds should be retained or returned to the State.

ESTABLISHING PROCEDURES FOR FINANCIAL ADMINISTRATION

This section presents an overview of the accounting procedures that must be followed in order to comply with State and federal requirements under the LCDBG program.

DOCUMENTING USE OF FUNDS

All funds must be documented appropriately to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes (24 CFR 85.20 (a)).

Financial Management System Adequacy

The grantee will receive a Financial Management Questionnaire along with the Application Revision letter. It is also available at **http://www.doa.louisiana.gov/cdbg/forms.htm**. Enter the names and the titles of the persons who will be performing each responsibility. If this information changes during the grant period, notify the grant representative in writing of the change.

Include a copy of the bond or fidelity policy and current proof of payment for the persons who are involved in the financial transactions of the grant.

The Financial Management Questionnaire, a copy of the bond or fidelity policy, and proof of current payment of the bond or fidelity policy will be sent to the grant representative at the Office of Community Development along with the information to clear contract conditions.

This office will review this and other information to determine the adequacy of the grantee's financial management system subsequent to the grant award (24 CFR 85.20).

Accounting Records

Accounting records must be maintained which adequately identify the source and application of funds provided for grant-assisted activities. These records must contain information found in a complete General Ledger including assets, liabilities, expenditures, and revenue (24 CFR 85.20 (b)(2)). Accounting should be conducted on the double entry basis. Because this program operates on a cost reimbursement basis, expenditures and revenue can be measured before the receipt and disbursement of cash, and therefore are subjected to accrual. Accounting for a particular governmental activity on a cash or an accrual basis is dictated by generally accepted accounting principles as it applies to that particular activity. The accounting for the LCDBG program has to be on a modified accrual basis.

Support Documents

Accounting records must be supported by such source documentation as cancelled checks, paid bills, invoices, purchase vouchers, payrolls, deposit slips, time and attendance records, contract and sub-grant award documents, etc. (24 CFR 85.20 (b)(6)). Never make payment without invoices and vouchers physically in hand. All vouchers/invoices should be on vendors' letterhead.

Books of Entry

24 CFR 85.20 (b)(2), and OMB Circular A-87 (Cost Principles for State and Local Government (Revised 5/10/2004)) require that the grantee establishes certain accounting records for documenting LCDBG related transactions. These books of original and final entry are an integral part of the required system. Books of original entry are the Cash Receipts Journal and the Cash Disbursements Journal. Books of final entry are the General Ledger and the Property Register. Each is briefly described below.

1. Cash Receipts Journal—All receipts of cash deposited into the LCDBG fund are recorded in this journal. Receipts may include contract payments from the State, receipts from the disposition of land, etc. The general procedure for using this journal is to record every LCDBG receipt in the date order that it was received, entering from whom the money was received, the account, the receipt number, and the date. A suggested format for this journal is presented in **Exhibit A-24.**
2. Cash Disbursements Journal—All expenditures are entered into this journal. A suggested format for this journal is shown in **Exhibit A-25**.
3. LCDBG Property Register—This is a listing of all fixed assets acquired using LCDBG funds. Examples of fixed assets that would be recorded using this subsidiary ledger are machinery and equipment. See **Exhibit A-26**.
4. General Ledger—This is a book of final entry that summarizes the status of each account in the LCDBG accounting system. The General Ledger may be maintained for the LCDBG program as for other municipal funds; however, the Chart of Accounts (**Exhibit A-27**) must be utilized. Supporting documentation should be maintained to summarize expenditures and revenues by the following categories:
    a. Expenditure Accounts—These accounts should correspond to those activities identified in the Cost Summary in the application. At a minimum, the grantee should utilize the following Expenditure Accounts: Administration, Acquisition, Engineering, and Construction. All administrative costs must be assigned to the administrative account and not to other accounts such as rehabilitation, sewer, etc. Every invoice should be recorded as an expenditure the day it is received or on the day it is approved for payment.
    b. Revenue Accounts—These accounts should be used to identify all revenues earned by the LCDBG program such as the LCDBG revenue, program income, and local contributions.

Monthly Financial Statements

At month's end, the grantee should prepare financial statements that provide accurate, current, and complete disclosure of the financial results of financially assisted activities (24 CFR 85.20 (b)(1)). Additionally it is the responsibility of each grantee to prepare general purpose financial statements presented in conformity with generally accepted accounting principles at the conclusion of each fiscal year. Therefore, one month after the close of the grantee's fiscal year it must have the general purpose financial statements consisting of a STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCE and a BALANCE SHEET prepared and ready for examination by the auditor. Examples of these general purpose financial statements are shown in **Exhibit A-28**. Costs incurred for the bookkeeping, accounting, and preparing of the general purpose financial statements related to the LCDBG program may be considered as administrative costs and should not be charged as part of the Audit expense.

Financial Recordkeeping

Financial records are to be retained for a period of four years after the program's final closeout, with access guaranteed to State officials, their representatives, or HUD representatives. Audit requirements are discussed later in this chapter.

System of Internal Controls

Effective control and accountability must be maintained for all grant cash, real and personal property, and other assets. The concept of internal control refers to those policies and procedures of the jurisdiction designed primarily to adequately safeguard all such property (24 CFR 85.20 (b)(3)). The State requires that each LCDBG recipient establish a system of internal controls that meet the following six minimum requirements:

1. No individual shall have complete control over all phases of any significant transaction. For example, the same person cannot authorize payment, record transactions, and sign checks.
2. Record keeping must be separate from operations and the handling and custody of assets.
3. Monthly reconciliation and verifications of cash balances with bank statements shall be made by employees who do not handle or record cash, or sign checks.
4. Actual lines of responsibility shall be clearly established and then adhered to as closely as possible.
5. The person who prepares payrolls should not handle the related paychecks.

6. **All persons who handle financial transactions for LCDBG shall have a current bond or fidelity policy.**

Those communities whose limited personnel preclude them from complying with steps 2 through 5 should contact the state for further guidance. An adequate system of internal controls combined with specific program and financial management responsibilities will permit jurisdictions to maintain the books and records presented above and will facilitate compliance with State and federal requirements.

Rules of Expenditure (Other Program-Related Expenditures)

Office Equipment—Office equipment is considered a capital expenditure and is not allowed as direct charges except where approved in advance by LCDBG. When purchasing or leasing equipment, grantees must act in compliance with 24 CFR 85.36, "Procurement." In addition, any LCDBG funds expended to lease or purchase equipment will result in disallowed costs unless the grantee can establish - and has fully documented in the grant files - that the expenditure(s) was reasonable, necessary, and allowable for the grant, and was not a general expense required to carry out the overall responsibilities of local government as required by OMB Circular A-87. Prior to lease or purchase of any equipment with LCDBG funds, grantees should carry out an analysis of lease versus purchase alternatives, and any other appropriate analysis to determine which approach would be the most economical. This analysis must be fully documented in the grant files.

Items in Excess of $1,000.00—If the expected total cost of any single leased or purchased item or the total cost of the aggregate of items exceeds one thousand dollars ($1,000.00) during the course of the grant, prior approval from the State is required.

Miscellaneous Items (LaSTEP)—During the construction of a LaSTEP project, there are times when it is necessary to purchase certain miscellaneous items in addition to those that were listed in the materials bid, such as gasoline, tools, etc. However, there must be a financial tracking system for the purchase of these items. Any individual item to be purchased which is valued at $150.00 or more must use the small purchase procedure as described in *Section A, Program Administration: Methods for Securing Materials, Supplies and Construction Services* of this LCDBG Grantee Handbook. The grantee must appoint two individuals who are each authorized to make these purchases. Each invoice must be signed by one of the appointed individuals, and indicate on the invoice that the item(s) purchased is for the LaSTEP project. As a final verification, the project engineer must sign the invoices when paid by the grantee to ensure that these are costs associated with the project. For smaller items valued less than $150.00 per item, the small purchase procedure is not necessary; however, the same documentation as described above shall be indicated on the invoices, along with the final approval by the engineer.

Employees Paid From LCDBG Funds—All employees paid in whole or in part from LCDBG funds should prepare a timesheet indicating the hours worked and detailed duties performed on LCDBG projects for each pay period. Account for the total of the employees' activities in accordance with A-87. A contemporaneous journal entry in the grantee's General (or appropriate) Fund should be made indicating "Due from LCDBG" for the amount allocated of the employee's payroll to be reimbursed from LCDBG. Each time the grantee submits a RFP all of the "Due from LCDBG" amounts accumulated to that point should be added to that RFP. The appropriate journal entry for the LCDBG Capital Projects Fund will be a debit to Administration expenditure and a credit to Due to General (or appropriate) fund. A sample Timesheet is shown in **Exhibit A-29**. The grantee may use its own timesheet if it contains the equivalent information including the distribution of payroll costs and is signed by a knowledgeable supervisor.

Real Property vs. Rent—Real property or trailers cannot be purchased with LCDBG funds to accommodate administrative staff. Office space may be leased or rented if necessary. Rent paid shall not exceed average office rental costs in the community. Further, rental of administrative space for three years is substantially less expensive than purchase of property. It is more cost effective and insures that the maximum amount of LCDBG funds is spent for activities that benefit low-to-moderate income residents.

Indirect Costs—In order for indirect costs to be charged to the grant, a Cost Allocation Plan that has been approved by this office must be on file.

Program Income

Program income (OMB Circular A-110, Subpart C.24) is defined as gross income generated from the use of CDBG funds that were received by the State, a unit of general local government or a subrecipient of a unit of general local government. Generally, program income is returned to the State and is re-awarded following guidelines established in the State's current Consolidated Annual Action Plan, which is available on the Office of Community Development's website. There may be some circumstances where the general local government would be allowed to retain the income. The OCD should be contacted for instructions.

CHANGES IN THE GRANT; PREPARING BUDGET RECONCILIATIONS, BUDGET REVISIONS AND PROGRAM AMENDMENTS

The State approved the grantee's application based upon the specific purpose of, and items included in the project description and cost estimate. Deviations from those items require written approval from this office; failure to receive that approval could result in disallowed costs. This approval must be obtained prior to this bidding process and/or implementation of the change.

BUDGET RECONCILIATION REPORT (EXHIBIT A-30)

This report is required if funds are requested in one category and expended in another. In this report actual expenditures are compared with budgeted amounts and amounts requested on the RFP's by category (24CFR 85.2(b)(4)). This report must be sent if there are errors or changes in invoices after submittal for reimbursement. If amounts on the Certificate of Completion differ from the LCDBG records, a budget reconciliation report will be required prior to closeout.

BUDGET REVISION REPORT (EXHIBIT A-31)

A budget revision report must be sent to the Office of Community Development if the grantee must revise the program budget or move money allocated from one category to another. Prior approval is not required if the dollar amount of the budget change plus any prior budget changes is less than 10 percent of the grant amount. This report must be sent within 10 days of the budget change and 14 days prior to any RFP involving the change.

PROGRAM AMENDMENTS

Single changes or cumulative changes in the program budget greater than ten percent of the grant award amount or changes that result in the deletion or addition of an activity or item, require prior State approval. This approval must be requested through the submittal of a Request for Program Amendment, **Exhibit A-32**. Detailed instructions are included in the exhibit. A public hearing regarding the proposed amendment must be held prior to submitting the request to the State. Documentation of the hearing (notice of hearing and minutes) must be submitted to the State with the Request for Program Amendment. However, if the project requires the addition or deletion of the acquisition activity, a public hearing will NOT be required.

If all of the approved activities and items in the approved cost estimate have been completed and there are funds remaining due to cost under-runs, the use of those funds is subject to prior approval from the Office of Community Development in the form of a program amendment.

Expansions must be contiguous to the original target area. The overall project must still primarily benefit low-to-moderate income persons. The scope and intent of expansion must be in keeping with the scope and intent of the originally funded application.

Major reductions in the scope of proposed work could result in adverse state action — grant reduction, termination, or a finding of ineligibility for future funding. Grantees were selected for funding based on their proposed program and are expected to complete it as proposed.

Grantees should contact the Office of Community Development if problems emerge which might lead to program modifications. Early notification of potential problems will permit all parties to resolve them when possible.

The Office of Community Development will review all requests for an amendment very carefully to determine how the proposed change relates to the approved project. In making that determination, the Office of Community Development will ascertain as to whether or not the proposed change is an integral part of the originally approved project and is necessary to complete the project as originally approved. The Office of Community Development will also review the site location of the proposed change in relation to the originally approved target area.

Program amendment requests which will result in the deletion or addition of an activity or a reduction or expansion in the project's scope of work will be evaluated to determine whether the project would have been funded based on the data proposed in the amendment. If the project would not have been fundable based on the proposed changes, the amendment will not be approved.

Any LCDBG funds remaining in the program following issuance of a conditional closeout will revert to the State for use in other communities.

Amendments to the approved program can neither be requested nor approved through the submittal of engineering change orders.

AUDITS

The appropriate type of governmental fund for the LCDBG Program is a **Capital Projects Fund or Special Fund**, and as such the fund must be accounted for using a modified accrual basis of accounting. All LCDBG monies should be accounted for in that fund. This would include all revenue identified in the LCDBG contract such as local match, other funds, and program income. Each source should be identified in the accounting records and in the annual audit or financial report. When reported in the grantee's audit, the LCDBG funds utilized for each project should be separately identified.

SINGLE AUDITS

Under the provisions of the Single Audit Act Amendments of 1996, an audit under OMB Circular A-133 is required whenever the amount of federal expenditures (LCDBG program funds plus all other federal expenditures) in a year exceeds $500,000. This type of audit includes a full set of financial statements and other detailed information and is referred to as a "single audit." The single audit will meet federal accountability requirements and will be sufficient to meet state accountability requirements.

OTHER TYPES OF FINANCIAL REPORTS

If less than $500,000 in federal funds is expended in an entity's fiscal year, a single audit is not required, but other requirements called for by state law and LCDBG policies must be met. If a

grantee determines that a single audit is not required, of the grantee must submit one of the following reports:

1. annual sworn financial statements if revenue received was $50,000 or less,
2. an annual compilation if revenue received was more than $50,000 but less than $350,000,
3. a biennial audit if revenue received was $350,000 or more but less than $3,500,000, or
4. an annual audit if revenue received was $3,500,000 or more.

Audit Due Dates

An audit or financial report is required from each grantee annually within six months (180 days) after the grantee's fiscal year end. Audits that are not received within this six months time period will be placed by the State Legislative Auditor on a "Delinquent Audit List." Once on this list the entity will be barred from receiving funds from any source including LCDBG. This list is posted on the Legislative Auditor's website (**http://www.lla.state.la.us/**) and is updated daily as audits are received.

In addition, if a required audit(s) or financial report(s) for a conditionally closed out grant is not received by the Office of community Development within ten months after the grantee's fiscal year end, the grantee will be sanctioned from future participation in the LCDBG program. This sanction will remain in place until the audit(s) or financial report(s) has been received and approved by the Office of Community Development.

Parish Requirement. Parishes must submit single audits to the Department of Social Services, Office of Management and Finance, attention Mr. Joe Green, Post Office Box 3927, Baton Rouge, LA 70821.

AUDIT SCOPE

When a grantee engages an independent CPA to prepare an audit or compilation, a copy of the written engagement agreement must be furnished to the Legislative Auditor of the State of Louisiana for approval of the engagement terms and conditions. The Legislative Auditor will forward to the independent CPA a copy of the approved engagement agreement. Approval is now available via fax or e-mail.

CDBG funds are a pass-through grant from HUD; the CFDA # is 14.228. This information should be forwarded to the CPA firm that completes the annual audit.

Upon completion of the financial report (audit), please advise the CPA to send one copy of the completed audit, together with all written communications between the CPA and the grantee to the Legislative Auditor's Office, P.O. Box 94397, Baton Rouge, Louisiana 70804-9397 and one

copy to our office at Office of Community Development, P.O. 94095, Baton Rouge, Louisiana 70804-9095.

Grantee management may be expected to respond in writing to LCDBG regarding any findings of noncompliance, control structure comments or recommendations cited by the independent CPA in their report or in a report issued by the Legislative Auditor. Such response should identify each finding or comment and the action(s) that has been taken or is planned to be taken. If an action has not been taken, provide the approximate date the action will be completed, or explain why no action is believed to be required.

AUDIT COSTS

If audit costs are to be charged to the LCDBG program, the grantee must follow the procurement guidelines explained in Section A of this handbook. However, due to the importance of the audit process, grantees are reminded that not all CPAs are qualified to perform audits of governmental entities and in particular, under the Single Audit Act. Care should be exercised to select an experienced, qualified firm, rather than simply selecting the firm offering to perform the audit at the lowest price.

The pro-rated portion of the total audit cost which can be charged to the LCDBG program may be determined by multiplying the total audit cost times a fraction (the numerator of which is the LCDBG program expenditures for the period, and the denominator of which is the government entity's total expenditures for the period, including the LCDBG program expenditures). A calculation of the allowable portion of the audit cost should be included in the supporting documentation presented with the request for payment.

Under the latest revisions to OMB Circular A-87, if appropriate documentation of the audit costs provides a higher amount than the formula, the higher audit costs may be charged to the program. Supporting documentation should be available for review by LCDBG staff.

REMOVING CONTRACT CONDITIONS/RELEASE OF FUNDS

The LCDBG contract will contain contract conditions that must be met prior to the release of grant funds. Failure to meet the deadline for submitting the additional information required will result in a delay in removal of contract conditions and release of funds along with the application of penalties as outlined in this handbook. The state reserves the right to grant an extension to this deadline where the reasons for not meeting the required timeframe were clearly beyond the control of the grantee. If there are extenuating circumstances, the grantee must advise us of such prior to the submission deadline date and request an extension of time. These contract conditions include:

1. Completion of an environmental review record.

2. Preparation of a three-year Community Development Plan.
3. Section 504 Assurance.
4. Residential Antidisplacement and Relocation Plan and Certification.
5. Submittal of application revisions, if requested.
6. Project Plans and Specifications, and Final Cost Estimate.*
7. Previous audits and financial questionnaire, if requested.
8. Certification from engineer that plans and specifications are complete and if applicable, submitted to DHH.
9. Firm commitments from other project funds, if applicable.
10. Any other documentation, if requested.

*Prior to receiving an executed contract and a release of the FY 2010 LCDBG funds, the Office of Community Development must receive a signed certification from the project engineer stating that the plans and specifications for the public facilities project have been completed and submitted to DHH for approval, (if applicable). **A copy of those plans and specifications plus a final cost estimate must also be submitted to this office for review.** If at the end of the six-month calendar period the plans and specifications have not been submitted to both DHH, (if applicable), and this office, $250 per working day will be deducted from the construction line item budget and disallowed. The monies will be deducted from the amount of LCDBG funds allowed to pay an engineer for basic services. If the grantee is not using LCDBG funds to pay an engineer, the penalty will be assessed against the construction budget and disallowed. The state reserves the right to grant an extension where the reasons for not meeting the required time frame were clearly beyond the control of the engineer.

Until a release of funds from the State is received, funds cannot obligated or expended except those items identified in the "authorization to incur costs" letter from the State. At the completion of the environmental process, the grantee's chief elected official will sign the "Request for Release of Funds and Certification" form (**Exhibit A-7**). Item 1 on the form requires the OMB Catalog Number. The correct number is 14.228. Item 2 requests the HUD/State Identification Number, which is B-10-DC-22-0001. At this time, the grantee should review the contract conditions set forth in the contract and determine that they are complete. The State will review the "Request for Release of Funds and Certification" and send a letter informing the grantee whether grant conditions have been met and funds are being released, or specifying additional steps to be taken. The grantee may obligate and expend construction funds and request project funds on the LCDBG account **only** after the letter removing contract conditions for the project and the executed contract with the State are received. It is possible

that at the time funds are released, our review of the plans and specifications will not be complete. In that case, the Office of Community Development's letter releasing grant funds will state that the grantee is not authorized to advertise for bids for the project. When the review of the plans and specifications is complete, the grantee will be notified to advertise for bids.

COMMUNITY DEVELOPMENT (CD) PLAN

All LCDBG grantees are required to develop a CD Plan.

PRACTICAL STEPS TO WRITING A CD PLAN

- Determine the needs.
- Determine the appropriate strategy (Item 4) to meet the needs (Item 2). Include strategy objectives, activities, timing, monetary amounts and potential sources of funds, both LCDBG as well as other funds.
- Note if there are any population group or groups experiencing high rates of unemployment. If there are no particular unemployed group or groups that can be identified, note that fact.
- Use the information you have gathered to write the CD Plan, being careful to adhere to the outline structure detailed in the visual layout as well as the official instructions contained in **Exhibit A-33** (Community Development Plan). Check the CD Plan for any of the common deficiencies shown below and modify if necessary.

COMMON DEFICIENCIES OF CD PLANS

- Failure to mention a population group experiencing high unemployment under the "Economic Development Needs" section (Item 2-D in **Exhibit A-33**).
- Failure to match listed strategy in Item 4 with identified needs in Item 2.
- Failure to adequately explain strategy by not including objectives, activities, timing and monetary amounts in Item 4.
- Failure to follow the general outline structure as shown in **Exhibit A-33**.

If you have any questions, call Jim Reiger at (225)342-7412

PROCUREMENT REQUIREMENTS

IF A GRANTEE PLANS TO USE LCDBG FUNDS TO PAY FOR CONTRACT SERVICES, THE FEDERAL AND STATE PROCUREMENT REQUIREMENTS MUST BE MET TO AVOID PENALTIES.

The federal requirements (24 CFR 85.36) applicable in securing contract services [engineering, consulting and other professional services, and construction and supplier services] are included as **Exhibit A-34** (Federal Procurement Regulations (24 CFR 85.36)).

A procurement policy must be written and adopted prior to securing contract services. If a procurement policy is already in place, the grantee must determine whether it includes all federal requirements contained in 24 CFR 85.36. If the policy does not contain all federal requirements (and the grantee intends to use LCDBG funds to pay for such services), the policy must be amended accordingly. A sample Procurement Policy is included as **Exhibit A-35**.

The grantee's procurement policy must address the following:

1. A code of conduct that prohibits elected officials, staff, or agents from personally benefiting from LCDBG procurement must be included. The policy should prohibit the solicitation or acceptance of favors or gratuities from contractors or potential contractors. Sanctions or penalties for violations of the code of conduct by either grantee officials, staff or agents, or by contractors or their agents must be identified [24 CFR 85.36 (b)(3)].
2. Proposed procurements should be reviewed by staff to avoid unnecessary and duplicative purchases and to insure costs are "reasonable" [24 CFR 85.36 (b)(4)].
3. Affirmative efforts must be undertaken to hire women's business enterprises, minority firms and labor surplus firms, both by the grantee and the project's prime contractor [24 CFR 85.36 (e)].
4. The method of contracting outlined in the policy should be acceptable (fixed price, cost plus fixed fee, purchase orders, etc.). Cost plus a percentage of cost contracts must be specifically prohibited if LCDBG funds are involved [24 CFR 85.36 (f)(4)].
5. Procedures to handle and resolve disputes relating to procurement actions of the grantee must be included [24 CFR 85.36 (b)(12)].
6. All procurement transactions, regardless of dollar amount, must be conducted to provide "maximum open and free competition" [24 CFR 85.36 (c)]. Some of the situations considered to be restrictive of competition include, but are not limited to:
    a. Placing unreasonable requirements on firms in order for them to qualify to do business;
    b. Requiring unnecessary experience and excessive bonding;
    c. Noncompetitive pricing practices between firms or between affiliated companies;

d. Noncompetitive awards to consultants that are on retainer contracts;

e. Organizational conflicts of interest;

f. Specifying only a "brand name" product instead of allowing an "equal" product to be offered and describing the performance of other relevant requirements of the procurement; and

g. Any arbitrary action in the procurement process.

7. Methods of procurement to be followed when purchasing materials and supplies or contracting for services must be included [24 CFR 85.36 (d)].

Conflicts of interest in the award and/or administration of contracts must be avoided. "No employee … of the grantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when…the employee, any member of his (her) immediate family, his or her partner…has a financial or other interest in the firm selected for award." (24 CFR 85.36(b)(3)) Other federal regulations with which the grantee must comply are the conflict of interest requirements in 24 CFR 570.611 that are included as **Exhibit A-36** (Conflict of Interest).

Conflicts of interest may be governed also by state law (State's "Code of Governmental Ethics") or local law or ordinance.

METHODS FOR SECURING MATERIALS, SUPPLIES, AND CONSTRUCTION SERVICES

The procurement process must be in accordance with the federal requirements of 24 CFR 85.36 and Louisiana's Public Bid Law. One of the four methods below must be followed when procuring materials and supplies and construction services.

1. Small Purchase – A simple and informal method used to purchase materials or supplies costing less than $30,000 and construction services costing less than $100,000.

    a. Obtain price or rate quotations from no less than three sources. They can be obtained by fax, telephone or in writing. Three quotes must be obtained and not merely requested. A response of "not interested" does not qualify as a quote.

    b. Maintain written documentation on the names of the businesses contacted and how they were contacted; the prices that were quoted; and the basis for selecting one firm over the other(s).

    c. Prepare and execute a formal contract that identifies the scope of work and the terms of compensation.

2. Competitive Sealed Bids - Method used to purchase materials or supplies costing more than $30,000 (or if the grantee chooses not to follow the small purchase procedure) and for construction exceeding $100,000. Used when the primary basis for award is cost.
    a. Initiated by publishing an advertisement for bids.
    b. Must hold a public bid opening at the time and place set in the advertisement for bids.
    c. Must have a written review and tabulation of bids according to selection criteria.
    d. Contract must be awarded to the lowest responsive and responsible bidder. Must be a firm fixed-price contract (fixed price or unit price).
    e. Any or all bids may be rejected if there is a sound documented reason.
    f. A contract detailing a scope of work and the terms of compensation is executed.
3. Competitive Negotiation - Not an effective method for procuring materials and supplies.
4. Noncompetitive Negotiation – Use only under the following conditions:
    a. The grantee receives written approval from the Office of Community Development.
    b. The award of a contract is infeasible under small purchase, sealed bids or competitive negotiation methods, and one of the following circumstances applies:
        i. The item is available only from a single source;
        ii. There is some public emergency; or
        iii. The results of the competitive negotiation are inadequate.
    c. Negotiation is conducted with the firm regarding a scope of work and price.
    d. A contract detailing a scope of work and the terms of compensation is executed.

METHODS FOR SECURING PROFESSIONAL SERVICES

PROCURING PROFESSIONAL SERVICES PRIOR TO THE SUBMITTAL OF THE LCDBG APPLICATION ENABLES THE LOCAL GOVERNING BODY TO BEGIN IMPLEMENTING THE PROJECT IMMEDIATELY UPON GRANT AWARD; THEREFORE, THE STATE WILL NOT ALLOW THE TERMINATION OF PROFESSIONAL SERVICES CONTRACT WITHOUT A VALID REASON. IF THE LOCAL GOVERNING BODY CHOOSES TO ENTER INTO A CONTRACT WITH ANOTHER FIRM DIFFERENT FROM THE ONE PROCURED DURING THE APPLICATION STAGE, THE LOCAL GOVERNING BODY WILL BE REQUIRED TO USE OTHER FUNDS TO PAY FOR THESE SERVICES. THE USE OF LCDBG FUNDS WILL NOT BE ALLOWED. THE GRANT AWARD WILL BE REDUCED BY THE AMOUNT OF FUNDS ORIGINALLY REQUESTED FOR PROFESSIONAL SERVICES.

Three methods described herein are applicable if the grantee intends to use LCDBG funds. (This is not applicable if local funds are to pay for professional services. In this case, the grantee may use local laws and procedures.)

Small Purchase

As discussed in *Section A, Program Administration: Methods for Securing Materials, Supplies and Construction Services*, this is a simple and informal method used to procure professional services costing less than $100,000. *Exception:* engineering/architectural services. Engineering/architectural services must be procured through Competitive Negotiation using "Qualification Statements".

1. Obtain price or rate quotations from at least three sources. They can be obtained by fax, telephone, or in writing. Three quotes must be obtained and not just requested. In addition, a response of "not interested" does not qualify as a quote.
2. Maintain documentation of the businesses contacted; the way in which they were contacted; the prices that were quoted; and the reasons for the firm selected.
3. Execute a contract that identifies the scope of work and the terms of compensation.

Competitive Negotiation

Method used to procure professional services exceeding $100,000. Also, this procedure may be followed in lieu of the Small Purchase procedure.

1. Begin by advertising for Request for Proposals (RFP's) and/or Qualification Statements. The RFP is used when price is a factor in the selection process and the qualification statement is used when price is considered after the firm has been selected.
2. The advertisement must be in the grantees' nearest metropolitan statistical area newspaper. The advertisement should state:
    a. the city/parish has been awarded an LCDBG grant;
    b. the type of professional service(s) that is being solicited;
    c. the location and time where the scope of services, selection criteria, minimum requirements, etc., can be obtained; and
    d. the deadline for the submittal of the proposal or qualification statements.
3. The advertisement cannot require one firm provide both administrative and engineering services. However, the same firm may be procured for both services.
4. To assure "proposals will be solicited from an adequate number of qualified sources" as required in the federal regulations at 24 CFR 85.36 (d)(3)(ii), a copy of the request for

proposals as it will appear in the newspaper must be mailed to a minimum of three firms that provide administrative services.

5. The following information must be provided to all parties that responded to the advertisement (and/or mailing):
    a. a cover letter from the grantee signed by the chief elected official;
    b. scope of services;
    c. name and phone number of grantee's contact person;
    d. deadline and location for submittal of proposal and/or qualification statements;
    e. selection criteria and corresponding point system that will be used to rate the proposals or qualification statements received (Criteria **must** be identified as a tiebreaker when using an "all or none" point system. The State recommends that a tiebreaker is identified for all point systems although it is not required except for the instance previously identified.); and
    f. a statement that the amount of funds available for the contract will be subject to LCDBG restrictions and approval.
6. An <u>evaluation process</u> of the proposals and/or qualification statements received is required to determine whether the selection criteria and requirements are met. Please note that receipt of just one proposal and/or qualification statement requires an evaluation. It is recommended that the grantee organize a committee of several people with knowledge of the LCDBG project, keeping in mind the Conflict of Interest rules.

Legal fees must be necessary, reasonable and allocable to a specific task if the grantee intends to use LCDBG funds. The grantee need not procure an attorney if an attorney is on staff or on retainer. For reimbursement, the attorney's rate of pay must be reasonable and consistent with their regular rate of pay and the grantee must keep the following documentation: date and method of hire (minutes of council/policy jury meeting, civil services procedures, etc.), rate of pay, hours worked on the LCDBG program (time sheets), and details of tasks undertaken.

If the grantee has an attorney on retainer the following information must be kept for reimbursement purposes: a list of specific services to be provided, a list of services completed and the normal monthly retainer and, if applicable, the retainer prorated accordingly. The LCDBG grant will not reimburse an amount that exceeds the usual monthly retainer.

The federal procurement procedures must be followed if there is neither a staff attorney nor an attorney on retainer and the grantee intends to use such services and use grant funds to pay for such services. In addition, if the grantee intends to pay an attorney for an amount over the normal retainer, the federal procurement procedures must be followed.

Request for Proposals (RFPs)

RFPs are used to procure professional services except for the services of an engineering firm or architectural firm when using the competitive negotiation method.

An RFP must be prepared detailing the type of services needed and listing the selection criteria against which all responding proposals will be evaluated. Cost must be one of the selection criteria used and must be a minimum of 10 percent of the total possible points identified. Geographical preference may not be a criterion in accordance with federal regulations.

One of two procedures can be used to review proposals. The procedure chosen must be identified in the advertisement, and the procedure cannot be changed once the procurement process is initiated.

1. Establish a predetermined competitive range of points for proposals that would be considered to qualify for the job. All firms whose proposals scored within that range would be invited to an oral interview and asked to submit a "best and final offer". The proposals would be re-evaluated and the highest scoring firm would be chosen.
2. Evaluate the proposal(s) according to the selection criteria and award the contract to the highest scoring firm.

Please note: A firm cannot include in their RFP the experience and background of other firms. This type of inclusion will result in disallowed costs unless the following conditions are in place:

1. a written contractual agreement between the two firms that lists the services that will be provided by the subcontractor; and
2. the fees paid to the subcontractor must account for no less than 25 percent of the contract between the prime contractor and the grantee (excluding pre-agreement costs).

Qualification Statements

Qualification statements are used to procure the services of an engineering firm or architectural firm when using the competitive negotiation method. Qualification statements cannot be used to procure any other service. Engineering and architectural firms may be procured for administrative tasks, but the RFP procedure must be utilized to procure administrative services.

A selection is made based on the competitors' qualifications, subject to negotiation of fair and reasonable compensation.

The qualification statements must be evaluated by the selection criteria identified in the request. The grantee should negotiate costs with the top ranked firm.

Refer to the following exhibits for sample formats:

Exhibit A-37 — Sample Advertisement Requesting Proposals (Modify for requesting qualification statements.)

Exhibit A-38 — Sample Request For Proposals For Administrative Services

Exhibit A-39 — Sample request for qualification statements for engineering/architectural services

Exhibit A-40 — Sample Scope Of Services For A Housing Program to insert in a request for proposals package and contract

Non-Competitive Negotiation

This method may be used the Office of Community Development declares projects and emergency or when utilizing a regional planning district or area-wide planning agency. A grantee procuring services by this method must have prior written approval from the State. *Exception:* utilizing a regional planning district or area wide planning agency for administrative services. HUD has determined that grantees are permitted to obtain administrative services through "non-competitive negotiation" with a state or area wide planning agency on a nonprofit basis. The contract between the grantee and the planning district or agency must provide for compensation on a "cost reimbursement" rather than a "fixed fee" basis.

Grantees using a planning agency for administrative services must document the following:

1. the rationale for the method of procurement used;
2. reasoning behind the selection of contract type; and
3. an analysis of costs (Cost and Price Detail Form, **Exhibit A-41**). The planning district or agency must provide the grantee with this information prior to the final negotiation of the contract in order for the grantee to determine reasonableness of costs.

DOCUMENT EACH STEP OF THE PROCUREMENT PROCESS IN ORDER TO DEMONSTRATE COMPLIANCE WITH ALL THE PROCUREMENT REGULATIONS AND PROCEDURES.

PREPARATION OF CONTRACT

Cost Analysis

The grantee must analyze the costs of contracts when intending to use LCDBG funds. The Cost and Price Detail Form in **Exhibit A-41** can be used for this purpose. Generally, administrative contracts are cost reimbursement contracts (cost plus fixed fee) where the firm is paid on the basis of costs incurred, overhead, other direct costs, and a fixed fee. Basic engineering and design contracts are generally fixed price contracts where the firm is paid based on work

completed. The cost plus a percentage of cost and percentage of construction cost method of contracting cannot be used.

Pre-Agreement Costs.

A maximum of $2,500 is allowed for housing projects; a maximum of $4,700 is allowed for public facilities, demonstrated needs, and LaSTEP projects. A maximum of $9,000 is allowed for economic development projects if the Environmental Review Record for the project is submitted to OCD prior to or at the same time as application submittal. If the environmental Review Record is not submitted prior to or at the time of application submittal, a maximum of $4,000 will be allowed. (*Refer to the Consolidated Annual Action Plan for a breakdown of these maximum amounts.*) Pre-agreement costs must be identified separately in administrative contracts and engineering/architectural contracts.

Administration Allowances.

A maximum of $35,000 is allowed for housing projects; construction administration per unit for rehabilitation & reconstruction is up to $4,000; and, construction administration per unit for spot rehab is up to $1,000. For Physical Accessibility projects, a maximum of $25,000 will be allowed for administrative costs with an additional $1,500 for each house for construction administration.

A maximum of $35,000 is allowed for public facilities and economic development projects.

A maximum of $25,000 and $30,000 is allowed for demonstrated needs and LaSTEP projects. If the grantee has more than one active LCDBG project (*one that has not been issued a conditional or final close out*) or if the demonstrated needs project is subsequently approved as an emergency project, the maximum amount allowed for administrative costs will be reduced to $20,000.

Local Government Costs.

A grantee may be reimbursed with grant funds to cover general expenses such as attendance to project-related workshops, travel, staff time, legal fees, advertising fees, audit fees, and costs associated with Section 504 compliance. Reimbursements shall be in accordance with the state's Policy and Procedures Memorandum Number 49.

Engineering/Architectural Fees.

Such fees, even those provided under a fixed price contract, must be reasonable and justifiable. Sole justification that the fees are within the amount allowed by the Office of Community Development is not adequate. The funds allowed will not exceed those identified in the applicable LCDBG Application Package. If, after a project has been funded, the scope of the

project changes significantly, the Office of Community Development will make a determination of an amount that will be allowed.

Administrative Contract Requirements

Exhibit A-42 is a sample Contract for Professional Services. The following conditions must be included:

1. all services to be performed (including the submittal of close-out documents with the exception of the audits) will be completed within the 36 month period covered by the grantee's contract with the State;
2. the contract conditions will be cleared within six months of the date of the "authorization to incur costs" letter;
3. the amounts to be charged for pre-agreement and project administration should be separated; and
4. 10 percent of the contract amount will be retained until the grantee has received the State's approval of all close out documentation.

Engineering/Architectural Contract Requirements

Engineering and architectural firms may choose the Standard Form of Agreement between Owner and Engineer (or Architect) for Professional Services. The Terms and Conditions identified in Part II of **Exhibit A-42** must be made a part of the contract.

1. The following conditions must be included in the contract:
    a. plans and specifications will be completed within six months of the date of the "authorization to incur costs" letter;
    b. the advertisement to solicit bids for the construction contract will be published within 30 days of the State's "authorization to advertise for bids"; and
    c. the amounts for pre-agreement, basic and additional services should be identified separately.
2. Include in the contract:
    a. a scope of services (*basic and additional*),
    b. a timeframe for rendering services,
    c. payment schedules,
    d. opinions of cost,
    e. the grantee's responsibilities,

f. general considerations,

g. definitions,

h. special provisions, and

i. related exhibits.

3. Any standard contract shall be modified to include LCDBG Program requirements. The program requirements are:

   a. Construction contracts shall not contain any cost plus or incentive savings provisions. Therefore, the contract shall not refer to compensation adjustments for cost plus or incentive savings provisions.

   b. The basis of payment cannot be cost plus a percentage of cost or a percentage of construction cost.

   c. Payment is subject to the availability of LCDBG funds. It is understood that the amount of funds available for engineering/architectural services is contingent upon the amount of LCDBG funds the State allows. LCDBG funds will only be used for pre-agreement services and basic and additional services that are provided following the grantee's receipt of a grant award and an "Authorization to Incur Costs" letter from the State's Office of Community Development. If the firm charges for the preparation of the LCDBG application, the fees must be identified separately. The firm will not be compensated from the applicable LCDBG Program if the grantee does not receive funding.

   d. The final plans and specifications and cost estimate must be submitted to the Office of Community Development for review within six months of the grantee's receipt of an "Authorization to Incur Costs" letter. In addition, the same information must be submitted to DHH for approval for those projects subject to DHH review (*sewer collection, sewage treatment, and potable/fire protection water systems*). If the plans, specifications, and cost estimate have not been submitted at the end of the six-month calendar period, $250 per working day will be deducted from the amount of LCDBG funds allowed for basic services. The State reserves the right to grant a time extension where reasons for not meeting the time requirement were beyond the control of the engineer/architect.

   e. The first advertisement to solicit bids for construction must be published within 30 days of the State's "authorization to advertise for bids." This is required of all public facilities and demonstrated needs projects. Failure to comply will result in

an assessment of $250.00 per working day. The $250 will be deducted from the amount of LCDBG funds allowed for basic services. The State reserves the right to grant a time extension where reasons for not meeting the time requirement were beyond the control of the engineer/architect.

f. The Terms and Conditions in Part II of **Exhibit A-42** must be revised to refer to the engineer/architect and must be made a part of the contract.

CONTRACT REQUIREMENTS

A professional services contract must include the following provisions:

General Administrative Provisions

1. Effective date of contract.
2. Names and addresses of grantee and firm.
3. Names of representatives of grantee and firm who will act as liaison for contract administration.
4. Citation of the authority of the grantee under which the contract is entered into and source of funds.
5. Conditions and terms under which the contract may be terminated by either party or remedies for violation/breach of contract.

Scope of Services

1. Detailed description of extent and character of the work to be performed.
2. Time for contract performance and completion including project milestones, if any.
3. Specification of materials or other services to be provided by both parties, such as maps, reports, printing, etc.

Method of Compensation

Provisions for compensation for services including fee and/or payment schedules and specification of maximum amount payable under contract. Never pay in advance of work.

State and Federal Standard Provisions

1. Executive Order 11246 clause (7 paragraphs if contract is above $10,000 or 3 paragraphs of equal opportunity provisions if $10,000 or under).
2. Title VI clause pertaining to the Civil Rights Act of 1964.
3. Access to records statement.

4. Conflict of interest clause.
5. Section 3 statement pertaining to the Housing and Urban Development Act of 1968, as amended.
6. Section 109 clause pertaining to the Housing and Community Development Act of 1974, as amended.
7. Rehabilitation Act of 1973, Section 504 Handicapped Clause (if contract is $2,500 or above).
8. Age Discrimination Act of 1975 clause.

It is recommended that the grantee have its attorney review the contracts prior to execution.

Contractor Clearance

Contractor clearance must be obtained from the Office of Community Development on administrative consulting, architectural, and engineering firms that have not provided services to grantees under the LCDBG Program within the previous five program years regardless of the source of funding (**Exhibit A-43** - Verification of Professional Services Eligibility). Clearance must be obtained following grant award and before any costs are incurred other than pre-agreement costs. Firms that have participated in the Program within the previous five program years do not require clearance. Contractor clearance is not required for any other professional services.

RECORDKEEPING

The grantee should set up a file and maintain the following documentation in order to show compliance with the applicable State and federal requirements:

1. Copy of the advertisements requesting RFP's or qualification statements.
2. Copy of the package requesting RFP's or qualification statements; such package must identify the selection criteria that will be utilized in rating the RFP's or qualification statements received.
3. Description of the method used to select consultants.
4. The RFP's and qualification statements received.
5. Written evaluation of the RFP's and qualification statements received.
6. Written statement explaining the basis of selection.

7. Cost and price detail summary sheets supporting fees and written evidence that costs were reviewed for reasonableness.
8. Verification of clearance of firms.

EQUAL OPPORTUNITY REQUIREMENTS

Grantees are responsible for meeting equal opportunity requirements as follows:

1. Complying with Title VI of the Civil Rights Act of 1964 which provides that no person in the United States shall on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives federal financial assistance;
2. Complying with Title VIII of the Civil Rights Act of 1968, as amended, which prohibits discrimination against any person in the sale or rental of housing, or the provision of brokerage services, including in any way making unavailable or denying a dwelling to any person, because of race, color, religion, sex, national origin, handicap, or familial status;
3. Complying with Section 109 of the Housing and Community Development Act of 1974. This provides that no person in the United States shall, on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds provided under the Act. Section 109 further prohibits discrimination based on age under the Age Discrimination Act of 1975 and based on handicap under Section 504 of the Rehabilitation Act of 1973, as amended;
4. Complying with Section 3 of the Housing and Urban Development Act of 1968 which requires that, to the greatest extent feasible, opportunities for training and employment generated as a result of Section 3 covered financial assistance be given to lower income residents of the project area and contracts for work in connection with this project be awarded to eligible business concerns which are located in, or owned in substantial part by, persons residing in the area of the project;
5. Complying with the provisions of the Age Discrimination Act of 1975 which prohibits discrimination on the basis of age in the delivery of services and benefits supported by federal funds;
6. Complying with the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap in any programs or activities receiving federal financial assistance.; and

7. Complying with the provisions of 24 CFR 570.506(g) by maintaining equal opportunity and other records.

To assure compliance, a record keeping and reporting system should include:

1. Section 3 Compliance.
2. Project Benefit to Population Groups.
3. Grantee Employment Records (See City/Parish Employment form, **Exhibit A-44** or utilize an EEO4 form).
4. Minority Business participation efforts.
5. Fair Housing Activities.
6. Affirmative Action measures (if applicable) to past findings of discrimination.
7. Displacement Activities (if applicable).

MINORITY BUSINESS ENTERPRISE

24 CFR 85.36(e), requires that grantees take affirmative action to contract with small and minority owned firms or women's business enterprises in the administration of the LCDBG project. Some affirmative action steps include, but are not limited to the following:

- Adding qualified small and minority owned enterprises and women's business enterprises to solicitation lists.
- Assuring that small and minority owned enterprises and women's business enterprises are solicited whenever they are potential sources.
- When economically feasible, dividing total requirements into smaller tasks or quantities to permit maximum participation by small and minority owned enterprises and women's business enterprises.
- Where the requirements permit, establishing delivery schedules that will encourage participation by small and minority owned businesses and women's business enterprises.
- Using the services and assistance of the Small Business Administration as necessary.
- If any subcontracts are to be let, requiring the prime contractor to take the above affirmative steps.

One of the reporting requirements relative to minority contracting is the annual submission of the Contract and Subcontract Activity form (formerly called the MBE - Minority Business Enterprise Report) for construction and non-construction contracts and subcontracts. This

report is due by September 15 each year for the grant period. The grantee will only report new contracts which have been let from October 1 through September 30 each year and those that have not previously been reported. If the grant closes prior to the deadline, a report must be submitted with closeout documents **if and only if** there is a contract to report that **was not** previously reported. **Exhibit A-45** provides a copy of this required form.

When advertising for bids for construction or requesting Qualification Statements/Proposals for administration and planning, encourage minority participation in newspaper advertisements for services being procured.

MAINTAIN PROJECT BENEFIT RECORDS

As part of the LCDBG application, statistical information was submitted on the proposed persons benefiting from the proposed project. This information must be maintained and updated throughout the implementation of the project as it is necessary both in proving compliance with civil rights laws relative to non-discrimination and in meeting closeout requirements of providing data on actual beneficiaries. **Exhibit A-46**, Project Benefit Profile, assists with maintaining this information. It does not have to be submitted to this office. Please note that it must document those who are directly benefiting from the project and those who are indirectly benefiting. Direct benefit requires completion of a personal record (job application, rehab grant application) to receive the benefit. Indirect benefit is available to all residents in the area where the project is taking place (residential street improvements, water treatment plant). A Project Benefit Profile must be maintained for each activity except administration, planning, contingency, and engineering.

Additionally, grantees are required to keep a list of all applicants and certain characteristics of those who apply to receive direct benefits from the LCDBG project, i.e., ED job applicants, housing rehab applicants, applicants for sewer hook-ups, applicants for employment on jobs resulting from this project (new hires). This information will be submitted as part of the close-out procedures of the program.

MAINTAIN LOCAL GOVERNMENT EMPLOYMENT RECORDS

Each local government participating in the LCDBG program must maintain employment records that include the composition of their staff. **Exhibit A-45**, City/Parish Employment form, is provided to assist in keeping track of this information. Additionally, personnel policies should clearly outline hiring, training, and promotional procedures. The local government should develop an employment policy that contains a non-discrimination clause assuring that all persons will be treated equally in employment opportunities. An Equal Employment Opportunity poster must be displayed in a prominent place in the grantee's office. This poster may be obtained from the Office of Community Development.

SECTION 3 COMPLIANCE

INTRODUCTION

The purpose of Section 3 of the Housing and Urban Development Act of 1968 is to ensure that employment and other economic opportunities generated by HUD financial assistance shall, to the greatest extent feasible, be directed to low and very low income persons, and to business concerns that provide economic opportunities to low and very low income persons. Section 3 is also designed to direct new economic opportunities to local residents and businesses. The standards and procedures contained herein are to ensure that the objectives of Section 3 are met.

Section 3 compliance requirements are triggered when a grantee receives in **excess** of $200,000. If Section 3 is triggered for the grantee, then contractors/subcontractors whose contracts **exceed** $100,000 must also comply.

If triggered, the local grantee and all contractors on LCDBG projects must comply with Section 3 requirements in terms of hiring new employees or sub-contractors to work on the project. **Therefore, the grantee should discuss these requirements as a separate item at the PRE-CONSTRUCTION CONFERENCE or whatever other means the grantee utilizes to notify the prime contractor(s) of his/her responsibilities.**

Section 3 does not require the creation of economic opportunities for anyone, nor does the extension of employment opportunities to Section 3 residents preclude the necessity for that individual to be qualified for the job. Section 3 applies only when the project requires new hires, contracting, or subcontracting. Section 3 requirements apply to the entire project or activity, regardless of whether it is fully or partially funded by HUD.

Grantees must document their efforts to comply with Section 3 through maintenance of a "good faith efforts" file. It should contain memoranda, correspondence, advertisements, etc., illustrating the grantee's attempts <u>and the contractor's attempts</u> to reach eligible persons and businesses. Documentation should support attempts to comply with Section 3.

SECTION 3 DEFINITIONS

Contractor – any entity that contracts to perform work generated by the expenditure of Section 3 covered assistance, or for work in connection with Section 3 covered project.

Employment opportunities generated by Section 3 Covered Assistance – All employment opportunities arising in connection with Section 3 covered projects including management and administrative jobs such as architectural, engineering or related professional services, appraisers, CPA's, administrative consultants, or jobs directly related to administrative support of these jobs.

New hires – full-time employees for permanent, temporary or seasonal employment opportunities.

Low-income person – persons or families whose total household incomes do not exceed 80 percent of the median income for the area.

Very low-income person – persons or families whose total household incomes do not exceed 50 percent of the median income for the area.

Section 3 resident – a public housing resident or an individual who resides in the service area in which the Section 3 covered assistance is expended and who meets the definition of low-income or very low-income person.

Section 3 business concern – a business

1. That is 51 percent or more owned by Section 3 residents; or
2. Whose permanent, full-time employees include persons, at least 30 percent of whom are currently Section 3 residents, or within 3 years of the date of first employment with the business were Section 3 residents; or
3. That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications in Nos. 1 or 2 above.

Section 3 covered activity – any activity that is funded by Section 3 covered assistance.

Section 3 covered assistance – assistance provided under any CDBG program that is expended for work arising in connection with housing rehabilitation, housing construction, or other public construction projects.

Section 3 covered contract – a contract or subcontract (including a professional service contract) awarded by a recipient or contractor for work generated by the expenditure of Section 3 covered assistance, or for work arising in connection with a Section 3 covered project. This does not include contracts for the purchase of materials and supplies unless the contract includes purchasing of materials and installation of these materials and supplies. For example: a contract for the purchase and installation of a furnace would be a Section 3 covered contract because the contract is for work (i.e. the installation of the furnace) and thus is covered by Section 3.

Section 3 covered project – the construction, reconstruction, conversion or rehabilitation of housing and other public construction assisted with CDBG funds.

Service area – the geographical area in which the persons benefiting from the Section 3 covered project reside. This area should include the jurisdiction and surrounding areas in the parish of the grantee.

DEMONSTRATING COMPLIANCE

The "greatest extent feasible" requirement of Section 3 for grantees and covered contractors may be demonstrated by meeting numerical goals established by HUD. These goals, when met, provide a "safe harbor" for compliance with the Section 3 preference requirements. The goals established apply to the entire amount of Section 3 covered assistance awarded to the grantee. Grantees have the responsibility of ensuring that, to the greatest extent feasible, contractors will operate in compliance with the requirements of Section 3. Recipients must make every effort to recruit, target and direct economic opportunities to Section 3 residents and businesses. **This requires more than normal advertising.**

Employment

The **grantee** may demonstrate compliance with Section 3 by committing to employ **Section 3 residents** as **30** percent of the aggregate number of new hires **for the project**. This requirement extends ONLY to full-time jobs that may be permanent, temporary or seasonal and contracts that are a direct result of this project. It also includes any hiring by the local government or contractor for employees hired to work on the project.

Contracting

The **grantee and contractor** must demonstrate compliance with Section 3 by committing to award to **Section 3 business concerns** at least **10** percent of the total dollar amount of all Section 3 covered contracts for construction. The **grantee** must also commit to award at least **3** percent of all other contracts to Section 3 business concerns; i.e., administration, engineering, etc.

Failure to Meet Goals

A grantee or contractor/sub-contractor who has not met the goals set forth has the burden of demonstrating why it was not feasible to meet these goals. **Documentation must be maintained as to the actions taken by each in order to attain the goals and any impediments encountered.** This documentation will be reviewed when the grantee is monitored. Sanctions for noncompliance with Section 3 include debarment, suspension and limited denial of participation in HUD programs.

Other Economic Opportunities

Other economic opportunities to train and employ Section 3 residents include, but need not be limited to, use of "upward mobility", "bridge" and trainee positions to fill vacancies, and hiring Section 3 residents in part-time positions. These "other" opportunities, if provided, may be viewed by HUD as an effort to comply with Section 3 should a challenge be issued by a Section 3 resident or business concern that either the grantee or contractor is not following Section 3 requirements.

Activities for Complying with Section 3

The following are examples of efforts that can be utilized to assist grantees in reaching the specified goals in employment and contracting **(efforts must be documented)**. These examples of efforts which can be undertaken to assist in reaching Section 3 residents and businesses for employment and contracting opportunities should not be considered all inclusive. **(Normal advertising is not enough.)**

Employment

1. Establish a Section 3 Plan, including a Section 3 Coordinator and certification procedures. Personally notify certified residents of employment opportunities.
2. Post advertisements of the employment opportunities identifying the positions, qualification requirements, and where to obtain additional information about the application process in housing developments and transitional housing in the neighborhood or **service area of the Section 3 covered project**. In addition, post advertisements, indicating Section 3 preference, at the jobsite, churches, apartments, and other places that low income residents would frequent.
3. Contact community organizations and resident organizations and request assistance in notifying residents of the employment positions to be filled.
4. Sponsor a job informational meeting or job fair in the service area of the project. Undertake job counseling, education and related programs in association with local educational institutions.
5. Arrange assistance in conducting job interviews and completing job applications for residents of the service area where the project is located.
6. Arrange for a location in the service area of the project where job applications may be collected by the grantee or contractor representative.
7. Consult with State and local agencies administering probation and parole agencies, unemployment compensation programs, etc., to assist with recruiting Section 3

residents for employment. Use local Workforce office to hire new employees specifying Section 3 preference.

8. Advertise the jobs to be filled through the local media, such as community television networks, newspapers of general circulation, and radio.
9. Maintain a list of certified Section 3 residents for future employment positions.
10. After selection of bidders, but prior to execution of contracts, incorporate into the contract a negotiated provision for a specific number of Section 3 residents to be trained or employed on the Section 3 project.
11. Post a project notification sign in the project service area.

Contracting

1. Establish a Section 3 Plan, including a Section 3 coordinator and certification procedures. Personally notify certified businesses of employment opportunities.
2. In determining the responsibility of potential contractors, consider their past records of Section 3 compliance and their current plans for the pending contract. **Refrain from entering into contracts with contractors that fail to comply with Section 3.**
3. Utilize minority contractors associations and community organizations to assist in identifying Section 3 businesses who may be potential bidders.
4. Advertise contracting opportunities by posting notices concerning the work to be contracted in common areas of housing developments.
5. Providing written notice to all known Section 3 business concerns of the contracting opportunities.
6. Maintain a list of certified Section 3 businesses, and follow up with business concerns that have expressed interest in the contracting opportunities by personal contact to provide additional information. Give contractors a list of Section 3 subcontractors.
7. Coordinate pre-bid meetings at which Section 3 business concerns could be informed of the upcoming contracting opportunities.
8. Provide workshops on contracting procedures and specific contract opportunities in a timely manner so that Section 3 business concerns can take advantage of upcoming contracting opportunities.
9. Advise Section 3 business concerns as to where they may seek assistance to overcome limitations such as inability to obtain bonding, lines of credit, financing, or insurance.

10. Arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways to facilitate the participation of Section 3 business concerns.
11. Where appropriate, break out contract work items into economically feasible units to facilitate participation of Section 3 business concerns.
12. Contact agencies administering HUD Youthbuild programs and notify these agencies of the contracting opportunities.
13. Advertise the contracting opportunities through trade association papers, local media, such as television, newspapers and radio. Refer to Section 3 in bid packages.
14. Establish numerical goals (dollar amounts, and number of awards) for contracts to Section 3 business concerns.
15. The use of small purchase procedures (contract may not exceed $100,000) such as soliciting quotations from a minimum of three qualified sources. At the time of solicitation, inform the parties of the Section 3 covered contract to be awarded with sufficient specificity; the time within which quotations must be submitted; and the information that must be submitted. A valid attempt to obtain three quotes from qualified sources must be made and documented.
16. Post a project notification sign in the project service area.

Certification

Grantees are responsible for certifying the eligibility of residents and businesses seeking Section 3 preference. Section 3 residents may include residents of public housing, Section 8 voucher holders, recently unemployed, veterans, recipients of other federal assistance, single mothers re-entering the workforce and recent college graduates. The grantee should obtain a completed Resident Employment Opportunity Data form (**Exhibit A-47**) from each resident seeking Section 3 preference.

Once a contract has been awarded to a contractor or subcontractor, each contractor or subcontractor must complete a Section 3 Contractor/Subcontractor Eligibility Form (**Exhibit A-48**). If the contractor or subcontractor answers any of the questions affirmatively, they must also submit a Certification for Business Concerns Seeking Section 3 Preference in Contracting and Demonstration of Capability (**Exhibit A-49**) to the grantee.

Grantees should keep copies of these certifications on file in order to contact them for future opportunities. **Exhibits A-47** and **A-48** provide copies of the forms to be used for certification of residents and businesses.

Section 3 Reporting

Employment and Payroll Reporting

Contractors and subcontractors must provide information on new employees. To verify compliance with Section 3 of the Housing and Urban Development Act of 1968, all contractors and subcontractors must complete a "Contractor's/Subcontractor's New Employee Information Form" (**Exhibit A-50)** for each new hire. This form must be submitted with the first payroll on which the new employee appears.

Program Completion Reporting

The grantee must report to the State information on Section 3 new hires and contracts awarded to Section 3 business concerns. This report will be due at the time of closeout and will be included in the Program Completion Report. The reporting format and instructions are found in **Exhibit G-4**. **NOTE: This form has been changed and requires additional information from that of previous years.**

The Section 3 report requires the following information:

Employment and Training

1. Job Category,
2. Number of new hires,
3. Number of New Hires that are Section 3 Residents,
4. Percent of Aggregate number of staff hours of New Hires that are Section 3 Residents,
5. Percent of Total Staff Hours for Section 3 Employees and Trainees, and
6. Number of Section 3 Trainees.

For construction contracts awarded

1. the total **CDBG** dollar amount of all contracts awarded on the project,
2. the total **CDBG** dollar amount of contracts awarded to Section 3 businesses,
3. the percentage of the total dollar amount that was awarded to Section 3 businesses, and
4. the total number of Section 3 businesses receiving contracts.

For non-construction contracts (engineering, administration, attorneys, appraisers, CPA's, etc.)

1. the total **CDBG** dollar amount of all non-construction contracts awarded on the project,

2. the total **CDBG** dollar amount of non-construction contracts awarded to Section 3 businesses,
3. the percentage of the total dollar amount that was awarded to Section 3 businesses, and
4. the total number of Section 3 businesses receiving non-construction contracts.

Section 3 Complaints

Additionally, a Section 3 complaint may be filed by an individual representing the interests of a small business, or by a Section 3 resident, alleging non-compliance with Section 3 by the grantee, contractor or subcontractor. The complaint must be filed within 180 days of the alleged violations. A Section 3 Complaint Register is included as **Exhibit A-51**. The information provided on this form is given voluntarily and provides the basis for HUD's investigation of the complaint to determine if the allegations of non-compliance are valid.

Section 3 Contract Clause

The following clause (referred to as the Section 3 clause) must be included in all Section 3 covered contracts:

A. *The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed, to the greatest extent feasible, to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.*

B. *The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.*

C. *The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative*

of the contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each, and the name and location of the person(s) taking applications for each of the positions, and the anticipated date the work shall begin.

D. *The contractor agrees to include this Section 3 clause in every subcontract totaling $100,000 or more, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon finding that the sub-contractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.*

E. *The contractor certifies that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.*

F. *Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.*

G. *With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible: (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are*

subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

DEVELOPING AND IMPLEMENTING A FAIR HOUSING PROGRAM

The Federal Fair Housing Law provides that "…no person shall be subjected to discrimination because of race, color, religion, sex, handicap, familial status, or national origin in the sale, rental, or advertising of dwellings, in the provision of brokerage services, or in the availability of residential real estate-related transactions including lenders, builders and homeowners insurance companies" (24 CFR 100.5).

Grantees have agreed to administer all programs and activities related to housing and community development in a manner to affirmatively further the policies of the Fair Housing Act (42 U.S.C.3608(e)(5));(E.O.12259(1-202));(24 CFR 570.601). This includes promoting and publicizing Fair Housing laws as explained below and in **Exhibit A-52 (**Suggested Activities to Affirmatively Further Fair Housing). The grantee also agreed to develop and maintain records of efforts to assure fair housing.

LCDBG grantees are required to further fair housing efforts by conducting an analysis to identify **impediments to fair housing choice** within its jurisdiction, taking appropriate actions to overcome the effects of any impediments identified through that analysis, and maintaining records reflecting the analysis and actions in this regard (24 CFR 570.487(b)(1)).

> **Impediments** are defined as any actions, omissions, or decisions taken because of race, color, religion, sex, handicap, familial status, or national origin that restricts housing choices or the availability of housing choices.
>
> **Fair Housing Choice** is defined as the ability of persons - regardless of race, color, religion, sex, handicap, familial status, or national origin - of similar income levels - to have available to them the same housing choices.

A good analysis will reflect a comprehensive review of policies, practices and procedures that affect the location, availability and accessibility of housing choices. The State has developed a Fair Housing Assessment that identifies six areas that should be reviewed. This Assessment, complete with instructions and examples, is provided as **Exhibit A-53**. Upon completing the assessment, the grantee should address Fair Housing efforts in the areas determined most critical. The State will review the Fair Housing Assessment as part of its monitoring of the grantee, who will maintain a copy in its local records (24 CFR 570.601(a)(2)).

In addition, each grantee must conduct at least one Fair Housing activity during the grant period and maintain documentation of that activity that was or will be conducted. This

documentation must be available when our office conducts its on-site monitoring. The documentation must identify the type of Fair Housing activity that was or will be conducted (community seminar, brochure distribution, etc.), the target audience (the general public, real estate brokers etc.), and the category of Fair Housing information provided. **Exhibit A-52** offers suggestions of activities that can be undertaken which will be determined to "further Fair Housing" and includes a sample Utility Bill Stuffer and a Fair Housing flyer. As a prerequisite for performing various Fair Housing activities, grantees must be aware of the different possible infractions that constitute discriminatory conduct. This list of regulations that categorize and explain the different types of discriminatory conduct under federal law and provides contact information in the event a person feels they have been discriminated against is also included in **Exhibit A-52**.

DEVELOPING A CITIZEN PARTICIPATION PLAN

All applicants and grantees should have developed and adopted a Citizen Participation Plan prior to application preparation in order to be in compliance with Section 508 of the Housing and Community Development Act of 1974, as amended. The Plan at a minimum should:

- provide for and encourage citizen participation, with particular emphasis on participation by persons of low and moderate income who are residents of slum and blighted areas and of areas in which funds are proposed to be used;
- provide citizens with reasonable and timely access to local meetings, information, and records relating to the unit of local government proposed method of distribution and relating to the actual use of funds under Title I of the Housing and Community Development Act of 1974, as amended;
- provide for technical assistance to groups representative of persons of low and moderate income that request such assistance in developing proposals with the level and type of assistance to be determined by the grantee;
- provide for public hearings to obtain citizen views and to respond to proposals and questions at all stages of the community development program, including at least the development of needs, the review of proposed activities, and review of program performance; which hearings shall be held after adequate notice, at times and locations convenient to potential or actual beneficiaries, and with accommodations for the handicapped;
- provide for a formal written procedure which will accommodate a timely written response to written complaints and grievances, within 15 days where practicable; and

- identify how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of non-English speaking residents can be reasonably expected to participate.

Each applicant/grantee shall provide citizens with adequate opportunity to participate in the planning, implementation, and assessment of the LCDBG program. The applicant/grantee shall provide adequate information to citizens, hold a public hearing at the initial stage of the planning process to obtain views and proposals of citizens, and provide opportunity to comment on the applicant's/grantee's community development performance. The Citizen Participation Plan must incorporate procedures for complying with the above regulations (1-6).

If you did not prepare, adopt and follow a Plan in the beginning, a sample plan is included as **Exhibit A-54**. For future grant applications, the plan must be made available to the public at the beginning of the planning stage, i.e., the first public hearing. The plan must include procedures that meet the following requirements:

SCHEDULING AND PROVIDING NOTICES OF PUBLIC HEARINGS

Adequate notice must be given of the public hearing. A minimum of five calendar days notice shall be given. Public hearings must be scheduled early in the planning process to ensure adequate public participation and still have time to develop an application. In addition, the applicant/grantee must provide citizens with reasonable and timely access to the hearings. The location and times of these hearings must be scheduled in such a manner as to be convenient to potential or actual beneficiaries with accommodations for the handicapped and non-English speaking persons.

Citizens, with particular emphasis on persons of low and moderate income who are residents of slum and blighted areas, must be encouraged to submit their views and proposals regarding community development and housing needs. Citizens must be made aware of where they may submit their views and proposals should they be unable to attend the public hearing. Where a significant number of non-English speaking residents can be reasonably expected to participate in a public hearing, an interpreter must be present to accommodate the needs of the non-English speaking residents. Citizens must be provided with the following information at the public hearing prior to application submittal to the state. The following items must be included in the <u>first</u> public notice:

1. the amount of funds available for proposed community development.
2. the range of activities that may be undertaken, including the estimated amount proposed to be used for activities that will benefit persons of low and moderate income.

3. the plans of the applicant for minimizing displacement of persons as a result of activities assisted with such funds and the benefits to be provided by persons actually displaced as a result of such activities.
4. if applicable, the applicant must provide citizens with information regarding the applicant's performance in prior LCDBG programs funded by the State.

Written minutes of hearings and an attendance roster must be kept for review by State officials. Nothing in these requirements shall be construed to restrict the responsibility and authority of the applicant for the development of the application.

A second public notice must be published after the first public hearing has been held and prior to the application being submitted. This notice must be published a minimum of seven calendar days prior to application submittal. The second notice must inform citizens of the proposed objectives, proposed activities, the location of the proposed activities, and the amounts to be used for each activity. Citizens must be given the opportunity to review the application and comment on the proposed application. The notice must state the proposed submittal date of the application and must further provide the location at which, and hours when, the application is available for review. The application must be available for review when the notice is published in the newspaper.

In addition to the information required to be included in each public notice, you will find, in order to satisfy all the requirements of Citizen Participation, there is additional information that must be provided citizens and the most logical source for this provision is public notices. The sample Citizen Participation Plan, **Exhibit A-54**, incorporates all of the required elements. Review this document carefully.

Applicants must submit a notarized proof of publication of each public notice with the application.

TECHNICAL ASSISTANCE

The applicant must provide technical assistance to facilitate citizen participation where requested, particularly to groups representative of persons of low to moderate income. The level and type of technical assistance shall be determined by the applicant/grantee based upon the specific needs of the community's residents.

AMENDMENTS

The grantee must involve citizens in program amendments to the Community Development program. This shall be done by means of a public hearing prior to the submittal of the request for a program amendment to the State. Minutes of the hearing and a roster of those in attendance must be included with the program amendment request.

COMPLAINT PROCEDURES

Each applicant/grantee must have written citizen and administrative complaint procedures which provides the address, phone number and times for submitting complaints and provides for a maximum of fifteen (15) working days, where practicable, for a written response. The written Citizen Participation Plan must provide citizens with information relative to these procedures or, at a minimum, provide citizens with the information relative to the location and hours at which times they may obtain a copy of these written procedures. In **Exhibit A-54**, the complaint procedure has been included in the Citizen Participation Plan.

All written citizen complaints that identify deficiencies relative to the applicant/recipient's community development program merit full and prompt consideration and must be handled according to the grantee's written complaints procedure. Good faith attempts must be made to satisfactorily resolve the complaint at the local level. Complaints must be filed with the Chief Elected Official or his/her designee, who will investigate and review the complaint. A written response from the Chief Elected Official to the complainant must be made within fifteen working days, where practicable. A copy must be forwarded to the Office of Community Development, Division of Administration. The complainant must be made aware that if he/she is not satisfied with the response, a written complaint may be filed with the Office of Community Development, Division of Administration.

All citizen complaints relative to Fair Housing/Equal Opportunity violations involving discrimination must be forwarded to the Louisiana Department of Justice (DOJ), Public Protection Division, Post Office Box 94095, Baton Rouge, Louisiana 70804-9095, for disposition. The complainant must be notified in writing within 10 days that, due to the nature of the complaint, it has been forwarded to Louisiana Department of Justice. Citizens must be made aware that they can forward a complaint alleging discrimination directly to the Department of Justice or may contact the Department of Justice by telephone 1-800-273-5718 or TDD 1-225-342-7900.

Persons wishing to object to approval of an application by the State may make such objection known to the Office of Community Development, Division of Administration. The State will consider objections made only on the following grounds:

1. the applicant's description of needs and objectives is plainly inconsistent with available facts and data;
2. the activities to be undertaken are plainly inappropriate to meeting the needs and objectives identified by the applicant; or
3. the application does not comply with the requirements set forth in the Final Statement or other applicable laws.

Such objections should include both an identification of the requirements not met and, in the case of objections relative to (a) above, must include the data upon which the objection is based.

PERFORMANCE HEARINGS

Prior to close-out of the Community Development Program, the recipient must have a public hearing to obtain citizen views and to respond to questions relative to the recipient's performance. This hearing must be conducted after the construction has been completed. It may be conducted during or after the lien period. A copy of the public notice and minutes of the hearing must be submitted with the close-out documents.

Documentation must be kept at the local level to support compliance with the aforementioned requirements.

SECTION 504 REQUIREMENTS

Grantees are required to comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 754). Section 504 provides that "No otherwise qualified individual with handicaps in the United States shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance".

Compliance with the provisions of Section 504 requires that grantees shall implement each program or activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities.

MINIMUM REQUIREMENTS FOR ALL GRANTEES

In order to comply with Section 504, the following actions must be initiated:

Grantee Assurance

Each grantee shall submit an assurance to the Office of Community Development that the LCDBG Program will be operated in compliance with Section 504 requirements (24 CFR 8.50(a)). This assurance obligates the grantee for the period during which federal financial assistance is extended. This assurance must be submitted prior to receipt of the executed contract with the State. A sample assurance is attached as **Exhibit A-55**, Section 504 Assurance form.

Self-Evaluation

a. Each grantee shall have completed a self-evaluation of current policies and practices with respect to communications, employment, and program/physical accessibility to determine whether, in whole or in part, they do not or may not meet the requirements

of being accessible to individuals with disabilities. The self-evaluation will have been completed within six months of receipt of any grant award after July 1988.

b. The self evaluation shall designate all buildings and structures as "new" or "existing" depending on whether the building was constructed or altered after July 1988 (24 CFR 8.51(a)). The self-evaluation shall determine whether buildings and structures that house programs and services for the public can be approached, entered, and used by persons with disabilities. At a minimum the following items should be addressed in the self evaluation: Parking – Spaces, Curbs, Ramps; Routes and Pathways – Slopes, Levels, Ramps, Notices; Entrance Ways – Widths and Heights; Interiors – Door Grasp, Pressure, Pathways, Elevators; Service – Counter Heights, Notices; and Auxiliary Services – Telephones, Restrooms, Drinking Fountains.

c. Each grantee shall modify any policies and practices that do not meet the requirements for program accessibility (24 CFR 8.51). Because compliance with 504 does not necessarily require a grantee to make each of its existing facilities accessible to and usable by individuals with disabilities, or require a grantee to take any action that it can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens, a grantee may comply with the requirements of this section in its programs and activities receiving Federal financial assistance through such means as relocation of programs, assignment of aids to beneficiaries, home visits, or any other method that results in making its program or activity accessible to individuals with disabilities. A grantee is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section (24 CFR 8.21(i)). If structural changes are necessary, the grantee must develop a transition plan (see below).

NOTE: If a grantee has been the recipient of prior LCDBG funds and has a completed self-evaluation and if applicable, a transition plan, as mentioned above, the three year time period for completing the construction activities specified in a transition plan for most grantees has expired. For "existing" buildings and facilities that house programs and services for the public and are not accessible, the grantee must have adopted policies and/or modified practices to achieve accessibility. Prior grantees should prepare a summary of their past compliance activities. The summary will be reviewed at the time the grant is monitored. A sample can be found in **Exhibit A-56** (Summary of Actions Taken to Achieve Compliance with Section 504) of this handbook. **Note: The "Summary of Actions to Achieve Compliance with Section 504" must contain three sections: physical accessibility, communications, and employment.** Also, the grantee must re-submit the required assurance previously described to the Office of Community Development.

Visual and Hearing Impairments

Each grantee must ensure that members of the population eligible to be served or likely to be affected directly by a federally assisted program who have visual or hearing impairments are provided with the information necessary to understand and participate in the program. Methods for ensuring participation include, but are not limited to, qualified sign language and oral interpreters, readers, or the use of taped and Braille materials.

The regulation requires that each grantee must have available a TDD or equally effective method for communicating with hearing impaired persons. Louisiana has an approved relay service that may be utilized. **In order to utilize the relay system, the grantee must have a policy indicating the use of the relay system by the grantee and publish the telephone numbers in the newspaper.** The numbers are: TDD Users 1-800-846-5277, and Voice Users 1-800-947-5277. This service is free of charge. The number "711" has been approved by the FCC for use in contacting the relay service. This number works from both TDD and voice telephones and while it is applicable in most states, grantees are still required to list the "800" numbers presented above.

TRANSITION PLAN

If structural changes to non-housing facilities will be undertaken to achieve program accessibility (see notes below), a recipient shall develop a transition plan with the assistance of interested persons, including disabled individuals or organizations representing disabled individuals, for those areas which cannot be made accessible administratively (24 CFR 8.21 (4)). The construction activities identified in the transition plan must have been/must be completed within three years of completion of the self evaluation that was conducted within six months of the first grant award made after July 1988 (24 CFR 8.21(c) 3)–(see above). The transition plan must be made available for public inspection, and, at a minimum, it shall:

1. Identify all physical obstacles that limit the accessibility of programs and activities to individuals with disabilities;
2. Describe in detail the method to be used in making the facility accessible;
3. Set forth a schedule for completion of the modifications. If the schedule exceeds one (1) year, then the grantee must identify the actions to be taken during each year of the transition period;
4. Identify the individual responsible for implementation of the plan; and
5. Identify the persons or groups with whose assistance the plan was prepared.

NOTE: Unless a previously funded grantee has recently acquired a facility that was constructed prior to 1988, that will house programs and services available to the public, and

intends to make physical alterations to this facility, the three year construction period for meeting the accessibility requirement for existing facilities under this regulation will have expired. New non-housing facilities (designed, constructed or altered after July 11, 1988) shall be designed and constructed to be readily accessible to and usable by individuals with disabilities (24 CFR 8.32).

REQUIREMENTS FOR GRANTEES EMPLOYING 15 OR MORE PERSONS

1. A responsible employee must be designated to coordinate the community's efforts to comply with Section 504;
2. The community must adopt by resolution grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to housing covered by this part.
3. The grantee shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the grantee that it does not discriminate on the basis of disability in violation of this part. The notification shall state, where appropriate, that the grantee does not discriminate in admission or access to, or treatment or employment in, its federally assisted programs and activities. The notification shall also include an identification of the responsible employee designated above.

   A grantee shall make the initial notification required by this paragraph within 90 days of receipt of the executed contract with the State for each new grant. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publications, and distribution of memoranda or other written communications.
4. The grantee must maintain a file, make available for public inspection, and provide to the responsible civil rights official, upon request: (1) a list of the interested persons consulted; (2) a description of areas examined in the self-evaluation and any problems identified; and (3) a description of any modifications made and/or any remedial steps taken.

In order to assist with Section 504 compliance, a separate handbook was developed by Office of Community Development several years ago. An Update for Section 504 compliance was prepared in October, 2002. The Update provides examples of policies to be adopted for accessibility compliance.

SECTION 504 RECORD KEEPING

Each grantee must maintain data for the State showing the extent to which individuals with disabilities are beneficiaries of federally assisted programs.

ANTI-DISPLACEMENT

All grantees are required to adopt a Residential Anti-displacement and Relocation Assistance Plan and Certification before any funds can be dispersed to that grantee. Please refer to *Section E, Acquisition/Anti-Displacement/Relocation/Demolition: Residential Anti-Displacement and Relocation Assistance Plan* of this handbook for more information on this requirement.

DISCLOSURE REPORTS

In accordance with the Housing and Urban Development Reform Act of 1989, all applicants for and recipients of LCDBG funds must prepare Disclosure Reports. The primary purpose of the Disclosure Report is to identify the sources and uses of all funds that will be used in conjunction with the LCDBG funds. The initial Disclosure Report will be submitted as part of the application for funds. Those applicants who are successful in receiving LCDBG funds must submit updated Disclosure Reports for those circumstances that require updated reports. Updated reports must be submitted to the Office of Community Development within thirty days of any change that addresses one of the circumstances requiring an updated report. The forms and instructions for completion of the initial and updated reports are included in **Exhibit A-57** (LCDBG Disclosure Report).

RECORD KEEPING AND REPORTING

You must be able to document full compliance with all applicable regulations of the LCDBG program. This can be accomplished through careful attention in maintaining adequate records and submitting required reports. Your LCDBG records must be maintained for a period of four years after final closeout. The filing system you establish to keep these records should be easy to use while providing a historical account of your activities for examination and review by the State, auditors, and local staff. Your filing system should be established on a program year basis. This will result in a duplication of files, but it will make your use of the files much easier. In addition, your files must be maintained in a central location. The checklist below is a sample of the major file categories you should maintain and a listing of materials that should be kept in each file. This list is not all inclusive. Although the consultant may maintain a set of files in his/her office, the local governing body is required to maintain the original files in the Town Hall/Courthouse.

Application

- Application
- Correspondence relating to the application
- Requests for program amendments/program changes and State's response

Contract Agreement

- Letter from the State awarding grant
- Contract Agreement
- Request for Removal of Contract Conditions and Release of Funds Form
- Notice of Removal of Contract Conditions and Release of Funds Form or letter from the State stating that the contract conditions have been removed
- Records of correspondence concerning other contract conditions

Environmental Review Record

- Finding of Exemption (if applicable)
- Finding of Categorical Exclusion (if applicable)
- Statutory checklist (if applicable)
- Project description
- Environmental Assessment/Checklist (if applicable)
- ERR Project Map with boundaries marked
- Floodplain Map
- Floodplain Notices/8-step documentation (if applicable)
- US Corps of Engineers letters (to and from / if applicable)
- State Historic Preservation letters (to and from)
- Farmland Conversion Impact Rating form (if applicable)
- Historic Preservation Housing Rehab Certifications (for housing activities only)
- Statutory Checklist Completion Forms (for housing activities only)
- Notice of Intent to Request Release of Funds **OR** Combined Notice of Finding of No Significant Impact and of Intent to Request a Release of Grant Funds
- Notice of FONSI distribution list

- Request for Release of Funds and Certification
- All letters related to ERR
- Any required permits

Financial Management

- Designation of Depositary Card
- Authorized Signature Card
- Financial Management Questionnaire (mailed with “Application Revision Letter)
- Requests for Payment
- Accounting books of original and final entry (Cash Receipts Journal, Cash Disbursements Journal, Monthly Financial Statements, General Ledger, LCDBG Property Register, Cash Control Card)
- Record of commitment of other funds
- Source documentation (contracts, purchase orders, vouchers, invoices, requests for partial payment, etc.)
- Canceled checks, EFT records, monthly bank statements, etc.
- City/Parish Code of Ethics
- City/Parish audits

Procurement

- Adopted procurement policy
- All professional services contracts (technical assistance, engineering, administrative, legal, audit, appraisal, et cetera)
- Methods and procedures for selection of professional services
- Qualification statements and proposals received
- Written review and evaluation of statements and proposals received
- Negotiation methodologies
- Cost and price detail summaries
- Amendments to contracts (if applicable)
- Evidence of City/Parish's attempt to identify and solicit minority contractors and vendors and documentation to support "good faith effort"

Fair Housing/Equal Opportunity

- City/Parish Employment Affirmative Action Plan, if applicable
- Evidence of efforts to affirmatively further fair housing
- City/Parish employment profile
- Project benefit profile documentation
- Analysis of Impediments to Fair Housing/Fair Housing Assessment
- M.B.E. Reports

Citizen Participation

- Copy of all notices of public hearings held and proofs of publication relating to your LCDBG program
- List of persons attending public hearings and minutes of the meetings
- Citizen inquiries and complaints and correspondence responding to the inquiries and complaints
- Copy of Citizen Participation Plan with adopting resolution. Records documenting implementation and compliance with the CP Plan Citizen Complaint Procedures

Section 504

- Self-evaluation with all areas examined
- List of interested persons consulted
- Transition Plan (if applicable)
- Summary of Previous Actions Taken to Achieve Compliance with Section 504
- Description of modifications made, or to be made, whether administratively or physically
- Designation of responsible person to coordinate Section 504 (if 15 or more employed)
- Grievance Procedure (if 15 or more persons are employed) - relating specifically to Section 504 and resolution adopting it
- Notices Required (if 15 or more persons are employed)
- Statement of Policy to be used with published or recruitment materials or publications of general information

- Method for ensuring participation by those likely to be affected by the LCDBG Program who have visual or hearing impairments
- Procedures which ensure that interested persons (including those with visual or hearing impairments) can obtain information on the existence and location of accessible services, activities, and facilities
- Employment/Personnel Practices
- Data which shows the extent to which handicapped individuals are benefitting from the LCDBG program
- Section 504 Assurance

Section 3

- Section 3 Plan for grantee (if grant exceeds $200,000)
- Section 3 Plan for contractors and subcontractors (with contracts over $100,000)
- Tables A & B to accompany Section 3 Plan
- Section 3 Certification for Contractor
- Certification of Proposed Subcontractor regarding Section 3 and Segregated Facilities (for all subcontractors)
- Proof of efforts to hire Section 3 employees and businesses by grantee, contractors and subcontractors if subject to Section 3; if Section 3 goals are not met, proof of impediments to hiring Section 3

Public Facilities Projects

- Special studies, surveys, investigations, tests results, et cetera
- Preliminary design and cost estimates
- Final design documents and cost estimates
- Evidence that all land, rights-of-ways, and easements have been obtained prior to advertising project for bids; should include highway permits and railroad crossing permits as applicable
- Advertisements for bids
- Bid documents
- Evidence of submittal to and/or review by cognizant State or Federal agency having jurisdiction over project

- Conformance with Architectural Barriers Act, if applicable
- List of proposed bidders and suppliers receiving copies of the bid documents
- Minutes of public bid opening
- Tabulation of bids with copy of the bid proposal and bid bond submitted by each bidder
- Bidder qualification information; verification of contractor eligibility
- Notice of award of the contract to the lowest responsible bidder
- Evidence of contractor and subcontractor verification of eligibility and approval
- Architect/engineer inspection reports or project status reports, field measurements and test results
- Records of claims, disputes, et cetera
- Change orders and field orders with supporting documentation and justification
- Final inspection and acceptance of project
- Clear lien certificate and final payment to contractor
- As-built drawings
- Correspondence, memoranda, and other records that may relate to construction contracts
- Verification of contractors' compliance with Section 3 regulations

Comprehensive labor standards compliance files must be established for each construction job. **Exhibit C-11** is a COMPREHENSIVE CONSTRUCTION CONTRACT CHECKLIST that includes all required labor standard compliance documentation and provides a system for documenting compliance activities.

Labor Standards

- Designation of a local Labor Standards Compliance Officer
- Request for Wage Determination
- Wage determinations, modifications, and additional classifications
- Federal Labor Standards Provisions
- Evidence of the 10-day call
- Verification of contractor eligibility
- Notice of Contract Award

- Contractor’s License Forms
- Contractor's and subcontractor's weekly payrolls and Statements of Compliance signed by an officer of the company
- Evidence of apprenticeship/trainee registration and certification if apprentice or trainee rates were paid
- Payroll deduction authorizations
- Employee interviews
- Evidence indicating that the federal wage determination and the Labor, E.O., and Safety posters were posted
- Evidence of restitution, if any
- Complaints from workers, if any, and actions taken
- Labor Standards Compliance Report(s), if any
- Final Wage Compliance Report

State Monitoring/Inspections

- State letter(s) of findings
- City/Parish response to letter of findings
- State's response clearing findings
- Other correspondence related to the State's monitoring visits

Audit

- Method utilized to procure audit firm(s)
- Professional Services Agreement with independent CPA
- Financial Reports
- Information relating to Financial Reports costs

Project Closeout

- Program Completion Report
- Certification of Completion
- State’s letter Issuing a Conditional Closeout
- State’s letter Issuing a Final Closeout

General Correspondence

Incoming and outgoing correspondence that does not fall into the above categories or into a specific project file category

Force Account

Contact the State's Office of Community Development for record keeping requirements with respect to force account.

Property Rehabilitation Case Files: (for each property Rehabilitated)

- General file
    - Property Rehabilitation Plan and resolution of adoption
    - Project area rehabilitation survey
- Application for property Rehabilitation assistance from property owner must include the following:
    - Identification of the person(s)
    - Address and proof of ownership or occupancy exceeding six months
    - Phone number
    - Ethnic group classification
    - Age and sex of all members of household
    - Monthly gross income of all members of the household older than seventeen
    - Monthly house note, if any
    - Average utility cost
    - Sex of head of household
    - Head of household handicap status
- Determination of eligibility for assistance and copies of all unfounded applicants
- Property inspection(s), work write-up and cost estimates
- Agreement to provide property Rehabilitation assistance
- Method and procedures used for contractor selection
- Construction contract documents
- Notice to Proceed with construction

- Inspection reports including final inspection reports and homeowners acceptance
- Payments to contractor
- Deferred loan lien agreement duly executed with the clerk of court
- Clear lien certificates
- Copies of all applicable warranties

Demolition (For each property demolished excluding Reconstruction)

- A file for each unit demolished
- Evidence that demolition was carried out in accordance with the requirements under La. R.S. 33:476/et.seq.
- Proof that the unit could not be rehabilitated in a cost efficient manner. (Photos or written Section 8 checklists, other documentation)
- Proof that the unit was vacant prior to demolition.

Land Acquisition: (for each parcel, easement, or right-of-way acquired or obtained)

- Official determination to acquire; a citation of the action that constitutes the official determination to acquire, the date of the action, and the applicable LCDBG contract number.
- Notice of Intent to acquire property; a copy of the notice, citation of the date of transmittal to owner, and evidence of receipt by the owner.
- Notice of land acquisition procedures; a citation of the date of transmittal to the owner and evidence of receipt by owner. (NOTE: LCDBG reviewer shall assure himself that notice actually transmitted is adequate.)
- Invitation to accompany appraiser - evidence that owner was invited to accompany each appraiser on his inspection of the property.
- Appraisal reports; a copy of each appraisal report, including reviewer's report on which determination of just compensation was based.
- Determination of just compensation; a copy of the resolution, certification, motion or other document constituting the determination of just compensation.
- Purchase offer; a copy of written purchase offer of just compensation, including all basic terms and conditions of such offer, and a citation of the date of delivery to the owner. This date is the initiation of negotiations.

- Statement of the basis for the determination of just compensation; a copy of the statement and an indication it was delivered to owner with written purchase offer.
- Purchase agreement, deed, declaration of taking, and tenant waivers; a copy of each such document and any similar or related document utilized in conveyance.
- Settlement cost reporting statement; a copy of the statement.
- Purchase price receipt; evidence of owner receipt of purchase price payment.
- Ninety days notice to surrender possession of premises; a copy of the notice. As an alternative, a copy of this notice may be included in the relocation or property management file.
- Copy of any appeal or complaint filed and recipient's response.
- If voluntary acquisition procedures were used, a copy of the adopted Voluntary Acquisition Policy and a copy of the resolution.

Relocation Case Files: (for each relocation claim)

- Identification of person, displacement property, racial/ethnic group classification, age and sex of all members of household, monthly rent and utility costs for displacement and replacement housing, type of enterprise, and relocation needs and preferences.
- Evidence that the person received a timely statement describing available relocation payments and basic eligibility conditions, available advisory services, and right to comparable replacement housing (or suitable replacement housing under Section 104(j) policies).
- Evidence that the person received a timely written notice informing him/her of eligibility for relocation assistance and the location and cost of the comparable replacement dwelling used to establish the upper limit of the replacement housing payment.
- Evidence and dates of personal contacts; and description of services provided.
- Identification of referrals to replacement properties, date of referral, sale price or rent/utility costs (if dwelling), date of availability, and reason(s) for declining referral.
- Copy of 90-day notice and vacate notice, if issued.
- Identification of actual replacement property, sale price or rent/utility costs (if dwelling), and date of relocation.
- Replacement dwelling inspection report; and date of inspection.

- A copy of each approved claim form and related documentation; evidence that the person received payment.
- Copy of any appeal or complaint filed and recipient's response.
- Copy of deferred loan lien agreement that has been filed with the clerk of courts office.

B. LABOR COMPLIANCE

REGULATIONS/REQUIREMENTS

- **Davis-Bacon and Related Acts (40. U.S.C. 276(a)-276(a)-7)** The Davis-Bacon Act (DBA), enacted by the United States Congress, covers contracts that are directly federally funded. After the DBA was enacted, Congress extended the reach of the Davis-Bacon Act provisions by passing Davis-Bacon Related Acts (DBRA), which cover contracts that are indirectly federally financed (or assisted) in whole or in part. The Louisiana Community Development Block Grant (LCDBG) program is funded through the U. S. Department of Housing and Urban Development (HUD). Thus, most of the LCDBG program's construction contracts are indirectly federally funded and subject to DBRA. DBA and DBRA are basically the same in substance and purpose. This grantee Handbook will often use the following terms interchangeably: Davis-Bacon, Davis-Bacon requirements, prevailing wage requirements, DBA, and DBRA.

  Davis Bacon requires payment of locally prevailing wages to laborers and mechanics for on-site construction, alteration, or repair on federally financed projects having contracts in excess of $2,000. Locally prevailing wages are determined by the U.S. Department of Labor (DOL) and made available to the public as "wage decisions." A contractor(s) on an LCDBG project covered by Davis-Bacon must meet, at a minimum, the wage requirements set forth in the wage decision(s) applicable to the project.

- **Copeland "Anti-Kickback" Act (40 U.S.C. 276c)** The Copeland Act applies to contracts receiving federal financing (assistance) that are subject to Davis-Bacon requirements. The Copeland Act requires weekly payrolls, Statements of Compliance and that deductions from workers' pay be permissible.

- **Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333)** CWHSSA, applies to federally financed (in whole or in part) contracts over $100,000 and provides that workers be paid at least one and one-half times their basic rate of pay for any time worked in excess of forty hours weekly.

- **Louisiana Law** Some issues are not addressed in federal law but will be applicable to LCDBG projects under state law. In cases where state law is more stringent than federal law, the state law would be applicable.

- **LCDBG Requirements** Numerous procedures and documentation requirements are established by the Office of Community Development (OCD), which is responsible for administering the federally funded LCDBG program.

RESPONSIBILITIES

LOCAL GOVERNMENT RESPONSIBILITIES

Each local government is responsible for ensuring compliance with Labor Standards as detailed in this section. The local government's designated Labor Compliance Officer (LCO), often an administrative consultant, is normally delegated the tasks associated with compliance with Labor Standards; however, the local government is ultimately responsible. The form used to designate the local government's Labor Compliance Officer is provided as **Exhibit B-1** (Appointment of Labor Compliance Officer) and is for the local government's use only. Please do not send this form to the Office of Community Development (OCD).

The local government must establish and maintain an adequate labor standards file(s) as specified in *Program Administration: Record Keeping and Reporting*.

OFFICE OF COMMUNITY DEVELOPMENT RESPONSIBILITIES

The Office of Community Development will establish labor standards procedures, provide technical assistance regarding labor questions, conduct compliance reviews, and specify corrective actions.

WAGE DECISIONS

- **Definition of a Wage Decision** A wage decision is a document listing a minimum wage rate and fringe benefit for each classification of laborers or mechanics which DOL has determined to be prevailing in a given area for a particular type of construction. A Wage Decision Example is provided as **Exhibit B-2.** The minimum pay requirements are referred to as "prevailing wages."

- **Source of Wage Decisions** The responsibility of determining prevailing wages is delegated to the United States Department of Labor (DOL). To meet this responsibility, DOL surveys contractors on construction projects nationwide to determine the prevailing wages for each locality. DOL then issues corresponding wage decisions. The terms "wage decision" and "wage determination" have the same meaning and are used interchangeably.

- **Wage Decision (s) as Part of the Construction Contract** Davis-Bacon requires that each prime contract over $2,000, which is assisted by federal funds and is for construction, alteration, or repair of public buildings or public works, contain the applicable DOL wage decision(s). Most LCDBG projects, except for housing projects, are covered.

  Subcontracts are also subject to Davis-Bacon by a required contractual agreement containing prevailing wage provisions between the prime contractor and

subcontractor(s). If any portion of a contract is subject to Davis-Bacon requirements, then all work under that contract, including the work of subcontractors, is subject to Davis-Bacon requirements.

TYPES OF WAGE DECISIONS

- **Building** The construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies. This type includes the construction of such structures, the installation of utilities, and the installation of equipment above and below the grade level, as well as incidental grading and paving. Structures need not be habitable to be considered as building construction.
- **Highway** The construction, alteration, or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas, and other similar projects that are not incidental to building or heavy construction.
- **Heavy** The construction on projects that cannot be classified as building, residential, or highway.
- **Residential** The construction, alteration, or repair of single-family houses or apartment buildings of no more than four (4) stories in height. This includes incidental items such as site work, parking areas, utilities, streets and sidewalks. LCDBG block grants are not often awarded for the construction activities listed under "Residential" in the following table; therefore, housing projects funded by this office are rarely covered by Davis-Bacon.

The Four Decision Types Based on Nature of Construction

Building	Highway	Heavy	Residential
Alteration or addition to buildings	Curbs	Drainage projects	Apartment buildings (4 stories or less)
Fire stations	Concrete pavement including sidewalks	Pumping stations (prefabricated drop-in units—not buildings	Married student housing
Hotels and motels	Parking lots	Sewers (sanitary, storm, etc.)	Multi-family houses (8 or more)
Power plants	Street reconstruction	Sewer collection	Town or row houses
Prefabricated buildings	Roadbeds	Water storage tanks	Single family houses (8 or more under one contract)
Remodeling, repairing, and renovating buildings	Shoulders	Water and sewage treatment plants (other than buildings)	
Warehouses	Street paving	Water mains	
Water and sewage treatment plants (buildings only)		Water wells	

OBTAINING A WAGE DECISION

- **Choosing and Downloading the Proper Wage Decision** Multiple factors must be considered to enable the proper choice of wage decision(s). Factors to consider when choosing a wage decision include: (a) decision type—whether building, highway, heavy or residential, (b) project location and (c) special characteristics of the project (such as elevated or ground storage tank), and (d) the possibility that more than one decision may apply. The local government is responsible to ensure that the correct wage decision(s) is chosen and becomes part of the bid document and that the correct wage decision(s) becomes part of the contract between the local government and the prime construction contractor.

  If the local government wishes to request guidance from the Office of Community Development regarding the proper wage decision choice, **Exhibit B-3**, "Initial Wage Decision Request," will facilitate the process. The request of an initial wage decision utilizing the expertise of the labor specialists in the Office of Community Development is an option but is not an LCDBG program requirement. The initial wage rate request guidance may be initiated by phone call, fax, or e-mail. If the request is initiated by phone call, the local government should provide OCD with the information contained in **Exhibit B-3**. If the request is initiated by fax, complete **Exhibit B-3** and fax it to OCD. If the request is initiated by e-mail, complete the form electronically and send it to the Labor Compliance Officer of the Office of Community Development.

  The local government may choose to obtain the proper wage decision(s) without OCD's assistance. DOL's website, **www.wdol.gov**, has guidance for choosing the proper wage decision and allows it to be downloaded. If the local government is unable to download a decision(s), the Labor Compliance Officer of the Office of Community Development should be notified. OCD will assist in the process, and if necessary, send the proper initial wage decision to the local government by fax, e-mail, or U.S. Mail.

TEN DAYS

- **The Process of Updating Wage Decisions** DOL gathers information on a year-round basis regarding wage decisions and often issues an update of a particular wage decision. An update of a wage decision is referred to as a "modification" or "mod." Less frequently, DOL will issue an entire new series of wage decisions, called supersedeas decisions, having a new wage decision number based on a new series year. For example, supersedeas decisions labeled as year 2003 were issued for Louisiana projects on June 13, 2003. Thereafter, for Louisiana, modifications to the 2003 series were issued on various dates until February 9, 2007, when the 2007 series of supersedeas

decisions were issued. Regardless of whether a wage decision is updated by modification or by supersedeas decision, it is required that the proper decision(s) is incorporated into bid and contract documents.

- **The Effective Wage Decision** DOL does not intend that bidders have to take into consideration the constantly changing rates when preparing bids. DOL allows the wage decision in effect ten days before the bid opening date to be effective for the duration of the construction if the contract is awarded within 90 days of the bid opening date. Such a wage decision is said to be "locked-in" and is also called the "effective" wage decision. If more than 90 days transpires between the bid opening and contract award, the wage decision in effect on the date of the contract award becomes the "effective" wage decision.
- **Ten Day Responsibility** It is the local government's responsibility to ensure that the wage decision(s) that is in effect ten days before the bid opening date was part of the original bid package or becomes part of the original bid package by addendum, which must be sent to all who obtained a bid package. The bidders are thus given the opportunity to change their bids prior to bid opening, based on the updated wage decision(s).
- **Ten Day Options** The "ten day call" (see **Exhibit B-4**, Ten Day Call Form) is one option that the local government may use to determine whether a wage decision has been updated since the bid package was prepared. The Ten Day Call is simply a telephone call made by the local government to OCD ten days before the bid opening date. If the day on which the call should be made falls on a weekend, then the call should be made on Friday or Monday. OCD will then examine the **www.wdol.gov** website to determine if there have been any updates. If there has been an update, the local government must obtain (normally download) the updated wage decision and send a copy by addendum to all who obtained a bid package. OCD will enter the optional ten day call into grant records. It is important to remember that Louisiana law requires that any addenda to a bid package be received at least 72 hours prior to the bid opening.
- The "ten day search" is another option that the local government may use to determine whether a wage decision has been updated since the bid package was prepared. The local government may search the DOL website at **www.wdol.gov** to determine if there have been any updates. The website should be examined no more than 10 days before the bid opening date. It is important to remember that Louisiana law requires that any addenda to a bid package be received at least 72 hours prior to the bid opening. If there has been an update, the local government must obtain (download) the updated wage decision and send a copy by addendum to all who obtained a bid package.

- **Follow-up Ten Day Options** If, after the bid opening, the award of the contract is delayed by more than ninety days, then another call or search will need to be done. If there has been a wage decision update, the low bidder must agree, in writing, to abide by the wage decision in effect on the date of the contract award. The wage decision in effect on the contract award date must become part of the construction contract.
- **State—45 Days / Davis-Bacon—90 Days** State law requires contracts to be awarded within 45 days of bid opening unless an extension is agreed upon in writing by both parties, whereas the Davis-Bacon requirement to "lock-in" a particular wage decision for the duration of construction calls for contracts to be awarded within 90 days of bid opening.
- **Failure to Include or Use of Incorrect Wage Decision** Failure to include the effective wage decision in bid documents or contracts will not relieve local governments or contractors from potential liabilities or enforcement actions. In cases of an incorrect decision or failure to include a decision, the local government must either terminate and re-solicit the contract with the valid decision or ensure that all parties sign a supplemental agreement to the contract that makes the effective wage decision retroactive to the beginning of construction.

  If a supplemental agreement is made, there are two ways to structure the agreement. The contractor may agree to include the proper wage decision retroactively with no additional compensation—especially if the wage rate changes are minor. The contractor may require that a change order be made to compensate for an increase in wages due to the observance of the effective wage decision. Such a change order would be an eligible LCDBG cost but would be subject to available grant funds. If grant funds are not available, local funding may be necessary.
- **Calling Requirement when using the Small Purchase Method** On rare occasions the prime contractor may be procured utilizing the "Small Purchase" method provided the low bid is expected to be under $100,000 and the contract award is less than $100,000. Note that the Small Purchase method does not have a bid opening date. Consequently, a procedure to ensure compliance with Davis-Bacon has been developed by OCD for the Small Purchase method. First, a bid tabulation date must be established in advance. Bidders must be informed of the day on which bids will be tabulated and of the possibility of a wage decision update. Next, a ten day call or a ten day search must be made ten days before the bid tabulation date.
- If there is a wage decision update, all bidders must be notified in a timely manner and documentation of notification must be maintained in grant records. Notification when the Small Purchase method is used is not restricted to addendum only but may be also

be done by telephone call, e-mail, fax, or U.S. Mail. This method will ensure that bidders will have nearly ten days to make changes to bids based on an update of the wage decision. A record of the notification of the wage decision update must be sent to the Office of Community Development. The record may be in the form of a fax, e-mail, U.S. Mail, phone log or addendum.

- The wage decision authorized at the ten day call or ten day search will remain effective for the duration of the construction project provided that the contract is awarded within ninety days of the bid tabulation date. The effective wage decision (s) must also become part of the construction contract when the Small Purchase method of procurement is used.

VERIFICATION OF WAGE DECISION AND CONTRACTOR ELIGIBILITY

- **Verification of the Wage Decision Choice** Prior to the award of a construction contract to any prime contractor, the local government must obtain verification of the wage decision choice and contractor eligibility. The fact that an optional ten day call or inquiry was made at an earlier date is not sufficient as verification of the wage decision choice. **Exhibit B-5**, Verification of Wage Decision(s) and Contractor Eligibility, or "Verification" form, must be completed and faxed, mailed, or e-mailed to the Office of Community Development for review. OCD will review the wage decision that was made part of the bid package, whether by initial inclusion in the bid package or later by addendum, and determine whether it was the proper choice. If the Office of Community Development agrees with the wage decision choice, line 22 of the Verification form will be executed by an OCD staff person and faxed back to the local government. If the Office of Community Development does not agree with the wage decision choice, a Verification form with a signature on line 22 will not be faxed back to the local government until the issue is resolved.

  If a determination is made that the wage decision choice was incorrect, the lowest responsive and responsible bidder must agree in writing to incorporate the proper decision as part of the bid documents and resulting construction contract. This agreement is to be obtained in writing prior to the award of the contract. If written agreement cannot be obtained, the local government must reject all bids and rebid the project. A contract award must not be made before receipt of the Verification form as reviewed and executed by the Office of Community Development.

  The authorization of a particular wage decision as evidenced by the OCD staff signature on line 22 of the Verification form will expire if the contract is not awarded within 90 days of the bid opening. If more than 90 days transpires between the bid opening and contract award, the local government is responsible to perform a follow-up ten day call

or ten day search to determine the effective wage decision. In such case, the local government must ensure that the wage decision in effect at the date of the contract award is made a part of the contract between the low-bidder and the local government. A further Verification form, in addition to the original Verification form, will not be required but may be sent with only the portion that pertains to the wage decision completed. Evidence that the effective decision was utilized will be determined by an examination of the construction contract during a monitoring visit. The local government remains responsible to ensure the proper wage decision choice(s) and may bear liability arising out of an incorrect wage decision choice(s).

- **Verification of Contractor Eligibility** Prior to the award of a construction contract with a **prime** contractor, the local government must obtain contractor clearance from OCD. To obtain clearance, the local government must complete and send to OCD by fax, mail, or e-mail, a Verification of Wage Decision(s) and Contractor Eligibility form (**Exhibit B-5**) (the "Verification" form). To conduct an eligibility review, OCD will search the following web site: **http://epls.arnet.gov/**. The OCD's search of the web site only determines whether the contractor is debarred; other types of performance information are not gathered. After reviewing the contractor's eligibility status,, OCD will indicate the results of the review on the Verification of Wage Decision(s) and Contractor Eligibility form and fax the reviewed form to the local government via the fax number listed on the face of the form. The local government may also search this internet site to obtain information, but the public availability of this site does not alter the requirement for the local government to obtain clearance through OCD. Prior to contract award, the grantee must receive the Verification of Wage Decision(s) and Contractor Eligibility form with OCD's completed review and execution. Specifically, the execution of line 23 of the Verification form by the Office of Community Development indicates the verification of contractor eligibility.

  One exception applies to the timing of the contract award. The date of the contract award may be prior to the local government's receipt of an executed Verification form only if wording in the official minutes of the resolution to award the contract specifies "contingent on verification of wage decision and contractor eligibility". The local government must maintain a copy of the resolution with the required wording as part of the grant records. The contract award would not become effective until the contingency is met although the award date will be listed as the date on which the resolution was made.

- **Subcontractor Clearance** OCD does not clear subcontractors. Prime contractors must be made aware that it is their responsibility to verify subcontractor eligibility based on

factors such as past performance, a yellow page listing, and proof of liability insurance, possession of a federal ID tax number, debarment, and state licensing requirements. The prime contractor may use the web site listed in the previous paragraph to determine if a subcontractor has been debarred at the federal level. The prime contractor assumes responsibility for the performance of the subcontractor; therefore, OCD urges prime contractors to closely scrutinize subcontractors.

The prime contractor should notify the local government's Labor Compliance Officer of contract awards to any subcontractor prior to the subcontractor beginning work on the project. This allows the local government's Labor Compliance Officer to be knowledgeable of the time frame in which to expect the submission of subcontractor payrolls.

If a contractor or subcontractor is found to be ineligible after award of a contract, the contract must be immediately terminated and the matter reported to OCD.

- **Clearance of Consulting and Engineering Firms** Consulting and/or engineering firms who either are new to the LCDBG Program or have not performed services associated with an LCDBG Program within the previous five years must also be cleared. For clearance of professional firms, use **Exhibit A-43** (Verification of Professional Services Eligibility) of this Handbook.

CONTRACT AWARD, PRECONSTRUCTION CONFERENCE, ADDITIONAL CLASSIFICATIONS

- **Notice of Contract Award** The local government must submit a completed Notice of Contract Award form to OCD for all prime contracts. This form must be received by OCD within 30 days after award. This form, along with instructions, is provided as **Exhibit B-6.** Along with the Notice of Contract Award, the local government must send a Certified and Itemized Bid Tabulation, which is a listing of bidders and bid amounts for the project.

- **Preconstruction Conference** The OCD recommends, but does not require, that the local government hold a preconstruction conference with the prime contractor and all available subcontractors prior to the start of construction, at which time they would be advised of their responsibilities and obligations concerning labor standards. If the local government should opt not to have a preconstruction conference, then the local government must utilize some method of its own choosing to advise contractors of their responsibilities and obligations concerning labor standards and other items normally covered at the preconstruction conference. The time of preconstruction conference is normally ideal to initiate the additional classification process as discussed in the

following paragraphs.

- **Additional Classifications** A wage decision will state the minimum hourly pay and fringe benefits that must be paid to specific classes of workers such as carpenters, electricians, and backhoe operators. If it is found that a class of laborers or mechanics not listed in the decision will be employed on the project, the contractor must request an additional classification. For instance, a prime contractor installing sewer lines may find that one of its subcontractors needs a boring machine operator, but such a classification is not on the wage decision. Since payrolls must reflect proper classifications for actual work performed, the prime contractor for the sewer project would be required to request and obtain an additional classification of a boring machine operator. Steps to obtain an additional classification include:

    1. The prime contractor requests an additional classification and rate by notifying the local government of the additional classification and rate being requested. The prime contractor will make a request if it determines its own need for an additional classification or if a subcontractor needs the additional classification. The contractor (or sub) would be immediately allowed to pay the worker(s), at a minimum, the requested rate(s) for the classification until a response from DOL is received. While the local government may advise the prime contractor regarding wage rates to be requested, if there is a disagreement, the local government should acquiesce by forwarding a report of the classification at the rate requested by the contractor. Note that the prime contractor makes a request while the responsibility of the local government is to make a report of the request.

    2. The local government prepares and sends a Report of Additional Classification and Rate to the Office of Community Development. The Report of Additional Classification and Rate, which is the HUD 4230A form and identified as **Exhibit B-7**, should be used to report the additional classification(s). The form is available online at **www.hud.gov**. The top half of HUD 4230A may be completed by the contractor or the local government based on information from the contractor. The bottom portion of HUD 4230A, beginning where it states "Check All That Apply," is to be completed by the Office of Community Development. This form and relevant supporting documentation, if any, must be sent (by mail, e-mail, or fax) to the Office of Community Development.

    3. The Office of Community Development will review and complete the report and send the form and supporting documentation, if any, to DOL.

    4. DOL will respond by approving the requested rate or specifying a higher rate.

DOL will send the Office of Community Development an official response to the contractor's request.

5. The Office of Community Development will forward the DOL response to the local government.
6. The local government will notify the prime contractor of the results of the DOL response. If the request was on behalf of a subcontractor, the prime will pass the DOL response to the subcontractor.
7. If the DOL response indicates approval of the requested rate, further action is unnecessary. If the DOL response indicates a rejection of the request and specifies a higher rate, then the higher rate must be paid to all workers at the particular classification retroactive to the first day of work. Restitution is to be paid at the contractor's expense. Local governments as well as contractors should be aware that the time that may elapse between the request and DOL's response may be approximately 60 days.

- **Additional Classifications Prior to Hiring or Mobilization** After a contract is awarded, a construction contractor will often know immediately whether additional classification(s) will be needed. In order to expedite the process, it is permissible for a contractor to request additional classifications before mobilization or hiring of workers. The preconstruction conference often provides an ideal time for contractors to request additional classifications and to provide information helpful to the local government in the completion of the Report of Additional Classification form, HUD 4230A.
- **Metal Building Erector as an Additional Classification** Building wage decisions that cover the State of Louisiana do not have the classification of "Metal Building Erector." This classification is often needed in the construction of fire stations because the "Ironworker" classification, which was designed for work at much higher elevations and in more dangerous conditions, is more expensive than the lower wages paid for a Metal Building Erector. In such cases, Metal Building Erector may be requested as an additional classification. The bid documents for fire stations may call attention to bidders regarding the availability of the additional classification of "Metal Building Erector." The rates normally requested for Metal Building Erector are more than the Laborer rate and less than the Ironworker rate.

TERMINOLOGY AND PROCEDURES OF DAVIS-BACON

- **Prevailing Wages** Total minimum compensation, including both the base rate and fringe benefit amount, as required under Davis-Bacon for a given classification of worker as determined by the U.S. Department of Labor in a document called a wage decision.

- **Laborers and Mechanics - Definition** Those workers whose duties are manual or physical as distinguished from managerial. Generally, mechanics perform the work of a recognized trade, such as an electrician, whereas laborers perform tasks such as cleaning and shoveling that is not normally thought of as a recognized trade. On a wage decision, a classification that is not "laborer" is automatically considered as a "mechanic" classification.
- **Contractor's Guide to Davis-Bacon** The HUD guidebook, "A Contractor's Guide to Prevailing Wage Requirements for Federally Assisted Projects," is a recommended (but not a required) publication that the local government may distribute to contractors. The preconstruction conference is an ideal time for such a distribution. The guide is recommended reading for grantees as well as construction contractors and those who prepare contractor payrolls. It provides a brief explanation of issues associated with labor standards and Davis-Bacon in particular. The guide may be downloaded from HUD's website at **www.hud.gov**.
- **Site of Work** The site of work as related to Davis-Bacon is limited to the physical place(s) where construction called for in the contract will remain when work has been completed and to adjacent or nearby property used by the contractor which can reasonably be included because of proximity.
- **Cleaning** Cleaning performed during construction is subject to prevailing wage provisions. If a specific wage rate for cleaning is not in the wage decision, cleaners must be paid the rate for unskilled laborers.
- **Demolition** Demolition work, which is not related to construction, is not subject to the prevailing wage requirements. However, where demolition is performed to allow construction of a new building, the demolition would require prevailing wages.
- **Family Members** There are no exceptions to labor requirements on the basis of family relationships. Relatives who are performing work for the contractor must be paid the required wage for the classification of job performed and must be included on payrolls.
- **Supply and Installation** The manufacture or furnishing of materials, articles, supplies, or equipment is not subject to prevailing wages unless conducted in connection with and at the site of the construction or in a temporary plant set up specifically to supply the needs of a particular construction project. If a supply contract not otherwise covered requires the supplier to install the product, the installation portion of the contract is subject to prevailing wage requirements except when the installation involves only minor construction activity. For example, installation of window shades or draperies would not require Davis-Bacon wage rates; however, installation of an elevator or boiler

would.

- **Precutting and Prefabrication** Precutting or prefabrication of parts to be used in the construction does not require prevailing wages unless conducted in connection with and at the site of construction or in a temporary plant set up specifically to supply only the needs of a particular Davis-Bacon-covered construction project.

  Items to be Posted at the Job Site The applicable wage decision(s) for the project or the project Wage Rate Sheet(s) must be posted at the worksite or prominent places readily accessible to all employees for the duration of construction. The project Wage Rate Sheet, if used, should serve to simplify the contents of the wage decision. A copy of this form, along with instructions, is provided as **Exhibit B-8**.

  Additionally, the following posters must be posted at the job site:

  - "Your Rights Under the Fair Labor Standards Act" (**http://www.dol.gov/whd/regs/compliance/posters/flsa.htm**)
  - "Notice to All Employees" (**http://www.dol.gov/whd/regs/compliance/posters/davis.htm**)
  - "Equal Opportunity is the Law". (**http://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm**)

  The U.S. Department of Labor's "Poster Page" internet address is: **http://www.dol.gov/oasam/programs/osdbu/sbrefa/poster/matrix.htm#minwage**

  To verify posting, **Exhibit B-9** (Verification of Posting Requirements) may be used.

EMPLOYEE INTERVIEWS

During the course of construction, the local government must conduct interviews of workers to determine payroll accuracy and compliance with Davis-Bacon. Interviews should be recorded on the "Record of Employee Interview," form HUD-11, **Exhibit B-10.**

- **Minimum Interview Requirements** Employees of the following contractors must be interviewed:
  - All prime contractors
  - Subcontractors whose contract award is $100,000 or more
  - Any subcontractor where there are a large number of payroll problems

  One interview session will sometimes be sufficient to meet minimum interview requirements for the above listed contractors. When an interview session is conducted, interviews of the employees of other subcontractors, not listed above must be conducted if they are on the jobsite on that day.

OCD has determined that interviews must be conducted for at least 50% of the laborers and at least 1 worker of each of the remaining classifications present on the jobsite on the day of the interviews. Additional interviews that exceed minimum requirements that the local government deems necessary to ensure compliance with Davis-Bacon are also required.

- **Place of Interview** Workers currently employed may be interviewed during working hours on the job if the interview can be properly and privately conducted on the premises. Care must be taken to arrange the session at a time convenient to the employer and employees. Interviews may also be conducted at other public places. Employees and former employees may also be interviewed by mail. An interview request by mail should include a cover letter explaining the purpose of the employee interview and ask the employee to complete items 3 through 12 on the Record of Employee Interview. The remaining items on the Record of Employee Interview form should be completed by the local government with items 1 and 2 to be completed before initial mailing and items 13 through 17 completed after the employee returns the document by mail. In off-site interviews or interviews by mail, the amount of interviews required must be similar to the estimated amount that would have been obtained during an on-site session.
- **Initiating the Person-to-Person Interview** The interviewer must confirm his/her identity to the worker. He/she must explain that the project is being constructed with federal assistance, which requires that workers be properly paid, and that the purpose of the interview is to determine whether the required wages are being paid. If a worker does not want to give particular information, the interviewer should not insist.
- **Using the Interview Information** After completing the interviews, the information obtained should be compared to the wage decision and payrolls to determine if the workers are classified and being compensated correctly. If necessary, corrective action should be initiated.
- **Example of Application of the Minimum Interview Requirements** A job has three prime contractors and at least four subcontractors. Three of the four subcontracts are for less than $100,000. The possibility exists that a fence contractor may become a fifth sub as the project nears completion. The fence subcontract will be less than $100,000.

  Employees of all three primes must be interviewed. Employees of the subcontractor whose contract is $100,000 or greater must be interviewed. If all four of these contractors are not present on the day an interview is scheduled, an additional trip(s) must be made to obtain the necessary interviews. Additionally, those subcontractors present on the jobsite on any day on which interviews are done for the four required

contractors must be interviewed.

If a subcontractor having a subcontract for less than $100,000 is not present on the day of an interview, that subcontractor will not have to be interviewed—unless there are payroll problems. If awarded a subcontract for less than $100,000, the future fence subcontractor will not be have to be interviewed—unless there are payroll problems.

HELPERS, APPRENTICES AND TRAINEES

- **Helpers** "Helpers" as a classification listed on a payroll may not be used on LCDBG projects since such a classification is not found on any of the Louisiana wage decisions. The use of helpers who use tools in assisting mechanics and who are paid below the minimum rates for mechanics is not proper, since an apprentice or trainee is the person who is to perform this type of work. If a person listed as a helper on a payroll were to be found working with the tools of a trade, Davis-Bacon would require such a person to be classified as a mechanic and be paid the amount of a mechanic's wages for the associated classification listed on the wage decision retroactive to the first day of work. If a person listed as a helper on a payroll were to be found doing the work of a laborer, Davis-Bacon would require such a worker to be classified as a laborer and paid at least the minimum for the classification of "laborer."

- **Apprentices** Apprentices will be permitted to work at less than the prevailing wage for their craft when they are employed and individually registered in a bona fide apprentice program registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training. If a worker is an apprentice, the contractor must submit a copy of his/her apprenticeship papers with the first payroll on which that worker appears.

  Any worker listed on a payroll at an apprentice wage rate that is not a trainee as defined in the following paragraph or is not registered as an apprentice shall be paid the wage rate determined by the Secretary of Labor for the classification of work actually performed.

  The wage rate paid to apprentices shall not be less than the specified rate in the registered program for the apprentice's level of progress expressed as a percentage of the journeyman's rate contained in the applicable wage decision.

- **Trainees** Trainees will be permitted to work at less than the predetermined rate for their craft if they are employed and individually registered in a program that has received prior approval through formal certification by DOL. A copy of a trainee's papers must be submitted by the contractor with the first payroll on which the trainee appears.

Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress or a percentage of the associated mechanics rate as listed on the wage decision. The contractor or subcontractor may be required to furnish written evidence of the certification of his/her program, the registration of the trainees, and the ratios and wage rates prescribed in that program to USDOL, HUD, OCD, and/or the local government.

USE OF FORCE ACCOUNT LABOR

Exhibit B-11 (Force Account Record Keeping) explains required record keeping for force account work. If the local government wishes to use force account, prior approval must be obtained from the Office of Community Development. The following paragraphs briefly discuss Force Account Labor.

- **The Meaning of Force Account Labor** Force Account Labor refers to the use of laborers or mechanics who are employed by the local government which serves as a contractor for the LCDBG construction project. In such cases, the local government/contractor does not have to pay the Davis-Bacon wage rates but can, instead, pay the rates normally paid to employees on staff. The amounts paid to workers on force account projects are allowable costs of the LCDBG program.
- **Prerequisites for the Use of Force Account Labor** In order to use force account labor, three criteria must be met: (1) there should be reasonable evidence that construction will cost substantially less than if it were done under contract or that competitive bids cannot be obtained from competent contractors; (2) the local government must have the equipment, supervisory skills, a substantial portion of the required work force, and record keeping system; and (3) the legal counsel for the governing body must make a finding that the project is permissible in accordance with Louisiana laws and does not constitute a major project nor include construction of a building.
- **Labor and Equipment Requirements for Force Account Labor** The local government may hire some employees to work on the specific project to complement existing employees. The cost of using equipment, including the cost of maintenance, operations, and minor field repairs is allowed. For example, the cost to replace a radiator that was punctured accidentally would be an allowable LCDBG cost. However, the cost to replace the engine of a diesel bulldozer on a short-term street project would not be an allowable LCDBG cost. Equipment may NOT be purchased with LCDBG funds. The equipment cost to be allocated to the LCDBG project can be determined by use-allowance or depreciation value. Such allocations of cost must be approved by OCD. In rare instances, such as the breakdown of a primary piece of equipment during a street

project, the cost of renting a replacement piece of equipment may be allowed with special written approval from the Office of Community Development.

- **Material Cost for Force Account Labor Projects** The costs of materials, including transportation and storage, are eligible costs under the LCDBG program. When the cost exceeds $20,000, the purchase of materials must be by competitive bid.

PAYROLL TERMINOLOGY, REQUIREMENTS, AND REVIEW PROCEDURES

Instructions prepared by the Office of Community Development are provided with **Exhibit B-12** (Payroll Form and Statement of Compliance). DOL also provides a sample payroll form (WH-347: DBRA Certified Payroll Form) along with instructions at **http://www.dol.gov/whd/forms/**. A Payroll Review Flowchart is provided as **Exhibit B-13.**

- **Responsibility of Prime Contractor Regarding Subcontractors** The prime contractor on a project is responsible for proper payment to all laborers and mechanics employed by the prime, employed under a subcontract to the prime, or employed under any lower tier subcontract. The construction contract between the local government and the prime contractor must require all subcontracts to contain clauses imposing the Federal Labor Standards Provisions (Part of **Exhibit C-1**, sample Contract Documents Guide, and numbered within the exhibit as HUD 4010). If the required provisions are not included in a subcontract, the prime contractor ultimately remains responsible for underpayments and Liquidated Damages of subcontractors.

  When labor standards violations occur, whether at the contract or subcontract level, the local government will require corrections via the prime contractor. It is the prime contractor's responsibility to ensure corrective action by the applicable subcontractor.

- **Weekly Payroll Submission Requirements and Payroll Numbering** It is the weekly responsibility of each contractor, subcontractor, and any lower tier subcontractor to submit to the local government numbered weekly payrolls from the time work begins on the project until the work is completed. If no work is performed on the project during a given workweek, payrolls do not have to be submitted; however, the local government should be informed by phone or e-mail that no work was done. Once work resumes, use the next consecutive number. Example: Work was done during weeks 1, 2, 3, and 7—the payroll number for week number #7 would be Payroll #4.

  Payrolls of subcontractors are to be submitted via the prime contractor. The prime contractor will review the sub's payrolls and may require corrections. The prime forwards the sub's payroll(s) to the local government. Payrolls may be collected by the project engineer for submission to the local government; however, this does not relieve the prime contractor of responsibility for review of payrolls.

- **Payroll Forms** Contractors may use the payroll form, DOL publication WH-347, which is designated as **Exhibit B-12**. This form along with instructions is available on DOL's website at **www.dol.gov**. The payroll preparer may also use instructions tailored to LCDBG projects prepared by the Office of Community Development which are part of **Exhibit B-12.** The signature page of WH 347, where a contractor certifies wages and fringes, if any, is referred to by DOL as the Statement of Compliance. The Statement of Compliance must be a component of each weekly payroll and must be signed by the contractor. A contractor may use his own payroll form or other computer-generated form if all required items of **Exhibit B-12** are included, but the wording of the Statement of Compliance must be verbatim.
- **Addresses and Social Security Numbers** The first and last name of each worker and last four digits of each worker's social security number are to be listed on each payroll. This procedure will, in nearly all cases, allow unique identification of each worker. In the interest of protecting the worker's privacy, the address and full social security number is not a required element of payrolls. However, the office or place of recordkeeping of each contractor must retain the full name, address, and social security number of each worker to provide to an authorized person requesting the information.
- **Signature on The Statement of Compliance:** The Statement of Compliance, which is the certification portion of payroll form WH347, must be signed by an owner, officer, or designated employee of the contractor for each weekly payroll. In cases where a designated employee signs, the contractor must submit written authorization signed by an officer of the company.
- **Prompt Submission of Payrolls** The local government should require that all payrolls from the prime contractor and any lower tier subcontractor be submitted by the prime contractor to the local government within seven working days after the payroll ending date. Payrolls must be examined promptly by the local government so that any problems discovered can be corrected early, while contractors are still on the job. Particular attention should be given to payroll review during early stages of construction to ensure that the prime contractor understands and is fulfilling his/her responsibilities concerning payrolls. If acceptable payrolls are not submitted in a timely manner, the local government may withhold contractor payment until acceptable payrolls are submitted.
- **Subcontractor Communication** The local government's contractual relationship is between the local government and the prime construction contractor. Furthermore, a contract with a subcontractor is between the prime contractor and the subcontractor. Therefore, a direct relationship between the local government and subcontractor does

not exist. Even though a direct contractual relationship does not exist, the Office of Community Development recognizes the following conditions under which the local government may communicate directly with a lower tier subcontractor regarding labor standards deficiencies: (a) the prime contractor agrees; (b) the subcontractor is cooperative; (c) the issues are not complex; and (d) the prime contractor receives a copy of important documentation or is informed of conclusions that result from the communication.

- **Concurrent Jobs** The payrolls must show only the regular and overtime hours worked on an LCDBG project. If an employee performs work at job sites other than the project for which the payroll is prepared, those "other job" **hours should not be reported** on the payroll. However, the **gross pay from all job sites** must be shown on the payroll.
- **Wage Rates and Proper Classification** Payrolls must be checked against the applicable wage decision(s), engineer's inspection reports (if available), employee interview forms (if available), and actual work done or in progress to determine if prevailing wage requirements regarding rates and proper worker classifications were met. The proper calculation of straight time rates and "time and a half" rates for overtime hours must be checked as well as mathematical accuracy of calculations pertaining to wages and deductions.
- **Employees Performing Work in More Than One Classification** A person employed as a laborer or mechanic and performing work in more than one job classification must be paid at least the required rate for the actual hours spent in each classification. Payrolls may be kept according to the hours spent in each classification. Such payrolls, called "split" payrolls, may be used to apportion hours worked at more than one classification in a workday according to the hours worked in each classification.

  An alternate measure, useful in avoiding the extra work involved in split payroll reporting, is to pay the worker the rate for the highest paid of the multiple classifications for which work was performed in a given workday. Example: Joe, a backhoe operator, gets off of his backhoe to try to find a buried water line. He uses a shovel most of the morning—which is the work of a laborer—and finally finds the water line. Later, Joe mounts the backhoe and digs a trench for a sewer line, carefully avoiding the water line previously located. The employer may list Joe as a backhoe operator if Joe is paid the backhoe rate, which is the higher of the two possible rates.
- **Working Foreman Requirements** A working foreman who devotes at least 20% of his time to laborer or mechanic duties is covered under Davis-Bacon requirements and must be classified according to work performed. Such a classification, for example, an electrician, must come from the applicable wage decision. The "working foreman" if

paid a flat salary with “salary” designated on the payroll, must be making prevailing wages for his classification. The amount of the salary must be stated on each payroll. If there is a considerable amount of overtime being worked on a particular project having a salaried working foreman, additional research may be necessary to determine that amounts paid meet Davis-Bacon and CWHSSA requirements.

The status of a foreman, (working or non-working) should be stated in writing as part of the grant payroll records. Any of the following items will be sufficient to indicate the status of a foreman:

a) a notation on the payroll in the “Comment” section of the Statement of Compliance,

b) a supplementary statement from the contractor,

c) a statement from the inspector associated with the project or

d) a notation on the payroll near or underneath the employee’s name that states “non-working foreman” or “working foreman”.

- **Classifications** Only the exact classifications appearing on the federal wage decision or additional classifications requested are to be used on payrolls. Generic classifications are not specific enough to allow the reviewer to determine if Davis-Bacon requirements were met. Example: “Operator” is a generic classification; however, “Backhoe Operator” is on the wage decision and would be a proper classification.

- **Fringe Benefits** If the wage decision calls for fringe benefits to be paid on behalf of any employee who worked on the project, such payment does not normally have to be verified by contact with the receiving institution. However, if problems are suspected, verification of the payment of fringe benefits should be pursued by the local government.

  Fringe benefits do not appear on the worker’s checks but are amounts paid to a receiving institution on behalf of the worker. Sometimes fringe benefits are confused with deductions. For instance, health insurance provided entirely by the employer would be a fringe benefit, whereas health insurance chosen by the employee and paid for by amounts subtracted from the employee’s gross wages would be a deduction.

  Fringe benefits that are common to the construction industry may be credited toward meeting Davis-Bacon requirements if they are paid to the employee in cash or into an approved fund, plan, or program on the employee's behalf.

  When this section or the Statement of Compliance mentions the payment of fringes “in cash”, actual payment in currency is not the meaning of the phrase but rather the

compensation as dispersed on a payroll check is normally considered as payment "in cash."

If a wage decision contains fringe benefits for a classification used on the construction project, box 4a or 4b of the payroll form/Statement of Compliance (**See Exhibit B-12**) must be marked to indicate the method of fringe benefit payment (i.e. in cash or to an approved plan). If there were no classifications used on the project that required fringe benefits, the boxes should be left blank. Box 4c is used to denote exceptions to box 4a or 4b. For example, if all of the employees are paid fringe benefits in cash except one who gets payment of fringes into an approved plan, box 4b would have been marked for payment of fringes in cash with box 4c also marked indicating and explaining the exception.

Fringe benefit pay requirements are calculated at a per-hour-worked rate and are not calculated at a "time and a half" rate. However, when fringes are paid in cash the payroll reviewer must be able to differentiate the basic hourly rate from the fringe benefit rate in order to calculate overtime properly. This total hourly compensation (basic hourly rate plus hourly fringe benefits) should be separated into the two components (a) in column 6 of the WH 347 payroll form (b) in the "Comments" section on the Statement of Compliance or (c) by supplementary signed statement from the employer. If the separate components cannot be identified, the entire monetary compensation per hour must be multiplied times 150% to calculate required overtime minimum rates. The payroll reviewer is not at liberty to guess or try to mathematically calculate the amount of the fringe component—the fringe component must be clearly stated by the contractor. The following is an example where the basic hourly rate and the fringe benefit per hour is properly identified:

Basic hourly rate on wage decision	$10.00 per hour
Fringe benefits requirement on wage decision	$1 per hour fringe benefits
Workweek	52 hours

Regular Pay + Overtime Pay + Fringe Benefits	= Gross Pay
(40 x 10) + (12 x 10 x 1.5) + (52 x 1	= $632

Flexibility is allowed in the allocation of how fringe benefits are paid. Using the above example, the contractor has flexible payment options such as (a) pay all of the $632 in cash; (b) pay $580 in cash and $52 in fringes; or (c) pay more or less than $580 in cash and more or less than $52 in fringes with the total paid to be $632.

In contrast, if a total compensation rate of $11.00 were identified with the components of the $11.00 not identified then the proper overtime calculation required by the LCDBG program for the previous example would be:

$$(40 \times 11) + (12 \times 11 \times 1.5) \qquad = \$638$$

The first result, $632, was due to calculation based on the proper separation of the basic hourly rate and fringes. The second result, $638, occurred based on calculations without proper separation of basic hourly rate and fringes.

The basic procedure to follow under the LCDBG program depends on which condition occurs. Condition One: If the payroll differentiates properly, then overtime at 150% of the basic rate must be paid while fringes are paid only at 100% for each hour worked regardless of whether an hour was an overtime hour or a straight time hour. Condition Two: If the payroll does not differentiate what portion of the compensation is the basic rate and what portion is the fringe benefit, then the overtime compensation must be calculated at 150% of the sum of the base rate plus fringe.

It is the responsibility of the contractor to provide payrolls that properly differentiate the basic hourly rate from the fringe benefit amount. If proper differentiation is not initially provided the payroll reviewer may obtain a supplementary statement or corrected payroll from the contractor which indicates the breakdown between basic hourly rates and fringes for each worker. The supplementary statement must be signed by an authorized person and clearly identify which payrolls are associated with the supplementary statement.

- **When the Basic Hourly Rate is Less Than on Wage Decision** Total compensation, (prevailing wages) as indicated on wage decision(s), is required. There is some leeway given regarding the breakdown of total compensation between the two components of the basic hourly rate and the hourly fringe benefit. When calculating overtime pay where total compensation is adequate there is one notable restriction: if the basic hourly rate on the payroll is less than the basic hourly rate on the wage decision then the higher basic hourly rate on the wage decision must be used in the calculation of minimum overtime pay.

- **Verifying Fringe Benefits** Fringe benefits may be paid in cash and such payment(s) can be determined by examining the face of the payroll. When fringe benefits are paid in cash, box 4-b of the Statement of Compliance must be checked. Fringe benefits that are paid to an approved plan are not usually posted on the face of the payroll. When fringe benefits are paid to an approved plan, box 4-a of the Statement of Compliance must be checked. Checking box 4-a is an acceptable indication that fringe benefits, equal to the

amount stated on the wage decision, were paid. Additional verification normally is not necessary. However, if the basic hourly rate is less than required on the wage decision with the claim that fringes are making up the balance due in order to meet the total Davis-Bacon requirements, verification of the payment of fringe benefits may be considered. If problems are suspected, verification of the payment of fringe benefits may be necessary.

An approved plan will have an institution(s) that receives fringe payments on some type of regular basis. Fringe benefit payments into an approved plan may be on a weekly, monthly, or quarterly basis but not semi-annually or annually. The applicable contractor will be the source of contact information for the receiving institution. Verification should include the following: (a) institution's name(s), (b) phone number(s), (c) date(s) contacted, (e) results of the inquiry, (f) person(s) contacted at the institution, and (g) the name of the person who made verification for the local government. Verification may be by phone, written correspondence, computer printout, or fax from a receiving institution, computer printout or fax from a union, or a copy of cancelled check(s) from the contractor written to a receiving institution, or a computer printout from the contractor.

- **Deductions** A deduction is an amount subtracted from a worker's gross wages, and must be reviewed to determine if they are permissible. Permissible deductions by law include court ordered deductions, FICA, and federal or state income taxes. Deductions not required by law, such as union dues, 401K deductions, loan payback amounts or uniforms, may be made only with the permission of the employee. The employee must sign a statement that authorizes deductions. The "Payroll Deduction Authorization" form provided as **Exhibit B-14** should be used.

- **Payroll Certification of the Self-Employed Contractor Who Works Alone**
  Example: A self-employed laborer or mechanic (or group of working partners) who has no other employees working on the job is not authorized to sign his/her own payroll and Statement of Compliance. Instead, such a person, often called a "working subcontractor," must be listed on the prime's (responsible employer's) payroll. For instance, Joe's Backhoe Service has one backhoe and no other workers other than the owner. Joe cannot sign his own payroll while on an LCDBG project. In contrast, if Joe hires at least one employee to help on that project, he could certify his own wages as well as the employee's wages.

  The minimum information needed on the responsible employer's payroll regarding the working subcontractor are name, address, classification(s), hours worked, estimated hourly pay, and estimated gross pay. Deduction amounts for social security and federal

taxes of the working subcontractor are not the responsibility of the prime contractor, and such amounts may be unknown to the prime contractor; therefore, deduction listings are not required. The Statement of Compliance should indicate box 4-c for the working subcontractor as an exception to the way fringe benefits may have been paid for regular employees. The explanation for box 4c may read something like, "Working sub, Fixed price contract, Fringes and deductions not applicable."

Sometimes it may be confusing for a prime contractor to list on the payroll a working subcontractor in addition to the regular employees. In such case, the prime contractor may prepare a separate weekly payroll listing only one person, the working subcontractor, using the WH 347 payroll form (**Exhibit B-12**).

Whatever method of compensation is utilized, such as piece work or a weekly contract draw for performance, the amount of estimated weekly compensation divided by the actual hours of work performed for that week must result in an "effective" hourly wage rate that is not less than the prevailing hourly rate for the type of work involved.

A special exception for truck owner-operators is available. Truck owner-operators must be reported on the prime's (responsible employer's) weekly payrolls but unlike other classifications, do not need to show the hours worked or rates—only the notation "owner-operator." The truck driver having an owner-operator exception should not be confused with a truck driver who is an employee of a prime contractor.

- **Liquidated Damages** "Liquidated Damages" is a predetermined amount that is paid as a penalty for failure to meet a specified requirement. Liquidated Damages, relative to the review of payrolls in the LCDBG Program, will mean the penalty amount calculated for overtime violations under the CWHSSA. The pre-determined penalty is $10 per worker, per day for overtime violation(s). Please note that penalty amounts paid for overtime violations to a specified government entity, (such as HUD for LCDBG projects) as Liquidated Damages are separate and distinct from wage restitution paid to workers.

CORRECTIVE ACTIONS REGARDING LABOR STANDARDS VIOLATIONS

- **Inadequate Payroll Information** The payroll format, **Exhibit B-12**, contains the necessary information for payroll reporting and is a copy of WH-347 from the Wage and Hour Division of DOL. Alternate forms may be used by contractors but must contain the necessary information as on WH-347. If a contractor's alternate form is not sufficient, the contractor will be required to provide the necessary information on an acceptable form or provide a supplementary statement.

  Payrolls that are incomplete, such as those which lack classifications or rates of pay, will require the contractor to provide a corrected payroll and Statement of Compliance that

lists the required information.

- **Handwritten Corrections On Face of Payroll By Reviewer Not Allowable** The local government, in reviewing a payroll, is not allowed to make corrections on the face of a payroll or on the Statement of Compliance. Such documents are designed to be sufficient as evidence in a legal proceeding, and corrections by multiple sources do not allow the reader certainty as to who made the corrections. If the local government needs to provide written clarification of a minor payroll item, a note with the reviewer's name and date may be attached.

- **Three Scenarios of Payroll Review** Three scenarios regarding payroll review and corrective actions are identified in **Exhibit B-13**, the Payroll Review Flowchart. The three scenarios are as follows:

    - Scenario One: Error that requires restitution.
    - Scenario Two: Error that does not require restitution.
    - Scenario Three: Error not detected.

  Each scenario triggers a unique set of events. Review the "Payroll Review Flowchart," **Exhibit B-13**, for an overview of the processes involved.

- **Notice to Contractor when Restitution is Required** Scenario One deals with payroll error that requires restitution due to underpayment of wages. Underpayment may result from Davis-Bacon violation(s), CWHSSA overtime violation(s), or both. The local government must promptly notify the prime contractor in writing that payment of back wages is required. This notice should identify the name of the prime contractor and the applicable subcontractor, the underpaid worker(s), the correct job classification and wage rate, dates of underpayment, and the amount of underpayment owed. The contractor must be notified of the need to make restitution by using a Certified Correction Payroll (as discussed below).

  If overtime violations under CWHSSA exist, the notice to the contractor should also identify a calculation of Liquidated Damages and inform the contractor to either pay them or request a waiver.

- **Certified Correction Payroll** Under Scenario One a payroll that reflects restitution paid under Davis-Bacon and/or CWHSSA is called a "Certified Correction Payroll." Such a payroll will be prepared by the employer and the Statement of Compliance will be signed by the authorized signatory. The signature on the Statement of Compliance designates the payroll a "certified" correction payroll. A Certified Correction Payroll will only list those workers to whom restitution is paid. The monetary amounts listed,

wages and deductions, reflect restitution amounts paid and should not indicate amounts paid and listed on past payrolls.

Payroll problems that require the employer to prepare a Certified Correction Payroll include the following:

- Wage rates on the payrolls do not meet Davis-Bacon requirements.
- Wage rates on the payrolls do not meet CWHSSA requirements.
- Worker classifications are incorrect, incomplete, or not in accordance with the applicable wage decision resulting in restitution due.
- Calculations are in error and result in underpayment of wages.

A Certified Correction Payroll will record the difference between amount paid and the required amount which should have been paid. The deficiency would be multiplied by the applicable number of hours worked at the lower-than-allowable rate. Example: If a worker was paid $10.00 per hour and should have been paid $11.00 per hour for 100 hours during three different non-overtime weeks, the amount of restitution payment as recorded on the Certified Correction Payroll would be $1 x 100 = $100.

The contractor may submit a Certified Correction Payroll for each applicable workweek or for multiple workweeks. A Certified Correction Payroll, if prepared for multiple weeks, should indicate the weeks. Example: Weeks 2 through 8 and 11. In contrast, a Certified Correction Payroll, if prepared for one week at a time, must be numbered the same as the original payroll for that workweek but must indicate the appropriate revision number. Example: "Payroll #2—Revision #1," "Payroll 3, Revision 1," and so forth.

In most cases the Statement of Compliance, as part of the Certified Correction Payroll, will be sufficient to demonstrate that restitution was made. Cancelled checks, employee initials, or an employee statement are not routinely required as additional proof of payment of restitution. If problems are suspected, additional proof may be required by the Office of Community Development or other reviewing agency.

- **<u>The Use of Corrected Payrolls to Demonstrate Restitution</u>** Some contractors may wish to provide corrected payrolls with a newly signed Statement of Compliance. A corrected payroll differs from a Certified Correction Payroll in the following ways:
  - A corrected payroll is always for one weekly period whereas a Certified Correction Payroll may cover multiple weekly periods.
  - A corrected payroll lists all workers who worked on a project during a weekly period whereas a Certified Correction Payroll lists only workers to whom

restitution was paid.

- A corrected payroll lists the original disbursements and disbursements made for the payment of restitution whereas the Certified Correction Payroll will list only the disbursements made for the payment of restitution.

If a contractor chooses to provide a corrected payroll to demonstrate restitution rather than a Certified Correction Payroll, such a provision is acceptable; however, a Statement of Compliance having a later signature and date must accompany the corrected payroll. The corrected payrolls should be numbered so as to be associated with the original payrolls, such as "Payroll 2, Revision 1."

- **Calculation of Liquidated Damages** Scenario One continues assuming that there was restitution due that involved not only Davis-Bacon but also overtime violation(s) under CWHSSA. Overtime rates must be paid at 150%, or time and a half, of the basic hourly rate. Under CWHSSA, Liquidated Damages are computed at the rate of $10 per worker for each calendar day the worker worked in excess of forty (40) hours in a week without payment of overtime rates.

  For instance, if workers worked six days a week for twelve hours per day and were paid straight time for 72 hours, there would be three days of violations. Overtime pay should have started on day four and continued on day five and day six. The Liquidated Damages calculation would be $30 per worker. Liquidated Damages would be calculated in addition to the payment of wage restitution.

- **Steps in Calculation, Assessment, Payment or Appeal of Liquidated Damages** The local government calculates restitution and Liquidated Damages due and notifies the contractor by traceable correspondence (e-mail, fax, or letter). The contractor, having received notification, must make restitution via a Certified Correction Payroll (or a corrected payroll with certification) and must either pay the Liquidated Damages or request a waiver. The contractor is to notify the local government of the choice by traceable correspondence.

  If payment is the contractor's choice, the contractor must use a wire transfer to make payment. Please contact the Labor Compliance Officer at the Office of Community Development for instructions regarding a wire transfer. Such procedures involve completing a special deposit-slip form, which is sent to HUD to enable a receiving account to be established. The contractor will be notified when the wire transfer can be received by an active account at HUD and will be sent a form that is equivalent to a deposit slip. The contractor will use a financial institution to conduct the wire transfer. After the wire transfer and proper notification/documentation of such payment to all

parties concerned, the contractor's responsibility for payment of Liquidated Damages will have been met. The financial institution will normally charge the contractor a fee for making the wire transfer.

If requesting a waiver is the contractor's choice, the contractor is to send the local government written communication explaining the reason(s) why a waiver is requested. HUD may grant a waiver for two reasons:

- The error was unintentional and due care was exercised.
- A mathematical mistake was made.

The local government will forward the letter to the OCD, who will send the letter to HUD in New Orleans. Following HUD's response the OCD will communicate HUD's response to the local government by traceable correspondence. The local government is to communicate the response to the contractor(s) by traceable correspondence.

If HUD approves the request for the waiver of the payment of liquidated damages, then labor standards requirements regarding liquidated damages will have been met. If HUD does not approve the request for the waiver, contact the Labor Compliance Officer at OCD for further instructions. The contractor will have 60 days to appeal the notice from HUD.

- **The Use of Corrected Payrolls Where Restitution Is Not Due** Under Scenario Two as shown in **Exhibit B-13**, restitution will not be due but some type of correction not involving restitution is necessary. A corrected payroll may be used to reclassify workers, correct math errors, clarify monetary amounts, revise improper dating, etc. Each corrected payroll is for one week only. The weekly numbering of the corrected payroll should be for the same weekly number as the original incorrect payroll. Example: "Payroll 4, Revision 1." The contractor may line through the mistakes and provide the corrections in handwriting or use software or other means to produce a corrected payroll. A new signature and date on a Statement of Compliance must be provided. A copy of the original Statement of Compliance with a new signature and date above the original signature may be provided, or the contractor may prepare a new Statement of Compliance, signed and dated, for any week having a corrected payroll.
- **Supplementary Statements** A supplementary statement from the contractor may be obtained to clarify not only major issues involving restitution but also minor issues that do not involve restitution. Situations where a supplemental statement would be acceptable include: (a) the payroll on which an employee appears does not have the last four digits of the Social Security number and (b) an incorrect employee name. The supplementary statement should be dated, signed by the authorized payroll signatory,

and also identify the associated payroll number(s). A Statement of Compliance does not accompany a supplementary statement.

- **No Error Detected** Scenario Three is identified as the scenario under which no error is detected.
- **Reporting Requirements** The "Payroll Review Flowchart," **Exhibit B-13**, is a diagram illustrating the three scenarios of payroll review and the reporting requirements triggered by each scenario.

  A Labor Standards Enforcement Report, **(Exhibit B-15**) is required when restitution cumulatively reaches $1,000 or more for any contractor or subcontractor. Instructions for completing the form are included in **Exhibit B-15**. It is possible that one LCDBG project could trigger multiple Labor Standards Enforcement Reports.

  The Labor Standards Enforcement Report is to be completed and sent to OCD when most or all of the corrective action has been completed. For instance, if a contractor made restitution and chose to pay Liquidated Damages, the local government would wait until receipt of evidence of restitution, contractor's letter agreeing to pay Liquidated Damages, and payment of the Liquidated Damages before sending OCD the enforcement report along with the supporting documents.

  The Labor Standards Enforcement Report should be sent before closeout documents are submitted, especially if a waiver of payment of Liquidated Damages is requested, as HUD may take up to a month to respond.

Under all three scenarios as the flow chart indicates, the last item regarding labor standards, the Final Wage Compliance Report (found in **Exhibit G-4**, Program Completion Report), must be sent to OCD. The Final Wage Compliance Report is to be sent to the Office of Community Development along with other closeout documents. It must be approved by the OCD Labor Compliance Officer before the grant can be conditionally closed out. If there are unresolved labor compliance problems at that time, the OCD Labor Compliance Officer will assist the local government in determining how to correct such problems.

- **Reporting Restitution under Davis-Bacon and CWHSSA** Restitution reported on the Labor Standards Enforcement Report or the Final Wage Compliance Report must be correctly classified. The Davis-Bacon component of restitution will involve an underpayment rate for each hour worked at the deficient rate. The CWHSSA component of restitution will involve the payment of one-half of the hourly deficiency for each overtime hour worked. The following example is provided:

  A laborer worked 48 hours in one work-week. He was paid $10.00 per hour for 48 hours. The wage decision calls for $11.00 per hour with no fringe benefits. Most payroll

preparers would immediately know that $52.00 of restitution is due; however, some may not realize the proper classification of each of the components of restitution. The $52.00 in restitution is properly calculated and classified as follows:

48 x $1.00	= $48.00	Davis Bacon component of restitution
8 x $0.50	= $4.00	CWHSSA component of restitution

WITHHOLDING FUNDS BASED ON NON-COMPLIANCE WITH LABOR STANDARDS

If violations regarding restitution have not been corrected within thirty calendar days from the date of the first notice of underpayment, the local government may withhold funds due the prime contractor. Only an amount considered necessary to ensure payment of underpaid wages (and Liquidated Damages, if applicable) may be withheld in order to meet Labor Standards requirements. The local government must notify the prime contractor of the withholding and provide the second notice of underpayment. The local government must, again, specify the identity of underpaid workers, correct job classifications and wage rates, dates when underpayments occurred, and the amounts of underpayments owed. If restitution is not made within 30 days of the second notice of underpayment, or if there is disagreement regarding the finding of wages owed, OCD must be notified.

If OCD determines it appropriate, the local government will be notified to disburse wages owed from the withheld funds to the respective workers to whom they are due. Should such an occasion arise, OCD must be contacted for information on the proper procedure for disbursement of funds.

UNFOUND WORKERS

If all affected workers cannot be located and restitution made either by the contractor directly or through use of withheld funds, enough funds must be reserved to pay those workers the wages owed. Efforts should continue to be made to locate workers; however, if they have not been located by the time the closeout of the grant occurs, the local government must return the withheld funds to OCD. A check, made payable to the Louisiana Division of Administration, and a Labor Standards Enforcement Report (**Exhibit B-15**) covering the remaining withheld funds must be submitted to OCD before the grant will be closed.

FALSIFICATION

If intentional falsification by a contractor is suspected, the local government's Labor Compliance Officer must not return the payroll to the contractor for correction and submittal. OCD must be informed of the suspected falsification.

WITHHOLDING FUNDS BASED ON NON-COMPLIANCE WITH LCDBG REQUIREMENTS

If a Labor Standards violation(s) does occur that results in the local government not being in compliance with the LCDBG program, the Office of Community Development may suspend payment on the next "Request for Payment." For example, if the local government fails to ensure the timely submission of contractor payrolls by the prime contractor (and any lower-tier subcontractor), then the local government may be considered as being in non-compliance with LCDBG program requirements.

PAYROLL RETENTION

Payroll records (in addition to all program files) must be retained by the local government for a period of four years from the date of the letter indicating "Final Close" of the LCDBG program relative to the construction project. The payroll records must be available at all times during the retention period for inspection by representatives of OCD, HUD, and DOL.

C. PUBLIC FACILITY IMPROVEMENTS

PREPARING CONTRACTING PROCEDURES TO MEET EQUAL OPPORTUNITY REQUIREMENTS

The grantee must ensure that all contracts comply with equal opportunity requirements by including all applicable equal opportunity language in the bid specifications and contract documents, verifying contractor eligibility, securing required documentation, monitoring compliance, and maintaining appropriate files.

The equal opportunity provisions and contractor certifications for inclusion in the bid documents are shown in the Contract Documents Guide (**Exhibit C-1**), and they include:

1. Contractor's Certification regarding Section 3;
2. Contractor's/Subcontractor's Section 3 Plan (if contract is over $100,000);
3. Contractor's/Subcontractor's Section 3 Tables A & B (if contract is over $100,000);
4. Subcontractor's Certification Regarding Section 3 and Segregated Facilities (required whether or not subject to Section 3);
5. E.O. 11246 clause (7 paragraphs -- if contract above $10,000 or 3 paragraphs Equal Opportunity provisions if $10,000 or under);
6. Age Discrimination Act of 1975 Compliance;
7. Rehabilitation Act of 1973 Compliance;
8. Notice of Requirement for Affirmative Action to ensure Equal Employment Opportunity (if contract over $10,000);
9. Standard CDBG-assisted Equal Employment Opportunity Construction Contract Specifications (if contract over $10,000);
10. Segregated Facilities clause;
11. Title VI clause;
12. Section 109.

These provisions must be included in all bid and contract documents. Note especially the Standard CDBG-assisted Equal Employment Opportunity Construction Contract Specifications. These specifications include a place to insert minority and female participation goals. The nationwide goal for female participation is 6.9 percent. Minority goals are specific to MSA and "Economic Areas", so the grantee must refer to the regulations for the minority goal for its locality. Minority employment goals for economic areas in Louisiana are included in **Exhibit C-2**

(Minority Participation Goals). These goals and contract specifications make written affirmative action plans unnecessary unless the U.S. Department of Labor determines a specific contractor or group of contractors needs to establish higher goals in order to remedy the effects of past discriminatory behavior.

These goals apply to each construction craft and trade in the contractor's entire workforce that is working in an area covered by the goals and timetables and not just on those jobs which are LCDBG-assisted. A contractor with an LCDBG contract in MSA X, and a non-CDBG assisted contract in MSA Y must meet MSA goals for the workforce in MSA X and MSA Y, even though that contract is not LCDBG-assisted.

Requirements for Section 3 apply to both the prime contractor and any subcontractors that conduct work on a CDBG project, if either of their contracts is over $100,000. The Section 3 Plan and accompanying Section 3 Tables A and B of the Contract Documents Guide **(Exhibit C-1)** must be completed by the prime contractor if his/her contract is over $100,000. In addition, if a subcontractor's contract with either the prime or another subcontractor is over $100,000, the Section 3 Plan and accompanying Section 3 Tables A and B must be completed by the subcontractor.

As previously noted for Labor Standards compliance, the grantee must verify contractor and subcontractor eligibility with the DOA Labor Compliance Officer to ensure the contractor and any subcontractors are not on a list of debarred contractors. A single certification satisfies both Labor Standards and equal opportunity requirements and the documents should be cross-referenced between files.

The grantee must notify the DOA Labor Compliance Officer of the date construction will begin. After contract execution, advise the contractor of his/her responsibilities for equal opportunity compliance, along with those related to Labor Standards and other LCDBG related provisions. **Exhibit C-3** (Commonly Asked Questions Concerning Equal Opportunity) is a list of commonly asked questions about equal opportunity which should be distributed and discussed with the contractor.

In addition, the grantee must visit the construction site (usually in conjunction with employee interviews for labor standards compliance) to insure the project site is posted with required equal opportunity notices (see *Section B, Labor Compliance* of this handbook for additional information).. The results of each visit should be noted in the contract compliance file. In addition, the grantee should interview each contractor during the course of work to determine compliance with the Standard CDBG assisted Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246) contained in the contract. Document these interviews in the files. Equal opportunity compliance files must be maintained for each project.

At project completion, the equal opportunity compliance file should contain the following items:

1. Copy of contract with all applicable equal opportunity provisions;
2. Evidence that contractor established his/her own Equal Opportunity file;
3. Equal Opportunity complaints and actions taken;
4. Correspondence concerning contractor's equal opportunity compliance;
5. Verification of contractor eligibility, cross-referenced from labor standards compliance file;
6. Preconstruction conference report (if applicable), cross-referenced from labor standards compliance file;
7. Contractor's/Subcontractor's written Section 3 Plan, if required;
8. Contractor's/Subcontractor’s Section 3 Tables A & B (if required);
9. Subcontractor’s Certification Regarding Section 3 and Segregated Facilities;
10. Contractor's/Subcontractor's New Employee Information forms;
11. Site visit reports indicating equal opportunity poster displayed on site and contractor compliance with equal opportunity provisions, cross-referenced from labor standards compliance file; and
12. Equal opportunity problems uncovered in employee interviews and evidence of resolution.

PREPARING A BID PACKAGE, DEVELOPING BID OPENING PROCEDURES AND ADVERTISING FOR BIDS

The first step in the preparation of a bid package is the writing of the technical bid specifications — 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 on the project. Additionally, the plans and specifications must be stamped by an architect or engineer registered in Louisiana. If the project falls under the jurisdiction of another State agency (e.g., Department of Health and Hospitals for sewer and water projects), the plans and specifications must be approved by the cognizant State agency prior to construction. It is recommended that the approval be received prior to the advertisement for bids. Documentation of that approval must be included in the files.

Also, where applicable, once the working drawings are complete, the architect or engineer must execute a certification that applicable standards of accessibility by the physically disabled have been or will be satisfied or specify the basis for exemption. Such certification is to be co-signed by a grantee official, filed in the contract documents file, and a copy sent to the State. This certification must be completed for fire stations/garages and buildings constructed under the LCDBG Program that will be accessible to the public. Refer to **Exhibit C-4**, Architect's Certification: Compliance with Minimum Standards for Accessibility by the Physically Handicapped.

At this time, the grantee must have obtained all lands, rights-of-way and easements necessary for carrying out the project. All property you acquire for any activity, funded in whole or in part with LCDBG funds, is subject to the Uniform Relocation Assistance and Real Property Acquisitions Policy Act of 1970 (the Uniform Act). Included in the definition of property, among others, are rights-of-way and permanent easements. If the construction project involves real property acquisition, the grantee should contact its Local Government Representative very early and make sure the acquisition is undertaken according to the provisions of the Uniform Act.

Although only local governing bodies may apply for funds, many of the public improvements are made on behalf of various third parties such as fire districts, water districts, and sewer districts, as well as port authorities. If ownership of the public improvement applied for will be transferred to one of these third parties, it will be necessary for the local governing body to enter into an intergovernmental cooperative agreement that will stipulate the conditions of transfer of ownership. This agreement is to be executed and a copy forwarded to the Office of Community Development prior to closeout. Examples of these agreements are shown in **Exhibit C-5**, Intergovernmental Cooperative Agreement.

The grantee must contact the regional notification center and the owners of underground utilities or facilities that are not members of the regional notification center for the existence and location of all underground utilities and facilities within the construction area in accordance with R.S. 38:2223.

All public works contracts shall contain a clause stating that any punch list generated during a construction project shall include the cost estimates for the particular items of work the design professional has developed based on the mobilization, labor, material, and equipment costs of correcting each punch list item. The design professional shall retain his working papers used to determine the punch list items cost estimates should the matter be disputed later. The grantee shall not withhold from payment more than the value of the punch list. Punch list items completed shall be paid upon the expiration of the forty-five day lien period.

The base bid should include all components of the approved project. The base bid should not include any items which were not included in the approved application or which have not received subsequent approval from the Office of Community Development.

When preparing the plans and specifications for the bid package, the following requirement pertaining to service connection lines and hook-up fees must be followed. As stated in Section 570.202(b)(6) of the Housing and Community Development Act of 1974, as amended, the "financing of costs associated with the connection of residential structures to water distribution lines or local sewer collection lines" is an eligible cost. It is eligible, however, as rehabilitation and will be considered as an integral part of the overall sewer or water project.

For those communities whose approved applications included the use of LCDBG funds for the construction or replacement of service connection lines, the following items must be taken into consideration:

1. LCDBG funds will only pay for connection lines to residential structures which are occupied by low and moderate income persons. Both rental and owner occupied units are eligible for this assistance if the residence is occupied by low and moderate income persons. Although LCDBG funds cannot be used to finance the cost of connection lines to homes occupied by persons above the low/moderate income limits, the applicant must adopt and enforce a procedure which will ensure that all residences (regardless of income) will be connected to the utility system. This is necessary to meet the project impact certification (i.e., the project will completely remedy the existing violation of a state or federal standard). Also, residents cannot be counted as beneficiaries of a project unless they are connected to the utility system.
2. In order for low and moderate income persons to qualify for financial assistance to pay for the construction or replacement of the service connection lines under the LCDBG program, all applicants must first complete an application form provided by the local governing body regarding the income status of all persons in the family. All applicants must attach documentation of their income to the application. Such documentation may include, but is not limited to: copies of paychecks or paycheck stubs, income tax forms, W-2 forms, or copies of social security, welfare, veteran benefits, or unemployment checks. At this time the grantee should also negotiate a temporary construction easement with the private owner(s) to protect itself from any liability that may arise. See *Section E, Acquisition /Anti-Displacement / Relocation / Demolition* of the handbook. A sample application and temporary construction easement form is shown as **Exhibit C-6**, Application for Utility Line Connection on Private Property. The exhibit form is for a sewer system, but can be

adapted to apply to any type of project. The grantee is not required to use this particular form, but can develop its own to suit its project's needs.

3. LCDBG funds cannot be used to pay the costs associated with the connection of non-residential structures.

Some communities/parishes charge hook-up fees. A hook-up fee is a one-time access charge that the homeowner must pay for the privilege of connecting to the utility system; this fee is generally a fixed amount which is not related to the actual construction cost of the service connection line. The federal regulations governing the use of LCDBG funds to pay the hook-up fee for the homeowner is very restrictive. If the community/parish plans to require this fee directly from the recipients of a utility system funded in whole or in part with LCDBG funds, a determination must be made by the Office of Community Development that such a fee would not have an adverse effect on the low/moderate income persons involved. Due to the complex federal regulations governing this matter, this office requires that all recipients which propose to collect a hook-up fee (whether from LCDBG funds or directly from the homeowner) contact the Office of Community Development to discuss such fees prior to the collection of the fees.

All recipients of funds under the LCDBG Program must post a sign in each target area for the purpose of informing the public that the work is being financed with a grant from the Louisiana Division of Administration. The sign also serves as an action taken to meet Section 3 requirements. The cost of the project sign should be included in the bid package. **Exhibit C-7**, Sign Required at LCDBG Construction Site(s), provides instructions and information regarding the sign.

The bid package must include all LCDBG-related provisions and the general terms and conditions. In addition to the labor standards and equal employment opportunity provisions and documentation previously discussed, the following provisions for LCDBG assisted projects must be included, as applicable. These are shown in the Contract Documents Guide (**Exhibit C-1**). They include:

1. Bonding and Insurance Requirements;
2. Conflict of Interest;
3. Access to Records/Maintenance of Records;
4. Clean Air/Water;
5. Special Conditions Pertaining to Hazards, Safety Standards and Accident Prevention (including Lead-based Paint Prohibition);
6. Flood Insurance, if applicable; and
7. E-Verify Requirements.

The bid package must also include cost and pricing formats. Generally, street, water, and sewer projects will be unit price contracts, while building type contracts will be fixed price. For unit price contracts, the bid specifications should delineate each type of item, estimated quantity, unit price, and total cost. The Louisiana Uniform Public Work Bid Form issued by the Division of Administration, Facility Planning and Control in accordance with the provisions of the Administrative Procedure Act (R.S. 49:950, et seq.) and the provisions of RS 39:121 must be used in the bid package. A copy of the form is included in **Exhibit C-1**. Any bids received that do not use this form as required must be rejected as being non-responsive.

The bidding process must be in strict compliance with the Louisiana Revised Statutes, Title 38: Public Contracts, Works and Improvements. These statutes are continually being amended, revised, and superseded; therefore, it is the grantee's responsibility to assure compliance with the most recent and current regulations. There may be differences between the Louisiana State Statutes and the federal CDBG regulations. If this is the case, use the most stringent requirement. For example, Title 38 requires that the contract limit for advertisement for construction is $150,000, and for materials/supplies is $30,000. However for CDBG, CFR 24 Part 85 still lists $100,000 as the limit for small purchase procedures, therefore, for CDBG contracts, grantees must advertise if the estimate exceeds $100,000.

If the project or any portion thereof, falls within the definition of an "emergency" under Title 38 of the Louisiana Revised Statutes, the grantee must contact the Office of Community Development immediately. The grantee cannot proceed with those emergency provisions unless it has received written approval of such from the Office of Community Development. Failure to receive written approval may result in disallowed costs.

It is *suggested* that the bid package be reviewed in its entirety by legal counsel to ensure compliance with applicable federal, State, and local laws. All required bid documents are listed on the Table of Contents of the Contract Documents Guide (**Exhibit C-1**) and copies of the documents are provided therein.

The final plans, specifications, and cost estimate must be submitted to the Office of Community Development for review. **If revisions to the plans, specifications, and/or cost estimate are requested by this office, these documents must be received by OCD within 30 calendar days or by the deadline for clearance of contract conditions as outlined in the "Authorization to Incur Costs" letter, whichever is later. Failure to comply with this requirement will result in an assessment of $250 per working day.** The assessment will be deducted from the amount of LCDBG funds allowed for basic engineering services. If the grantee is not using LCDBG funds to pay for basic engineering services, the penalty will be deducted from the construction line item in the contract and disallowed. **If revisions are submitted timely but do not adequately comply with the revisions requested, the penalty may be assessed at the State's discretion.**

Following this office's review of the plans and specifications, and if all other program requirements have been met, the grantee will receive a letter authorizing it to advertise for bids. Bids must be advertised for within thirty days of the date of that letter. A copy of the publicized bid advertisement, including the publication date, must be submitted to this office. Failure to comply with this thirty day bid advertisement will result in an assessment of $250 per working day. The assessment will be deducted from the amount of LCDBG funds allowed for basic engineering services. If the grantee is not using LCDBG funds to pay for basic engineering services, the penalty will be deducted from the construction line item in the contract and disallowed. If the failure to advertise for bids within the required timeframe is the fault of another party (the local government or the administrative consultant), then the penalty will be assessed accordingly. If there are extenuating circumstances which prevent publication of the advertisement for bids within the thirty day period, the local government must advise this office of such prior to the end of the thirty day period and request an extension of time. The State reserves the right to grant an extension when the reasons for not meeting the timeframe are valid.

Bids must be solicited by public advertising. A sample Advertisement for Bids appears in the Contract Documents Guide, (**Exhibit C-1**). The Public Bid Law requires that the advertisement for any contract for public works shall be published once a week for three different weeks in a newspaper in the locality and the first advertisement shall appear at least 25 days before the opening of bids for construction projects. For materials purchases, the Public Bid Law requires the advertisement to be published two times in a newspaper in the locality and the first advertisement shall appear at least 15 days before the opening of bids. The first publication of the advertisement shall not occur on a Saturday, Sunday, or legal holiday. Plans and specifications shall be available to bidders on the day of the first advertisement and shall be available until 24 hours before the bid opening date. Additionally, the advertisement must call the bidders' attention to the conditions of employment and requirements of federal prevailing wage rates, Segregated Facilities, Section 3, Section 109 and Equal Opportunity. If bid documents are amended during the advertisement period, addenda must be sent to all prospective bidders who have received bid documents. No public entity shall issue or cause to be issued any addenda modifying plans and specifications within a period of 72 hours prior to the advertised time for the opening of bids, excluding Saturdays, Sundays, and any other legal holidays; however, if the necessity arises to issue an addendum modifying plans and specifications within the 72-hour period prior to the advertised time for the opening of bids, then the opening of bids shall be extended for at least 7 days, but not to exceed 21 days, without the requirement of re-advertising the project. The addendum shall state the revised time and date for the opening of bids**. A copy of each addendum shall be submitted to the**

Office of Community Development at the time the addendum is issued, including addenda solely pertaining to federal wage rate decisions.

All bids received prior to the opening of bids must remain sealed and in a safe place until the bid opening.

On the date scheduled, the public bid opening should be conducted. The bids should be read aloud during bid opening and the apparent low bidder should be determined during the bid opening. However, the bids must also be reviewed for both technical and legal responsiveness of bids. In addition, the bidders must be evaluated as having the capacity to furnish products and/or services required. Minutes of the bid opening, along with a tabulation of bids and a roster of attendees, should be placed in the contract file; a format is provided in **Exhibit C-8** (sample Minutes of Bid Opening and Bid Tabulation).

After the bid opening, the grantee must take action within 45 days to either award a contract to the lowest responsible bidder or to reject bids. The grantee and the lowest responsible bidder may, by mutual written consent, agree to extend the deadline for award by one or more extensions of 30 calendar days. Please refer to LRS 38:2215 for any exceptions. A public entity may reject any and all bids for just cause. For more information about "just cause", see LRS 38:2214B. Also, a contract cannot be awarded with an incorrect federal wage decision. The proper choice of the federal wage decision must be verified as per the process described in *Section B, Labor Compliance*.

PROCEDURES FOR WHEN BIDS EXCEED COST ESTIMATES

In some cases, the lowest bid received will exceed the amount of funds allocated for the project. Several options are available. One option is to reject all bids received. The engineer/architect will then revise the plans and/or specifications in an effort to lower the cost of the project. It is imperative that the Office of Community Development be consulted as to any proposed changes to the plans and/or specifications. A revised set of plans and specifications and an updated cost estimate may be required to be submitted to the Office of Community Development for review prior to re-advertising the project. Another option is to make up the difference between the available funds and the amount of the lowest bid through the reallocation of LCDBG funds. If the reallocation of LCDBG funds is involved, contact the Office of Community Development for concurrence and to ensure the reallocation does not affect the project's eligibility status. A third option is to make up the difference between the available funds and the amount of the lowest bid with other sources of funding such as local funds. Still another option is to enter into a contract with the low bidder for the amount of the bid and to, subsequently, execute change orders to bring the project within the allocated funds. The grantee should investigate how exercising this option would affect the other bidders prior to awarding a contract. All change orders must be approved by the Office of Community

Development before execution. **Contact the Office of Community Development for consultation before exercising any of these options.**

If it is anticipated that bids received may be higher than the amount of funds budgeted, alternate bids should be included in the bid documents. Alternates may be in the form of deductive or additive alternates and the drawings should clearly show what is being considered as an alternate. The requirements of the Public Bid Law regarding alternates as found in R.S. 38:2212A(3)(e) are repeated here for convenience:

> "(e) Any proposal shall include no more than three alternates. An alternate bid by any name is still an alternate. Alternates, if accepted, shall be accepted in the order in which they are listed on the bid form. Determination of the low bidder shall be on the basis of the sum of the base bid and any alternates accepted. However, the public entity shall reserve the right to accept alternates in any order which does not affect determination of the low bidder."

AWARDING A CONTRACT, NOTIFYING CONTRACTORS OF RESPONSIBILITIES AND ISSUING A NOTICE TO PROCEED

Contracts must be awarded to the "lowest responsible bidder" in accordance with the Public Bid Law. Discretion has been given to public entities to determine bidder responsibility. A Court decision has concluded that, in determining bidder responsibility, the public entity may look to financial ability, skill, integrity, business judgment, experience, reputation, quality of previous work on contracts, and other similar factors bearing on the bidder's ability to successfully perform the contract. If the grantee proposes to disqualify a bidder on the grounds that the bidder is not a "responsible bidder", it must (1) give written notice of the proposed disqualification to the bidder and include in the notice all reasons for the proposed disqualification, and (2) give the bidder the opportunity to be heard at an informal hearing at which the bidder is afforded the opportunity to refute the reasons for the disqualification.

As described in *Section B, Labor Compliance*, the successful bidder must be cleared by the Office of Community Development (see **Exhibit B-5**). Once the bidder is accepted and a contract has been awarded, the grantee must send a Notice of Contract Award (**Exhibit B-6**) to the Labor Compliance Officer in the Office of Community Development within 30 days. Also, one copy of the **certified and itemized bid tabulation** shall be submitted to the Office of Community Development's engineer along with the Notice of Contract Award. In addition, an updated LCDBG Disclosure Report (**Exhibit A-57**) must be submitted to the Office of Community Development within 30 days of executing the contract.

Following award of the contract, the contract documents and applicable bonding and insurance requirements 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 bonding and insurance forms. The bonding/surety company or companies used by the contractor must be on the U. S. Department of Treasury's Financial Management Services list of companies approved for federal bonds. They may be contacted by phone at (202) 874-6850, or online at **http://www.fms.treas.gov/c570/index.html** Verification of the status of surety or insurance companies must be carried out by the grantee, and the date and method of verification must be clearly documented in the files. In addition, the Louisiana Insurance Commissioner's Office must be contacted by phone at (225) 342-0895, or online at **http://www.ldi.state.la.us/** in order to determine whether or not the agent selling the bond is currently licensed to do business in Louisiana. A form which can be used to document the phone calls is provided as **Exhibit C-9**, Verification of Contractor's Bonding/Insurance. If the status of the company(s) was checked via the internet websites, a copy of the information located at the websites will be sufficient verification.

A pre-construction conference or other means of notification should be accomplished immediately upon contract execution to inform the prime contractor(s) of his/her responsibilities. These responsibilities include labor standards, (covered in *Section B, Labor Compliance*), equal opportunity, (covered in this Section), other State and local provisions, and technical job requirements. Others who must be aware of these responsibilities are the foreman or construction superintendent, the payroll preparer, and all subcontractors identified in the bid.

At this time, any equal opportunity deficiencies such as Section 3 plans, certificates of compliance, etc. that have not been submitted by prime contractors and subcontractors should be corrected. Carefully explain contractor and subcontractor responsibilities regarding equal opportunity using the list of commonly asked equal opportunity questions (**Exhibit C-3**) as a guide. Also, requirements for the equal opportunity monitoring during site visits should be explained.

In addition, any subcontractors **not** identified in the bid should provide the data necessary to verify eligibility, sign required certifications, prepare a written Section 3 Plan, etc. All of these contractor/subcontractor responsibilities should be complete prior to start of construction.

After execution of the contract documents and notification of the contractor(s) and subcontractor(s) responsibilities, a **Notice to Proceed** should be issued to each prime contractor. The notice should state the construction start date and the scheduled completion date. Do not submit a copy of the Notice to Proceed to this office.

The contract file and associated compliance files should be reviewed to ensure documentation is complete. The following is a list of construction contract file requirements:

1. Preliminary design and cost estimates;
2. Final design documents and cost estimates;
3. Evidence that all necessary land or easement acquisition has been completed prior to advertising for bids;
4. Bid documents;
5. Documentation of submittal to and approval of plans and specifications by the cognizant State/Federal agency having jurisdiction over the project;
6. Certification of Compliance with Architectural Barriers Act, if applicable;
7. Proof of publication/copy of advertisement for bids;
8. Minutes of public bid opening;
9. Tabulation of bids;
10. Recommendation for award;
11. Notice of contract award;
12. Executed contract document;
13. Certification of insurance/bonding;
14. Notice to Proceed; and
15. Evidence of project sign requirements as shown in **Exhibit C-7**.

MONITORING CONTRACTOR PROGRESS AND MAKING PROGRESS PAYMENTS

The purpose of this task is to monitor construction contracts to insure compliance with technical specifications and State and Federal requirements, maintain adequate cost and budget controls, and process necessary contract changes in order to bring the contract to completion.

Upon receiving the Notice to Proceed, the contractor must submit a cost breakdown showing the amount assigned to each portion of the work. This breakdown is not required when per unit prices form the basis of payment under the contract. This breakdown must be reviewed by the grantee and its architect/engineer and used as the basis for requests for payment. The breakdown should be submitted within 5-10 days of receipt of the Notice to Proceed.

During construction, the grantee is responsible for monitoring equal opportunity and labor standards requirements as described in *Section B, Labor Compliance* and this Section and for construction management. This may be done by the architect/engineer, and if so, should be

included in the scope of services of the professional services contract. Construction management must include inspection and general supervision of construction to check the contractor's work for compliance with the drawings and specifications and quantity/quality control. Written inspection reports must accompany the contractor's requests for partial payment.

The architect/engineer shall furnish a Resident Project Representative (RPR), assistants, and other field staff to assist the engineer in observing the progress and quality of the work. The RPR shall be under the architect/engineer's supervision and shall be a member of the architect/ engineer's staff or a contract employee. In either case, the architect/engineer shall attest to the RPR's qualifications and abilities to perform the appropriate duties and responsibilities. The Qualification Certification for Resident Project Representative (**Exhibit C-10**) must be completed and submitted to the Office of Community Development along with a copy of the RPR's current resume showing his/her qualifications and work history before construction begins. As part of his/her duties, the RPR will prepare reports, each recording, at a minimum, the following information: project name, contractor's name, date, weather conditions, contractor's work force (indicating work classifications), equipment (in use or idled), quantities of items installed, deficiencies in materials or work, general observations, summary of construction activities, and RPR's signature. Furnishing an RPR does not relieve the architect/engineer of the responsibility of making visits to the site at intervals appropriate to the various stages of construction.

Subtasks that are a part of construction management include:

General Supervision — must include monitoring construction to alert the grantee of the need for adjustments in design as dictated by actual field conditions and the need for contract amendments. All contract amendments affecting alignment and detail or dimensions shown on drawings must include revised drawings.

Quality Control — must include quality tests as necessary to verify conformance with technical specifications concerning minimum quality requirements.

Quantity Control — must include verification of in-place quantities and other records reflecting an as-built facility.

Certification of Pay Estimates — must include inspection reports and copies of field measurement notes; test results used to verify contractor's periodic pay estimates for partial payments should be attached to and filed with the periodic estimate for partial payment.

General — construction management may involve other responsibilities including, but not limited to, providing benchmarks and baselines to be used by the contractor in

staking the construction, review and approval of shop drawings, and project coordination.

Upon receipt of requests for partial payment and necessary documentation, the grantee must check equal opportunity and labor standards compliance files to insure that all payrolls have been received and checked, any restitution paid, employee interviews have been conducted, and all discrepancies corrected.

In accordance with the Public Bid Law, all change orders must be in writing. Change orders must be prepared and recommended by the architect/engineer. Each change order must be accompanied by a supporting statement which describes why the proposed change is deemed necessary. Preliminary (unexecuted) change orders, containing the signatures of the architect/engineer and the contractor but not the public entity, must be reviewed by the Office of Community Development so that the Office may determine the extent of financial participation eligible through the LCDBG Program. Once this determination has been made the local entity and the architect/engineer will be informed. The fully executed change order will contain the signatures of the architect/engineer, contractor, and local entity. A copy of the fully executed change order must be submitted to the Office of Community Development as soon as possible after execution.

INSPECTING AND ACCEPTING THE WORK, CLOSING OUT THE PROJECT, AND MAKING FINAL PAYMENT

When construction work has been completed, the contractor must certify completion of work and submit a final request for payment. The architect/engineer should make the final inspection and prepare a written report of the inspection prior to issuance of a final certificate of payment. In addition, if the project involved the construction of a building, the Office of the State Fire Marshal, Code Enforcement, and Building Safety must issue a Certification of Occupancy.

Before making final payment (less retainage), insure that: all weekly payrolls and Statements of Compliance have been received, checked, and any discrepancies resolved; all discrepancies identified via on-site interviews must have been resolved; all other required equal opportunity and labor standards provisions must have been satisfied; all contract submissions must have been received; all claims and disputes involving the contractor must have been resolved; all files must be complete; and as-built plans have been filed. A Final Wage Compliance Report (found in **Exhibit G-4**) must be prepared, submitted to the State, and placed in the Labor Standards Compliance file.

The contractor should file the acceptance of work at the designated location. The grantee can then issue acceptance of work and final payment, less the retainage. After 45 days from the

filing of the acceptance and upon submission of a clear lien certificate by the contractor, the retainage can be paid to the contractor. If any claims or liens remain after the 45 day lien period, you must take appropriate action for disposition of the retainage and all claims against the bonds in accordance with State law.

In accordance with State law, a maximum of ten percent retainage on construction contracts which are less than $500,000 and a maximum of five percent retainage on construction contracts which are $500,000 or more can be retained by the grantee.

A comprehensive Construction Contract Checklist is included as **Exhibit C-11**.

RESTRICTIONS ON FIRE PROTECTION PROJECTS

The use of LCDBG funds for garages to house fire trucks is allowed with the following stipulations. The size of the garage will be based upon the number of operational fire trucks available to be housed upon completion of the garage; LCDBG funds will not pay for vacant garage space which will be used for future truck storage. The maximum size allowed for each bay is 20’ x 50’. If there is a valid reason that this size is not sufficient, written approval from the Office of Community Development must be obtained. LCDBG funds will not pay for kitchens, training rooms, etc. in garages for volunteer fire departments. LCDBG funds can be used to install a bathroom in the garage, such monies will pay for a lavatory, toilet\ and bathing facilities, such as baths and showers. LCDBG funds can be used to install a heating system in the garage but cannot be used to install a cooling system.

If there are any questions regarding the design of the garage, please contact the Office of Community Development.

D. HOUSING: REHABILITATION/RECONSTRUCTION AND PHYSICAL ACCESSIBILITY

INTRODUCTION

This section of the Grantee Handbook covers the two Louisiana Community Development Block Grant (LCDBG) housing programs. The Rehabilitation/Reconstruction Program involves the rehabilitation or reconstruction of substandard owner-occupied housing units to bring the units up to standard condition. The Physical Accessibility Program involves the construction, alteration, repair or replacement of household structures and/or fixtures that address the needs of physically disabled persons.

LCDBG REHABILITATION/RECONSTRUCTION PROGRAM

The Rehabilitation/Reconstruction Program has two types of assistance involving LCDBG funds that are awarded by the local government to the property owners: (a) Deferred Payment Loan and (b) Grant.

- **Deferred Payment Loans:** Although the assistance received under the LCDBG Program for rehabilitation or reconstruction has many characteristics of a grant it is actually a Deferred Payment Loan with a lien to be filed on the housing unit with the Parish Clerk of Court. The lien period, which is for five years, begins with the date the Notice of Substantial Completion is filed. After five years of occupancy by the homeowner, beginning on the date of the Notice of Substantial Completion, the lien expires. However, if the homeowner sells, rents, leases or otherwise vacates the premises before five years have elapsed, the LCDBG funds associated with the pro-rated portion of the five years not being occupied by the homeowner/recipient must be returned to the Office of Community Development. The interest rate is zero. If the owner vacates the property or wishes to sell the property, the local government shall notify the Office of Community Development immediately for instructions. Certain circumstances, such as death of the sole owner of the property, voids this occupancy requirement of the homeowner as long as the unit remains occupied by the family and the surviving family member(s) do not sell the unit during the remainder of the deferred loan period.

  Example: A homeowner tries to sell a reconstructed housing unit three years after the Notice of Substantial Completion. The housing unit was constructed under the LCDBG Program for a cost of $50,000. There is a Deferred Payment Loan lien against the property; therefore, the sale cannot be made until the lien is released. The value per year "earned" is calculated at $10,000 because $50,000 divided by a 5 year

lien period equals $10,000 per year. Thus, the owner "earned" three years worth of funds, a total of $30,000. The remainder, $20,000 is not "earned" and therefore must be returned to the Office of Community Development. The local government must contact the Office of Community Development for instructions.

- **Grant:** The local government will fund spot rehabilitation and clearance demolition with grants using LCDBG funds. There is no five-year lien period with an outright grant.

PROGRAM CONSISTENCY WITH ORIGINAL LCDBG REHABILITATION/RECONSTRUCTION APPLICATION

The local government's Rehabilitation/Reconstruction Program must be consistent with the approved application. Any significant variation requires prior approval from the Office of Community Development. The local government's Reconstruction/Rehabilitation application established one or two target areas in which substandard housing units and structures in need of demolition will be addressed. There is usually insufficient LCDBG funding available to improve all substandard eligible housing units and structures in need of clearance demolition within the local government's corporate limits. Due to such monetary limitations, it was the local government's responsibility to select a smaller geographical area(s) within the corporate limits for inclusion in the LCDBG Rehabilitation/Reconstruction application.

Within the target area established in the application, a Target Area Survey Form was completed for each structure. Housing units eligible for rehabilitation or reconstruction under the LCDBG Rehabilitation/Reconstruction Program are limited to housing units that were slated for treatment on the completed Target Area Survey Form and were included in the LCDBG application. Homeowners in the target area who expressed that they did not want to participate at the time of the completion of the Target Area Survey Form will not later become eligible.

Spot rehabilitation is eligible only if the original LCDBG application indicated a request for specific spot rehabilitation units. Funds remaining after regular rehabilitation, reconstruction, and clearance demolition have been completed cannot be used for spot rehabilitation.

ADMINISTRATION TYPES AND AMOUNTS

- **General Administration:** General administration will normally include environmental reviews, preparation of a community development plan, preparation of Requests for Payment, assistance to the local government in the updating or preparation of a Housing Rehabilitation/Reconstruction Policy, preparation of closeout documents, etc. The maximum allowable for general administration is $35,000 and may be invoiced proportionately throughout the duration of the program with ten percent retainage to

be paid upon the successful "conditional closeout" out of the LCDBG Rehabilitation/Reconstruction Program. The first general administration invoice must not exceed 35% of the amount awarded to the administrative consultant for general administration.

- **Construction Administration:** Construction administration will include such tasks as the preparation of work write-ups and a cost estimate for each unit, inspections on each unit, and general activities involving the repair and construction process. The maximum allowable for construction administration is $4,000 for each housing unit slated for reconstruction or rehabilitation. The maximum allowable for construction administration for each housing unit slated for spot rehabilitation is $1,000. Construction administration must not be invoiced until the construction or rehabilitation of each respective unit is complete. The entire amount invoiced for construction administration may be paid in full at the time the invoice is submitted. It is not required that the local government hold back retainage associated with construction administration.

  Clearance demolition does not include associated "construction administration" funds. The administrative duties for clearance demolition are considered to be covered by the amount allocated under general administration.

IMPROVEMENT TYPES AVAILABLE

A Rehabilitation/Reconstruction application may include the following type(s) of improvement(s).

- Clearance demolition: The removal of vacant substandard dilapidated housing units or other dilapidated structures in residential areas with no replacement of the demolished unit.
- Reconstruction: demolition and reconstruction of a substandard housing unit on the original site.
- Rehabilitation: Substantial repair and/or renovation of a substandard housing unit in order to bring the unit up to Section 8 Standards.
- Spot rehabilitation: Limited repair of a housing unit involving the treatment of health and safety deficiencies pertaining to one of more of the following household systems: (1) Electrical (2) Plumbing (3) Roofing and/or (4) Heating/Air-conditioning. Spot rehabilitation does not necessarily bring the unit up to Section 8 Standards.

REHABILITATION/RECONSTRUCTION PROGRAM RECORDS

For a listing of record keeping requirements, refer to the Grantee Handbook, *Section A, Record Keeping and Reporting*. In addition to these items, rehabilitation/reconstruction grant recipients must also maintain a "Status Report" which contains a status listing of all units slated for improvement as identified in the original LCDBG Rehabilitation/Reconstruction application along with completion status and cost of each housing (or demolition) unit. A sample is provided as **Exhibit D-1**, Status Report of All Properties Slated for Treatment Per LCDBG Application**.** A copy of the completed Status Report must be submitted with closeout documents.

DEFINITIONS:

- Rehabilitation/Reconstruction Application Package: A publication of the Office of Community Development explaining how to prepare an LCDBG Rehabilitation/Reconstruction Application.
- LCDBG Rehabilitation/Reconstruction Application: The application submitted to the Office of Community Development by the local government for funding under the LCDBG Rehabilitation/Reconstruction Program.
- Homeowner Application: A written application received from a homeowner after the local government's LCDBG Rehabilitation/Reconstruction application is funded and LCDBG funds are released. The document is a formal written application from a homeowner requesting housing improvements under the LCDBG Rehabilitation/Reconstruction Program accompanied by documents supporting low-to-moderate income status, ownership, and other LCDBG Housing Program requirements.
- Target Area Survey Form: A form completed and submitted with the application for each housing unit that describes characteristics of each household and condition of each housing unit in a target area(s). Also the Target Area Survey Form is completed for each structure in need of demolition.
- Usufruct: Usufruct is the legal right, recorded at the Courthouse, for the use of a property.

ELIGIBILITY REQUIREMENTS OF THE REHABILITATION/RECONSTRUCTION PROGRAM

Eligibility requirements for a housing unit to be listed as eligible for assistance in an LCDBG Rehabilitation/Reconstruction Application and eventually be funded by the local government include the following:

- **Income:** Beneficiaries must be of low and moderate (LMI) income.
- **Target Area:** Housing units or properties slated for clearance demolition must be in the target area, as indicated by the local government in the LCDBG Rehabilitation/Reconstruction Application. Individual housing units or clearance demolition units must be among the units identified in the LCDBG Rehabilitation/Reconstruction application as in need of improvement. An expansion of the target area will not be allowed under the LCDBG Program.
- **Owner-occupied or With Usufruct:** Housing units needing reconstruction, rehabilitation, or spot rehabilitation must be owner-occupied (or have usufruct) in order to be eligible for improvements. The property on which the occupied housing units sit must also be owned by the occupant.
- **Duration of Occupancy:** The owner must (a) have occupied the unit for at least six months prior to the submittal of the LCDBG application, (b) must be occupying the unit at the time of the homeowner application and (c) must be intending to occupy the unit for at least five years after improvements are complete.
- **Usufruct:** A person who has usufruct of a housing unit and the property on which it sits is eligible for assistance. Documentation of the legal obtaining of usufruct must be filed or have been filed at the Clerk of Court's office. A person who does not have usufruct at the time of the release of LCDBG funds must obtain usufruct and submit a complete homeowner application within the time limits specified by the local government. The deadline for the receipt and completion of review of homeowner applications must be specified in the Housing Policy of the local government.
- **Single Family/Duplex:** Only single-family and duplex structures are eligible under the LCDBG Rehabilitation/Reconstruction Program. If a duplex is included, all substandard parts of the duplex must be rehabilitated or reconstructed—which will often mean that both parts of a duplex must be treated.
- **Structure Types:** A housing unit must be a conventional "stick built" structure to be eligible for rehabilitation. Mobile homes and modular homes are not eligible for rehabilitation. However, reconstruction, which includes demolishing and rebuilding on the same site, is an eligible activity for both conventional "stick built" structures and mobile homes. Clearance demolition of substandard structures in residential areas is eligible.
- **The 75% Rule:** Eligibility for rehabilitation requires that the 75% Rule be met. The 75% Rule states that a housing unit is suitable for rehabilitation if the estimated cost of improvements will be 75% or less of the expected market value of the improved unit.

Housing units which do not meet the 75% rule should be not be considered for rehabilitation or spot rehabilitation but should be considered for reconstruction.

Example: A house has termites with significant structural damage. The roof of this house is caving in. The cost to rehabilitate this house so that it would meet program standards (Section 8 Standards) is estimated to be $35,000. The market value of the house and land upon which it sits is estimated to be 39,000 after completion of work. This house would not be eligible for rehabilitation because the cost of construction, $35,000, exceeds $29,250 which is 75% of $39,000. However, the house should be considered for reconstruction.

- **Adjudicated Housing Units:** An adjudicated housing unit is a housing unit formerly owned by a citizen but now owned by the local government due to court action. Adjudicated homes within the target area will qualify for rehabilitation/construction under the LCDBG Program and will be counted as owner occupied housing. The terms for the transfer of ownership to a low-income family will be subject to the five year deferred payment loan lien period. If there are any adjudicated homes in the target area the Housing Rehabilitation/Reconstruction Policy (**Exhibit D-2**) must state the selection method for the person to which ownership will be transferred. After release of LCDBG funding the local government must rate and rank applications using a selection method. The selection method will determine which housing units are selected to become part of the project and in what order each unit will be placed for bidding. The selection method in the Housing Rehabilitation/Reconstruction Policy must be deemed fair by the Office of Community Development who will review the Housing Rehabilitation/Reconstruction Policy prior to release of LCDBG funding.

- **Conflict of Interest:** Housing units whose owners have a conflict of interest are not eligible. The following individuals or firms must not have any interest, direct or indirect, in any contract or subcontract or the proceeds from any contract or subcontract for work to be performed in connection with the LCDBG Program:

    1. Employee of the local government,
    2. The local government's designee, agent, or consultant,
    3. Member of the local governing body or other public official of the local government who exercises or has exercised any functions or responsibilities with respect to this LCDBG project during his/her tenure.

  However, upon written request of the local government, the Office of Community Development may agree in writing to waive a conflict otherwise prohibited by this provision whenever there has been full public disclosure of the conflict of interest, and

the Office of Community Development determines that undue hardship will result either to the local government or the person affected by applying the prohibition and that granting of a waiver is in the public interest. No such request for waiver should be made by the local government which would permit a violation of federal, State or local law.

PREVIOUSLY FUNDED HOUSING UNITS

Any housing unit that has received assistance under a previous LCDBG Rehabilitation/Reconstruction Program is ineligible for further assistance.

LOCAL GOVERNMENT'S OBLIGATION FOR TREATMENT

A substandard housing unit submitted for treatment in the original LCDBG Rehabilitation/Reconstruction Application must be treated if: (a) the owner properly applies for funding, (b) the owner meets program requirements (c) the bid comes in within allowable amounts as established in the local government's Housing Rehabilitation/Reconstruction Policy and (d) sufficient LCDBG funds are available to fully fund the construction contract. The local government is obligated to treat units that meet all four requirements.

Clearance demolition units submitted for treatment in the original LCDBG Rehabilitation/Reconstruction Application must be treated if: (a) the owner properly applies for funding or successful condemnation procedures are carried out, (b) bids come in within allowable amounts as established in the local government's Housing Rehabilitation/Reconstruction Policy, and (c) sufficient LCDBG funds are available to fully fund the demolition contract. The local government is obligated to treat units which meet all these requirements.

REHABILITATION/RECONSTRUCTION PROGRAM REQUIREMENTS

Property Rehabilitation Standards

Property Rehabilitation Standards are the building and safety standards adopted by the local government that apply to reconstruction and rehabilitation relative to the LCDBG Rehabilitation/Reconstruction Program. All housing units, reconstructed or rehabilitated, must meet, at a minimum, the local government's adopted Property Rehabilitation Standards. When more than one component of Property Rehabilitation Standards applies to a particular building or safety issue, the component with the strictest requirements should be followed. Components of Property Rehabilitation Standards include:

1. **HUD's Section 8 Housing Quality Standards**: When assessing the condition of an existing housing unit, a set of standards must be used to determine whether the housing unit is in standard condition. In the LCDBG Rehabilitation/Reconstruction Program,

Section 8 Minimum Housing Quality Standards, as established by HUD, are normally utilized. These standards are often referred to as "Section 8" standards.

HUD has provided an "Inspection Checklist" along with instructions that briefly explain Section 8 standards. These instructions and the Inspection Checklist are located on the "HUD Clips" website at:

http://www.hud.gov/offices/adm/hudclips/

The path to the Inspection Checklist is as follows: HUD Clips→Forms→HUD 5→HUD-52580 "Inspection Checklist Housing Choice Voucher Program."

The path to a very similar Inspection Checklist but with greater explanatory details is as follows: HUD Clips→Forms→HUD 5→HUD-52580-A "Inspection Form Housing Choice Voucher Program."

Also available is HUD's "Housing Choice Voucher Guidebook" which, in Chapter 10 of the Guidebook, gives extensive details regarding Section 8 Housing Quality Standards. The path to the Guidebook is as follows: HUD Clips→Guidebooks→Guidebook 7420.10G.

2. **International Building Code:** Act Number 12 of the first extraordinary session of the FY 2005 Louisiana Legislature requires the following building codes to be applicable in every parish as of January 1, 2007:

   - The International Residential Code except for administration (part one), plumbing (part seven) and electrical (part eight)

     Note that Appendix J of the International Residential Code covers treatment of existing buildings.

   - The Louisiana State Plumbing Code

   - The National Electric Code

3. **HUD's Lead-Based Paint Regulations:** The name of the regulation is "Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance". It was published in the Federal Register on September 15, 1999. Additional information for administrators of the Rehabilitation/Reconstruction Program should be viewed at: **http://www.hud.gov/offices/lead/enforcement/lshr_summary.cfm** .

4. **Asbestos Requirements of the Louisiana Department of Environmental Quality:** The LCDBG Rehabilitation/Reconstruction Program must follow asbestos testing and abatement procedures which are publicized and enforced by DEQ.

5. **Federal Flood Insurance Administration Regulations:** The Federal Flood Insurance Administration is a division of the Federal Emergency Management Agency (FEMA) that is involved with determining areas which need flood insurance. The LCDBG program is subject to Federal Flood Insurance Administration Regulations.
6. **LCDBG Rehabilitation/Reconstruction Program Requirements:** LCDBG Rehabilitation/Reconstruction Program requirements are established by the Office of Community Development and applied to building and safety items not covered in other standards or are more restrictive than other standards.

Average and Maximum Cost Per Unit

In the LCDBG Application on the Cost Effectiveness and Housing Program Cost Estimate form the local government indicated an average cost per unit to be improved. Averages were set forth for all improvement types: reconstruction, rehabilitation, spot rehabilitation, and clearance demolition.

After the award of the LCDBG Rehabilitation/Reconstruction Grant and as the Housing Rehabilitation/Reconstruction Policy of the local government is being prepared the maximums and minimums for each improvement type must be included except that reconstruction will not have a minimum.

During the planning and bidding phase of a funded Rehabilitation/Reconstruction Program it is important to keep costs under control in order that the maximum allowable is not exceeded.

During the construction contract award phase the local government must not award contracts which exceed the maximum allowable as stated in their Housing Rehabilitation/Reconstruction Policy. The maximum allowable may be revised by written request from the local government and subsequent written approval from the Office of Community Development.

Demolition of Units to be Reconstructed

Housing units to be replaced must be demolished on-site—including mobile homes—not simply moved to another location. Should a house scheduled for demolition be relocated (rather than demolished on-site), the grantee assumes all financial responsibility for the reconstruction of the housing unit. A written record of the disposition of the substandard mobile home must be made a part of grant records by the local government.

Mobile homes and modular housing units may not be rehabilitated with LCDBG funds. Eligible mobile home or modular housing units, if deemed to be substandard, must be replaced with "stick-built" homes. The local government is obligated to provide a clear explanation, in writing, to the homeowner that the mobile home must be demolished on-site and not just moved elsewhere. The owner is obligated to agree to the demolition in writing. This element of

agreement between the owner and local government should be indicated on the Homeowner Agreement that will be executed prior to the bidding process.

Storage Buildings, Carports, etc:

The following components are ineligible as additions to an existing housing unit or as part of the plans for a new housing unit: carports, dens, recreation rooms, free standing storage buildings, and similar accessory structures.

If a component is attached to an existing housing unit slated for rehabilitation, such as a carport, the attached component is eligible to be improved with LCDBG funds. If a component is not attached to an existing housing unit, such as a workshop in the back yard, the unattached component is not eligible to be improved with LCDBG funds.

Demolition of Outbuildings and Removal of Debris

An unattached outbuilding to an existing housing unit, such as a garage, is eligible for demolition with LCDBG funds and, in some cases if an unattached structure is extremely dilapidated, demolition will be required. Debris (such as abandoned vehicles) must be removed. Outbuildings that need demolition must be demolished and debris must be removed to meet the objective of having a positive impact on the entire target area.

If demolition regarding a structure (such as a shed) or debris removal will be required, the homeowner must agree to the demolition or debris removal in writing. In some cases, the homeowner may agree to remove the debris themselves. The Homeowner Agreement, to be executed after release of LCDBG funds and before the beginning of the bidding process for each homeowner unit, is the proper instrument to provide evidence of agreement by the homeowner for the demolition of any identified outbuilding or removal of debris. The Homeowner Agreement should identify (a) the items to be demolished or debris to be removed, (b) who will be responsible to carry out the demolition/removal, and (c) establish a deadline date for the accomplishment of such actions. Should a homeowner refuse to agree to the removal of structure(s) or debris for which the local government has removal responsibility the home must not be included in the final list of homes approved for the bidding process. The homeowner must be informed, in writing, that his/her home was not approved as part of the LCDBG project.

Smoke Detectors

The Office of Community Development requires two smoke detectors installed in the unit, both of which must be hard-wired and with a battery back-up.

Air Conditioning

Central air conditioning is an eligible improvement for housing units being considered for rehabilitation and is a required item for all reconstructed housing units. The replacement of window units and/or portable air conditioning units with non-central units is not allowed under this program.

Clearance Demolition

A vacant house or structure that cannot be brought up to Section 8 standards within the Housing Rehabilitation/Reconstruction Policy guidelines because the unit is so deteriorated that rehabilitation is not feasible must be demolished.

Demolition Policy

If clearance demolition is part of an LCDBG Program, a local Demolition Policy must be prepared, adopted and utilized by the local government. This document may be incorporated into the Housing Rehabilitation/Reconstruction Policy or may be configured as a stand-alone document. The Demolition Policy must include the following:

1. Provision for the inspection of the housing unit to determine the need for demolition
2. Written conclusion of the inspection
3. Written requirement for the mutual agreement between the local government and the owner of the property to be demolished or successful conclusion of condemnation procedures
4. The requirement for a resolution or motion by the local government to initiate the demolition of each unit
5. Provision for testing for asbestos by a Department of Environmental Quality (DEQ) qualified inspector
6. Provision for asbestos abatement, if necessary
7. Any other applicable State, local, or federal laws pertaining to demolition
8. Provisions which are required by the local government

A stand-alone Demolition Policy does NOT need to be submitted to the Office of Community Development for approval up front.

Ten-Step Procedure

If the local government wishes to demolish a structure under State Code R.S. 33:4761, a ten-step procedure is prescribed. The ten-step procedure is as follows:

1. The unit must be inspected by a qualified building inspector and/or housing administrative consultant.
2. The building inspector and/or rehabilitation/reconstruction administrative consultant must prepare a written report signed by him/her which recommends demolition or removal of the unit; this can be a Section 8 checklist and photograph.
3. The local government must serve notice on the owner, requiring him/her to show cause why the unit should not be condemned at a Local Governing Body meeting. This notice must be served by the Chief of Police, Sheriff, or Deputy Sheriff.
4. The serving officer must make a return of service. The serving officer should indicate in writing, often by completing a standard form, that notice was served.
5. If the owner does not live in the State or if the address of the owner is unknown, the local government must appoint an attorney at law upon whom the notice can be served.
6. The notice to the attorney at law must be filed with the Clerk of Court.
7. A public hearing is held and at the conclusion, the local government must pass a resolution ordering condemnation of the building and that it be demolished and removed by a certain time.
8. There must be a five (5) day period in which the owner may appeal the written order of the local government.
9. Before demolishing the unit, the Chief Elected Official must serve notice on the owner or his agent or the attorney representing an absentee owner that states the date and time the demolition or removal work will begin.
10. If the owner does not voluntarily demolish the building, the local government can proceed with the demolition and removal.

Attorney's Fees

The fee of an attorney appointed to represent an absentee owner is an eligible cost of the demolition.

The Ten Step Procedure Abbreviated

Often the local government and the owner of a property agree to the demolition of a structure before the ten steps of the procedure under State Code are completed. In such cases, where there is mutual agreement between all parties regarding demolition, an abbreviated version of the Ten Step Procedure may be utilized but must contain at a minimum the following:

- Inspection of a property slated for clearance demolition
- Inspection report recommending clearance demolition and acceptance of the recommendations by the local government
- Owner's written approval for clearance demolition
- Resolution or passing of a motion for clearance demolition by the local government
- Preparation and execution of a contract between the local government and property owner for clearance demolition

HOUSING REHABILITATION/RECONSTRUCTION POLICY

An LCDBG Housing Rehabilitation/Reconstruction Policy (**Exhibit D-2**) to be prepared by the local government will serve as the guiding document for duration of the LCDBG Rehabilitation/Reconstruction Program. The Housing Rehabilitation/Reconstruction Policy must be submitted to the Office of Community Development for review and approval. The local government must adopt the policy by resolution. The sample policy (**Exhibit D-2**) is for a typical grant having the following improvement types: Reconstruction, rehabilitation and clearance demolition. The Housing Rehabilitation/Reconstruction Policy must include the following:

1. Source of authority of the local government
2. Objectives of the LCDBG Rehabilitation/Reconstruction Program
3. Program definitions
4. Eligibility requirements
5. Responsibilities and obligations of the local government
6. Responsibilities and obligations of homeowner/recipients
7. Applicant selection procedure

8. Property Rehabilitation Standards
9. Maximums, minimums and average costs
10. Items pertaining to all improvement types
11. Clearance demolition
12. Reconstruction
13. Rehabilitation
14. Advertising, bidding and awarding contracts procedures
15. Inspection, acceptance and closeout procedures
16. Deferred payment loans and the five year lien period
17. National Flood Insurance Program

Spot Rehabilitation and the Housing Rehabilitation/Reconstruction Policy

If spot rehabilitation is part of the LCDBG Rehabilitation/Reconstruction Program the following items must be included in the local government's Housing Rehabilitation/Reconstruction Policy:

- A definition of spot rehabilitation
- Mobile homes and modular housing are not eligible for spot rehabilitation.
- Sub-standard structures in need of demolition are not eligible for spot rehabilitation.
- The 75% rule applies to spot rehabilitation.
- Spot rehabilitation is to be accomplished concurrently with rehabilitation and reconstruction rather than toward the end of the project.
- Amounts unutilized from other grant activities may not be used to expand spot rehabilitation beyond that which was requested in original LCDBG Application.
- A description of the selection process for spot rehabilitation should be included.

A minimum and maximum dollar amount per unit for spot rehabilitation must be established.

HOMEOWNER APPLICATION SOLICITING AND SCREENING

Chronology: Rehabilitation/Reconstruction Program, Release of Funds to the Final Screening of Homeowner Applications	
Event	Comments
Requests for Payment begin	
Initial procedures for clearance demolition are carried out.	Owner contact Asbestos testing if applicable
Homeowner applications for housing improvements are solicited.	The solicitation is restricted to housing units and property located in the target area(s) identified in the LCDBG application as in need of treatment.
Homeowner Application deadline passes	
Preliminary screening of homeowner applications	Those units which are not able to pass initial screening will not be tested for asbestos and/or lead paint.
An agreement is entered, as applicable, between the local government and homeowner applicants and or clearance demolition applicants for asbestos testing and/or lead paint testing.	The local government then has authority procure and contract with a testing firm.
Asbestos and lead testing	Costs of improvements can be determined with greater accuracy after testing results become known.
Rating of homeowner applications	Establishes order of bid priority
Final status lists are prepared	A list for clearance demolition
Homeowner or property owner notification	

Requests for Payment

Upon release of LCDBG funds the local government may begin submitting, as necessary, Request For Payments (RFPs) up to a maximum of three per month. Local governments are encouraged to exercise restraint regarding the frequency of the submittal of RFPs.

Previously incurred eligible costs may be paid including costs for the services of an administrative consultant for work associated with the preparation of the application and the clearance of contract conditions. Present and future eligible LCDBG costs under the grant are incurred and associated invoices are received from professionals, vendors and, eventually, construction contractor(s). The invoices for eligible LCDBG costs become the basis for the preparation of RFPs.

Proper Categorization of Invoices For RFPs

Eligible amounts invoiced to the LCDBG Rehabilitation/Reconstruction Program should be requested on the Request for Payment form under the proper category.

- Amounts invoiced for reconstruction, rehabilitation and spot rehabilitation should be summed and entered on the "Rehabilitation Housing" row of the RFP form.
- Amounts invoiced for construction administration should be entered on the "Rehabilitation Administration" row of the RFP form.
- Amounts invoiced for clearance demolition should be entered on the "Clearance, Demolition" row of the RFP form.
- Amounts invoiced for Pre-agreement administrative costs should be summed and entered under "Administration 1. Pre-agreement Costs".
- Amounts invoiced for general administration should be entered under "Administration 2. Public Facilities, Housing, and Economic Development".

Asbestos and Lead Testing and Home Plans on the RFP

The service involving asbestos testing, lead testing, and the preparation of home plans is completed prior to advertising for bids; therefore, the invoices for such services should not be allocated to respective housing units (or construction contracts). The proper category on the RFP under which to draw costs of asbestos testing, lead testing and preparation of home plans is listed on the RFP form as "Rehabilitation Housing".

It is possible that testing or floor plans may be done for a housing unit that, ultimately, does not become part of the LCDBG project.

Asbestos testing, lead testing, and the preparation of home plans are **not** to be drawn under the RFP categories of "Rehabilitation Administration" or "Administration 2. Public Facilities, Housing, and Economic Development".

Clearance Demolition Compared to Reconstruction Demolition on the RFP

Clearance Demolition is an activity in which a structure is demolished with the result being cleared property with no replacement of the demolished structure. In the LCDBG program the term "reconstruction" refers to the process of demolishing a home and rebuilding another home on the same lot. Clearance Demolition is a distinct, separate activity and is drawn under "Clearance Demolition" on the Request for Payment (RFP) form whereas the demolition associated with reconstruction is drawn under the category (activity) identified as "Housing Rehabilitation" on the RFP form.

Clearance Demolition Initial Procedures

Contact is made (or attempted) with the owner(s) of property slated for clearance demolition in the original LCDBG Application.

Prior to an agreement for demolition, the local government must test for asbestos on structures that were constructed before 1979. An agreement to test for asbestos should be prepared by the local government and executed by all interested parties. After asbestos testing is complete the results will indicate the type of landfill required for the debris.

It is often cost-efficient to wait until all structures, both clearance demolition structures and housing units to the rehabilitated or reconstructed, can be tested simultaneously.

In the event that one invoice covers all testing work for clearance demolition, rehabilitation, and reconstruction, the preparer of the RFP should draw the amount of the invoice associated with clearance demolition under "Clearance Demolition" and draw the amount of the invoice associated with rehabilitation and/or reconstruction under "Rehabilitation Housing".

After testing is complete an application, as prepared by the local government, must be completed by the property owner. The application is reviewed by the local government. The agreement for clearance demolition between the local government and the property owner will be discussed in the next section.

It is often preferable to establish a mutual agreement between the property owner and the local government by using an abbreviated Ten Step Procedure as described previously**.** An agreement for clearance demolition is prepared by the local government and executed by all interested parties.

If mutual agreement for the demolition of a property cannot be reached, the use of the full Ten Step Procedure may be necessary as earlier described. In such case, court action would give the local government authority for demolition to be undertaken.

Preparing the Homeowner Application Form: Rehabilitation and Reconstruction

The local government must prepare an application form for use by homeowners that apply for rehabilitation, spot rehabilitation or reconstruction. The application form must include items regarding the name, address, income level, occupancy, statement of future intention of occupancy, ownership or usufruct, notification regarding conditions that may occur during construction, notification of the five year lien period of a Deferred Payment Loan, and other information necessary to carry out the LCDBG Rehabilitation/Reconstruction Program. **Exhibit D-3,** Income Limits by Household Size, is necessary to verify LMI income status. Supporting documentation must accompany the homeowner application regarding major items such as income and property ownership status.

The homeowner application form should state that this document is an application for assistance and not an agreement for assistance. The form should indicate that a future contract for assistance may be entered into after applications are screened and rated. A copy of the local government's LCDBG Housing Rehabilitation/Reconstruction Policy must be attached to each homeowner application form in order that they may review and become knowledgeable about the LCDBG Rehabilitation/Reconstruction Program.

Along with the homeowner application form, homeowners of units slated for rehabilitation in the LCDBG Application must also receive **Exhibit D-4**, Lead-Based Paint Information. **Exhibit D-4** contains the "Watch Out For Lead-Based Paint Poisoning" notification which must be signed and dated by each recipient. Additionally, the brochure "Protect Your Family From Lead In Your Home", available on HUD's website must be given by the local government to each homeowner whose housing unit is slated for rehabilitation. The 16 page brochure can be obtained at: **http://www.hud.gov/offices/lead/healthyhomes/lead.cfm**

Soliciting Homeowner Applications

At this time, homeowners have not applied for assistance. The housing units in need of treatment were identified in the LCDBG Application which was submitted by the local government to the Office of Community Development for funding. Homeowners were interviewed and their homes were inspected to determine needs but homeowners have not actually applied for assistance. It is now the local government's responsibility to inform those whose housing units were identified as in need of treatment in the LCDBG Application of the opportunity to apply for assistance.

The local government may wish to prepare a brochure or information sheet describing the LCDBG Rehabilitation/Reconstruction Program, eligibility requirements, homeowner information needed and actions which should be taken by homeowners who wish to apply for assistance. The brochure should identify the target area(s) of the LCDBG Application in order to avoid confusion among other citizens who do not reside in the target area. The local government must also make clear the deadline date for receiving complete homeowner applications. The brochure could be delivered by one or more methods, including but not limited to: hand delivery, mail delivery—preferably certified mail return receipt requested, and posting at a local public location.

One method that has been successfully utilized to solicit homeowner applications is the arrangement of a public meeting or appointment to inform homeowners about the LCDBG Rehabilitation/Reconstruction Program. The brochure mentioned in the previous paragraph should be distributed. The time and place of the public meeting should be listed in the brochure.

Whatever method(s) or combination of methods is chosen should be fairly applied. The local government must document the steps taken and retain the brochure and/or information sheet for review by any interested party and as part of grant records.

Homeowner Applications Deadline

To be eligible, a homeowner must submit a complete application for funding to the local government by a deadline date. A complete application is an application that can be immediately reviewed without further delay. If the ownership or usufruct cannot be verified immediately the application is not complete. Applications which are incomplete as of the deadline may be considered the same as applications not submitted.

An example of the deadline date could be nine months (or some other specified number of months) from the Authorization to Incur Costs date. The deadline should be specified on the homeowner application and may be specified in the local government's Housing Rehabilitation/Reconstruction Policy.

Initial Screening of Homeowner Applications

The local government must screen the homeowner applications to insure that applicants meet LCDBG Rehabilitation/Reconstruction Program requirements. The meeting of eligibility requirements as previously discussed must be determined. After initial screening the local government will know which housing units have potential to be included in the LCDBG Rehabilitation/Reconstruction Program, and which property(ies) have the potential for immediate clearance demolition.

Asbestos Testing

Asbestos testing should be done only on units which have potential to part of the LCDBG Rehabilitation/Reconstruction Program. Testing for asbestos is required for units slated for rehabilitation, reconstruction, and clearance demolition if the structure was built before 1979 or if asbestos is suspected to have been unlawfully utilized in construction during or after 1979.

Testing for asbestos for spot rehabilitation is necessary if the presence of asbestos is suspected to be a factor in the construction improvements.

Lead Testing

Lead testing should be done only on units that have potential to be part of the LCDBG Rehabilitation/Reconstruction Program. Testing for lead is required for units slated for rehabilitation if the structure was built before 1978 or if lead is suspected to have been unlawfully utilized in construction during or after 1978. See **Exhibit D-4** for lead-based paint information.

Testing for lead for spot rehabilitation is necessary if the presence of lead is suspected to be a factor in the construction improvements.

DEQ Approved Inspection For Asbestos and Lead

A Louisiana Department of Environmental Quality (DEQ) approved inspector must be used for asbestos and lead-based paint testing. The "Asbestos and Lead" web page of DEQ will provide a path for locating a DEQ approved inspector at **http://www.deq.louisiana.gov**. Choose the "Asbestos and Lead" link. The page will have links which will lead to lists of DEQ approved inspectors for asbestos and lead-based paint. If there is any difficulty in finding these pages call the Housing Program Manager in the Office of Community Development.

Asbestos and/or Lead Testing Agreement

On all units which require asbestos and/or lead testing a contract between the local government and the homeowner/property owner is prepared and executed for the needed testing service(s). The agreement will specify

a) the scope of the agreement includes testing procedures, access to the housing unit, etc.

b) this agreement does not in any way guarantee that the owner's housing unit has been awarded a grant by the local government

c) homeowner responsibilities regarding testing and

d) responsibilities of the local government regarding testing

e) the homeowner's failure to accommodate reasonable efforts for testing may result in the determination that the homeowner application is ineligible.

In order to reduce testing costs the agreement may be structured to make provisions for testing to be conducted on multiple units on the same day. This agreement gives the local government the authority to schedule testing on the selected day or days after making an appointment with the homeowner for such testing. At the time of the signing of the agreement for testing to be conducted, applicants for rehabilitation must sign the notification, "Watch out For Lead-Based Paint Poisoning," which is part of **Exhibit D-4**. The local government must keep a copy of the signed notice as part of grant records. The local government will then procure (according to CDBG regulations) a testing firm, approved by DEQ, for the asbestos and/or lead testing. The local government may enter into a contract with the testing firm.

Final Screening of Homeowner Applications

After asbestos and lead testing are complete and results of the testing are determined the final housing units and property(ies) that are potentially includable in the LCDBG Rehabilitation/Reconstruction Program and the type of improvement for each of the units can be determined.

The final screening does not occur until after asbestos and lead-based paint testing because changes may occur due to results of the testing. Example: A housing unit scheduled for rehabilitation is discovered to have both asbestos and lead-based paint. It is determined that the unit cannot be rehabilitated within allowable amounts but needs to be slated for reconstruction—subject to available LCDBG funds.

Withdrawal of Homeowner Applications

A homeowner may withdraw his/her application for any reason prior to the execution of the construction contract. If a homeowner withdraws his/her application a memo to the file for that housing unit is to be prepared and signed by the homeowner showing the date of the notice and the effective date of the withdrawal. The file will remain inactive for 30 days from the effective date of the withdrawal after which it will be officially closed. The homeowner may, upon written request, reactivate his/her application during the 30 day period. After the 30 days have elapsed it will be necessary for the homeowner to reapply and be screened again for eligibility. Those homeowners who withdraw do not retain their original position in the rating list (as discussed in the next paragraph) after withdrawal even if they reactivate their application or reapply for assistance. Such an application must be sent to the bottom of the rating list.

Rating of Homeowner Applications

A rating system is necessary to establish a chronological order for the consideration of each homeowner application for rehabilitation or reconstruction. Homeowner applications from the target area that meet ownership, income, occupancy, etc., requirements will be assigned points. Applicants meeting all eligibility requirements will be selected and processed in numerical descending order of rating.

The application with the highest points will be considered for funding first, and so on. The bidding and award process will begin for the higher rated applications since it will be anticipated that enough LCDBG funds are available for completion of any associated contract that will be entered. After bids are received for higher rated applications and LCDBG funding for next-in-line applications is certain, the process of considering the next-in-line applications will continue until all eligible applications have been considered or LCDBG funds are depleted.

A **sample** rating system for complete applications (for rehabilitation or reconstruction) that have been approved for consideration for funding is as follows. Each household receives the specified point(s) for each qualifying category.

- Income (Moderate 1, Low 2, or Extremely Low 3) — 1, 2, or 3 points
- Elderly Head of Household — 1 point
- Elderly Occupant(s) (Other than Head of Household) — 1 point
- Physically Disabled Head of Household — 1 point
- Physically Disabled Occupant(s) (Other than Head of Household) — 1 point
- Other _____ — ___ point(s)

The rating system chosen by the local government must have been made a part of the Housing Rehabilitation/Reconstruction Policy that was submitted for review by the Office of Community Development prior to the release of LCDBG funds.

Final Status List, Rehabilitation, Spot Rehabilitation, Reconstruction

After initial screening and testing for hazardous materials a “Final Status List—Rehabilitation/Reconstruction” of eligible housing units and the rating score for each unit is prepared. The Final Status List will cover housing units slated for the following improvement types: reconstruction, rehabilitation and spot rehabilitation. The list should consider all improvement types in one comprehensive list with the highest scored unit at the top and the remainder of the units listed in decreasing order. If a housing unit required asbestos or lead

testing the results of the testing should be indicated for each applicable housing unit. The Final Status List—Rehabilitation/Reconstruction must be kept as part of grant records.

Final Status List, Clearance Demolition

Additionally, a "Final Status List—Clearance Demolition" of properties slated for clearance demolition is also prepared. The order in which demolition structures are bid is not established by a rating system but will be determined by the local government based on practical considerations. The Final Status List for clearance demolition will include whether: (a) negotiation is in progress, (b) negotiation is complete, (c) court action regarding condemnation is in progress or (d) court action is complete. The Final Status List—Clearance Demolition should indicate results of asbestos testing for each unit. Finally, the Final Status List should indicate whether the structure is ready for the bidding process to begin. The Final Status List—Clearance Demolition must be kept as part of grant records.

Notification of Homeowner or Property Owner

The local government is responsible to notify, in writing, all who submitted applications regarding the final application status. Both applicants which have been approved and those which were not approved must be notified.

For approved applications the notification should state that approval of the application is not a guarantee of assistance since the bidding process must meet LCDBG Rehabilitation/Reconstruction Program requirements and contracts cannot be awarded on bids which exceed allowable amounts as established in the local government's Housing Rehabilitation/Reconstruction Policy for the LCDBG program.

PREPARATION OF BID DOCUMENTS, APPROVALS, ADVERTISING

Chronology: Preparation of Bid Documents, Approvals, Advertising (Rehabilitation/Reconstruction Program)	
Event	Comments
Preparation of bid and contract documents	
The plans and specs for units to be reconstructed are obtained.	
Work write-up for units to be rehabilitated or spot rehabilitated are prepared.	
Cost estimates are prepared for reconstruction, rehabilitation and spot rehabilitation.	These are not prepared for inclusion in the bid document but for in-house use by the local government.

Event	Comments
A work write-up and cost estimate is prepared for structures slated for Clearance Demolition.	
Homeowner approval for each housing unit is obtained regarding reconstruction, rehabilitation, or spot rehabilitation.	
Agreement for Clearance Demolition is obtained.	
Environmental review, second tier	
A bid document for each unit is compiled which will become available for pick-up by bidders.	The bid document will include standard clauses, special LCDBG requirements, and items which pertain to each respective unit such as plans and specifications for reconstruction or work write-ups for rehabilitation.
Clearance Demolition units are let for bidding.	
Reconstruction, rehabilitation, and spot rehabilitation units are let for bidding.	
Bidders are solicited.	

Preparation of Bid and Contract Documents

The local government prepares a bid and contract documents package for each housing unit or demolition unit. These packages will be obtained by contractors who may choose to place a bid(s). A Sample Contract Package For Rehabilitation is provided as **Exhibit D-5**. The packages, to be prepared by the local government, must include the following:

1. Date, time and place of bid opening
2. A work-write up or plans and specifications
3. Additional considerations, such as a list of construction material type and quality
4. A copy of a blank contract to be executed at a later date.
5. The local government should prepare, if necessary, bid and contract documents specific to each type of improvement. For instance, if the LCDBG Rehabilitation/Reconstruction Program has all four types of improvements, reconstruction, rehabilitation, spot rehabilitation and clearance demolition, then four different document sets would be prepared which are tailored to the respective type of improvement. Furthermore, if the

bid and contract document is being prepared for a unit slated for reconstruction then the appropriate contract to put in the bid package is the one tailored for reconstruction.

6. Section 3 Certification of the Selected Bidder form
7. Special Equal Opportunity Provisions and other federal provisions that are referenced in the blank contract. These items, although in the form of a separate document, become part of the contract by being referenced on the face of the contract.

The Special Equal Opportunity Provisions and other federal provisions must include the following: Title VI Clause, E.O. 11246 Standard Clause, Section 109 clause, Section 3 clause, Segregated Facilities clause, Lead-based Paint clause, Fire Administration Authorization Act of 1992, Access to Records clause, and Conflict of Interest clause.

Bid Documents Prepared for One Prime Contractor Per Housing Unit

Bid documents are to be prepared so that there is one prime contractor for each housing or property unit except in cases where an asbestos contractor is required to remediate asbestos.

The objective of one prime contractor is to provide continuity from start to finish regarding construction activities. For example regarding reconstruction: one contractor, the prime, is responsible to demolish and reconstruct a housing unit with all activity scheduled over as short a period of time as possible. If all activity is under the control of one prime contractor that prime contractor is better able to coordinate the moving out of the occupants, initiation of demolition and the completion of construction. The prime contractor is free to sub out various components of the construction process, such as the electrical installation; yet, the prime contractor remains the responsible party to ensure project completion in a timely manner.

Permits, Codes, Clean-up, and Warranty

The local government should also consider including provisions in the bid documents and contracts which require the contractor to:

- obtain and pay for all necessary permits and licenses
- perform all work in conformance with codes and requirements covered by the specifications and drawings
- remove all debris at the completion of work
- not assign the contract without written consent
- be paid for work completed and material installed—not for material stored on the job site
- warrant the work contract for one year from the final acceptance of work

Homeowner Ineligibility

Homeowners will be ineligible to bid on the rehabilitation or reconstruction of their own residence.

Davis Bacon Not Normally Applicable

Davis-Bacon does not normally apply to the LCDBG Rehabilitation/Reconstruction Program because eight or more housing units in an LCDBG project are not often located on one parcel of property with all housing units being commonly owned by one person or entity. Specifically, individually-owned residential housing units that are located on separate parcels of property are not covered by Davis-Bacon. Such housing units may be advertised in bid lots covering any number of housing units including, for example, the advertising of one unit or twenty units. Regardless of the number of housing units advertised for bids in a single bid advertisement, an individual contract must be established between a winning bidder and each housing unit owner.

Plans and Specifications—Reconstruction

The local government, after consulting with the homeowner, will be responsible for obtaining professionally prepared home plans for each unit to be reconstructed. The permitting process will normally require a set of home plans for each housing unit to be reconstructed. The homeowner must approve, by signature and date on the plans (or some other written method of approval). If approval between the local government and the homeowner is not reached, the unit must not be let for bidding.

Additional Considerations—Reconstruction

Additional considerations regarding the preparation of bid documents and plans and specifications regarding reconstruction include the following:

1. **Construction Materials**: The local government will prepare a list of construction materials and items which will be specified for use in the reconstruction of each housing unit. The firm which prepares the plans and specifications will be provided this list. The list of materials will be more detailed than those normally listed in professionally prepared house plans and specifications and must be presented to the homeowner for consideration at the time the professionally prepared house plans and specifications are presented. The list may include such items as:
    - Type of countertop for the cabinets
    - Type and quality of windows

- Flooring type and quality
- Paint type(s) and quality
- Appliance types
- Types of energy for each appliance (gas or electric)
- Light fixture types
- Faucet types and quality
- Bathroom fixture types and quality
- Type of exterior surface or siding

2. **Bedrooms, Bathrooms, and Square Feet:** Two or three bedroom homes may be chosen (even if there is only one occupant in the home) and will be restricted to an area of no more than 1,000 square feet of heated/cooled area. A one bedroom home will not be an option. Two or three bedroom units will have only one bathroom.

   A home which has more than three bedrooms, normally a four bedroom home, may be chosen if one of the following conditions apply.

   (a) The number of persons in the household multiplied by 150 square feet per person exceeds the 1,000 square feet allowed for two and three bedroom homes. "Number of persons" as used in the previous sentence will mean the lesser of:

   - the number of persons who were listed in the LCDBG application or,
   - the number of persons now living in the household or
   - the number persons planning to reside in the household after construction is complete.

   (b) More than three bedrooms are needed so that minor children of different sexes and/or adults of different families can have separate bedrooms.

   The maximum square feet allowed for a home that exceeds three bedrooms will be determined by multiplying the number of occupants by 150 square feet per person. A four bedroom unit may have up to two bathrooms.

3. **Porches, Garages, Screen Doors:** The plans and specifications may include porches, up to 150 square feet. Screen doors and/or economy quality storm door assemblies are allowable. A carport or garage is not allowable with LCDBG funds even if the original substandard housing unit had an attached carport or garage.

4. **Appliances:** The plans and specifications will indicate the following requirements for appliances. Two fire alarms are required and must be hard-wired with battery back-ups. A new water heater and central heating and air conditioning system are required. Costs for the refrigerators and range/ovens are allowable under the LCDBG Program. The cost for one ceiling fan per reconstructed housing unit is allowable.

   Allowable appliances, when purchased for reconstruction (by the contractor—not the homeowner) must be economy models. For example, the standard baked enamel "no frills" refrigerator with the freezer on top or bottom must be chosen rather than the more expensive stainless steel side by side units or units with the "French" doors. However, a homeowner may choose an existing appliance, such as a favorite refrigerator that is in operation in the substandard housing unit, if the homeowner agrees to be responsible for the removal, storing, and reinstallation of the appliance.

   Costs for the following are not allowable under the LCDBG Program: dishwashers, washers, and dryers.

5. **Cabinet Space for Future Refrigerators:** When constructing cabinets, the width and height of the space allowed for a refrigerator may be wider and taller than the minimum width needed for an economy model refrigerator. Refrigerators purchased by the homeowner in the future may be larger than the economy model allowable with LCDBG funds.

6. **Property Conditions**: Debris and abandoned vehicles must be removed from the premises of units slated for reconstruction. If the local government determines that debris and/or an abandoned vehicle(s) is (are) on the premises the homeowner must agree, in writing, that these item(s) is (are) to be removed. Specifics that must be agreed upon include who will be responsible to remove the items and the timetable for the removal. Provision for debris and abandoned vehicle removal is to be indicated on the Homeowner Approval form, as discussed in subsequent paragraphs. If a homeowner becomes obligated to remove debris prior to the award of a construction contract and does not

complete the removal in a timely manner as specified by written agreement then the local government must not award the construction contract.

Preparation of the Cost Estimate—Reconstruction

Once the plans and specifications have been prepared, the cost of construction, materials and labor, must be estimated. The cost estimate is necessary to know if the work can be done within the allowable amounts as established in the local government's Housing Rehabilitation/Reconstruction Policy and to have a standard against which to review bid responses. Cost estimates are not to be made part of the bid documents. The person preparing cost estimates, although not necessarily expected to be a professional estimator, should be familiar with the current cost of building materials and labor costs in the community and be able to estimate the cost required to complete each task.

The Work Write-up—Rehabilitation and/or Spot Rehabilitation

The local government, after consulting with the homeowner, will be responsible for preparing a work write-up for each unit slated for rehabilitation or spot rehabilitation. An inspection of the property should be conducted to determine the type and cost of work necessary to bring the property into compliance with Section 8 standards. The work write-up should be designed so that it can become a part of the bid package. The work write-up should specify all work that must be done to bring the housing unit up to Section 8 Standards.

The work write-ups are usually done on a room-by-room basis. See **Exhibit D-6** (Sample Work Write-up and Cost Estimate) for a sample of a work write-up. There must be a statement on the work-write up that affirms that the work contained in the write-up, when completed, will bring the housing unit up to Section 8 standards. The homeowner should sign the work write-up first and sign on each page. The local government should be the last entity, chronologically, to sign the work write-up. The work write-up must be executed by both the homeowner and the local government prior to the establishment of the Homeowner Approval that will authorize the bidding and construction process.

Additional Considerations—Rehabilitation

Additional considerations regarding the preparation of bid documents and work write-ups regarding rehabilitation (and spot rehabilitation where indicated) include the following:

- **Space Heaters:** Unvented fuel burning space heaters violate Section 8 Standards and must be replaced during rehabilitation (and spot rehabilitation). If the unvented heater is fueled by gas, the gas line must be capped below the floor and permanently sealed. The unvented fuel burning space heater must be removed from the premises by the contractor and destroyed.

- **Ceiling Fans:** If a housing unit to be rehabilitated does not have any ceiling fans, the installation of one ceiling fan is eligible under the LCDBG Program. If a housing unit to be rehabilitated has multiple existing fans, only the fans which are not operating properly may be replaced with LCDBG funds. Example: A housing unit to be rehabilitated has two fans that are inoperable or not operating properly. Both fans may be replaced with LCDBG funds.
- **Outbuildings:** Attached outbuildings are eligible for rehabilitation (and spot rehabilitation) if the outbuilding shares a common wall with the structure to be rehabilitated. Many garages and covered walkways are examples of attached outbuildings. Unattached outbuildings, which are buildings that do not share a common wall, must not be rehabilitated with LCDBG funds. They may, however, be demolished with LCDBG funds. If an outbuilding is deemed to be completely dilapidated, demolition may be required and the homeowner must agree, in writing, to the demolition. Provision for the demolition is to be indicated on the Homeowner Approval form, as discussed in subsequent paragraphs.
- **Property Conditions:** Debris and abandoned vehicles must be removed from the premises of units slated for rehabilitation. If the local government determines that debris and/or an abandoned vehicle(s) is (are) on the premises the homeowner must agree, in writing, that the item(s) is (are) to be removed. Specifics that must be agreed upon include who will be responsible to remove the items and the timetable for the removal. Provision for debris and abandoned vehicle removal is to be indicated on the Homeowner Approval form, as discussed in subsequent paragraphs. If a homeowner becomes obligated to remove debris prior to the award of a construction contract and does not complete the removal in a timely manner as specified by written agreement then the local government must not award the construction contract.
- **Minimum Amount:** The Office of Community Development considers that a unit slated for rehabilitation should have at a minimum $8,000 of repairs conducted on it. Any deviation from this must have prior approval from this office. A unit that has less than $8,000 of estimated repair cost may be considered for spot rehabilitation instead of rehabilitation.

Preparation of the Cost Estimate—Rehabilitation and Spot Rehabilitation

Once the work write-up has been prepared, the cost of the material and labor must be estimated. The cost estimate is necessary to know if the work can be done within the allowable amounts as established in the local government's Housing Rehabilitation/Reconstruction Policy and to have a standard against which to review bid responses. Cost estimates are not to be

made part of the bid documents. The person preparing cost estimates should be familiar with the current cost of building materials and labor costs in the community and be able to estimate the cost required to complete each task. **Exhibit D-6** is a sample work write-up and cost estimate.

Work Write-up and Cost Estimate--Clearance Demolition

The local government will be responsible for preparing a work write-up and cost estimate for each property slated for clearance demolition. The work write-up is to be utilized in the bidding process. The cost estimates are not to be made part of the bid documents.

Homeowner Approval Form for Reconstruction, Rehabilitation and Spot Rehabilitation

The local government must prepare a "Homeowner Approval " form which will serve as evidence of the homeowner's approval of the processes involved in the LCDBG Rehabilitation/Reconstruction Program and evidence of the homeowner's intention to participate. The following items or statements must be included on the Homeowner Approval Form:

1. Name of the homeowner, address, and date
2. Description of the work to be performed on the particular housing unit
3. Description of demolition involving any outbuildings, such as an old shed.
4. Description of any debris removal from the premises regarding who will be responsible for the debris removal and deadline date for performance. (Note: the timing of the removal of debris is better if debris is removed prior to commencement of construction work. Such prompt action will allow a contractor to have room to work and a safer work area.)
5. Affirmation by the homeowner that he/she has reviewed and accepts the plans and specifications or the work-write-up
6. Affirmation by the homeowner that he/she has reviewed and accepts the processes and homeowner responsibilities as stated in the local government's Housing Rehabilitation/Reconstruction Policy. (The Housing Rehabilitation/Reconstruction Policy was to have been attached to the homeowner application)
7. Description of who is responsible to obtain and pay for temporary lodging, if applicable.
8. Description of any hardships that may occur due to steps in the process. (To include the need for any temporary relocation and provision for storage of belongings, if applicable)

9. Affirmation by the homeowner that he/she intends to participate in the LCDBG Rehabilitation/Reconstruction Program by giving consent for the local government to let the housing unit for bids
10. Affirmation by the homeowner that occupancy information, ownership information, and household income at stated on the Homeowner Application is still valid. If any information has changed, a place to indicate such change should be provided on the Homeowner Approval form.
11. Affirmation by the homeowner the he/she understands the Deferred Payment Loan which is explained in the local government's Housing Rehabilitation/Reconstruction Policy
12. A statement indicating that the homeowner understands that this document is not a contract for construction, but only indicates the approval for the local government to begin the bidding process. Before construction can begin the homeowner will sign a construction contract that will be a three-way agreement between the local government, the homeowner, and the construction contractor.
13. Other provisions
14. Signature of the homeowner and date of the signature
15. Optionally, the local government may sign and date.

The local government should review the Housing Rehabilitation/Reconstruction Policy and proposed construction with the homeowner to insure that the homeowner understands exactly what he/she is approving. It is necessary for all parties to clearly understand their responsibilities.

If the homeowner does not sign (for any reason, including unavailability) or refuses to sign the Homeowner Approval Form, the local government must not proceed with the bidding process. The local government must document the efforts made to obtain approval and reasons that approval was not obtained.

Agreement for the Local Government to Bid and Award for Clearance Demolition

In cases where demolition is by mutual agreement between all parties, the local government will obtain the agreement from the property owner to allow the local government to begin the bidding process, award a demolition contract, and enter into a demolition contract that will include all three parties (a) the local government, (b) the homeowner and the (c) demolition contractor.

Environmental Review—Second Tier

The second tier of environmental review must be completed. Since specific housing units and properties which will be improved are now known, the Statutory Checklist Completion Form, **Exhibit A-11**, must be completed and sent to the Office of Community Development.

Clearance Demolition Properties are Let for Bidding

Properties slated for clearance demolition which are covered by mutual agreement for demolition between the property owner and the local government or which have been cleared for demolition by court action may be let for bidding. The order in which clearance demolition units are let for bidding will be at the discretion of the local government and, if applicable, any timetables agreed upon between the local government and the property owner. Those structures which are still in the court process or which are awaiting documentation of mutual agreement may not be let for bidding until mutual agreement or court order occurs.

One or multiple housing units/structures may be demolished under one Clearance Demolition contract. Either contracting method is acceptable.

Davis-Bacon requirements does not apply to the activity of Clearance Demolition—no matter how many units are demolished under one contract. Davis-Bacon applies only to construction work.

Homeowner Units are Let for Bidding

The local government must have an executed Homeowner Approval form for units slated for reconstruction, rehabilitation and spot rehabilitation before letting any of the units for bidding. After the deadline for receipt and review of Homeowner Approval Forms has passed, the highest rated among the housing units which have homeowner approval should be let for bidding first. Often the bidding will be done in rounds with higher rated units bid in the first round and lesser rated units bid in successive rounds of bidding. Construction does not have to be finished on units that were in the first round of bidding before the second round of bidding begins Even though some bids may be let at the same point in time, each housing unit will normally have a separate bid document, and a separate contract. If more than one unit is being let under a bid, the final construction contract should reference supplemental conditions containing details specific to each housing unit.

Solicitation of Bidders

Two methods are commonly used to solicit bids.

- **The Bid List Method:** The bid list method calls for the establishment of a list of contractors who indicate that they wish to be part of the LCDBG project bidding process.

When a housing unit is ready to let for bids the bid documents are sent to contractors on the bid list.

When using the bid list method at least one advertisement in the local government's legal newspaper (official journal) must be published soliciting contractors for units that will be let for bids at some future time. This advertisement should be made a part of grant records. Additionally, the local government may solicit contractors for inclusion in a bid list by telephone, other newspaper advertisements, or in person.

- **The Individual Unit Advertising Method:** The individual unit advertising method requires that each housing unit to be let under one bid (or multiple housing units let under one bid) to be advertised in the official journal at least one time. Although multiple advertisements per bid are not required multiple advertisements may be necessary. Those who respond to the advertisement are invited to obtain a set of bid documents at a specified location, such as the City Hall.

CONTRACTING

Chronology: Contracting (Rehabilitation/Reconstruction Program)	
Event	Comments
Bids are opened and tabulated.	
Eligibility, responsiveness and whether a contractor is deemed responsible is examined. The lowest eligible responsive and responsible bid is determined.	The local government must obtain contractor clearance from the Office of Community Development prior to any contract award.
Higher rated units are considered first.	A rating system was used to establish the order in which units are considered in the bidding process.
A housing unit that has a high bid(s) that exceeds the maximum allowable must not be awarded a contract Instead, proceed to the next housing unit on the rating list	
Award, by the local government of contract(s) for clearance demolition	
Execution of the clearance demolition contract	Three entities are party to a demolition contract if demolition is by mutual agreement: (a) the local government, (b) the property owner and (c) the demolition contractor. In contrast, if demolition is by condemnation the contract is normally between the (a) local government the (b) demolition contractor and may have the (c) property owner as a third party.

Event	Comments
Award, by the local government, of construction contract(s) for the first round of bidding on homeowner units	
A three way contract for each unit is entered for reconstruction rehabilitation, and/or spot rehabilitation. The three parties are: (a) The local government (b) The Homeowner and (c) The Contractor	The contract should include all items that need understanding between all parties.

Bid Opening and Tabulation for Clearance Demolition Units

The local government opens and tabulates bids for properties slated for clearance demolition at the appointed time and place that was specified during the solicitation for bids.

Bid Opening and Tabulation for Homeowner Units

The local government opens and tabulates bids for properties slated for reconstruction, rehabilitation and spot rehabilitation at the appointed time and place that was specified during the solicitation for bids.

Louisiana Contractor Licensing Law

All work to be performed under the LCDBG Rehabilitation/Reconstruction Program must comply with the Louisiana Contractor Licensing Law as discussed in Title 37 of the Louisiana Revised Statutes, Chapter 24. The Contractor Licensing Law can be found on the website of the Louisiana State Licensing Board for Contractors at **http://www.lslbc.louisiana.gov/** →Contractor's License Law→Licensing Law LA R.S. 37 / Rules and Regulations. Requirements of the Contractor Licensing Law pertaining to the LCDBG housing program include the following:

- **Residential Building Contractor:** A "residential building contractor" [defined: LA R.S. 37:2150.1 (11)] submitting a bid of more than $75,000 is required to be licensed by the Louisiana State Licensing Board for Contractors.
- **Contractor:** If more than two housing units are let under one bid, a bidder will not be considered as "residential building contractor" but rather as a "contractor" [defined: LA R.S. 37:2150.1 (7 and 8)]. A "contractor" submitting a bid of more than $50,000 is required to be licensed by the Louisiana State Licensing Board for Contractors.
- **Home Improvement Contractor:** A "home improvement contractor" [defined: LA R.S. 37:2150.1 (4)] must be registered with the Louisiana State Licensing Board for

Contractors when a bid for home improvement is more than $7,500 but does not exceed $75,000.

- **Electrical Contractor:** Any electrical contractor, [defined: LA R.S. 37:2150.1 (14)] whether operating as a prime contractor or subcontractor, who installs an electrical system in a housing unit must be licensed if the cost of electrical system exceeds $10,000.
- **Mechanical Contractor (Plumbing or Heating/Air):** Any mechanical contractor, [defined: LA R.S. 37:2150.1 (15)] whether operating as a prime contractor or subcontractor, who installs a heating and/or air-conditioning system or a plumbing system in a housing unit must be licensed if the cost of either system exceeds $10,000.

Bid and Contractor Eligibility

The bid and the bidding firm must be examined for eligibility responsiveness and responsibility. The following items are factors which determine eligibility, responsiveness or whether a contractor is to be deemed as responsible.

- **Licensing:** Bidders must be in compliance with Louisiana contractor licensing law as discussed in preceding paragraphs.
- **Insurance Requirements:** Contractors are required to have General Liability insurance coverage and Worker's Compensation insurance coverage in connection with LCDBG Rehabilitation/Reconstruction Program. Proof of coverage will be required as part of the bid response from the contractor. The local government must verify insurance coverage.
- **Verification of Contractor Eligibility:** A Verification of Contractor Eligibility form must be sent to the Office of Community Development prior to contract award. The Office of Community Development will check to make sure the contractor is not debarred at the federal level, sign the form, and return it by fax, to the local government. An approved Verification of Contractor Eligibility form is a required document in the LCDBG Program before a contract can be awarded. See **Exhibit B-5** for the forms and instructions. If multiple contractors will be used by the establishment of a bid list, those contractors can be cleared at the beginning of the program; this clearance is valid for the duration of the LCDBG Rehabilitation/Reconstruction Program.
- **Criminal Misconduct:** Under the LCDBG Program, consultants, contractors or inspectors who have been indicted for any criminal misconduct involving work performed on any Community Development Block Grant Program, within or outside of the State of Louisiana, may not participate in the Louisiana Community Development Block Grant

Program. This ban on participation will remain in effect until or unless the legal charges against such persons have been resolved in their favor, either through dismissal or a finding of innocence. Those individuals whose indictments result in convictions will be permanently barred from participation in the LCDBG Program.

- **Responsive and Responsible:** The minimum qualifications for a contractor to be awarded a project are that the contractor (and his subcontractors) has proper licenses, insurance coverage, meets all other requirements and submits the lowest responsive and responsible bid. The receipt of a responsive bid means that the local government has not only received a bid but that the bid received contains all required documents. If a contractor's bid is more than twenty percent below the cost estimate, it may be considered as non-responsive. The determination of whether a contractor is responsible is based on the local government's assessment of past performance. The following items indicate a lack of being responsible:
    - outstanding invoices/bills due to subcontractors or suppliers
    - failure by the contractor to meet warranty obligations on previous jobs
    - evidence that liens have been filed on the contractor within the last two years
    - a backlog of uncompleted rehabilitation or replacement units in the locality or other communities
    - contractor not having the financial capacity to undertake this project
    - contractor not cleared by the Office of Community Development
    - reports of poor performance and/or poor workmanship quality on other projects

Awards Contingent on Available LCDBG Funds

All contract awards must be contingent on the availability of LCDBG funds. A homeowner unit or clearance demolition unit that is not within the maximum allowable or that has insufficient LCDBG funding to cover the entire contract will not be an obligation of the local government for inclusion in the LCDBG project.

Contract Award and Execution for Clearance Demolition

In cases where the local government and the property owner are in mutual agreement for demolition, the local government, with written assent from the property owner previously obtained, makes a contract award(s) for clearance demolition to the lowest responsive and responsible bidder for each bid. The local government, property owner and contractor enter into a contract(s) for clearance demolition.

In cases where the local government had to use condemnation procedures for demolition to proceed, and were successful, the local government with assent from the judge/court, makes a contract award for clearance demolition to the lowest responsive and responsible bidder for each bid. The local government and the contractor enter into a contract for clearance demolition. The property owner may be a signatory to the clearance demolition contract depending on the guidance of the local court jurisdiction under which the successful condemnation was achieved. Owner involvement is recommended whenever possible—even in cases where condemnation is utilized.

Contract Award for Homeowner Units

The local government makes a contract award for eligible bids for units slated for reconstruction, rehabilitation or spot rehabilitation. Bids that are not within allowable amounts as established in the local government's Housing Rehabilitation/Reconstruction Policy are not eligible for consideration at this point. The lowest responsive and responsible eligible bidder receives the award for each respective unit.

Parties to the Contract for Reconstruction, Rehabilitation or Spot Rehabilitation

The contract will normally be between the homeowner and the contractor with the local government being a third party to the contract. The local government will act as the homeowner's agent.

A work write-up prepared by the local government should be attached to the contract for rehabilitation and clearance demolition units and the plans and specifications should be referenced in the contract (for reconstruction units). The homeowner normally executes the three-way construction contract first, the construction contractor second, then the local government is the final party to execute the contract.

A two party contract for construction between the homeowner and the construction contractor with the local government acting as the homeowner's agent has also been successfully utilized in the LCDBG Rehabilitation/Reconstruction Program. In such cases two separate contracts are involved: (a) the contract between the homeowner and the contractor and (b) the contract between the homeowner and the local government. The Office of Community Development does not object to the use of separate two party contracts as long as the contractual obligations of all parties are adequately covered.

Second Round of Bidding for Homeowner Units

The local government may choose to wait for construction progress on the units that have been awarded before letting the second round of bids. The second round of bids, if applicable, can

be let when conditions favor such action. Then the third round, if applicable—and so forth until all eligible units are complete or LCDBG funds are depleted. A contract for construction must not be awarded if there are insufficient LCDBG funds for the entire amount of the construction contract.

Procedures for Bids that Exceed the Maximum Allowable

It has been previously noted that a selected housing unit for which bids come in higher than the maximum allowable must not be awarded a contract. The remainder of the housing units approved for the bidding process must be let for bids. After all approved housing units have been let for bids and awards made to units which were within allowable amounts as established by the Housing Rehabilitation/Reconstruction Policy, those units for which bids exceeded the maximum allowable may be considered again. To achieve a bid that is within program guidelines the local government may take some or all of the following actions: (a) adjust the plans or the work write-up to reduce costs before letting the home for rebidding, (b) bid out the more expensive units again with no plan or write-up changes and/or (c) revise the Housing Rehabilitation/Reconstruction Policy by resolution of the local government regarding maximum allowable amounts. The Office of Community Development must first receive, review and approve a request from the local government regarding a higher maximum prior to passing the resolution. A copy of the local government's resulting resolution allowing a higher maximum must be sent to the Office of Community Development.

CONSTRUCTION

Chronology: Construction (Rehabilitation/Reconstruction Program)	
Event	Comments
Notice to Proceed for clearance demolition. Work begins	
Pre-construction conference for reconstruction, rehabilitation and spot rehabilitation	A clear understanding of each the responsibility of each party must be obtained.
Homeowner prepares for the forthcoming construction activity	Preparation may include temporary relocation and storage of household items at a commercial storage facility.

Event	Comments
Notice to Proceed for reconstruction, rehabilitation, and/or spot rehabilitation	
The local government will perform inspections of work completed, approve invoices, prepare Requests for Payment and disburse payments relative to each construction or demolition contract.	
Monitoring visit and monitoring letter from the Office of Community Development	To be done when the grant is at least 50% drawn down.
Local government responds to any findings by taking proper corrective action.	
Notice of Substantial Completion for each housing unit treated and for each structure undergoing clearance demolition.	This legal notice is normally filed at the Clerk of Court's office by the contractor when construction is substantially complete for each housing unit or clearance demolition property.
Development of a punch list by the local government	Items that are incomplete or not acceptable and minor things not completed are recorded on the punch list
Contractor addresses items on the punch list	
Notice of Acceptance of Work will be signed by the local government and should be signed by the homeowner	
Notice of Acceptance of Work regarding clearance demolition will be signed by the local government and, if applicable, the property owner.	

Event	Comments
For reconstruction and rehabilitation the Deferred Payment Loan lien is filed at the Clerk of Court for each housing unit treated.	The Deferred Payment Loan will not apply to spot rehabilitation or clearance demolition.
Each homeowner temporarily relocated moves back home	
Clear Liens are obtained for each homeowner unit that was treated and for each clearance demolition structure that was demolished.	
Payment of retainage to contractor(s)	

Notice to Proceed Issued for Clearance Demolition

The local government issues a Notice to Proceed for units which were awarded clearance demolition contracts.

Preconstruction Conference—Reconstruction, Rehabilitation, Spot Rehabilitation

A pre-construction conference for each homeowner unit may be conducted with all three parties present. The local government must ensure that all parties understand their responsibilities whether by preconstruction conference or by some other method of communication. Key items of understanding between all parties must be in writing.

Homeowner Preparation for Reconstruction, Rehabilitation or Spot Rehabilitation

The local government will notify each homeowner of preparations and actions which are needed to fulfill the homeowner's responsibilities. This notification may be delivered at the pre-construction conference. Homeowner responsibilities at this point may include the following:

- Removal of debris, equipment, automobiles, tree limbs, etc., from the lot/property prior to the beginning of the reconstruction, rehabilitation or spot rehabilitation.
- Cleaning of the home interior, removal of pictures from affected walls, placement of breakables in a secure location and securing of valuables.
- Storage of household items at a storage facility (Primarily applies to reconstruction)
- Temporary relocation. (Primarily applies to reconstruction)

Temporary and Voluntary Displacement—Reconstruction

Prior to reconstruction the homeowner may voluntarily agree to move to another dwelling place and stay for the duration of construction. Temporary displacement is rarely necessary with housing units that are only being rehabilitated.

The local government may write its Housing Rehabilitation/Reconstruction Policy to allow or to not allow rental assistance.

The Office of Community Development recommends the following homeowner responsibilities as part of the local government Housing Rehabilitation/Reconstruction Policy for all units awarded for reconstruction:

- The homeowner must be responsible for the removal of all belongings, furniture, possessions, etc. from the unit. Out of pocket moving expenses that are documented and reasonable are allowable costs under the LCDBG Program. Storage space for the duration of construction is an allowable LCDBG cost.
- The homeowner will be responsible to find, and if necessary pay for, temporary housing for themselves and all of the residents of the existing unit during construction. Such accommodations must meet Section 8 standards or the homeowner must sign a waiver releasing the local government from liability arising from temporary substandard housing.

Relocation that Exceeds One Year

Any residential occupant who has been temporarily relocated for a period beyond one year must be contacted by the local government and offered permanent relocation assistance which is an eligible LCDBG cost. The local government must avoid this situation, but report the potential for any temporary relocation to exceed twelve months prior to the ending of the twelve month period.

For rehabilitation or reconstruction where the homeowner must vacate their unit while construction occurs, the local government must inspect the temporary living facility for Section 8 violations. The displaced persons must be advised as to whether they are moving into a standard or sub-standard unit and a signed statement acknowledging this fact must be maintained in the applicable housing unit file.

Notice to Proceed is Issued for Reconstruction, Rehabilitation, and/or Spot Rehabilitation

The local government normally issues a Notice to Proceed to the construction contractor.

The Local Government's Responsibilities During Construction

- **Inspections:** Make periodic inspections of work as it progresses and provide documentation including dates, name of inspector, work description, estimated percentage of completion, difficulties encountered, etc.
- **Termination of the Contract:** If serious deficiencies are identified through inspection, the local government can initiate procedures to terminate the contract, compute the cost of the completed satisfactory work and pay the contractor. The local government can then solicit another contractor to complete the work.
- **Invoice Approval, Requests for Payment, Disbursements of Checks:** The local government must review each invoice and initial and date each one which is approved. At an appropriate time the local government will prepare Requests for Payment and attach the approved invoices to the respective Request for Payment. A 10% retainage must be held from each construction invoice to be paid after the Clear Lien Certificate is obtained. The request is then sent to the Office of Community Development for processing. The Office of Community Development will review invoices as well as the Request For Payment form. Upon approval by the Office of Community Development funds will be electronically transferred to the local government's LCDBG checking account. The local government will then prepare and disburse checks as necessary for approved progress payments.

  The local government may submit up to three Requests For Payment per month.
- **Arbitrate Disputes:** The local government must arbitrate disputes and/or complaints involving the contractor and/or homeowner regarding construction.
- **Change Orders:** The local government will prepare change orders, and obtain necessary signatures of the homeowner and the contractor. If there is any doubt as to whether the cost of the change order will be an eligible cost of the LCDBG Rehabilitation/Reconstruction Program, the local government should consult with the LCDBG Housing Program Manager prior to executing the change order. Change orders that are executed and for which work has been initiated or completed must be sent with the next Request for Payment. Toward the end of the project any change orders that have not been previously sent must be sent along with other close-out documents.
- **Monitoring by the Office of Community Development:** When the LCDBG Rehabilitation/Reconstruction Program is about 50% drawn down a monitoring trip will be scheduled to review grant documentation and examine construction work that has been completed. The local government is responsible to provide access to records and housing units for inspection by OCD staff. After the visit a monitoring letter will be sent

to the local government indicating findings of merit and any finding(s) of deficiency. The local government will be responsible to take the proper corrective action to remedy any finding of deficiency. All findings of deficiency must be cleared before the LCDBG Rehabilitation/Reconstruction Program can be closed out.

The Local Government's Responsibilities As Construction Nears Completion

- **Preliminary and Final Inspection:** Make a preliminary inspection of the work that should be complete, ensure that all items on the original work write-up and any change orders are satisfactory, complete an inspection checklist, and advise contractors of any incomplete or unacceptable items. If necessary, provide a "punch list" to the contractor which specifies work items that need further attention. Upon completion of items flagged for additional attention, make a final inspection.
- **Warranties:** Obtain a guarantee of work, manufacturer's warranty and supplier warranties from the contractor or other appropriate source(s). A copy should be made for retention by the local government in the grant files with the original to be given to the homeowner.
- **Substantial Completion, All Improvement Types:** Insure that the Certificate of Substantial Completion is filed with the Clerk of Court. The Substantial Completion applies to all improvement types: (a) reconstruction (b) rehabilitation (c) spot rehabilitation and (d) clearance demolition. Since this filing will normally be done by the contractor, the local government may be notified by receiving a copy of the certificate as provided by the contractor. The date on which the Certificate of Substantial Completion is filed will be the starting point of the 45 day lien period.

  The Certificate of Substantial Completion is a document that indicates that a structure can be used for the intended purpose. If the homeowner had to temporarily relocate during construction the local government may authorize the homeowner to move in after the Certificate of Substantial Completion has been filed at the courthouse.
- **Notice of Acceptance of Work, All Improvement Types:** The local government must sign and date the Notice of Acceptance of Work based on a final inspection that indicates that the work contracted has been properly completed. The homeowner or property owner should also sign and date the Notice of Acceptance of Work. Upon execution, the Notice of Acceptance of Work is to be filed with the Clerk of Court (See **Exhibit D-7**).

  After construction is complete, should the homeowner refuse to sign the Notice of Acceptance of Work and the Local Government deem the homeowner is being

unreasonable, the Local Government may process the payments due the contractor without the homeowner's signature on the Notice of Acceptance of Work.

- **Flood Insurance:** In the event a unit scheduled for reconstruction or rehabilitation is located within a designated flood zone by the Federal Flood Insurance Administration (FIA), the homeowner will be required to secure and maintain a policy of flood insurance on the unit for a minimum of one (1) year after completion of the unit. The cost of the flood insurance for one (1) year may be paid with LCDBG funds but only if the grant is still active and LCDBG funds are available. It is recommended that flood insurance be obtained on or before the premises are turned over to the owner and not later than the date of the filing of the Notice of Substantial Completion. A copy of the insurance certificate or policy must be made a part of grant records. The homeowner should be counseled about the flood insurance requirement prior to the approval of the homeowner's application for assistance.
- **Deferred Payment Loan Lien:** The local government must file a five year deferred payment loan lien for reconstruction and rehabilitation for units that have attained a Certificate of Substantial Completion. The five year period of the Deferred Payment Loan Lien starts on the date that the Certificate of Substantial Completion is filed.
- **Retainage:** Following the 45 day lien period, obtain the contractor's final invoice and Clear Lien Certificate from the Clerk of Court. Upon obtaining the Clear Lien Certificate, retainage due to the contractor(s) may be paid.

LCDBG PHYSICAL ACCESSIBILITY PROGRAM

The Physical Accessibility Program is a grant program. The Deferred Payment Loan Lien requirements of the LCDBG Rehabilitation/Reconstruction Program do not apply to the LCDBG Physical Accessibility Program.

PROGRAM CONSISTENCY WITH ORIGINAL LCDBG PHYSICAL ACCESSIBILITY APPLICATION

The local government's Physical Accessibility Program must be consistent with the approved application. Any significant variation requires prior approval from the Office of Community Development. The local government's Physical Accessibility application established one or two target areas for accessibility improvements to housing units. Within the target areas housing units were identified as having accessibility needs and a Household Survey Form was completed for each of those housing units whose occupants were willing to participate.

Housing units eligible for accessibility treatment under the LCDBG Physical Accessibility Program will be limited to housing units that were slated for treatment on the completed

Household Survey Form and were included in the LCDBG application. The expansion of a target area beyond that which was contained in the LCDBG application is not allowable. The addition of housing units to the project beyond those which were slated for treatment in the LCDBG application is not allowable.

ADMINISTRATION TYPES AND AMOUNTS:

- **General Administration:** General administration will normally include: environmental reviews, preparation of a community development plan, preparation of Requests for Payment, assistance to the local government in the updating or preparation of a Physical Accessibility Policy, preparation of closeout documents, etc. The maximum allowable for general administration is $25,000 and may be invoiced proportionately throughout the duration of the program with ten percent retainage to be paid upon the successful "conditional closeout" out of the LCDBG Physical Accessibility Program. The first general administration invoice must not exceed 35% of the amount awarded to the administrative consultant for general administration.
- **Construction Administration:** Construction administration will include such tasks as the preparation of work write ups and a cost estimate for each unit, inspections on each unit, and general activities involving the construction process. The maximum allowable for construction administration is $1,500 for each housing unit. Construction administration must not be invoiced until the construction of each respective unit is complete. The entire amount invoiced for construction administration may be paid in full at the time the invoice is submitted. It is not required that the local government hold back retainage associated with construction administration.

IMPROVEMENT TYPES AVAILABLE

Improvements under the Physical Accessibility program may include the following for single or multi-family residential housing structures:

- Construction of a wheel chair ramp
- Widening of doorways and installation of wider doors
- Conversion from a bathtub to a shower to aid accessibility
- Installation of handrails and grab-bars
- Replacement of other plumbing fixtures, such as commodes, with fixtures more user-friendly regarding accessibility
- Other improvements that provide accessibility or remove barriers to accessibility

PHYSICAL ACCESSIBILITY PROGRAM RECORDS

For a listing of record keeping requirements, refer to the Grantee Handbook, Section A, *Program Administration: Record Keeping and Reporting*. In addition to these items, Physical Accessibility grant recipients must also maintain a "Status Report" which contains a status listing of all units slated for improvement in the original LCDBG Physical Accessibility application, current status regarding completion, and accessibility unit cost. A sample is provided as **Exhibit D-2.** A copy of the completed Status Report must be submitted with closeout documents.

DEFINITIONS

- LCDBG Physical Accessibility Application: The application submitted to the Office of Community Development by the local government for funding under the LCDBG Physical Accessibility Program.
- Homeowner Application: A written application received after the local government's LCDBG Physical Accessibility application is funded and LCDBG funds are released. The document is a formal written application from a homeowner (or landlord and tenant if the home is owned by a landlord) requesting Physical Accessibility improvements under the LCDBG Physical Accessibility Program accompanied by documents supporting low-to-moderate income status and other LCDBG Physical Accessibility Program requirements. Eligibility to receive a homeowner application is restricted to owners of housing units for which there was a Household Survey Form in the original LCDBG Physical Accessibility application.
- Household Survey Form: A form submitted as part of the LCDBG Physical Accessibility application for households in a particular target area identified as in need of accessibility improvements.
- Usufruct: Usufruct is the legal right, recorded at the Courthouse, for the use of a property.

ELIGIBILITY REQUIREMENTS OF THE PHYSICAL ACCESSIBILITY PROGRAM

Eligibility requirements for a Physical Accessibility unit to be listed as eligible for assistance in an LCDBG Physical Accessibility Application and eventually be funded by the local government include the following:

- **Income:** Beneficiaries must be of low and moderate (LMI) income.
- **Target Area:** Physical Accessibility housing units must be in the target area, as indicated by the local government in the LCDBG Physical Accessibility Application.

- **Identification by the Household Survey Form:** A Household Survey Form must have been part of the original LCDBG application identifying each housing unit and person**s** living in each housing unit to be included in the LCDBG project as in need of accessibility improvements.
- **Owner-occupied, Usufruct Participant, or Concurring Landlord:** Non-rental housing units must be owner-occupied, have usufruct or have ability to obtain usufruct in a timely manner in order to be eligible for improvements. The property on which the occupied housing units sit must also be owned by the occupant. Rental units occupied by low to moderate income individuals must be accompanied by clear proof of ownership by the landlord and stated willingness of the landlord to pay half of the construction costs.
- **Duration of Occupancy:** The owner or renter must have been occupying the premises at the time of the submittal of the LCDBG application and must be intending to occupy the premises for a reasonable time period after improvements are complete. The Household Survey Form is for particular persons—not particular housing units.

  Example: If John Doe at 111 Oak Street of the original LCDBG application ceases to rent or permanently occupy 111 Oak Street, then that unit is no longer eligible for inclusion in the LCDBG project. If John Doe moves to a nursing home and ceases to permanently occupy 111 Oak Street, the housing unit is not eligible for inclusion in the LCDBG project. If knowledge of the move to the nursing home becomes known after the preparation of the original LCDBG application but before the bidding process for the housing unit then 111 Oak Street should not be included in the bidding process.
- **Usufruct:** A homeowner must legally prove usufruct of a housing unit and the property on which it sits. Documentation of the legal obtaining of usufruct must be filed or have been filed at the Clerk of Court's office. A person who does not have usufruct at the time of the release of LCDBG funds must obtain usufruct and submit a complete homeowner application within the time limits specified by the local government. The deadline for the receipt and completion of review of homeowner applications must be specified in the Physical Accessibility Policy of the local government.

  Landlords must prove ownership and do not have the option of usufruct.
- **Single or Multi-family Residential:** Single and multi-family residential structures are eligible under the LCDBG Physical Accessibility Program.
- **Structure Types:** A single or multi-family housing unit must be a conventional "stick built" structure to be eligible for rehabilitation. Mobile homes and modular homes are not eligible for accessibility improvements.

- **The 75% Rule and Structural Soundness Test:** Eligibility for accessibility improvements requires that the 75% Rule and Structural Soundness Test be met as discussed in the Physical Accessibility application package.
- **Conflict of Interest:** Housing units whose owners have a conflict of interest are not eligible. The following individuals or firms must not have any interest, direct or indirect, in any contract or subcontract or the proceeds from any contract or subcontract for work to be performed in connection with the LCDBG Program:

  1. Employee of the local government,
  2. The local government's designee, agent, or consultant,
  3. Member of the local governing body or other public official of the local government who exercises or has exercised any functions or responsibilities with respect to this LCDBG project during his/her tenure.

  However, upon written request of the local government, the Office of Community Development may agree in writing to waive a conflict otherwise prohibited by this provision whenever there has been full public disclosure of the conflict of interest, and the Office of Community Development determines that undue hardship will result either to the local government or the person affected by applying the prohibition and that granting of a waiver is in the public interest. No such request for waiver should be made by the local government which would permit a violation of federal, State or local law.
- **Local Government's Obligation For Treatment:** A housing unit submitted for accessibility treatment in the original LCDBG application must be treated if: (a) the owner properly applies for funding, (b) the homeowner meets program requirements (c) the bid comes in within allowable amounts as established in the local government's Physical Accessibility Policy and (d) sufficient LCDBG funds are available to fully fund the construction contract. The local government is obligated to treat units which meet all four requirements.

PHYSICAL ACCESSIBILITY PROGRAM REQUIREMENTS

Property Rehabilitation Standards

Property Rehabilitation Standards are the building and safety standards adopted by the local government that apply to improvements under the LCDBG Physical Accessibility Program. When more than one component of Property Rehabilitation Standards applies to a particular building or safety issue, the component with the strictest requirements should be followed. Components of Property Rehabilitation Standards include:

1. HUD's Section 8 Housing Quality Standards: The objective of the Physical Accessibility Program is not to bring each housing unit up to Section 8 standards; however, Section 8 standards may be applicable to certain components of construction involving accessibility improvements. For example, if an entry door were being replaced with a wider door the Section 8 requirements requiring entry doors to be lockable would apply.
2. International Building Code: Act Number 12 of the first extraordinary session of the FY 2005 Louisiana Legislature requires the following building codes to be applicable in every parish as of January 1, 2007:
    - The International Residential Code except for administration (part one), plumbing (part seven) and electrical (part eight)

      Note that Appendix J of the International Residential Code covers treatment of existing buildings.
    - The Louisiana State Plumbing Code
    - The National Electric Code
3. HUD's Lead-Based Paint Regulations: The name of the regulation is "Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance". It was published in the Federal Register on September 15, 1999. Additional information for administrators of the Physical Accessibility Program should be viewed at: **http://www.hud.gov/offices/lead/enforcement/lshr_summary.cfm** .
4. Asbestos Requirements of the Louisiana Department of Environmental Quality: The LCDBG Physical Accessibility Program must follow asbestos testing and abatement procedures which are publicized and enforced by DEQ.
5. LCDBG Physical Accessibility Program Requirements: LCDBG Physical Accessibility Program requirements are established by the Office of Community Development and apply to building and safety items not covered in other standards or are more restrictive than other standards.

Average and Maximum Cost Per Unit

During the planning and bidding phase of a funded Physical Accessibility Program it is important to keep costs under control in order that the maximum allowable is not exceeded. After the award of the LCDBG Physical Accessibility Grant and as the Physical Accessibility Policy (**Exhibit D-8)** of the local government is being prepared the maximums and minimums for housing units must be included.

Mobile Homes and Modular Units

Mobile homes and modular housing units may not be addressed under the Physical Accessibility Program.

Outbuildings and Yard Areas

An unattached outbuilding to an existing housing unit, such as a shop, is not eligible for treatment under the Physical Accessibility Program. The normal living quarters of single or multi-family residential buildings are eligible. Areas outside of normal living quarters are eligible only to the extent of providing better ingress and egress to the living quarters of a residence. For example, it is not the intent of the program to allow the construction of a sidewalk and wheelchair ramp to a pond located on the premises; however, a sidewalk and/or a wheelchair ramp is allowable to provide a surface on which a wheelchair could navigate to an entry door of a residence.

PHYSICAL ACCESSIBILITY POLICY

An LCDBG Physical Accessibility Policy (**Exhibit D-8**) to be prepared by the local government will serve as the guiding document for duration of the LCDBG Physical Accessibility Program. The Physical Accessibility Policy must be submitted to the Office of Community Development for review and approval. The local government must adopt the policy by resolution. A sample Physical Accessibility Policy has been provided as **Exhibit D-8**. The Physical Accessibility Policy must include the following:

- Source of authority of the local government
- Objectives of the LCDBG Physical Accessibility Program
- Program definitions
- Eligibility requirements
- Responsibilities and obligations of the local government
- Responsibilities and obligations of homeowner/recipients
- Applicant selection procedure
- Property Rehabilitation Standards
- Maximums, minimums and average costs
- Requirements regarding accessibility improvements
- Advertising bidding and awarding contracts procedures
- Inspection, acceptance and closeout procedures

HOMEOWNER APPLICATION SOLICITING AND SCREENING

Chronology: Physical Accessibility Program, Release of Funds to the Final Screening of Homeowner Applications	
Event	Comments
Requests for Payment begin	
Homeowner applications for accessibility improvements are solicited.	The solicitation is restricted to housing units and property located in the target area(s) identified in the LCDBG application on a Household Survey Form.
Homeowner Application deadline passes	
Preliminary screening of homeowner applications regarding eligibility. Proof of LMI income status and ownership status are examined.	Those units which are not able to pass initial screening will be eliminated from consideration for asbestos and lead testing.
A decision is made by the local government whether lead and asbestos testing is applicable regarding each housing unit that passed preliminary screening. An agreement is entered, as applicable, between the local government and homeowner applicants and or clearance demolition applicants for asbestos testing and/or lead paint testing.	If lead and/or asbestos testing is warranted a written agreement is established between the local government and each homeowner applicant for lead or asbestos testing. The local government then has authority to procure and contract with a testing firm.
Asbestos and lead testing is completed on units where such testing was warranted.	An estimate of the costs for each unit can be determined with greater accuracy after testing results become known.
Rating of homeowner applications	Establishes order of bid priority
Final status lists are prepared	
Homeowner and/or property owner notification	

Requests for Payment

Upon release of LCDBG funds the local government may begin submitting, as necessary, Request For Payments (RFPs) up to a maximum of three per month. Local governments are encouraged to exercise restraint regarding the frequency of the submittal of RFRs.

Previously incurred eligible costs may be paid including costs for the services of an administrative consultant for work associated with the preparation of the application and the clearance of contract conditions. Present and future eligible LCDBG costs under the grant are incurred and associated invoices are received from professionals, vendors and, eventually, construction contractor(s). The invoices for eligible LCDBG costs become the basis for the preparation of RFPs.

Proper Categorization of Invoices For RFPs

Eligible amounts invoiced to the LCDBG Housing Program should be requested on the Request for Payment form under the proper category.

- Amounts invoiced for the actual construction involving accessibility improvements should be summed and entered on the "Rehabilitation Housing" row of the RFP form.
- Amounts invoiced for construction administration should be entered on the "Rehabilitation Administration" row of the RFP form.
- Amounts invoiced for Pre-agreement costs should be summed and entered under "Administration 1. Pre-agreement Costs".
- Amounts invoiced for general administration should be entered under "Administration 2. Public Facilities, Housing, and Economic Development".

Asbestos and Lead Testing, and Plans/Diagrams on the RFP

The services involving asbestos testing, lead testing, and the preparation of plans for a component unique to a specific housing unit (such as a diagram and specifications of a wheel chair ramp) is completed prior to advertising for bids; therefore, the invoices for such services should not be allocated to respective housing units (or construction contracts). Although testing or a plan/diagrams may be done for a housing unit that, ultimately, does not become part of the LCDBG project, this cost is still reimbursable. The proper category on the RFP under which to draw costs of asbestos testing, lead testing and preparation of plans/diagrams is listed on the RFP form as "Rehabilitation Housing".

Asbestos testing, lead testing, and the preparation of plans/diagrams are **not** to be drawn under the RFP categories of "Rehabilitation Administration" or "Administration 2. Public Facilities, Housing, and Economic Development".

Preparing the Homeowner Application Form

The local government must prepare an application form for use by homeowners (or landlord/tenants) who apply for accessibility improvements. The application form must include items regarding the name, address, income level, occupancy, statement of future intention of occupancy, ownership or usufruct, notification regarding conditions that may occur during construction, and other information necessary to carry out the LCDBG Physical Accessibility Program. **Exhibit D-3,** Income Limits by Household Size, is necessary for verifying LMI income status of the occupants. The homeowner application must clearly state that supporting documentation is required for major eligibility items such as proof of income status and proof of property ownership status.

Homeowner applications involving a renter and a landlord must include an agreement that the homeowner/landlord will pay half the construction cost. Such agreement is to be obtained at the application stage. It would be imprudent to wait until the bidding process to obtain such agreement.

For all applications, the local government should include a hold harmless statement on the face of the application that relieves the local government of certain liabilities that could arise. The hold harmless statement would specify that (a) the local government is acting in a third party capacity to facilitate an agreement between the homeowner and construction contractor for accessibility improvements, (b) the local government is not responsible for regular maintenance after improvements are complete and (c) the local government is not responsible for accidents that happen in association with accessibility improvements, such as a person falling while utilizing a ramp. After a bid is awarded, the resulting contract for construction should contain a hold harmless clause patterned after the hold harmless statement placed on the homeowner application.

The homeowner application form should state that it is an application for assistance and not an agreement for assistance. The form should indicate that a future contract for assistance may be entered into after applications are screened and rated. A copy of the local government's LCDBG Physical Accessibility Policy must be attached to each homeowner application form in order that they may review and become knowledgeable about the LCDBG Physical Accessibility Program.

Along with the homeowner application form, homeowners of units slated for accessibility improvements in the LCDBG Application must also receive **Exhibit D-4**, Lead-Based Paint

Information. **Exhibit D-4** contains the "Watch Out For Lead-Based Paint Poisoning" notification which must be signed and dated by each recipient. Additionally, the brochure "Protect Your Family from Lead in Your Home", available on HUD's website must be given by the local government to each homeowner whose housing unit is slated for accessibility improvements. The brochure can be obtained at **http://www.hud.gov/offices/lead/healthyhomes/lead.cfm**.

Soliciting Homeowner Applications

At this time, homeowners have not applied for assistance. The Household Survey Form, which was made a part of the LCDBG Physical Accessibility application, was not a formal application for assistance. At this point in the process it is the local government's responsibility to inform those whose housing units were identified as in need of accessibility treatment in the LCDBG Application of the opportunity to apply for assistance.

The local government may wish to prepare a brochure or information sheet describing the LCDBG Physical Accessibility Program, eligibility requirements, homeowner information needed and actions which should be taken by homeowners who wish to apply for assistance. The brochure should identify the target area(s) of the LCDBG Application in order to avoid confusion among other citizens who do not reside in the target area. The local government must also make clear the deadline date for receiving complete homeowner applications. The brochure could be delivered by one or more methods, including but not limited to: hand delivery, mail delivery—preferably certified mail return receipt requested, and posting at a local public location.

One method that has been successfully utilized to solicit homeowner applications is the arrangement of a public meeting or appointment to inform homeowners about the LCDBG Physical Accessibility Program. The brochure mentioned in the previous paragraph should be distributed. The time and place of the public meeting should be listed in the brochure.

Whatever method(s) or combination of methods is chosen should be fairly applied. The local government must document the steps taken and retain the brochure and/or information sheet for review by any interested party and as part of grant records.

Homeowner Applications Deadline

To be eligible, a homeowner must submit a complete application for funding to the local government by a deadline date. A complete application is an application that can be immediately reviewed without further delay. If the ownership or usufruct cannot be verified immediately the application is not complete. Applications which are incomplete as of the deadline may be considered the same as applications not submitted.

An example of the deadline date could be nine months (or some other specified number of months) from the Authorization to Incur Costs date. The deadline should be specified on the homeowner application and may be specified in the local government's Physical Accessibility Policy.

Initial Screening of Homeowner Applications

The local government must screen the homeowner applications to insure that applicants meet LCDBG Physical Accessibility Program requirements. The meeting of eligibility requirements as previously discussed in must be determined. After initial screening the local government will know which housing units have potential to be included in the LCDBG Physical Accessibility Program.

Asbestos Testing

Asbestos testing should be done only on units which have potential to part of the LCDBG Physical Accessibility Program. Asbestos testing is done for at least three reasons: (1) to protect the persons residing in the housing unit (2) to protect the craftsmen performing the work (3) and to ensure proper disposal of construction material. A decision must be made by the local government to determine whether asbestos testing is necessary for each potential housing unit. For example, if the accessibility improvements to a housing unit consisted of the replacement of outside concrete steps with a wheelchair ramp and a deck, there would be little potential for asbestos to be disturbed or involved in the construction process, therefore asbestos testing is not warranted. In contrast, if an entire bathroom is being remodeled to be accessible to the physically disabled, there is a greater potential for asbestos to be involved in the construction process. Asbestos testing is an eligible cost under the Physical Accessibility Program. The local government should document the decision regarding asbestos testing and make the documentation part of grant records for each housing unit.

Lead Testing

Lead testing should be done only on units which have potential to be part of the LCDBG Physical Accessibility Program. Testing for lead is an issue only if a structure was built before 1978 or if lead is suspected to have been unlawfully utilized in construction during or after 1978. See **Exhibit D-4** for lead-based paint information.

On accessibility projects lead testing is necessary if there is a reasonable potential for lead to be involved during construction. The local government should document the decision regarding lead testing and make the documentation part of grant records for each housing unit.

DEQ Approved Inspection For Asbestos and Lead

When the local government decides that testing is warranted a Louisiana Department of Environmental Quality (DEQ) approved inspector must be used for asbestos and lead testing. The "Asbestos and Lead" web pages of DEQ will provide a path for locating a DEQ approved inspector at **http://www.deq.louisiana.gov**. Choose the "Asbestos and Lead" link. The page will have links which will lead to lists of DEQ approved inspectors for asbestos and lead-based paint. If there is any difficulty in finding these pages contact the Housing Program Manager at the Office of Community Development.

Agreement for Asbestos and/or Lead Testing

On all units which require asbestos and/or lead testing an agreement between the local government and the homeowner/property owner is prepared and executed for the needed testing service(s). The agreement should contain the following elements:

a) the scope of the agreement (b) provision for access to the housing unit

b) statement that the agreement does not in any way guarantee that the owner's housing unit has been awarded a grant by the local government,

c) homeowner responsibilities regarding testing and

d) responsibilities of the local government regarding testing and

e) statement that the homeowner's failure to accommodate reasonable efforts for testing may result in the determination that the homeowner application is ineligible.

In order to reduce testing costs the agreement may be structured to make provisions for testing to be conducted on multiple units on the same day. This agreement gives the local government the authority to schedule testing on the selected day or days after making an appointment with the homeowner for such testing. At the time of the signing of the agreement for testing to be conducted, applicants for accessibility improvements must sign the notification, "Watch out For Lead-Based Paint Poisoning," which is part of **Exhibit D-4**. The local government must keep a copy of the signed notice as part of grant records. The local government will then procure (according to CDBG regulations) a testing firm, approved by DEQ, for the asbestos and/or lead testing. The local government may enter into a contract with the testing firm.

Final Screening of Homeowner Applications

After asbestos and lead testing are complete and results of the testing are determined, the final housing units and property(ies) that are potentially includable in the LCDBG Physical Accessibility Program and the cost of improvement for each of the units can be better estimated.

Withdrawal of Homeowner Applications

A homeowner may withdraw his/her application for any reason prior to the execution of the construction contract. If a homeowner withdraws his/her application a memo to the file for that housing unit is to be prepared and signed by the homeowner showing the date of the notice and the effective date of the withdrawal. The file will remain inactive for 30 days from the effective date of the withdrawal after which it will be officially closed. The homeowner may, upon written request, reactivate his/her application during the 30 day period. After the 30 days have elapsed it will be necessary for the homeowner to reapply and be screened again for eligibility. Those homeowners who withdraw do not retain their original position in the rating list (as discussed in the next paragraph) after withdrawal even if they reactivate their application or reapply for assistance. Such an application must be sent to the bottom of the rating list.

Rating of Homeowner Applications

A rating system is necessary to establish the order in which each housing unit will be let for bids. Homeowner applications from the target area that meet ownership, income, occupancy, etc., requirements will be assigned points. Applicants meeting all eligibility requirements will be selected for the bidding process in numerical descending order.

The application with the highest points will be considered for funding first, and so on. The bidding and award process will begin for the higher rated applications since it will be anticipated that enough LCDBG funds are available for completion of any associated contract that will be entered. After bids are received for higher rated applications and LCDBG funding for next-in-line applications is certain, the process of considering the next-in-line applications will continue until all eligible applications have been considered or LCDBG funds are depleted.

A **sample** rating system for complete applications that have been approved for consideration for funding is as follows. Each household receives the specified point(s) for each qualifying category.

- Duration of physical disability — 1, 2, or 3 points
- Income (Moderate 1, Low 2, or Extremely Low 3) — 1, 2, or 3 points
- Physically disabled head of household — 1 point
- Number of disabled persons in household — 1 point
- Other _____ — ___ point(s)

The rating system chosen by the local government must have been made a part of the Physical Accessibility Policy that was submitted for review by the Office of Community Development prior to the release of LCDBG funds.

Final Status List

After initial screening and testing for hazardous materials a "Final Status List" of eligible housing units and the rating score for each unit is prepared. The Final Status List must become part of grant records.

Notification of Homeowner or Property Owner

The local government is responsible to notify, in writing, all who submitted applications regarding the final application status. Both applicants which have been approved and those which were not approved must be notified.

For approved applications the notification should state that approval of the application is not a guarantee of assistance since the bidding process must meet LCDBG Physical Accessibility requirements and contracts cannot be awarded on bids which exceed allowable amounts as established in the local government's Physical Accessibility Policy.

PREPARATION OF BID DOCUMENTS, APPROVALS, ADVERTISING

Chronology: Preparation of Bid Documents, Approvals, Advertising (Physical Accessibility)	
Event	Comments
Prepare bid and contract documents	
Complete a work write-up for each unit that will become part of the bid documents	
Prepare a cost estimate for each unit.	Cost estimates are not prepared for inclusion in the bid document but for in-house use by the local government.
Obtain homeowner approval for the work write-up of each housing unit.	
Complete the environmental review, second tier	

Event	Comments
Compile a bid document for each unit which will become available for pick-up by bidders.	The bid document will include standard clauses, special LCDBG requirements, and items which pertain to each respective unit such as plans and specifications for reconstruction or work write-ups for rehabilitation.
Begin the process of letting units for bidding.	
Bidders are solicited.	

Preparation of Bid and Contract Documents

The local government prepares a bid and contract documents package for each housing unit. These packages will be obtained by contractors who may choose to place a bid(s). A sample package for the LCDBG Housing Program is provided as **Exhibit D-5**. The package for the LCDBG Physical Accessibility Program will need some minor modifications which establish details unique to Physical Accessibility prior to making the package available publicly. The package, as prepared by the local government, must include the following:

1. Date, time and place of bid opening
2. A work-write up
3. Additional considerations, such as a list of construction material type and quality
4. A copy of a blank contract to be executed at a later date.
5. Section 3 Certification of the Selected Bidder form
6. Special Equal Opportunity Provisions and other federal provisions that are referenced in the blank contract. These items, although in the form of a separate document, become part of the contract by being referenced on the face of the contract.

The Special Equal Opportunity Provisions and other federal provisions must include the following: Title VI Clause, E.O. 11246 Standard Clause, Section 109 clause, Section 3 clause, Segregated Facilities clause, Lead-based Paint clause, Fire Administration Authorization Act of 1992, Access to Records clause, and Conflict of Interest clause.

Bid Documents Prepared for One Prime Contractor Per Housing Unit

Bid documents are to be prepared so that there is one prime contractor for each housing unit except in cases where an asbestos contractor is required to remediate asbestos.

The objective of one prime contractor is to provide continuity from start to finish regarding construction activities. The prime contractor is free to sub out various components of the construction process, such as the electrical installation; yet, the prime contractor remains the responsible party to ensure project completion in a timely manner.

Permits, Codes, Clean-up, and Warranty

The local government should also consider including provisions in the bid documents and contracts which require the contractor to:

- obtain and pay for all necessary permits and licenses
- perform all work in conformance with codes and requirements covered by the work write-up or plans/designs
- remove all debris at the completion of work
- not assign the contract without written consent
- be paid for work completed and material installed—not for material stored on the job site
- warrant the work for a specified time period such as one year from the final acceptance of work

Homeowner Ineligibility: Homeowners will be ineligible to bid on the improvement to their own residence.

Davis Bacon Not Normally Applicable

Davis-Bacon does not normally apply to the LCDBG Physical Accessibility Program because eight or more housing units in an LCDBG project are not often located on one parcel of property with all housing units being commonly owned by one person or entity. Specifically, individually-owned residential housing units that are located on separate parcels of property are not covered by Davis-Bacon. Such housing units may be advertised in bid lots covering any number of housing units including, for example, the advertising of one unit or twenty units. Regardless of the number of housing units advertised for bids in a single bid advertisement, an individual contract must be established between a winning bidder and each housing unit owner.

The Work Write-up

The local government, after consulting with the homeowner, will be responsible for preparing a work write-up for each unit slated for accessibility treatment. The work write-up should be designed so that it can become a part of the bid package.

The work write-ups are usually done on a room-by-room basis. See **Exhibit D-6** for a sample of a work write-up prepared for the LCDBG Housing Program but still applicable in many respects to the LCDBG Physical Accessibility Program. The homeowner should sign the work write-up first and sign on each page. The local government should be the last entity, chronologically, to sign the work write-up. The work write-up must be executed by both the homeowner and the local government prior to the establishment of the homeowner approval that will authorize the bidding and construction process.

Preparation of the Cost Estimate

Once the work write-up has been prepared, the cost of the material and labor must to be estimated by the local government. The cost estimate is necessary in order to determine if it is probable that the work can be done within the allowable amounts as established in the local government's Physical Accessibility Policy and to have a standard against which to review bid responses. Preliminary cost estimate prices, as estimated by the local government, are not to be made part of the bid documents. The person preparing cost estimates should be familiar with the current cost of building materials and labor in the community and be able to estimate the cost required to complete each task. **Exhibit D-6** is a sample work write-up and cost estimate.

Homeowner Approval Form

The local government must prepare a "Homeowner Approval " form which will serve as evidence of the homeowner's approval of the processes involved in the LCDBG Physical Accessibility Program and evidence of the homeowner's intention to participate. A deadline for the receipt of executed Homeowner Approval Forms may be indicated by a statement of the face of the form. The following items or statements must be included on the Homeowner Approval Form:

1. Name of the homeowner, address, and date
2. Description of the work to be performed on the particular housing unit
3. Affirmation by the homeowner that he/she has reviewed and accepts the work-write-up
4. Affirmation by the homeowner that he/she has reviewed and accepts the processes and homeowner responsibilities as stated in the local government's Physical Accessibility Policy. (The Physical Accessibility Policy was to have been attached to the homeowner application)
5. Description of any hardships that may occur due to steps in the process. (To include the need for any temporary relocation and provision for storage of belongings, if applicable)

6. Affirmation by the homeowner that he/she intends to participate in the LCDBG Physical Accessibility Program by giving consent for the local government to let the housing unit for bids
7. Affirmation by the homeowner that occupancy information, ownership information, and household income at stated on the Homeowner Application is still valid. If any information has changed, a place to indicate such change should be provided on the Homeowner Approval form.
8. Affirmation that the homeowner understands that this document is not a contract for construction, but only indicates the approval for the local government to begin the bidding process. Before construction can begin the homeowner will sign a construction contract that will be a three-way agreement between the local government, the homeowner, and the construction contractor.
9. Affirmation by the homeowner that the local government will not be considered liable for ongoing maintenance of improvements after construction is complete and not liable for accidents that may happen which are associated with the accessibility improvements.
10. Other provisions
11. Signature of the homeowner and date of the signature
12. Optionally, the local government may sign and date.

The local government should review the Physical Accessibility Policy and proposed construction with the homeowner to insure that the homeowner understands exactly what he/she is approving. It is necessary for all parties to clearly understand their responsibilities.

If the homeowner does not sign (for any reason, including unavailability) or refuses to sign the Homeowner Approval Form, the local government must not proceed with the bidding process. The local government must document the efforts made to obtain approval and reasons that approval was not obtained.

Environmental Review—Second Tier

The second tier of environmental review must be completed. Since specific housing units and properties which will be improved are now known, the "Statutory Checklist Completion Form", **Exhibit A-11**, must be completed for each housing unit that will become part of the LCDBG Physical Accessibility project and sent to the Office of Community Development.

Housing Units are Let for Bidding

The local government must have an executed Homeowner Approval form before letting any of the units for bidding. After the deadline for receipt and review of Homeowner Approval Forms has passed, the highest rated among the housing units which have homeowner approval should be let for bidding first. Often the bidding will be done in rounds with higher rated units bid in the first round and lesser rated units bid in successive rounds of bidding. Construction does not have to be finished on units that were in the first round of bidding before the second round of bidding begins.

Even though some bids may be let at the same time, each housing unit will normally have a separate bid document, and a separate contract. If multiple units are being let under a bid that results in multiple units being under a single contract, the final construction contract should reference supplemental conditions containing details specific to each housing unit and a work write-up specific to each housing unit.

Please be reminded that Davis-Bacon coverage will be triggered if more than seven units are finalized under one construction contract. For instance, 15 housing units that undergo bidding at the same time on an LCDBG Physical Accessibility project with each unit having a separate contract would not trigger Davis-Bacon requirements. In contrast, 8 housing units that undergo bidding at the same time resulting in one contract with unique supplemental conditions for each unit would trigger Davis-Bacon requirements.

Solicitation of Bidders

Two methods are commonly used to solicit bids.

- **The Bid List Method:** The bid list method calls for the establishment of a list of contractors who indicate that they wish to be part of the LCDBG project bidding process. When a housing unit is ready to let for bids the bid documents are sent to contractors on the bid list.

  When using the bid list method at least one advertisement in the local government's legal newspaper (official journal) must be published soliciting contractors for units that will be let for bids at some future time. This advertisement should be made a part of grant records. Additionally, the local government may solicit contractors for inclusion in a bid list by telephone, other newspaper advertisements, or in person.

- **The Individual Unit Advertising Method:** The individual unit advertising method requires that each housing unit to be let under one bid (or multiple housing units let under one bid) to be advertised in the official journal at least one time. Although multiple advertisements per bid are not required multiple advertisements may be

necessary. Those who respond to the advertisement are invited to obtain a set of bid documents at a specified location, such as the City Hall.

CONTRACTING

Chronology: Contracting (Physical Accessibility Program)	
Event	Comments
Bids are opened and tabulated.	
Eligibility, responsiveness and whether a contractor is deemed responsible is examined. The lowest eligible responsive and responsible bid is determined.	The local government must obtain contractor clearance from the Office of Community Development prior to any contract award.
Higher rated units are considered first.	A rating system was used to establish the order in which units are considered in the bidding process.
A housing unit which has a high bid(s) that exceeds the maximum allowable must not be awarded a contract Instead, proceed to the next housing unit on the rating list	
Award, by the local government, of construction contract(s) for the first round of bidding on homeowner units	
A three way contract for each unit is entered for reconstruction rehabilitation, and/or spot rehabilitation. The three parties are: (a) The local government (b) The Homeowner and (c) The Contractor	The contract should include all items which need understanding between all parties.

Bid Opening and Tabulation for Homeowner Units

The local government opens and tabulates bids at the appointed time and place that was specified during the solicitation for bids.

Louisiana Contractor Licensing Law

All work to be performed under the LCDBG Physical Accessibility Program must comply with the Louisiana Contractor Licensing Law as discussed in Title 37 of the Louisiana Revised Statutes, Chapter 24. The Contractor Licensing Law can be found on the website of the Louisiana State Licensing Board for Contractors at www.lslbc.louisiana.gov→Contractor's License Law→Licensing Law LA R.S. 37 / Rules and Regulations. Requirements of the Contractor Licensing Law pertaining to the LCDBG Physical Accessibility program include the following:

- **Residential Building Contractor:** A "residential building contractor" [defined: LA R.S. 37:2150.1 (11)] submitting a bid of more than $75,000 is required to be licensed by the Louisiana State Licensing Board for Contractors.
- **Contractor:** If more than two housing units are let under one bid, a bidder will not be considered as "residential building contractor" but rather as a "contractor" [defined: LA R.S. 37:2150.1 (7 and 8)]. A "contractor" submitting a bid of more than $50,000 is required to be licensed by the Louisiana State Licensing Board for Contractors.
- **Home Improvement Contractor:** A "home improvement contractor" [defined: LA R.S. 37:2150.1 (4)] must be registered with the Louisiana State Licensing Board for Contractors when a bid for home improvement is more than $7,500 but does not exceed $75,000.
- **Electrical Contractor:** Any electrical contractor, [defined: LA R.S. 37:2150.1 (14)] whether operating as a prime contractor or subcontractor, who installs an electrical system in a housing unit must be licensed if the cost of electrical system exceeds $10,000.
- **Mechanical Contractor (Plumbing or Heating/Air):** Any mechanical contractor, [defined: LA R.S. 37:2150.1 (15)] whether operating as a prime contractor or subcontractor, who installs a heating and/or air-conditioning system or a plumbing system in a housing unit must be licensed if the cost of the system exceeds $10,000.

Bid and Contractor Eligibility

The bid and the bidding firm must be examined for eligibility, responsiveness and responsibility. The following items are factors which determine eligibility, responsiveness or whether a contractor is to be deemed as responsible.

- **Licensing:** Bidders must be in compliance with Louisiana contractor licensing law as discussed in preceding paragraphs.

- **Insurance Requirements:** Contractors are required to have General Liability insurance coverage and Worker's Compensation insurance coverage in connection with LCDBG Physical Accessibility Program. Proof of coverage will be required as part of the bid response from the contractor. The local government must verify insurance coverage.
- **Verification of Contractor Eligibility:** A Verification of Contractor Eligibility form must be sent to the Office of Community Development prior to contract award. The Office of Community Development will check to make sure the contractor is not debarred at the federal level, sign the form, and return it by fax to the local government. An approved Verification of Contractor Eligibility form is a required document in the LCDBG Physical Accessibility Program before a contract can be awarded. See **Exhibit B-5**. Note: If Davis-Bacon is not applicable a portion of the form that deals with wage decision choice will not be applicable but the contractor eligibility portion of the form will be applicable. If multiple contractors will be used by the establishment of a bid list, those contractors can be cleared at the beginning of the program; this clearance is valid for the duration of the LCDBG Physical Accessibility Program.
- **Criminal Misconduct:** Under the current LCDBG Physical Accessibility Program, consultants, contractors or inspectors who have been indicted for any criminal misconduct involving work performed on any Community Development Block Grant Program, within or outside of the State of Louisiana, may not participate in the Louisiana Community Development Block Grant Program. This ban on participation will remain in effect until or unless the legal charges against such persons have been resolved in their favor, either through dismissal or a finding of innocence. Those individuals whose indictments result in convictions will be permanently barred from participation in the LCDBG Program.
- **Responsive and Responsible:** The minimum qualifications for a contractor to be awarded a project are that the contractor (and his subcontractors) has proper licenses, insurance coverage, meets all other requirements and submits the lowest responsive and responsible bid. The receipt of a responsive bid means that the local government has not only received a bid but that the bid received contains all required documents. . If a contractor's bid is more than twenty percent below the preliminary cost estimate prepared by the local government, it may be considered as non-responsive. The determination of whether a contractor is responsible is based on the local government's assessment of past performance. The following items indicate a lack of being responsible:
    - outstanding invoices/bills due to subcontractors or suppliers
    - failure by the contractor to meet warranty obligations on previous jobs

- evidence that liens have been filed on the contractor within the last two years
- a backlog of uncompleted rehabilitation or replacement units in the locality or other communities
- contractor not having the financial capacity to undertake this project
- contractor not cleared by the Office of Community Development
- reports of poor performance and/or poor workmanship quality on other projects

Awards Contingent on Available LCDBG Funds

All contract awards must be contingent on the availability of LCDBG funds. A homeowner unit that is not within the maximum allowable or that has insufficient LCDBG funding to cover the entire contract will not be an obligation of the local government for inclusion in the LCDBG project.

Contract Award for Homeowner Units

The local government makes a contract award. The lowest responsive and responsible eligible bidder receives the award for each respective unit.

Parties to the Contract for Accessibility Improvements

The contract will normally be between the homeowner and the contractor with the local government being a third party to the contract. The local government will act as the homeowner's agent.

A work write-up prepared by the local government should be attached to the contract for construction and referenced in the contract. The homeowner normally executes the three-way construction contract first the construction contractor second, then the local government is the final party to execute the contract.

A two party contract for construction between the homeowner and the construction contractor with the local government acting as the homeowner's agent has also been successfully utilized in the LCDBG Physical Accessibility Program. In such cases two separate contracts are involved: (a) the contract between the homeowner and the contractor and (b) the contract between the homeowner and the local government. The Office of Community Development does not object to the use of separate two party contracts as long as the contractual obligations of all parties are adequately covered.

Second Round of Bidding for Homeowner Units

The local government may choose to wait for construction progress on the units that have been awarded before letting the second round of bids. The second round of bids, if applicable, can

be let when conditions favor such action. Then the third round, if applicable—and so forth until all eligible units are complete or LCDBG funds are depleted. A contract for construction must not be awarded if there are insufficient LCDBG funds for the entire amount of the construction contract.

Procedures for Bids that Exceed the Maximum Allowable

It has been previously noted that a selected housing unit for which bids come in higher than the maximum allowable must not be awarded a contract. The remainder of the housing units approved for the bidding process must be let for bids. After all approved housing units have been let for bids and awards made to units which were within allowable amounts as established by the Physical Accessibility Policy, those units for which bids exceeded the maximum allowable may be considered again. To achieve a bid that is within program guidelines the local government may take some or all of the following actions: (a) adjust the plans or the work write-up to reduce costs before letting the home for rebidding, (b) bid out the more expensive units again with no plan or write-up changes and/or (c) revise the Physical Accessibility Policy by resolution of the local governing body regarding maximum allowable amounts. The Office of Community Development must approve a revised higher maximum of a Physical Accessibility Policy before the local government can pass a resolution for a higher maximum. A copy of the resolution must be sent to the Office of Community Development.

CONSTRUCTION

Chronology: Construction (Physical Accessibility Program)	
Event	Comments
Optional pre-construction conference	A clear understanding of each the responsibility of each party must be obtained.
Homeowner prepares for the forthcoming construction activity	
Notice to Proceed for reconstruction, rehabilitation, and/or spot rehabilitation	

Event	Comments
The local government will perform inspections of work completed, approve invoices, prepare Requests for Payment and disburse payments relative to each construction or demolition contract	
Monitoring visit and monitoring letter from the Office of Community Development	To be done when the grant is at least 50% drawn down
Local government responds to any findings by taking proper corrective action	
Notice of Substantial Completion for each housing unit	This legal notice is normally filed at the Clerk of Court's office by the contractor when construction is substantially complete for each housing unit or clearance demolition property
Development of a punch list for each housing unit by the local government	Items that are incomplete or not acceptable and minor things not completed are recorded on the punch list
Contractor addresses items on the punch list	
Filing of the Notice of Substantial Completion	
Notice of Acceptance of Work will be signed by the local government and should be signed by the homeowner.	The Notice of Acceptance of Work is filed at the courthouse
Clear Liens are obtained for each homeowner unit	
Payment of retainage to prime contractor	

Preconstruction Conference

A pre-construction conference for each homeowner unit may be conducted with all three parties present. The local government must ensure that all parties understand their responsibilities whether by preconstruction conference or by some other method of communication. Key items of understanding between all parties must be in writing.

Homeowner Preparation

The local government will notify each homeowner of preparations and actions which are needed to fulfill the homeowner's responsibilities. This notification may have been delivered at the pre-construction conference. Homeowner responsibilities at this point may include the following:

- Cleaning of the home interior, removal of pictures from affected walls, placement of breakables in a secure location and securing of valuables
- Making the housing unit accessible to the construction contractor
- Ensuring that conditions are favorable for the performing of the construction work

Temporary and Voluntary Displacement

Prior to accessibility improvements the homeowner may voluntarily agree to move to another dwelling place and stay for the duration of construction. Temporary displacement is rarely necessary for accessibility improvements.

The local government may write its Physical Accessibility Policy to allow or not to allow rental assistance for those who are temporarily displaced.

The Office of Community Development recommends the specification of the following homeowner responsibilities regarding temporary and voluntary displacement as part of the local government's Physical Accessibility policy:

- The homeowner must be responsible for any removal of belongings, furniture, possessions, etc. from the unit. Out of pocket moving expenses that are documented and reasonable are allowable costs under the LCDBG Program. Storage space for the duration of construction is an allowable LCDBG cost.
- The homeowner will be responsible to find, and if necessary pay for, temporary housing for themselves and all of the residents of the housing unit during construction. Such accommodations must meet Section 8 standards or the homeowner must sign a waiver

releasing the local government from liability arising from temporary substandard housing.

Relocation that Exceeds One Year

Any residential occupant who has been temporarily relocated for a period beyond one year must be contacted by the local government and offered permanent relocation assistance which is an eligible LCDBG cost. The local government must avoid this situation but report the potential for any temporary relocation to exceed twelve months prior to the ending of the twelve month period.

If the homeowner must vacate their unit for more than twelve months, the local government must inspect the temporary living facility for Section 8 violations. The displaced persons must be advised as to whether they are moving into a standard or sub-standard unit and a signed statement acknowledging this fact must be maintained in the applicable housing unit file.

Notice to Proceed is Issued for Reconstruction, Rehabilitation, and/or Spot Rehabilitation

The local government issues a Notice to Proceed to the construction contractor.

The Local Government's Responsibilities During Construction:

- **Inspections:** Make periodic inspections of work as it progresses and provide documentation including dates, name of inspector, work description, estimated percentage of completion, difficulties encountered, etc.
- **Termination of the Contract:** If serious deficiencies are identified through inspection, the local government can initiate procedures to terminate the contract, compute the cost of the completed satisfactory work and pay the contractor. The local government can then solicit another contractor to complete the work.
- **Invoice Approval, Requests for Payment, Disbursements of Checks:** The local government must review each invoice and initial and date each one which is approved. At an appropriate time the local government will prepare Requests for Payment and attach the approved invoices to the respective Request for Payment. A 10% retainage must be held from each construction invoice to be paid after the Clear Lien Certificate is obtained. The request is then sent to the Office of Community Development for processing. The Office of Community Development will review invoices as well as the Request For Payment form. Upon approval by the Office of Community Development funds will be electronically transferred to the local government's LCDBG checking account. The local government will then prepare and disburse checks as necessary for approved progress payments.

The local government may submit up to three Requests For Payment per month.

- **Arbitrate Disputes:** The local government must arbitrate disputes and/or complaints involving the contractor and/or homeowner regarding construction.
- **Change Orders:** The local government will prepare change orders, and obtain necessary signatures of the homeowner and the contractor. If there is any doubt as to whether the cost of the change order will be an eligible cost of the LCDBG Physical Accessibility Program, the local government should consult with the LCDBG Physical Accessibility Program Manager prior to executing the change order. Change orders that are executed and for which work has been authorized, initiated or completed must be sent with the next Request for Payment. Toward the end of the project any change orders that have not been previously sent must be sent along with other close-out documents.
- **Monitoring by the Office of Community Development:** When the LCDBG Physical Accessibility Program is about 50% drawn down a monitoring trip will be scheduled to review grant documentation and examine construction work that has been completed. The local government is responsible to provide access to records and housing units for inspection by OCD staff. After the visit a monitoring letter will be sent to the local government indicating findings of merit and any finding(s) of deficiency. The local government will be responsible to take the proper corrective action to remedy any finding of deficiency. All findings of deficiency must be cleared before the LCDBG Physical Accessibility Program can be closed out.

The Local Government's Responsibilities As Construction Nears Completion

- **Preliminary and Final Inspection:** Make a preliminary inspection of the work that should be complete, ensure that all items on the original work write-up and any change orders are satisfactory, complete an inspection checklist, and advise contractors of any incomplete or unacceptable items. If necessary, provide a "punch list" to the contractor which specifies work items that need further attention. Upon completion of items flagged for additional attention, make a final inspection.
- **Warranties:** Obtain a guarantee of work, manufacturer's warranty and supplier warranties from the contractor or other appropriate source(s). A copy should be made for retention by the local government in the grant files with the original to be given to the homeowner.
- **Substantial Completion:** Insure that the Certificate of Substantial Completion is filed with the Clerk of Court. Since this filing will normally be done by the contractor, the local government may be notified by receiving a copy of the certificate as provided by

the contractor. The date on which the Certificate of Substantial Completion is filed will be the starting point of the 45 day lien period.

The Certificate of Substantial Completion is a document that indicates that a structure can be used for the intended purpose. If the homeowner had to temporarily relocate during construction the local government may authorize the homeowner to move in after the Certificate of Substantial Completion has been filed at the courthouse.

- **Notice of Acceptance of Work:** The local government must sign and date the Notice of Acceptance of Work (**Exhibit D-7**) based on a final inspection that indicates that the work contracted has been properly completed. The homeowner should sign and date the Notice of Acceptance of Work. The Notice is to be filed with the Clerk of Court.

  After construction is complete, should the homeowner refuse to sign the Notice of Acceptance of Work and the Local Government deem the homeowner is being unreasonable, the Local Government may process the payments due the contractor without the homeowner's signature on the Notice of Acceptance of Work.

- **Clear Lien:** Following the 45 day lien period the Clerk of Court will issue the Clear Lien Certificate. The Clear Lien Certificate will indicate that no actions were filed by aggrieved parties during the 45 day period allowed beginning with the date on which the Substantial Completion was filed.

- **Retainage:** Upon obtaining the Clear Lien Certificate, retainage due to the contractor(s) may be paid.

E. ACQUISITION/ANTI-DISPLACEMENT/RELOCATION/DEMOLITION

ACQUISITION

INTRODUCTION

This section presents the requirements that apply to property acquisition in connection with the Louisiana Community Development Block Grant (LCDBG) Program. The acquisition of property, as used in this section of the handbook, will include the acquisition of parcels of land, servitudes, leases and rights-of-way.

Local governments are required to own and provide documentation of property ownership for property involving an LCDBG project. Property will include property owned by the local government before a specific LCDBG project was considered, property obtained in anticipation of an LCDBG project and property obtained as part of an LCDBG project.

Proof of property ownership must be documented by an attorney's opinion or a copy of the title to the property as recorded at the parish courthouse. For streets, there is an additional option which will prove ownership under Louisiana Revised Statute 48:491. LRS 48:491 allows maintenance logs or other substantial written proof of maintenance for at least three years to be considered as written documentation of ownership of the respective streets.

Property acquired for an LCDBG project must be legally recorded. Such recordation is to be filed at the parish courthouse.

APPLICABILITY OF THE UNIFORM ACT

There was a need for a standardized set of acquisition procedures on federally funded projects in order to avoid the myriad of variations occurring from state to state. In response to this need, Congress passed the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970. This law is commonly called the "Uniform Act".

ACQUISITION OF SPECIFIC PARCELS OF PROPERTY BY PURCHASE

Much of the property that an agency acquires for any activity funded in whole or in part with LCDBG funds is subject to the Uniform Act. An agency is a village, town, city, parish, or any other entity that has "Eminent Domain". Eminent Domain is the legal power to condemn land and acquire privately held property under Article I, Section 2, of the Louisiana Constitution. The following examples illustrate common types of acquisition that are subject to the Uniform Act:

- A parcel of property owned by John Doe is needed by the local government for a fire station. LCDBG funding has been awarded for the project. The acquisition of this parcel by the local government would be subject to the Uniform Act.

- A parcel of property owned by Private Enterprise, Incorporated, is needed for the installation of a water well involving an LCDBG funded project. The life expectancy of the water well is estimated to be as much as 40 years. Private Enterprise, Incorporated, is willing to enter into a lease with the local government for the long term use of the parcel for a water well. Acquisition of a leasehold agreement from Private Enterprise, Incorporated, by the local government would be subject to the Uniform Act.
- The local government needs to obtain permanent roadside rights of way for sewer lines that are part of the installation of a new sewer system which is funded, in part, with LCDBG funding. Some of the rights of way are expected to be donated while others are expected to be purchased. Acquisition of such rights of way, whether by donation or purchase, would be subject to the Uniform Act.

ACQUISITION BY PRIVATE ENTITIES

Even though private entities, do not have condemnation powers, LCDBG economic development project acquisitions are covered by the Uniform Act, including acquisitions funded by the private entity. The following is an example of acquisition by a private entity that would be subject to the Uniform Act:

- The local government, on behalf of Widget Incorporated, has been funded for a LCDBG economic development project. A parcel of land is to be acquired by Widget, Incorporated. The Office of Community Development will provide funds for infrastructure associated with the expansion but Widget Incorporated will be the entity that acquires the parcel of land. Such acquisition would be subject to the Uniform Act.

PURCHASES, DONATIONS, PARTIAL DONATIONS

Purchases, donations, and partial donations are subject to the Uniform Act when property is obtained for LCDBG projects from individuals or entities that do not have Eminent Domain.

ADDITIONAL RIGHTS OF WAY—STREET PROJECTS

If a road or street is being widened or extended it will often be necessary to obtain additional rights-of-way. The local government may own the street and a small right of way along the street but not the larger right of way needed. This additional right of way, when obtained from private individuals or entities which do not have Eminent Domain, would be subject to the Uniform Act.

TIMING

The timing of an acquisition can also make it subject to the Uniform Act. Regardless of the source of funds, any acquisition made by a local government after submission of the LCDBG

application to finance an activity on that property is subject to the Uniform Act. Also, an acquisition that took place before the application submission may be subject to the Uniform Act if there is clear evidence that the acquisition was done in anticipation of obtaining LCDBG funds.

LEASES SUBJECT TO THE UNIFORM ACT

Leases which are for a duration of 15 years or longer are subject to the Uniform Act. Leases which are for a duration of less than 15 years but are automatically renewable are also subject to the Uniform Act.

LEASE APPROVALS

Should the local government decide to lease rather than purchase a piece of property, the Office of Community Development must be furnished the terms of the proposed lease and an estimate of the property value prior to the execution of the lease agreement.

The Office of Community Development will examine the lease for at least three factors: duration, cost, and compliance with the Uniform Act. The lease should be for a duration that is, at a minimum, as long as the anticipated life of the project improvements. The cost of the lease must be reasonable and will be compared to the cost of an outright purchase. If the duration of the lease is less than 15 years, this office must determine that the duration was not established for the intentional purpose of avoiding the requirements of the Uniform Act.

HUD WEBSITE

HUD provides a Real Estate Acquisition and Relocation website at ***http://www.hud.gov/offices/cpd/library/relocation/index.cfm***. This site provides access to HUD Handbook 1378, Tenant Assistance Relocation and Real Property Acquisition, and the HUD brochure, When a Public Agency Acquires Your Property.

ACQUISITION PROCEDURES UNDER THE UNIFORM ACT

Steps For Meeting LCDBG and Uniform Act Acquisition Requirements

Certain steps regarding acquisition of property are necessary to meet LCDBG and Uniform Act requirements. The steps for the purchase of property under the Uniform Act, and the order in which they should occur are as follows:

1. Determine ownership
2. Send the Preliminary Acquisition Notice
3. Determine if an appraisal and review appraisal will be required
4. Obtain a valuation of the property

5. Prepare the Statement of Just Compensation
6. Send the written offer to purchase
7. Conclude final negotiations
8. Prepare a sales contract and complete the sale
9. Provide a Statement of Settlement Costs
10. Recordation of Title

Notices, letters, and other documents regarding acquisition must be sent by certified or registered mail, return receipt requested, or hand delivered with receipt documented.

If the owner or occupant does not read or understand English, the local government must provide translations and assistance. Each notice must give the name and telephone number of a person who may be contacted for further information.

Determine Ownership

The local government is responsible for determining ownership of property which may be needed for an LCDBG project. A title search to determine ownership is often necessary.

Send the Preliminary Acquisition Notice

As soon as possible after the local government decides that it wants to acquire property, a Preliminary Acquisition Notice must be sent to the owner (**Exhibit E-1**, Sample: Preliminary Acquisition Notice/Brochure). One important element of the Preliminary Acquisition Notice is that it explains that it is not a notice to vacate and does not establish eligibility for relocation payments or assistance. The Preliminary Acquisition Notice must be accompanied by the brochure, "When a Public Agency Acquires Your Property" (**Exhibit E-1**), which is usually the local government's acquisition policy. If the local government chooses to adopt a different policy, it must at least be as stringent as the Uniform Act; it must be written and sent to the owner along with the Preliminary Acquisition Notice.

Determine if an Appraisal and Review Appraisal will be Required

Either of two conditions will require an appraisal: (1) the value of the property is estimated to be more than $10,000, (2) the owner of the property wants an appraisal. If an appraisal is required, a review appraisal will automatically be required, and the owner of the property must be invited to accompany the appraisers.

Obtain a Valuation of the Property

Regardless of whether an appraisal is required it will be necessary to obtain valuation of the property in order to prepare the Statement of Just Compensation as discussed in Step 5.

If an appraisal and review appraisal are required, the valuation will be based on the appraisals. However, the review appraisal, if higher in monetary valuation than the first appraisal, is the controlling document.

If an appraisal and review appraisal are not required, a knowledgeable person may provide a written opinion as to the value of the property. It should be signed and dated and made a part of acquisition records. It does not have to be notarized. A knowledgeable person may be a real estate broker, salesperson, banker, or some other type of locally recognized authority on the value of local property. The scope and cost of the service should be substantially lower than the cost of an appraisal and review appraisal.

The written valuation does not need to be complicated or detailed. The written opinion is not required to be based on a selection of chosen "comparables" as is often the case with a formal appraisal. The knowledgeable person should state the following in the written opinion: (1) His/her qualifications in one short paragraph, (2) Brief description (but not an official legal description) of the property and (3) Estimate of the value of the property.

Prepare the Statement of Just Compensation

After valuation of the property, the Sample Statement of the Basis for the Determination of Just Compensation (**Exhibit E-2**) must be prepared. The amount determined to be just compensation must be based on the fair market value as determined in the valuation. It must contain the following elements:

1. Legal description and location of the property
2. Description of the interest to be acquired (e.g., full ownership, servitude, etc.)
3. Inventory identifying the building, structures, fixtures, etc., which are considered to be a part of the real property
4. The amount of the offer
5. A statement to the effect that the amount offered is the full amount believed by the local government to be just compensation, is not less than the fair market of the property, disregards any increase or decrease in the fair market value attributable to project for which the property was acquired, and does not include any consideration or allowance for relocation costs
6. Definition of fair market value

7. Explanation of the method used to value the property
8. In the case of tenant-owned improvements, the amount determined to be just compensation for the improvement and the basis as set forth in Handbook 1378
9. In the case of owner retention of improvements, the amount determined to be just compensation for these improvements and the basis as set forth in Handbook 1378
10. Any purchase option agreement should be attached
11. If only a part of the parcel is to be acquired, a statement apportioning the just compensation between the actual piece to be acquired and an amount representing damages and benefits to the remaining portion.

Send the Written Offer to Purchase

Send the owner a Written Offer to Purchase (**Exhibit E-3**), along with the written Statement of the Basis of the Determination of Just Compensation. In addition to the amount of just compensation, the offer must specify the date on which negotiation for the sale of the property will begin. This date must be the same date as the written offer. As with all notices, it should be sent certified or registered mail, return receipt requested.

If the property is tenant or owner-occupied, a written Notice of Displacement must be issued within 30 days of the date specified for the initiation of negotiation. For more details on Relocation Procedures and Anti-Displacement under Section 104(d) of the Act, refer to the information on Relocation and Anti-Displacement in This Section of this handbook or HUD Handbook 1378.

Conclude Final Negotiations

The sale is then negotiated. The owner may accept the fair market value and the local government can enter into an agreement. The owner must be provided an opportunity to discuss the offer and propose a higher value and document that higher value. Any amount which exceeds fair market value must be examined and approved by the Office of Community Development before signing the contract of sale if acquisition is to be paid with LCDBG funds. Approval or disapproval by this office is to be evidenced either by e-mail communication or faxed copy of the documentation dated and initialed by the acquisition specialist of the LCDBG staff. The use of LCDBG funds which are in excess of fair market value and are not approved by the Office of Community Development prior to disbursement will be disallowed. The local government may consider an offer exceeding fair market value, obtain a new valuation, initiate condemnation proceedings, or decide not to acquire the property. Documentation of negotiation proceedings should be placed in the project acquisition file.

Prepare a Sales Contract and Complete the Sale

Following successful negotiations, an act of sale must be prepared and executed and transfer of documents secured. The local government must also reimburse the owner to the extent deemed fair and reasonable for incidental costs associated with transfer of title (i.e., recording fees, transfer taxes, penalty cost or other charges for prepayment of any pre-existing recorded mortgages, etc.).

Provide a Statement of Settlement Costs

The local government must give the owner a Statement of Settlement Costs (**Exhibit E-4**) which identifies all settlement costs regardless of whether they are paid at, before, or after closing, and must clearly separate charges paid by the owner. If a title or escrow company is used, their standard form is acceptable. The Statement of Settlement Costs must be dated and certified as true and correct by the closing attorney or other person handling the transaction.

The local government must also be able to prove the payment of the purchase price by retaining a copy of the canceled check and the Act of Sale.

Recordation of Title

Once the acquisition process has been completed, and all settlement costs have been finalized, the title (which is now owned by the local government) must be filed and recorded at the parish courthouse so that proof of ownership is officially on record.

DECIDING NOT TO ACQUIRE

If the local government decides not to buy or expropriate a property at any time after the Preliminary Acquisition Notice has been sent to the property owner, written notification must be sent to the owner and any tenants occupying the property that the local government does not intend to acquire the property and that any person moving from the property thereafter will not be eligible for relocation payment and assistance. This notice must be sent within 10 days of the decision not to acquire (**Exhibit E-5**, Sample Notice of Intent Not to Acquire Property).

DONATIONS

If a property is to be fully donated, the local government should inform the owner of his rights under the Uniform Act and obtain a signed waiver. A sample waiver form is included as **Exhibit E-6** (Property and/or Servitude Acquisition Waiver). The owner must be given a copy of the HUD brochure, "When a Public Agency Acquires Your Property". If property is to be partially donated, the local government must follow the procedures of the Uniform Act as detailed in the steps herein and the property owner must sign a waiver of his/her rights for the donated

portion of the property. If donations are being made by elderly, very poor, functionally illiterate or non-English speaking persons, the local government should carefully document the efforts made to insure the owner understands their rights in order to demonstrate the owner is not persuaded or coerced into donating their property.

APPRAISALS UNDER THE UNIFORM ACT

Selecting Appraisers

The local government must select an independent appraiser. The appraiser should have no interest in the property or be related to, or in business with, anyone having any interest in the property to be acquired. The appraiser should be qualified, reputable and professional. Generally, only people who obtain at least 50 percent of their income from performing appraisals and who belong to a professional association that has a code of ethics should be considered. Appraisers who have had experience performing the types of appraisals needed should be sought after. An appraiser who usually establishes values for vacant, unimproved land may not be appropriate for establishing accurate values of houses. State-certified or licensed real estate appraisers eligible to perform appraisals for federally related transactions are listed on the Internet. The National Registry of State-Certified or Licensed Appraisers' Website is: ***https://www.asc.gov/Home.aspx***.

The local government must follow procurement procedures described in *Section A, Program Administration* and employ only qualified appraisers. A minimum of one appraisal is required; however, if the project is potentially controversial (as with an unwilling seller or a conflict of interest involving a public official) or where property values exceed $100,000, it is recommended that two independent appraisals be conducted. A review appraisal must be prepared for each appraisal conducted.

The Contract for Appraisal Services

The local government must execute a professional services contract with the independent appraiser. **Exhibit E-7**, Agreement for Appraisal Services (Acquisition), is a sample appraisal contract that has the required elements for use in the LCDBG program. Other contract formats may be used if they contain the elements found in **Exhibit E-7**. The contract must require the appraiser to invite the property owner to accompany the appraiser during the property inspection and not to consider race, color, religion or the ethnic characteristics of a neighborhood in estimating the value of residential real property. Compensation for an appraisal shall not be based on the amount of the valuation.

Exhibit E-8, Uniform Appraisal Standards for Federal Land Acquisitions, sets forth standard requirements for appraisals involving federally funded acquisitions.

Property Valued at $250,000 or More

A contract (fee) appraiser making a detailed appraisal on property valued at $250,000 or more must be certified and licensed in accordance with State law implementing Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), P.L. 101-73 and must be currently active on the Louisiana State Certified Appraisers General Appraisal list. The review appraiser must also be on the State's General Appraisal list.

Property Valued at Less Than $250,000

For property valued below $250,000, the local government may use a General Appraiser or a Residential Appraiser for the appraisal and review appraisal.

Owner Invitation

Before the first appraisal is undertaken, the local government or the appraiser on behalf of the local government must formally invite the property owner to accompany the appraiser during inspection of the property (**Exhibit E-9**, Sample Invitation to Accompany an Appraiser). This notice must be in writing and a copy placed in the property acquisition file along with evidence of receipt by the owner. The requirement to invite the property owner to accompany the appraiser is optional for the review appraisal.

Servitude Appraisal Forms

Exhibit E-10 (Short Appraisal Form for Servitude Takings) is an example of a short form that can be accepted for an appraisal establishing the value of servitudes. This form summarizes complete documentation which the appraiser must have on file.

The Review Appraisal

Once the appraiser has prepared and submitted the appraisal a review appraisal must be obtained. The review must be conducted by a qualified staff appraiser or an independent fee appraiser. The review appraiser is required to visit the property. The review must be written, signed and dated. It should assess the adequacy of the original appraiser's supporting data, the appraisal procedures used, the soundness of the appraiser's opinion of fair market value, and the reviewer's recommendation of the fair market value of the property. **Exhibit E-11,** the Review Appraisal Report, contains the required elements needed in a review appraisal. If the review appraiser disagrees with the fair market value of the original appraisal, the locality can request that the original appraiser modify and document any changes in the original report. When differences in the first appraisal and the review appraisal are not resolved by the modification of the first appraisal, the review appraisal is authoritative. The local government also has the option of obtaining another appraisal and review appraisal.

ACQUIRING PROPERTY WITHOUT AN APPRAISAL

(42 USC 4651 (2); 49 CFR 24.102 (c) (2)): If the local government can determine that the valuation of a parcel of land or servitude is uncomplicated and that fair market value of the property does not exceed $10,000, and if the owner does not desire an appraisal, then an offer can be made to the owner(s) of the property without a formal appraisal but a written valuation of the property by a knowledgeable person will be required. If an appraisal is not required then a review appraisal will not be required.

An option to increase the $10,000 valuation amount to $25,000 may be requested in writing from the Office of Community Development.

EXPROPRIATION

Expropriation Proceedings

If the local government cannot negotiate the sale, expropriation proceedings may be instituted. Expropriation is not necessarily cheaper than negotiated sales. Courts may be very generous and expropriation can be substantially more expensive than negotiation. The local government is required to pay the amount established by the court.

Initiation of Expropriation Proceedings

Expropriation is a legal action and must be carried out by the local government's attorney. The local governing body should authorize the proceedings by resolution. Copies of surveys and maps relating to the subject property in the parish are recorded. Expropriation proceedings can then be initiated in the district court of the parish in which the property is located. The court will establish the compensation to be paid for the property. The judgment of the court will vest full ownership title to the property expropriated in the local government. When title is vested, the local government may enter upon the property taken and takeover and dispose of existing improvements. The local government will deposit the amount determined to be just compensation in escrow with the court.

Quick Take

The 2003 Louisiana Legislature authorized the expropriation of property by "quick-take". Contact the Office of Community Development for instructions, forms and approval prior to undertaking this action.

ACQUISITION NOT SUBJECT TO THE UNIFORM ACT

Types of Acquisition that are Not Subject to the Uniform Act

Five types of acquisition are not subject to the requirements of the Uniform Act; however, they are still subject to Louisiana law and specific LCDBG requirements. These five types are:

1. Acquisition from another public agency
2. Temporary construction servitudes/easements
3. Short term leases
4. Voluntary acquisition
5. Acquisition of streets under LRS 48:491

Acquisition from Another Public Agency

When a local government acquires property from another public agency which also has the power of Eminent Domain, such acquisition is not subject to the Uniform Act.

- Example: A municipality acquires a water well site from a parish for an LCDBG funded project. This acquisition is not subject to the Uniform Act.

Temporary Construction Servitudes/Easements

A construction easement should be obtained for any temporary construction to be undertaken on private property, and is not subject to the Uniform Act (**Exhibit C-6**).

- Example: A local government is constructing a new sewer system with LCDBG funds that will serve 100 homes. It is determined that these homes qualify for service line connections under the LCDBG program. The local government must obtain a temporary construction easement from each homeowner before beginning work on each respective parcel of property. Acquisition of the 100 temporary construction servitudes would not be subject to the Uniform Act.

Short Term Leases

Leases which are for a duration of less than 15 years and are not automatically renewable are considered short term leases not subject to the Uniform Act.

- Example: A sewer lift station must be installed on an emergency basis due to an unexpected chain of events. The lift station is needed for only five more years at which time a new force main system will be installed which will render the lift station obsolete. The local government chooses to obtain a ten year lease, not automatically renewable,

from an appropriate property owner. Acquisition of the ten year lease would not be subject to the Uniform Act.

Voluntary Acquisition

Voluntary acquisition occurs when the local government acquires real property at fair market value from an owner who has submitted a proposal to the community for purchase of their property in response to a public advertisement. The local government may undertake a voluntary acquisition when a site needed for an LCDBG project can be satisfied by more than one property. Property owners can then voluntarily, in response to the advertisement, notify the local government of the availability of their property and enter into negotiations for the sale of the property. Voluntary acquisition is not subject to the Uniform Act.

Voluntary Acquisition Property Valuation Valuation of parcels of property must be established and may be done by the appraisal process or by a knowledgeable person. If the appraisal process is used a review appraisal is not mandatory because voluntary acquisition is not subject to the Uniform Act. If a knowledgeable person does a valuation of the property it must be in writing. The valuation does not need to be complicated or detailed. The written opinion is not required to be based on a selection of chosen "comparables" as is often the case with a formal appraisal. The knowledgeable person should state the following in the written opinion: (1) His/her qualifications in one short paragraph (2) Brief description (but not an official legal description) of the location of the property and (3) Estimate of the value of the property.

Voluntary Acquisition Example

- Example: A parcel is needed for an LCDBG funded fire station. The fire station could be placed on many different parcels located in the municipality. The local government adopts a Voluntary Acquisition Policy. The local government advertises in the local newspaper for a parcel of property for the fire station. Acquisition of the parcel for the fire station is not subject to the Uniform Act.

Voluntary Acquisition Policy The local government must have or prepare a formal, written policy that authorizes voluntary acquisition. **The Voluntary Acquisition Policy in Exhibit E-12 must be used**. The public invitation or solicitation should include a description of what the local government wants to buy and all other conditions of which a seller should be aware, as stated in **Exhibit E-12**. The solicitation must also indicate that if a mutually satisfactory agreement cannot be reached, the local government will not condemn the property for the same purpose.

Caution Voluntary acquisition is a useful technique in certain situations. It is not a way to circumvent the Uniform Act. The OCD staff can provide advice, early in the process, which can

assist in structuring the local government's policy and public solicitations to avoid potential problems.

Ownership of Streets under LRS 48:491

Ownership of streets under LRS 48:491 is not subject to the Uniform Act. LRS 48:491 provides ownership status to local governments that provide evidence of local government maintenance of respective streets for a period of three years. In order to document street ownership on an LCDBG project, the three year period should have been completed by the date the LCDBG application was submitted to the Office of Community Development.

PROCEDURES REQUIRED FOR ACQUISITION NOT SUBJECT TO THE UNIFORM ACT

Requirements for acquisition of property which are not subject to the Uniform Act generally include the following steps:

1. determination of ownership
2. valuation of the property
3. offer and acceptance
4. act of sale or transfer
5. a statement of settlement costs
6. recordation
7. in general, any documentation of acquisition activity from start to finish and
8. proof of at least one public advertisement, if property is obtained via voluntary acquisition.

ACQUISITION RECORD KEEPING

List of Parcels

For each project, the grantee's files shall include a list identifying all parcels to be acquired for the project. Such a list may be maintained in a computer generated format that also indicates, for project management purposes, progress made in carrying out the acquisition program.

Acquisition Case File

Acquisition notices, letters and other documents which are mailed are required to be sent by registered or certified mail, return receipt requested. If hand delivered the delivery should be evidenced by signature and date. An Acquisition Composite List (**Exhibit E-13**) must be completed on LCDBG projects having any acquisition. A Real Property Acquisition Checklist (**Exhibit E-14**) must be completed for each parcel acquired.

For each parcel acquired the grantee files shall include:

1. Identification of property and property owner(s)
2. Determination of ownership
3. If applicable, evidence that owner received a Preliminary Acquisition Notice accompanied by the notice entitled “When a Public Agency Acquires Your Property”
4. A copy of valuation for each parcel obtained by purchase whether by appraisal or opinion of a knowledgeable person
5. If applicable, a Statement of the Basis For the Determination of Just Compensation
6. If applicable, a copy of the written purchase offer and documentation of the date of delivery
7. If applicable, as in the case of a donation, a Property and/or Servitude Acquisition Waiver
8. Copy of a Contract of Sale or Act of Donation
9. Copy of a Statement of Settlement Costs and evidence (via a copy of a cancelled check) that the owner received net proceeds (if applicable) due from sale
10. Copy of recordation at the appropriate parish courthouse
11. If applicable, a copy of an appeal or complaint filed and Agency response

ANTI-DISPLACEMENT

INTRODUCTION

On August 17, 1988, HUD published an interim rule (53FR31234) setting forth policies and requirements governing displacement, relocation, real property acquisition, and replacement of low/moderate income housing under the CDBG programs. One of the major purposes of the rule was to implement revisions to Section 104 (d) of the Housing and Community Development Act of 1974 (the "Act") made by Section 509 of the Housing and Community Development Act of 1987, approved February 5, 1988. The revised section provides that grants under Sections 106 and 119 of the Act may be made only if the grantee certifies that it has adopted and is complying by following an Anti-Displacement and Residential Relocation Plan.

RESIDENTIAL ANTI-DISPLACEMENT AND RELOCATION ASSISTANCE PLAN

Every grantee is required to adopt a Residential Anti-Displacement and Relocation Plan before any funds may be dispersed to that grantee. This plan must be adopted by resolution through the governing body and must designate in the plan a contact person for Anti-Displacement Activities. (See **Exhibit E-15**, Residential Anti-Displacement and Relocation Assistance Plan Under Section 104(d) of the Housing and Community Development Act of 1974, as amended)

The plan contains two components:

1. A requirement to replace all occupied and vacant occupiable low/moderate-income dwelling units that are demolished or converted to a use other than low/moderate-income housing in connection with an activity assisted under the HCD Act (see CFR 570.496a(c)(1) and 24 CFR 570.606(c)(1); and
2. A requirement to provide certain relocation assistance to any lower income persons displaced as a direct result of (1) the demolition of any dwelling unit or (2) the conversion of a low/moderate-income dwelling unit to a use other than a low/moderate-income dwelling in connection with an assisted activity.

The grantee must certify (**Exhibit E-16**) that it is following the Residential Anti-Displacement and Relocation Assistance Plan.

DISPLACED PERSONS

The term "displaced person" means any lower income family or individual that moves from real property, or moves his/her personal property from real property, permanently and involuntarily, as a direct result of the conversion of an occupied or vacant occupiable low/moderate-income dwelling unit or the demolition of any dwelling unit, in connection with an assisted activity.

Examples:

1. A person who moves permanently from the real property, after the person receives a notice from the Agency to move permanently, is considered a displaced person if the move occurs after the Agency initially submits a request for financial assistance that is later provided for the requested activity.
    a. Whenever the Agency is a private property owner, e.g., a private developer or nonprofit organization, the request for financial assistance is the initial application by the property owner (or person in control of the site) that is submitted to the grantee (includes State recipient).
    b. Whenever the Agency is the grantee (includes State recipient), the request for financial assistance is:
        i. For the State CDBG Program, the initial submission of an application to the State by the State recipient requesting assistance under 24 CFR Subpart G;
2. A person who moves permanently from the real property before notification is considered a displaced person if HUD or the grantee (includes State recipient) determines that the displacement resulted directly from the conversion of an occupied or vacant occupiable low/moderate-income dwelling unit to another use or the demolition of any unit in connection with the assisted activity.

3. Each tenant-occupant of a dwelling unit who will be temporarily displaced must be provided timely notice and reimbursed for any out-of-pocket expenses. Any such tenant who moves permanently from the real property will qualify as a displaced person if any one of the following three situations ((a), (b), or (c)) has occurred:

    a. The tenant moves permanently after the execution of the Agreement without prior written notice offering the tenant the opportunity to occupy a suitable decent, safe, and sanitary dwelling unit in the same building/complex following the completion of the project under reasonable terms and conditions. Reasonable terms and conditions include:

        i. No unreasonable change in the character or use of the property;

        ii. A monthly cost for rent and utilities that does not exceed the greater of:

            A. The tenant's monthly rent and estimated average monthly utility costs before the execution of such agreement; or

            B. The "Total Tenant Payment" for that person.

    b. The tenant was required to relocate temporarily for the project but

        i. the tenant was not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving expenses to and from the temporary unit and any increased housing costs, or

        ii. other conditions of the temporary relocation were not reasonable. (If the tenant returns to the building/ complex, he or she is not a displaced person, but this does not relieve the Agency of its obligation to reimburse the person for such out-of-pocket expenses); or

    c. The tenant is required to move to another unit in the same building/complex, but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move.

    d. Persons Not Considered a "Displaced Person." If a comparable dwelling unit is available to the displaced person at a monthly cost (rent plus estimated average monthly utility cost) that does not exceed the "total tenant payment per month or a Section 8 certificate or voucher is made available to that person."

    e. When In Doubt. The Agency should, at any time, ask the State or the HUD field office administering these relocation assistance requirements to determine whether a specific displacement is or would be covered by these rules.

RELOCATION ASSISTANCE UNDER SECTION 104(D)

The basic relocation assistance payments under Section 104(d) that an individual can receive are either at the Uniform Relocation Assistance (URA) levels or at greater levels under Section 104 (d).

Guidance on this subject is provided in the HUD Handbook 1378, available on HUD's website at **www.hud.gov/relocation**. The level of assistance under Section 104(d) should be reviewed closely before any individual is displaced under the LCDBG Program.

Prior to any demolition or displacement of any individuals covered by Section 104(d) you must contact the Office of Community Development for instructions on how to proceeds.

RELOCATION/DEMOLITION

INTRODUCTION

"Displacement" means the involuntary movement of persons (individuals, families, businesses, organizations, or farms) from their properties as a result of: (1) an activity assisted in whole or in part with CDBG funds; or (2) a non-CDBG assisted activity, where such activity is a prerequisite for an activity carried out with CDBG funds (e.g. acquisition of land with local funds for a neighborhood facility to be constructed with CDBG funds).

Title I of the Housing and Community Development Act of 1974 as amended through 1983 requires States to have their local government recipients certify that they will minimize displacement of persons as a result of activities assisted with Title I funds.

DEVELOPING A LOCAL RELOCATION/DEMOLITION POLICY

Section 570.606 of the federal regulations governing the LCDBG program states that where one or more CDBG activities could result in displacement, as defined in 570.606, the grantee shall develop, adopt, and make public a statement of local policy indicating the steps that will be taken, consistent with other goals and objectives of the CDBG program, to minimize displacement of persons from their homes and neighborhoods and to mitigate the adverse effects of any such displacement on low and moderate income persons. **Exhibit E-17** contains a Recommended Local Relocation Policy/Grievance Procedure.

When the CDBG funded project or activity results in the acquisition of real property or the displacement of persons as a result of CDBG funded acquisition activities, the Uniform Act and its implementing regulations set forth in 24 CFR 42 shall apply. If there is no real property acquisition involved in the displacement of persons resulting from CDBG funded activities the displacement is not subject to the Uniform Act. Such payments and assistance may be higher than the levels established in the Uniform Act, however, the recipient can make such payments and assistance only upon a written determination that the payments are appropriate. The recipient must adopt a written policy available to the public setting forth the relocation

payments and assistance it elects to provide and providing for equal payments and assistance within each class of displacee. The policy must insure fair, consistent, and equitable treatment of persons displaced as a result of CDBG funded activities regardless of race, color, religion, national origin, sex, age, handicap, status or source of income.

The State requires, at a minimum, that the local relocation policy provide for:

1. The payment of reasonable moving expenses;
2. The provision of advisory services as needed to help the displacee in moving, including:
    a. Replacement site requirements
    b. Need for outside specialists required for move
    c. Early identification and resolution of realty/personal property issues
    d. Estimated time needed to vacate
    e. Anticipated difficulty in locating replacement site
    f. Identification of advanced relocation payments required for the move
3. For residential tenants and owners, financial and advisory assistance sufficient to enable the persons displaced to obtain decent, safe, and sanitary housing at an affordable rental cost. In providing advisory assistance to displaced persons to obtain such housing, recipients shall advise them of their rights under the Federal Fair Housing Law (Title VIII), and of replacement housing opportunities in such manner that, wherever feasible, the displacees have a choice between relocating within their own neighborhoods consistent with the recipient's responsibility to affirmatively further fair housing;
4. Under the local policy, rental cost shall be considered to be affordable, if the rent plus the cost of utilities when not included in the rental rate, does not exceed the greater of the rent plus utilities paid by the tenant prior to the displacement activity or does not exceed 30 percent of the gross monthly income of all adult members of the tenant's household, including supplemental income from other public agencies, whichever is higher. Purchase cost shall be considered affordable if the monthly housing cost, including the cost of all mortgage payments, real property taxes, and reasonable utility charges, does not exceed the greater of the monthly housing cost paid by the displacee prior to the displacement activity or does not exceed 30 percent of the displacee's household, including supplemental income from other public agencies, whichever is higher;
5. The basis for determining the amount of relocation payments;

6. A relocation plan to provide decent, safe, and sanitary housing at affordable costs;
7. Transportation to inspect replacement housing;
8. The grantee cannot propose or request a displaced person to waive his/her rights or entitlements to relocation assistance and benefits provided by the Uniform Act and this regulation.

Elements that must be included in the local policy are:

1. The conditions under which displacement may occur.
    a. A statement that identifies the community development program that will cause displacement to occur and the area in which the displacement will take place; and basis for displacement (both temporary and permanent),e.g. acquisition, code enforcement, specifying codes involved, relocation/demolition, or rehabilitation.
2. Eligibility requirements for benefits and assistance.
    a. Conditions for eligibility;
    b. Conditions for providing temporary relocation payments;
    c. Occupancy requirements for benefits and assistance (including types of occupancy, e.g. owner/renter, and term of occupancy of at least 180 days for homeowner occupants and 90-days for tenants.
3. Benefits and assistance.
    a. Types and amounts of payments for owner/renters;
    b. Conditions of each type of payment;
    c. Moving expenses, including the amount and conditions under which such expenses will be paid or not paid;
    d. Under which circumstances benefits and assistance will be denied, e.g. early move and relocation into substandard housing;
    e. Availability of other social services, if applicable.
4. Replacement housing.
    a. Procedures for selecting safe, sanitary, and decent, including inspections, approval process, use of realtors and Civil Rights statement; counseling and advisory service to be provided by the recipient to the displacee in locating replacement housing;

b. Under the local policy, replacement housing need not be functionally equivalent to and substantially the same as the housing from which the displacee is required to move. However, the replacement housing must be safe, sanitary and decent and meet local housing and occupancy codes. See HUD Handbook 1378 for the definition of safe, decent, and sanitary.

5. Claims for payments and assistance.
    a. Explanation of how, when, and where claims are to be filed;
    b. Claim forms with an explanation of where assistance in completing claims can be obtained.
6. Project location maps.
    a. A copy of detailed maps showing project location in the jurisdiction and specific location of each activity (houses, streets, etc.).
7. Replacement housing inventory.
    a. The recipient should maintain a list of all know available housing and realtors who manage and typically list low-cost housing.
8. Guidelines for displacees.
    a. Explanation of displacee rights, responsibilities, and privileges;
    b. Outline of specific steps they should follow in order to file an appeal;
    c. Explanation of how the appeal will be reviewed;
    d. Time limits for processing and reviewing appeals;
    e. Statement of the displacee's rights to appeal to the State if they are not satisfied with the local agency's decision. This should include identification of the address and telephone number of the Department of Community Affairs;
    f. Statement of the displacee's rights to appeal to the courts if not satisfied with the local agency's decision;
    g. Statement of displacee's rights under the Civil Rights Act (Title VI and Title VII).

When developing the local policy, the recipients should use the recommended Local Relocation Policy included in this manual. If the locality decides to develop a relocation policy that is substantially different from the recommended local policy, State approval of the policy should be obtained before adoption.

UNDERSTANDING BASIC RELOCATION REQUIREMENTS

Most relocation in connection with the CDBG project may be subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. If the project entails relocation, refer to ***www.hud.gov*** and download Handbook 1378, Tenant Assistance Relocation and Real Property Acquisition, and copies of the HUD brochures, "Relocation Assistance to Tenants Displaced From Their Homes" and "Relocation Assistance to Displaced Homeowners "(**Exhibit E-18**). These brochures are for residential relocation only. There are different requirements for the relocation of farms, commercial and industrial uses. If the program involves non-residential relocation, OCD will provide you additional materials and guidance since non-residential relocation is a more complicated process.

Persons displaced may be eligible for two types of relocation payments: moving costs and replacement housing payments. For a summary of relocation eligibility and benefit guidelines, see **Exhibit E-19** (Relocation Eligibility and Benefits Chart).

MOVING COSTS

All displaced persons are eligible for moving costs if the move occurs after initiation of acquisition negotiations or after acquisition. The displaced person can choose to receive either actual moving and related expenses, supported by invoices and other documentation or receive a fixed payment. Actual moving and related expenses include:

- Transportation up to 50 miles for moving him/herself, his/her family, and personal property;
- Packing and unpacking personal property;
- Disconnecting, dismantling, reassembling and reinstalling relocated household appliances and other personal property;
- Storage;
- Replacement value of property lost, stolen or damaged during the move;
- Insurance in connection with move and storage;
- Other costs related to move if approved by recipient as reasonable.

Alternatively, an eligible displaced person may also elect to take a fixed payment for moving expenses that is based on the Federal Highway Administration allowances.

REPLACEMENT HOUSING PAYMENTS

These payments are available to 180-day owner-occupants and 90-day owner-occupants and tenants. The 180-day owner-occupants must meet the following criteria:

1. Owned and occupied the acquired dwellings for 180-days prior to initiation of acquisition negotiations;
2. Purchases and occupied decent, safe and sanitary units within one year after the date of receipt of final acquisition payment or the date of the move from the acquired unit, whichever is later;
3. Filed a claim within 18 months of the time the move is completed.

An 180-day owner-occupant who relocates to an ownership unit is eligible for a maximum replacement housing payment of up to $22,500, unless otherwise stipulated in the grantee's locally adopted Relocation Policy. The payment represents the combined costs of:

- The cost difference between the acquisition price of the acquired unit and the purchase price of comparable replacement housing or the price of the actual unit purchased, whichever is less;
- Increased interest costs;
- Eligible incidental settlement costs.

However, section 205(c)(3) of the URA precludes displacement from a dwelling unless a comparable replacement dwelling is available. Therefore, if the payment exceeds $22,500, the additional assistance will be provided, according to the grantee's locally adopted Relocation Policy.

The 90-day tenants and owner-occupants must meet the following criteria:

1. Occupied the acquired units 90-days prior to initiation of acquisition negotiations;
2. Relocated into decent, safe and sanitary unit within one year after –
    a. In the case of a tenant, the date he/she moves from the acquired unit;
    b. In the case of an owner-occupant, the date of receipt of final acquisition payment or the date of the move filed a claim within 18 months of the time the move is completed.

A tenant or owner-occupant that relocates into a rental unit is eligible for a maximum $5,250 Rental Assistance Payment. This payment represents 42 times the monthly difference between his/her housing cost at the original dwelling and the monthly housing cost of comparable replacement housing, or the actual unit rented, whichever is less. This payment must be made in one payment unless the displaced person specifically requests that the payment be made in installments.

A tenant who relocates to an ownership unit is eligible for a maximum $5,250 Down Payment Assistance Payment. This payment may be increased according to eligible circumstances described in HUD Handbook 1378.

The Down payment Assistance Payment must be applied to the purchase price of the replacement dwelling and related incidental expenses. The payment is determined on the basis of the amount required to obtain conventional financing for the decent, safe and sanitary dwelling actually purchased and occupied.

Certain benefits may be prorated for unrelated individuals living together. For guidance, check Handbook 1378.

The benefits under the Uniform Act are rights to which the individual is entitled and all displacees must receive the maximum amount of benefit to which they are entitled regardless of income level.

DEFINING RELOCATION PROCEDURES

The basic benefits described in *Acquisition/Anti-Displacement/Relocation/Demolition: Developing Local Relocation/Demolition Policy* must be provided by the local program. The grantee may choose to provide payments higher than these by formal action of the governing body. If higher benefits are adopted, the local relocation policy must define those higher benefits.

The grantee must determine how the Uniform Act will be implemented. Procedures should be developed covering responsibility for the following: notification of eligibility and available assistance, processing claims, making payments, handling grievances, and providing documentation.

GRIEVANCE PROCEDURE

The grantee's Grievance Procedure must outline the appeals process, including the grounds for filing an appeal, which appeals should be filed in your locality, appropriate time limits, and the right of appeal to the State. Requirements concerning appeals are contained in HUD Handbook 1378. For the LCDBG program, substitute the word "State" each time the word "HUD" is used. Also, the Commissioner of Administration will function in place of the HUD Area Director.

PROVIDING INFORMATION AND COUNSELING

It is the grantee's responsibility to inform occupants of their rights, send them the required notices and assist them to find replacement housing. Therefore, identify the people to be relocated as soon as possible. Notice(s) of Eligibility for Relocation Assistance (**Exhibit E-20**) must be sent to all owner-occupants or tenants in occupancy within 30 days of the written offer

to purchase the property if the occupant is going to be relocated. This Notice must be accompanied by a copy of the program's relocation procedures or the appropriate brochure, and a copy of the Grievance Procedure.

All notices must be written in plain, understandable language. THEY MUST BE EITHER HAND DELIVERED WITH RECEIPT DOCUMENTED, OR SENT CERTIFIED MAIL, RETURN RECEIPT REQUESTED. The Notices must also contain the name and phone number of a person who may be contacted for answers to questions or other assistance. The Grievance Procedure should be mailed or hand delivered with the Notice of Displacement and receipt documented. If there is any reason to believe the recipient may have difficulty understanding the printed materials, hand delivery is preferable. Receipt must be documented.

If relocatees do not speak or read English, notices must be available in appropriate translations. Some cities have already translated these notices in various languages and the OCD can assist in obtaining copies. If another city's translation is used, make sure that its notices/procedures are the same as the grantee's.

As soon as these initial notices are sent out, interview each recipient, in person, to determine his/her need for assistance. A sample interview format, the first section of a Sample Household Case Record, is provided to show the type of information that is required (**Exhibit E-21**). This includes data identifying the parcel and dwelling; number of individuals and family units; family composition (including age, sex, location of employment, source and amount of income); description of current dwelling (number and type of rooms); length of time of occupancy; amount of housing payment or rent; replacement housing preferences regarding type of tenure, location and willingness to increase monthly payments; and other important characteristics (health/disability problems, special needs such as furniture, public assistance, etc.).

The staff conducting these surveys and having personal contact with the individuals to be relocated should be very patient people capable of understanding the distress of displacement and of dealing with the relocatee in a non-threatening, helpful manner.

During the family survey, the relocation process should also be reviewed with the relocatee. Special attention must be give to: (1) the assistance to be provided by the grantee; (2) the benefits available; (3) the fact that replacement housing payments cannot be made unless the household relocates into a standard unit; (4) the importance of keeping in touch with the grantee; and (5) the need to notify the grantee <u>before</u> they move. All significant contacts with displacees must be logged into Section 5 of **Exhibit E-21**, Household Case Record.

IDENTIFYING REPLACEMENT HOUSING NEEDS

REPLACEMENT HOUSING CANNOT BE PROVIDED UNLESS THE LOCAL GOVERNMENT IS ACTING UNDER A CODE ENFORCEMENT POLICY OR PLAN IN CONJUNCTION WITH STATE LAW AND LOCAL ORDINANCE.

A primary purpose of the household survey is to provide the information needed to determine replacement-housing needs. All replacement housing must be decent, safe and sanitary, and must meet local housing or occupancy codes.

The only times that local housing or occupancy codes do not define "decent, safe and sanitary" are when such codes do not exist or when the replacement unit is Section 8 assisted. In the latter instance, Section 8 Existing Housing Quality Standards define "decent, safe and sanitary". The unit must also be free of lead-based paint hazards and or architectural barriers, if serving a physically disabled person. A Sample Inspection Report Format is shown as **Exhibit E-22**.

COMPARABILITY/FUNCTIONALLY SIMILAR

In addition to being decent, safe and sanitary, the replacement unit must also be functionally similar to the acquired unit with respect to the number of rooms and living space. The term "functionally similar“ means that the comparable replacement unit must perform the same function, provide the same utility and be capable of contributing to the same lifestyle as the acquired dwelling. While it need not contain every feature of the acquired dwelling, the principal features must be present.

This applies unless additional or larger rooms are needed to meet decent, safe and sanitary criteria (especially overcrowding). This means that a family of six living in a two-bedroom unit may require a four-bedroom replacement unit to meet local codes or Section 8 standards, if applicable. On the other hand, a person currently living alone in a three-bedroom unit is entitled to a three-bedroom unit. They may choose a smaller unit, but must be provided with three (3) reasonable choices of comparable replacement units before issuing a 90-day notice to vacate.

AFFORDABILITY

Further, the referral units must be affordable; that is, the monthly housing costs shall not exceed 30 percent of the household's income with the replacement housing costs. Since the acquisition price for a substandard house may be low, the purchase price coupled with even the maximum replacement housing payment ($22,500) may be insufficient to purchase (free and clear) a comparable unit with monthly mortgage, taxes and utility costs that do not exceed 30 percent of monthly income or established fair market rents.

If comparable, affordable replacement housing using these standards cannot be identified, the project may be jeopardized. Other means of assisting displacees is shown under the "Last Resort Replacement Housing" provisions of the regulations.

Such alternatives include rehabilitation of, and/or additions to, an existing replacement dwelling; a replacement housing payment in excess of normal limits; construction of new units; relocation of a replacement dwelling; and removal of barriers to the physically disabled in a replacement dwelling.

LOCATING REPLACEMENT HOUSING

Having identified the replacement housing needs, the grantee must begin to inventory available housing resources. In doing this, be aware of affirmative action criteria that must be met when relocating low-income and minority persons. The regulations require that the community make comparable replacement housing available to low-income or minority relocatees in areas that do not have concentrations of either low-income or minority households if such opportunities are available. This means that if there are vacant, standard, affordable units available in middle/upper income areas or predominantly non-minority areas of the community, low-income or minority relocatees must be given at least one replacement housing choice in those areas before the grantee can give such relocatees a 90-day notice to vacate.

Furthermore, the grantee must make available to low-income and minority families counseling and related services, (e.g., transportation and escort services). Many cities have focused their search for replacement units in low-income or minority areas because those areas were where the less expensive housing was concentrated. Every community must broaden its search to include middle income and predominantly non-minority areas.

In inventorying available resources, contact landlords, realtors, and movers; read the classified ads; and tour neighborhoods looking for available property signs. Often affordable units are not advertised. These listings can be inspected' and, if found to be decent, safe and sanitary, placed on a referral list.

The process of finding comparable housing will involve continuous contact with displacees to solicit information, establish rapport, provide referrals to rehousing resources, and accompany displacees to inspect possible dwellings. Up-to-date information on the availability and prices of comparable sales and rental housing must be provided. All units must be inspected and certified as meeting local housing and occupancy codes before being placed on a referral list.

SELF-RELOCATIONS

Some relocatees will search for their own units and relocate themselves, which can be problematic. Occupants who relocate themselves risk not receiving the compensation to which

they are entitled because: (1) the occupants do not know they are entitled to money and fail to apply; (2) the locality is unable to trace them to their new quarters; (3) the new quarters are substandard (in which the relocatees still receive moving expenses); or (4) a pre-move inspection of their new quarters does not occur, or is ineffective.

If an individual locates or moves into a replacement unit that is not decent, safe and sanitary, the grantee must try to upgrade the unit to minimum code in order to entitle the relocatee to benefits. This can include providing any assistance for which the unit is eligible with CDBG funds or securing comparable assistance from other sources. In the event that the grantee cannot get the unit brought up to code, the relocatees must be informed that if they remain in or move to another substandard unit, they will not be eligible for replacement housing payments, but will be eligible for moving expenses. The grantee must also inform them that if they move into a standard dwelling within one year from the date they received payment for their acquired dwelling or from the date they moved from the acquired dwelling, whichever is later, and file a claim within 18 months, they will be eligible for a replacement housing payment. A sample notification letter is **Exhibit E-23** (Sample Letter to Relocate in a Substandard Unit).

HOUSING DISCRIMINATION IN RELOCATION

Private landlords are sometimes discriminatory in their renting practices. Individual displacees who have been discriminated against may not know how to take action on their own; and legal action is often too expensive to be a practical solution for them. The grantee must provide assistance in cases of housing discrimination and must assist with displacees' claims of discrimination. The local Fair Housing Ordinance should be reviewed for guidance.

If a displacee has been discriminated against, there are two (2) alternatives. Suit may be filed in a federal court, in which case he/she should either consult an attorney or the local Legal Aid Society for assistance. If the court finds in favor of the displacee, it can halt the sale of the house or the rental of the apartment to someone else, and award the displacee damages and court costs. Instead of taking his/her complaint directly to court, the second alternative is for the displacee to send the complaint to DOA/OCD within 180-days of the incident. Upon receipt of the complaint, the DOA/OCD will follow its complaint procedure and forward it to the Louisiana Department of Justice.

COMMON DEFICIENCIES

The following are common deficiencies that occur during the relocation process:

1. Failure to provide assistance in locating suitable housing.

2. Failure to provide replacement housing opportunities outside areas of low-income and/or minority concentration.
3. Failure to provide assistance in identifying and remedying instances of discrimination in sales and rentals of housing units.

COMPLETION OF RELOCATION

When the grantee has made choices of comparable replacement housing opportunities available to the relocatee, the Sample 90-DAY NOTICE TO VACATE/30-DAY NOTICE TO VACATE (**Exhibit E-24**) should be issued. This notice cannot be issued before the Notice of Displacement has been issued or before a reasonable choice of comparable replacement housing has been made available that meet the criteria described in **Exhibit E-20**. The notice must state the date by which the property must be vacated, and indicate that a second notice will be issued at least 30 days in advance of the date the property must be vacated. The date on which the property must be vacated cannot be less than 30 days after the grantee has obtained title to the property or legal right of possession, whichever comes earlier.

Prior to, and following, the 90-day notice, the grantee will continue to work with the relocatees -- inspecting units, certifying they meet code; assisting or preparing mortgage applications, sales agreements, or leases as appropriate; assisting or preparing claim forms which are available from OCD; processing and verifying claims; documenting claims and making payments. Every effort to expedite relocation should be made since claims may be filed up to 18 months following the completion of the move.

If there are unsettled relocation cases at the time of program close-out, show maximum payments for each potential claimant as unpaid costs on the Closeout Form.

Claim forms and their instructions for relocation payments are included in the Exhibits. They include: Claim for Moving and Related Expenses, **Exhibit E-25**; Claim for Replacement Housing Payment for 180-Day Homeowners, **Exhibit E-26**; and Claim for Rental Assistance or Down Payment Assistance, **Exhibit E-27**.

TIMELY PAYMENT

Relocation payments should be issued within 30 days following the submission of sufficient documentation to support the claim. The regulations further state that advance payments must be made where they would avoid or reduce a hardship. When advance payments are made, the recipient must sign a letter acknowledging receipt of relocation payments (**Exhibit E-28**, Sample Letter of Acknowledgement Services and Payments Rendered).

USE OF RELOCATION PAYMENTS

Payments for down payment assistance must be applied to the purchase price of a replacement dwelling and related incidental expenses. Payments for rental assistance to owners or renters need not be applied to housing costs. The rental assistance payment must be made in a single payment unless the recipient specifically requests otherwise.

DENYING A CLAIM

If a claim is to be denied because the replacement unit is not free of lead-based paint, notify the OCD 15 days in advance of the denial and indicate the efforts made to secure compliance with the lead-based paint poisoning prevention requirement. In *Acquisition/Anti-Displacement/Relocation/Demolition: Locating Replacement Housing*, the grantee's responsibilities if a person makes a claim for payment which must be denied because the unit is substandard was discussed. Inform the claimant why the claim is being denied, indicate the assistance available for bringing the current unit up to code, and the ongoing opportunity to qualify for assistance by moving to a standard unit.

Further, inform the claimant that the move to a standard unit must be completed within 12 months of the date of removal from the acquired dwelling or receipt of final payment (if owner-occupant), whichever is later; and that the claim must be submitted within 18 months of the completion of the move. **Exhibit E-23** is a sample letter containing this information.

If payments are not made, fully document efforts to provide payments, the reasons payments were not made, and signed waivers of payment if possible.

The regulations mandate that any claim for payment be submitted to the grantee within a period of 18 months after displacement. Fully document when the grantee initially notified the recipient of this requirement and all subsequent reminders.

WAIVER OF RELOCATION BENEFITS

A tenant's relocation benefits cannot be waived by the owner.

Relocation benefits are rarely waived, however, should a relocatee choose to waive relocation benefits, a Waiver of Relocation Assistance must be completed (**Exhibit E-29**) and documented in the file. Any case involving a waiver of relocation benefits will be carefully examined to insure no coercion was involved.

RELOCATION RECORD KEEPING

Exhibit E-30, Relocation Composite List, must be maintained by the grantee in its project files. Additionally, the grantee must maintain a separate case file on each displaced household for four years after final project closeout or after the relocation payments, whichever is later. The

Relocation File Checklist (**Exhibit E-31**) identifies all the information required for each displaced household file. A copy of **Exhibit E-31** must be attached to and maintained for each relocation file for tracking purposes and to facilitate state and local review.

CONFIDENTIALITY OF RECORDS.

Records maintained by the grantee/Agency to demonstrate compliance with the policies in this handbook are confidential. They shall not be made available as public information, unless required by applicable law. Only authorized staff of the grantee/Agency, the State or HUD shall have access to them. However, upon the written request of an affected person, the grantee/Agency shall give the person or his designated representative the opportunity to inspect and copy all pertinent records during normal business hours, except material which the grantee/Agency determines should not be disclosed to the person for reasons of confidentiality.

In addition, the following information at a minimum shall be maintained for at least four years after each owner of the property and each person displaced from the property have received the final payment to which they are entitled.

1. List of Occupants. For each project, the grantee's files shall include a list or lists identifying the name and address of:

    a. All persons occupying the real property at the beginning of the project. Generally, this is the date of the initial submission of the application for assistance by the property owner to the grantee or by the grantee to the State; however, if site control is not obtained until after submission of the application, the date of site control is usually considered the beginning of the project;

    b. All persons moving into the property on or after the date on which the project begins but before completion of the project; and

    c. All persons occupying the property upon completion of the project.

    The list(s) may be maintained in a suitable computer generated format that also indicates, for project management purposes, progress made in carrying out the program.

2. Tenants Not Displaced. Documentation on tenants not displaced shall include:

    a. Evidence that the tenant received timely written notice that the tenant would not be displaced by the project.

    b. For a tenant-occupant of a dwelling, evidence that the tenant received (a) a timely offer of an opportunity to lease and occupy a suitable, affordable, decent, safe and sanitary dwelling in the building/complex upon completion of the project under

reasonable terms and conditions, and (b) reimbursement of any out-of-pocket expenses incurred in connection with any temporary relocation or a move to another unit in the building/complex.

c. For each tenant that is not displaced but elects to relocate permanently, an indication of the reason for the move and any personal contact to explain available alternatives and that the tenant will not qualify for relocation payments as a displaced person. This information must be available for all tenants who occupied the property before project completion but did not occupy the property after project completion and did not receive relocation assistance as a displaced person.

d. Racial/ethnic/gender identification as required by program rule (implementing section 562 of the Housing and Community Development Act of 1987 and section 808(e)(6) of the Fair Housing Act).

e. A copy of any appeal or complaint filed and grantee/Agency response.

3. Displaced Persons: For persons displaced, there shall be separate case files that include:

a. Identification of the person's name, address, racial/ethnic group classification and date of initial occupancy. For residential tenant-occupants, include age, sex, and income of all members of the household and monthly rent and average monthly utility costs for the displacement dwelling. For homeowners, include grantee/Agency acquisition cost of unit. For nonresidential occupants, include type of enterprise.

b. Evidence that the person received early written notice of the possible displacement and a general description of the relocation payments and advisory services for which the person may be eligible, basic eligibility conditions and the procedures for obtaining payments.

c. Evidence that person received timely written notice of eligibility for relocation assistance and, for those displaced from a dwelling, the specific comparable replacement dwelling and the related cost to be used to establish the upper limit of the replacement housing payment.

d. Identification of relocation needs and preferences, dates of personal contacts and services provided.

e. Identification of referrals to replacement properties, date of referral, rent/utility costs or sale price (if dwelling), date of availability, and reason(s) person declined referral.

f. Copy of 90-day notice and vacate notice, if issued.

g. Identification (address) of actual replacement property, rent/utility costs or sale price (if dwelling) and date of relocation.

h. Copy of replacement dwelling inspection report showing condition of unit and date of inspection.

i. Copy of each approved claim form and related documentation, evidence that person received payment and, if applicable, Section 8 Certificate or Housing Voucher.

j. Copy of any appeal or complaint filed and grantee response.

For additional record-keeping requirements, refer to *Program Administration: Record Keeping and Reporting*.

F. ECONOMIC DEVELOPMENT

INTRODUCTION

This section presents the special requirements that apply to Economic Development (ED) projects as a part of the Louisiana Community Development Block Grant (LCDBG) Program. ED projects are varied and unique. A project may consist of a loan to a business to procure such items as land, commercial-industrial facilities, commercial-industrial equipment, and inventory, or to finance construction of on-site development. ED projects can also be grants to local governments to purchase land, buildings, et cetera or for public infrastructure improvements to assist a business.

ED projects are subject to the same federal provisions as housing and public facility projects. However, due to different types of activities and participants, certain provisions become more important or apply differently.

This section refers to other sections in the Handbook that apply to most ED projects and lists additional requirements, and discusses areas that are particular to ED projects.

The text discusses the requirements of each task, references required forms and cites examples of work contained in the supporting materials.

PROGRAM ADMINISTRATION

Items previously discussed in the Program Administration Section (Section A) of this Handbook are also applicable to administering an ED program. Following preliminary approval of a project, some application revisions may be requested such as a new performance schedule or a revised cost summary form. The same documents which must be submitted to this office in order to obtain a release of funds for other CDBG programs, i.e. environmental review record, anti-displacement resolution, community development plan, signature cards, depositary cards, et cetera, must also be submitted for ED programs. In addition, other documents which pertain only to ED programs will be required to obtain a release of funds. These documents and other requirements for the ED program are discussed in this Section.

CONTRACTS

After the local governing body receives an authorization to incur cost for planning and administration, the State will send the local governing body a contract (State contract) which details the responsibilities of the assisted business ("developer") and the local governing body. The local governing body will develop a Written Agreement between it and the developer incorporating the provisions of the State contract (24 CFR 570.506 (b)(5)). The Written Agreement will either be in the form of a Two Party Agreement for infrastructure grant projects

or a Three Party Agreement for projects that provide direct financial assistance in the form of a loan. **Exhibit F-1** contains a sample Written Agreement. The shaded portions of the sample written agreement are pertinent to a loan and must be used only for the Three Party Agreement. The local governing body can develop a Two Party Agreement from the sample by removing the shaded portions. This is only a sample since each project is unique and the local governing body has some latitude in negotiating the best possible arrangements with the assisted business. There are basically three requirements for either form of the written agreement. The written agreement must set forth at a minimum the following:

1. All basic activities and responsibilities as established in Contract Exhibits A, B, C, and D of the Grant Agreement (Contract between the State and the Local Governing Body).
2. Specification of all related federal and State provisions and regulations as included in Contract Exhibit F of the Grant Agreement.
3. A statement to the effect that the agreement is contingent upon a release of funds, thereby avoiding any environmental concerns.

In addition to the written agreement, other evidentiary materials must be submitted to this office. Contract Exhibits C and D of the Grant Agreement outline all required evidentiary materials that must be sent to this office. Local governments are allowed six months from the date of the Authorization to Incur Cost to submit all evidentiary materials.

Some items of evidentiary materials that are commonly submitted include but are not limited to the following:

- Written Agreement - This is a legally binding agreement between the developer and the local governing body, (and the State for a Three Party Agreement) which specifies all parties' responsibilities in implementing the ED project. As indicated earlier, this document should contain all provisions outlined in the State Contract. This document should contain provisions which protect the local governing body and the State as well.
- Mortgage Agreements – *(Loan projects only)* Security is required for all CDBG loans and fully executed mortgage agreements must be submitted to this office. See the LCDBG ED staff for samples of these documents.
- Evidence of Developer's Private Investment- Fully executed loan agreements with bank, public entities, et cetera, which indicates the dollar amount and terms of the loans must be submitted. Depending on the source of the Developer's financial commitment, documentation of the evidence will vary. **Exhibit F-2** provides a Sample Evidence of Developer's Commitment.
- A resolution establishing authority of persons to enter into the Written Agreement and

other legal documents on behalf of the corporation. See **Exhibit F-3** for a Sample Resolution of the Board of Directors.

- Certification of Legally Binding Agreements (**Exhibit F-4**) - The local governing body's legal counsel certifies the genuineness of the above referenced documents and the authority of all parties to sign the documents. Further, it states that the documents constitute a valid and legally enforceable contract under the laws of the State of Louisiana and is in conformity with the LCDBG Grant Agreement/Contract. It is important for your attorney to be actively involved in this process due to potential liability faced by the local governing body.

As indicated earlier, the above represents some of the evidentiary materials required to be submitted to the State prior to release of funds. However, other documents specified in Section A of this Handbook must also be submitted in order to receive a release of funds.

ENVIRONMENTAL REVIEW

ED projects must comply with all environmental review requirements discussed in *Program Administration: Completing Environmental Review Requirements*. One of the common problems noted with ED projects is that a finding of "Categorical Exclusion" (24 CFR Part 58.35) is made in many cases where inappropriate. This is most common where it is argued that the project may be categorically excluded due to only a minimal change in use, size, capacity or location, et cetera and because it is consistent with the allowed use of the site, et cetera. These determinations are difficult to make and require an in depth analysis of the proposed changes. The grantee must closely follow the regulations in making the determination. Please contact the Office of Community Development prior to making a finding of categorical exclusion for an ED project.

The most important fact to consider regarding ED projects and environmental review is that <u>no</u> project activities (other than "Exempt" activities) may be undertaken or LEGALLY OBLIGATED from the time the application is submitted until all project activities are environmentally cleared. No monies may be incurred with LCDBG funds except those costs relating to engineering and planning. See **Exhibit F-5** for a listing of common questions regarding Release of Funds. Environmental Review Requirements apply to <u>all</u> activities of the project; those privately funded and LCDBG funded.

REQUESTS FOR PAYMENT

Once the project has received the Notice of Approval of Evidentiary Materials and Release of Funds, Requests for Payment may be submitted. This process is described in Section A. However, most ED projects have conditions set forth in the State contract that must occur before funds are drawn. Usually the conditions involve expenditures of private sector funds

and accumulation and presentation of invoices. Be especially careful in following the provisions of the State contract.

If all conditions of the State contract are met and a draw request is granted, a financial management system must be in place to receive and account for LCDBG funds (see *Program Administration: Establishing the LCDBG Funds Account, Requesting Payments, Three-Day Expenditure Rule, and Disbursement of Funds* and *Establishing Procedures for Financial Administration*). If the ED project involves a loan to a business, a loan closing should be held for presentation of the check to an appropriate company representative, if needed. Prior to the loan closing, security documents such as mortgages, promissory notes, loan agreements and/or security agreements must have been signed. These documents must be prepared by the grantee's attorney. If custom equipment is being built for the developer that is to be paid with LCDBG funding, some preliminary payments may be required. Funds for equipment will be requested by the local government when the equipment is received and invoiced.

It is important that all ED loans be secured as soundly as possible and that the repayment schedule and all requirements set forth in the Three Party Agreement are understood clearly by the payor and payee. A bank or attorney should be able to produce a payment schedule with principal and interest clearly delineated. The State will prepare a revised payment schedule for recipients if the actual drawdown deviates from the program schedule. Follow all LCDBG contract requirements and provisions identified in the State contract. One very important requirement is the submittal of quarterly financial reports. These reports are due no later than 30 days after the end of the quarter. For instructions, see *Economic Development: Sources and Uses Report*.

Section A also discusses the subject of procurement. ED projects often involve the private sector party procuring services such as engineering. Private sector entities are not subject to the provision of 24 CFR 85.36 even when the activity is financed with federal funds. However, all contract provisions apply to public sector procurements.

Citizen participation requirements are outlined in *Program Administration: Developing a Citizen Participation Plan* which the grantee must comply with in addition to Equal Opportunity and Fair Housing requirements (*Program Administration: Equal Opportunity Requirements, Section 3 Compliance,* and *Developing and Implementing a Fair Housing Program*). Grantees must insure that they comply with all the provisions contained in the Statement of Assurances which was submitted in the application.

INFRASTRUCTURE PROJECTS

The requirements discussed in *Section C, Public Facilities Improvements*, pertain to construction work financed in whole or in part with LCDBG funds. This section therefore applies to ED projects. The only difference is that 24 CFR 85.36 (procurement) does not apply if the construction contract is between the private sector party and the contractor. All other provisions regarding applicability of labor and equal opportunity standards do apply. Therefore, the format and contents of the contract must be basically the same as those provided in *Section C, Public Facilities Improvements*. The contract oversight requirements, such as posted construction sites, employee interviews, payroll reviews, et cetera, are the same.

ACQUISITION

The Acquisition Section presents the requirements that apply to real property acquisition in connection with LCDBG financed projects. Therefore, this section is important to many ED projects, especially those involving new infrastructure construction or site acquisition.

The most important consideration for ED recipients is whether the Uniform Act (Act) applies to any part of the project.

There are two (2) similar but different instances when a project must follow the Uniform Act requirements.

First, the Act will be triggered if the public entity, i.e., a city, parish redevelopment agency or any other entity which has legal power to expropriate land and acquire privately held property under Louisiana law, is acquiring the property with LCDBG funds, whether the activity is funded wholly or in part with Block Grant funds.

Second, the Uniform Act will in most instances be triggered when a private company, which does not have expropriation power, acquires property with LCDBG funds or private funds, prior to or after the award of a LCDBG Award.

Environmental Review requirements apply to the area that the developer is improving, as well as the area where infrastructure improvements, paid for by LCDBG are to be located.

Prior to any purchase of real property by the local governing body or the developer, contact the Office of Community Development (OCD). This will avoid costly time delays and/or disallowed costs associated with the ED program.

The above applies for easements or servitudes (excluding construction easements) that need to be acquired in conjunction with the program.

RELOCATION

Relocation refers to the physical movement of people, families, businesses, whether commercial or industrial, and farm operations as a direct result of activities in connection with any LCDBG project. The requirements for Relocation are discussed in the Relocation Section (Section D) of this Handbook. Regardless of who or what is being relocated within the project, coordination with state staff should occur as early as possible in the application's development to deal with this complicated process.

DAVIS-BACON AND RELATED ACTS

Section B: Labor Compliance provides information regarding labor provisions applicable to LCDBG projects.

The question of applicability takes on greater significance when dealing with ED projects since the private sector portion of the project can be affected financially by labor provision applicability to the entire project. 42 USC 5310 states that Davis-Bacon wage rates must be paid to laborers or mechanics employed by contractors or subcontractors in the performance of construction work financed in <u>whole</u> or in <u>part</u> with LCDBG assistance. If construction is not involved, Davis Bacon requirements will not apply.

<u>Equipment</u> - HUD has provided the framework to determine whether Davis-Bacon and related labor provisions apply to the installation of equipment, and if its application to equipment will trigger Davis-Bacon to other parts of the project. The Davis-Bacon Equipment Policy is provided in **Exhibit F-6**. For guidance, the following opinions have been written by HUD in response to LCDBG inquiries:

- LCDBG funds to be used to purchase furniture, fixtures, maintenance equipment, televisions, telephone equipment and registration equipment will not necessitate the application of Davis-Bacon wage rates. This applies if the equipment analysis provided by the developer does not show any installation costs.
- Department of Labor considers Davis-Bacon coverage of equipment to depend to a great extent on whether the installation of the equipment in question involves more than an incidental amount of construction work.
    - As an example, installation costs of $68,338.80 are more than incidental for $402,000 of LCDBG financed equipment. Therefore, Davis-Bacon rates are applicable to laborers and mechanics involved in installation of the equipment.
    - Installation costs of $29,388.80 are incidental for $402,000 of LCDBG financed equipment. Therefore, Davis-Bacon rates are not applicable to laborers and mechanics in that project who are involved in installation of the equipment.

- Where LCDBG is used to finance equipment, the following items will trigger Davis-Bacon: time clock with card racks, overhead crane system/hoist, air lines and fire extinguisher. The reason for this is the attachment to the building.
- According to the U. S. Attorney General, Section 110 (Davis-Bacon Act) does not require the payment of prevailing wages with respect to installation where federal funds are provided exclusively for the purchase of equipment and not for its installation.

Every effort must be made to address the equipment issue during the application process. If LCDBG funds are to be used to purchase equipment, an Equipment Analysis form must be submitted to this office (**Exhibit F-7)**. All LCDBG financed items of equipment must be listed. A determination will be made based on the particular listing. Should the items of equipment change or the amount of installation required increase, the determination may not be valid. Therefore, changes in these items will generally not be permitted. Should a change become necessary and be considered appropriate, the project will require a formal Program Amendment and a re-evaluation of the equipment analysis forms.

PROGRAM INCOME

Program income (repayment) is money earned that is generated by the use of LCDBG funds. Examples of program income are: (1) payments of principal and interest on loans made using LCDBG funds; (2) proceeds from the lease or disposition of real property acquired with LCDBG funds; (3) interest earned on LCDBG funds held in a Revolving Loan Fund (RLF) account; and (4) interest earned on any program income pending its disposition.

Program income in the form of loan repayments shall be continually remitted to the State until the loan has been retired. In the case of lease payments being received from a building purchased, constructed, or renovated, in whole or in part with LCDBG funds, the pro-rata percentage payment will be payable to the State based on a fair market valuation of the leasehold. This "fair market value" shall be considered at least to be the value of the LCDBG contribution amortized over 20 years at no interest. These lease payments will continue to be due to the State until the grant is repaid. Lease payments will not be due, however, if the building becomes vacant.

Any other program income earned as a result of the LCDBG Program will be submitted to the State. The Office of Community Development must be contacted for instructions regarding income as soon as the local governing body becomes aware of the income or of the possibility that program income will be received.

PROGRAM BENEFIT/TRACKING JOB REQUIREMENTS

To be eligible for LCDBG assistance, an activity must address the objective of benefiting low and moderate-income persons. In the case of ED projects, persons benefiting will be those hired or retained by the company assisted by LCDBG funds. Since these persons must complete an application for employment, they will be direct beneficiaries.

For an activity that creates jobs, the grantee must document that at least 51 percent of the jobs are held by, or were made available to low and moderate-income persons. (24 CFR 570.483.(b)(4))

Obtaining this information is crucial to documenting project eligibility. The income information provided will determine if the Low-Moderate-Income (LMI) Benefit claimed in the application has been met. Even if all jobs cannot ultimately be filled, the LMI requirements stated in the LCDBG Contract must be met. The company, to avoid possible eligibility problems, must clearly understand and agree to these requirements as early in the application process as possible. These requirements should be included in the written agreement (24 CFR 570.506(b)(5)).

Exhibit F-1, Attachment B is a sample Survey Form for use in collecting information for persons hired or considered for employment. Survey forms must be kept on file by the company and made available to the State or the City/Parish if requested. **Exhibit F-1**, Attachment C, is an Employee Characteristics Record, where the individual information is compiled showing required employee characteristics such as job title and household income. Employees can be denoted by code if preferred, to protect their privacy. The employee forms and the Employee Characteristics Record must be kept in the LCDBG files.

Just as for Housing and Public Facilities projects, it is the grantee's responsibility to determine specific statistical information on those persons benefiting from the project. According to 24 CFR 570.506(g)(2) beneficiaries must be documented as to race, national origin, age, sex, head of household, and physical disability status. Some of this information cannot be obtained prior to or as a condition of employment. Therefore, once hired, all employees must be surveyed.

To count the number of jobs created, a payroll of the company being assisted will be required. The date of the payroll will be near the date of the Authorization to Incur Costs letter. This payroll will determine the original number of positions. A payroll will also be required when the jobs have been created. The number of employees on the final payroll will be compared with the original payroll to determine that the proper number of jobs were created.

FINANCIAL REPORTING REQUIREMENTS

It is crucial to the monitoring process of any LCDBG ED grant that the State and grantee receive financial reports within the required timeframe from the developer. Quarterly reporting will be

submitted on the Sources and Uses Report. See *Economic Development: Sources and Uses Report*.

When the State or local governing body requests a year-end financial statement from the developer, either a complete unqualified opinion or a reviewed statement with a detailed profit and loss statement, balance sheet, statement of changes in financial position, and all required footnotes will be required. When an annual financial report is requested, compiled financial information will not be acceptable for an annual financial report. The State contract and the written agreement will specify whether an audited year-end financial statement or a reviewed statement is required. It is necessary that the developer employs a Certified Public Accountant that can meet the reporting requirements. Recipients should be aware of statements in the accountant's letter to management such as:

> ”A compilation is limited to presenting in the form of financial statements information that is the representation of management. We have not audited or reviewed the accompanying financial statements and, accordingly do not express an opinion or other form of assurance on them. Management has elected to omit substantially all of the disclosures and the statement of changes in financial position required by generally accepted accounting principles.”

Statements such as the above can be indicators of less reliable, missing, and possibly distorted information.

Preferably the accountant's letter to the management for the annual financial report should contain language similar to the following:

> “We have examined the balance sheet of XXX Corp as of July 31, 2009, and the related statements of income, retained earnings, and changes in financial position for the year then ended. Our examination was made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances. In our opinion, the financial statements referred to above present fairly the financial position of XXX Corp as of July 31, 2009, in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.”

Not all businesses can afford the expense of an audit. In cases where a business cannot afford an audited annual financial report and the State contract and the written agreement allows for

a review statement, a reviewed statement may be acceptable. In this case the accountant's letter to management would contain language similar to the following:

> "We have reviewed the accompanying balance sheet of XXX Corp as of July 31, 2009, and the related statements of income, retained earnings and changes in financial position for the year then ended, in accordance with standards established by the American Institute of Certified Public Accountants. A review consists principally of inquiries of company personnel and analytical procedures applied to financial data. It is substantially less in scope than an examination in accordance with generally accepted auditing standards, the objective of which is the expression of an opinion.
>
> Accordingly, we do not express such an opinion. Based on our review, we are not aware of any material modifications that should be made to the accompanying financial statements in order for them to be in conformity with generally accepted accounting principles."

A reviewed statement must include all the required footnote disclosures. The footnotes disclose such critical information as: the basis for the inventory valuation, depreciation methods, maturity and debt structure, and related party transactions (loans to and from stockholders, etc.)

It is incumbent upon the local government to know what kind of audit report is acceptable and to take the necessary steps to ensure that the specific kind of audit report required is produced by the business and is provided to you on an annual basis.

The local government should ensure that the terms of engagement between the developer and his accountant require more than just a compilation for the annual report.

SOURCES AND USES REPORT

Since frequent monitoring visits by the State LCDBG-ED staff is not feasible, it is necessary that the local government which has received LCDBG-ED funds report regularly on the developer's progress. The LCDBG State contract and written agreement established the periods when the reports are due. This requirement is closely monitored. Failure to submit this report in a timely manner can result in negative consequences to the local government/business.

The reports will be required every quarter beginning with the date of the first draw from the State. The first reporting period will coincide with the next federal and State quarterly reporting period of 3-31, 6-30, 9-30, or 12-31. The report will be due 1 month after the end of the first reporting period and every 3 months thereafter. (For example, if the first payment request is

paid on August 10th then the first report is due before the end of October for the period of July1 through September 30.)

The use of this report will assist the local governing body in carrying out its contractual responsibilities. It will allow the State to stay informed on the developer's progress, to ensure that the money is being spent as scheduled, and that the jobs needed and promised are being created as quickly as possible.

This process will create an early warning system that will allow both levels of government to assist the developer if unexpected problems arise, which could alter his/her schedule of events as approved in the application and in the contract between the local government and developer. To avoid any potential liability all communities providing assistance to for-profit entities must ensure that this contractual obligation is strictly observed. A copy of this report is shown in **Exhibit F-8** (Quarterly Status of Sources and Uses).

Beginning with the 2009 Grant Year, OCD will require the report form used for the quarterly reports to be submitted when the job requirement has been met if this occurs between the regular quarterly reporting periods.

LOAN DEFAULT

In order for the local government to fulfill its responsibility and not face potential monetary liability, it must make a "good faith effort" to ensure that the project is successfully developed as outlined in the application package/contract. Briefly summarized, the local government's responsibilities are:

- to maintain records of total and low-to-moderate income employment;
- to monitor the financial condition of the business;
- to inform the State in a timely manner of any difficulties with the project;
- to take the proper legal remedies to recover the LCDBG investment, if the business becomes insolvent or fails to comply with contract requirements; and,
- to pursue the appropriate legal action in the event of fraud or other illegal activities.

It is HUD's position that the local government should act as a responsible creditor, both in servicing loans and instituting the proper legal proceedings in the event of default.

In case of a default, the Office of Community Development will review the local government's performance as it pertains to the above mentioned criteria.

Before the State relieves a local government of any potential monetary liability, the local government must demonstrate substantial progress in recovering the LCDBG funds from the developer.

CLOSEOUT

Many ED projects can move to closeout fairly quickly due to the fact that many involve a one-time draw. ED projects may not be conditionally closed out until all funds (private, public and local) have been expended, all jobs created, low-mod employees verified and the projects monitored by the State. In addition, all monitoring and audit findings must be resolved and if the project involves a loan, payments must be up-to-date. See Section H for closeout forms and instructions, and the ED staff for any additional information or forms needed for closeout.

The following items must be addressed in the Program Completion Report (PCR):

1. The amount of total private and public investment in a project must be listed in the PCR and documented in project files. Before a grant award is made, the total financial package is reviewed and the need for LCDBG assistance determined. Therefore, a recipient must document that all financial injections in the project have been accomplished. Documentation may take the form of loan agreements, construction contracts, invoices, payrolls, audits, canceled checks, etc. A project cannot be closed until all other funds in the project are expended. If all investment has not been made, the project must remain open with quarterly reporting. Under the circumstances where the private investment is very large, an amendment to the Grant Agreement may be approved to lower the amount of other funds required.
2. In ED projects, a recipient must report the number of jobs created/retained as direct beneficiaries. *Economic Development: Program Benefit/Tracking Job Requirements* discusses documenting jobs. A grant may not be closed until all jobs are created/retained and the National Objective met.
3. The PCR must include a report of any repayment. This is addressed in *Economic Development: Program Income*.
4. The PCR must include reporting of family income level, beneficiaries by race, sex, ethnicity, household size, sex and physical disabilities (24 CFR 570.506 (g)). The reporting arrangement with the developer should be discussed during negotiations.
5. In the PCR Section, the housing opportunities form which specifies action taken to further fair housing and increase housing opportunities for lower income households must be completed by the ED recipient. It applies to the community rather than the project.

Final closeout of a contract is issued only when all activities are completed. This means the results of the project are achieved, including compliance with a national objective (all low and moderate income job creation/retention), an audit covering all LCDBG expenditures, PCR, and Certificate of Completion are approved. In addition, when a project involves a loan, all loan payments must be up-to-date and an audit(s) reporting all LCDBG expenditures has been received by the Office of Community Development.

ECONOMIC DEVELOPMENT RECORD KEEPING

Refer to *Program Administration: Record Keeping and Reporting* in this handbook. For further questions related to the record keeping in this area, please call the Office of Community Development at (225) 342-7412 and reference 24 CFR Section 570.506.

G. MONITORING AND CLOSEOUT

MONITORING OF LCDBG PROGRAMS BY THE STATE

The LCDBG staff may schedule a monitoring visit with the grantee at any time to review the program performance on site. Generally, visits are scheduled when fifty (50%) percent of the grant amount has been expended. A visit may be a comprehensive program evaluation or it may be oriented toward assessing performance in specific areas. In either case, the grantee should provide the State staff with all records and files pertaining to the program, as well as any other information requested. Before the LCDBG staff leaves the community, they will discuss their findings with the grantee in an exit conference; it is desirable that the chief elected official be present for this conference. The LCDBG staff, to the extent possible, will work with the grantee on site to correct any problems. Any problems that cannot be corrected will be discussed in the monitoring letter.

Following the monitoring visit, the State will send a letter that identifies both the positive and negative findings of the monitoring review. **Exhibit G-1** (Sample Sate's Monitoring Letter) provides an example.

The State generally allows thirty to forty-five days to correct and respond to the findings of deficiency noted in the letter (Example Response to State's Monitoring Letter, **Exhibit G-2)**. The corrective actions should generally follow the recommendations made by the LCDBG staff. State staff will then inform the grantee if its response is sufficient to clear the findings. All monitoring findings must be cleared prior to grant closeout.

Exhibit G-3 contains the Monitoring Checklists that the LCDBG staff utilizes when monitoring LCDBG programs on-site. These checklists were current at the time this handbook was prepared; however, they are revised continuously to reflect changes in State and Federal regulations.

PREPARING THE PROGRAM COMPLETION REPORT

Upon completion of the project, the grantee must take the steps necessary to close-out its program. The program cannot be closed out until the improvements/construction undertaken with grant funds is in full operation. For example, a program involving sewerage collection and treatment system cannot be closed-out until the households are connected to the system and the system is fully functional.

All grantees are required to submit a Program Completion Report when all activities are complete. The forms which comprise this report are shown in **Exhibit G-4**. The instructions for the completion of each form in this report are also provided.

When preparing these forms, these general guidelines should be kept in mind:

- Identify activities on the forms exactly as they are identified in the contract or as were established by any program amendments.
- Provide current data on obligated and expended amounts by activity. In most instances, the amount obligated will be the same as the amounts expended.
- On all tables, make sure that the rows and columns of figures subtotal accurately.
- Identify methods used to determine beneficiaries. For new water and sewer systems, the persons actually connected to the new system will determine the beneficiaries.
- Submit two copies of the report to the Division of Administration/Office of Community Development.
- Submit three copies of the Certificate of Completion all of which have original signatures.

As part of the Completion Report, the grantee must prepare three Certificate of Completion forms, all of which have original signatures. This form summarizes all costs incurred by the program which were paid for with LCDBG funds. If grant funds received exceed grant costs, the amount of excess grant funds received must be repaid to the State.

The State also requires a clear lien certificate prior to closing-out the program.

Upon receipt and approval of the Certificate of Completion and a check for excess grant payments, when applicable, the State will make any necessary adjustments to the LCDBG account. The State will also monitor funds earmarked for the payment of unpaid costs and unsettled third party claims. If unsettled third party claims were included, upon resolution of these claims, the grantee must submit a revised Certificate of Completion for State review before the project can receive a final closeout.

When the State considers the closeout documents to be complete and in order, the grantee will be notified in writing of such.

In most instances, a grantee will receive conditional closeout prior to receiving a final closeout. Conditional closeout is issued when all audit/monitoring findings have been cleared, the Program Completion Report has been accepted, the final disposition of funds is accepted by the State, a clear lien certificate has been issued, and a Final Wage Compliance Report has been accepted. Generally, a conditional closeout is given prior to a final closeout because all financial reports/audits covering the expenditure of the total LCDBG funds have not been received. In such instances, upon receipt and acceptance of the final audit, final closeout is issued by the State. Prompt closeout of the grant is desirable since the State views it as an

indicator of local capacity. Delays in program closeout may be indicators of poor performance and can influence the State's review of subsequent applications.

For various reasons, grants can be terminated after LCDBG funds have been requested, received, and expended prior to the completion of the project. In such instances, the local governing body must prepare a Certificate of Completion and submit it to the Office of Community Development as part of the closeout process. A Certificate of Completion is not necessary when no LCDBG funds have been expended.

AUDIT AND FINANCIAL REVIEW FINDINGS

Under the provisions of the Single Audit Act of 1996 (OMB Circular A-133), a single audit is required whenever the amount of federal financial assistance (LCDBG program funds plus all other federal financial assistance, both direct and indirect) expended in a fiscal year equals or exceeds $500,000. For further guidance see *Program Administration: Audit Process*. One of the purposes of audits is to perform a compliance review of the recipient of federal funds with federal and state program requirements. When an auditor finds an area of noncompliance with program requirements he/she is required to make a supplemental report of findings and/or questioned costs. Grant recipients should insure that their responses are included in the audit report. The Office of Community Development reviews all audit reports to insure audit findings are addressed. Examples of audit findings and questioned costs are found in **Exhibit G-5**. A sample response is found in **Exhibit G-6**.

SANCTION POLICY

INTRODUCTION

This policy describes the types of administrative actions that can be taken by the Office of Community Development in cases of improper or inadequate performance by recipients of LCDBG Program grants. In each instance, to the extent possible under the circumstances, the action taken will be intended, first, to prevent a continuation of the deficiency; second, to mitigate any adverse effects or consequences of the deficiency; and, third, to prevent a recurrence of the same or similar deficiencies.

TYPES OF DEFICIENCIES

A deficiency is an instance of non-performance of activities or non-compliance with requirements set forth in the contract between the State of Louisiana and the recipient of LCDBG funds. Examples of deficiencies include, but are not limited to, the following:

- Failure to clear monitoring findings within 120 days of the issuance date by the Office of Community Development. An on-site monitoring visit (for the purpose of assuring the

grantee's compliance with the federal and state requirements governing the LCDBG Program) may be conducted as a matter of routine monitoring or whenever problems come to the attention of the Office of Community Development. Following the monitoring visit, a letter is written to the grantee which identifies findings of deficiency as well as findings of merit, the corrective action required to clear findings of deficiency, and a target date for the accomplishment of the corrective actions. Upon receipt and review of the grantee's response, the Office of Community Development determines whether or not the response is sufficient to resolve the findings. If any monitoring findings are not properly resolved by the initial target date, the grantee is advised of such and is assigned a second target date for the clearance of those findings. All monitoring findings not resolved by the second target date remain open until resolved.

- Failure to file reports as required or failure to file reports within established timeframes. Such reports include but are not limited to the Minority Business Report, financial reports, and closeout documents.
- Failure to resolve an audit finding within 120 days of the issuance date by the Office of Community Development.
- Incurring costs for ineligible activities in accordance with state and federal regulations.
- Lack of continuing capacity to administer the LCDBG program.
- Failure to execute approved activities in accordance with the implementation schedule included between the State and the grantee.
- The implementation of a program change without prior written approval from the Office of Community Development.

NOTICE OF DEFICIENCY

The first step in the corrective procedure is for the Office of Community Development to send a written Notice of Deficiency to the grantee. The notice will describe the deficiency specifically and objectively, describe actions the grantee must take in order to remedy the deficiency and a deadline for doing so, and describe the consequences for failure to remedy the deficiency (i.e. administrative sanctions or legal action).

SANCTIONS

If the deficiency remains uncorrected, one or more sanctions will be imposed. The choice of the sanction(s) to be issued is governed by the objectives identified in the Introduction, the type of deficiency, and the seriousness of the deficiency. Possible sanctions include but are not limited to:

1. Required administrative change: For example, if the consultant administering the program is doing a poor job but the grantee has the continuing capacity to administer the grant, the grantee may be required to discharge the consultant and engage someone else to administer the program.
2. Suspension of grant payments.
3. Reduction of grant amount.
4. Termination of grant.
5. Reimbursement of costs disallowed by the Office of Community Development.
6. Disqualification from consideration for other LCDBG funds.. The criteria for disqualification shall be consistent with, but not limited to, the State's threshold requirements for funding.
7. Legal action pursued by the State.

If the grantee does not address the cited problem after having been sanctioned, additional sanctions may be imposed, or the matter may be referred for legal action.

APPEALS

The grantee may appeal any imposed sanctions through the following process. The grantee must submit a written request for an appeal within ten working days after the written notice of sanction has been received. A written decision shall be rendered within ten working days of receipt of the request for appeal unless additional time is agreed to by the recipient.

DURATION OF IMPOSED SANCTION

The Office of Community Development will maintain a sanction list of those sanctions which render the grantee ineligible for additional grant awards. The list will identify the grantee, a brief description as to why the sanction was imposed, and what steps must be taken to remove the sanction.

The sanction will remain in effect until the deficiency has been corrected or for no more than ten LCDBG program years with the following exception. Sanctions involving LCDBG funds which were expended for ineligible activities as identified in the federal regulations (24CFR 570.207) cannot be excused unless those funds have been repaid to the State or a satisfactory arrangement for the repayment of those funds have been made and payments are current. The grantee will be advised in writing when the sanction has been lifted.

INTERNAL PROCEDURES FOR ISSUING/CLEARING SANCTIONS

1. If a Local Government Rep (LGR) feels that he/she should issue a sanction, he/she should set up a meeting which includes his/her Program Manager, the Policy and Programs Coordinator, and the Community Development Director. The purpose of this meeting will be to determine if a sanction should be issued. If a determination is made to issue a sanction, the penalty/time frame attached to that sanction will also be determined. Every effort will be made to insure consistency among the sanctions imposed.
2. The LGR will advise the grantee in writing of the sanction. That letter will identify the deficiency which has resulted in the sanction, the steps that can be taken to correct the deficiency, the penalty which will be imposed, and any timeframe associated with the sanction. If the grantee will be prohibited from receiving LCDBG funds for a specified time period, the timeframe must be clearly and specifically identified. A copy of this letter will be given to the Policy and Programs Coordinator.
3. The Policy and Programs Coordinator will be responsible for maintaining the Sanction List which tracks those sanctions having an effect on a potential applicant's eligibility for future funding. The information contained in the letter issuing the sanction will be summarized on this list.
4. When the grantee corrects the deficiency or the timeframe associated with the sanction period ends, the LGR will advise the grantee of such in writing. A copy of that letter will be given to the Policy and Programs Coordinator who will remove the grantee from the Sanction List, if applicable.
5. The permanent working files for the grant associated with the sanction must remain in the Office of Community Development as long as the sanction is in effect; these files cannot be archived until the sanction has been lifted.
6. The final determination of the issuance and clearance of each sanction rests with the Director of the Office of Community Development.

KEYWORD INDEX

A

Accounting records, *A-19*, *A-20*, *A-25*, *F-9*
Acquisition, *A-5*, *A-20*, *A-24*, *A-71*, *A-72*, *C-4*, *C-12*, *E-1*, *E-2*, *E-3*, *E-4*, *E-5*, *E-6*, *E-7*, *E-8*, *E-9*, *E-11*, *E-12*, *E-13*, *E-14*, *E-17*, *E-19*, *E-21*, *E-22*, *E-23*, *E-25*, *E-29*, *E-31*, *F-5*
Additional classification, *A-68*, *B-9*, *B-10*, *B-11*, *B-20*
Adjudicated housing unit, *D-6*
Anti-displacement, *A-63*, *C-5*, *E-6*, *E-14*, *E-15*, *E-23*, *E-29*, *F-1*
Appraisal, *A-65*, *A-71*, *E-3*, *E-4*, *E-5*, *E-8*, *E-9*, *E-10*, *E-12*, *E-14*
Apprentice, *A-69*, *B-15*
Asbestos requirement, *D-8*, *D-50*
Asbestos testing, *D-8*, *D-15*, *D-16*, *D-17*, *D-20*, *D-23*, *D-50*, *D-52*, *D-53*, *D-54*, *D-56*
Audit, *A-1*, *A-21*, *A-25*, *A-26*, *A-27*, *A-28*, *A-37*, *A-38*, *A-65*, *A-69*, *F-9*, *F-10*, *F-12*, *F-13*, *G-2*, *G-3*, *G-4*
Authorized Signature Card, *A-15*, *A-16*, *A-17*, *A-65*

B

Bid list method, *D-33*, *D-34*, *D-64*
Budget reconciliation, *A-24*
Budget revision, *A-24*

C

Ceiling fans, *D-30*
Central Bank Account, *A-16*
Certified correction payroll, *B-25*, *B-26*, *B-27*
change orders, *A-25*, *A-68*, *C-9*, *C-14*, *D-43*, *D-44*, *D-73*
Clear lien, *A-68*, *A-71*, *C-15*, *D-41*, *D-43*, *D-45*, *D-70*, *D-72*, *D-74*, *G-2*
Clearance demolition, *D-2*, *D-3*, *D-5*, *D-7*, *D-9*, *D-11*, *D-13*, *D-14*, *D-15*, *D-16*, *D-17*, *D-19*, *D-20*, *D-23*, *D-24*, *D-31*, *D-32*, *D-33*, *D-34*, *D-35*, *D-37*, *D-38*, *D-39*, *D-40*, *D-41*, *D-44*, *D-52*, *D-70*
Competitive negotiation, *A-32*, *A-33*, *A-35*, *A-36*
Competitive sealed bids, *A-32*
Conflict of interest, *A-31*, *A-34*, *A-41*, *C-6*, *D-6*, *D-25*, *D-49*, *D-60*, *E-8*
Construction administration, *A-37*, *D-3*, *D-16*, *D-46*, *D-53*
Contract, *A-1*, *A-2*, *A-3*, *A-4*, *A-15*, *A-17*, *A-19*, *A-20*, *A-25*, *A-27*, *A-28*, *A-29*, *A-30*, *A-31*, *A-32*, *A-33*, *A-34*, *A-35*, *A-36*, *A-37*, *A-38*, *A-39*, *A-40*, *A-41*, *A-42*, *A-43*, *A-44*, *A-45*, *A-46*, *A-47*, *A-49*, *A-50*, *A-51*, *A-52*, *A-53*, *A-59*, *A-62*, *A-64*, *A-65*, *A-67*, *A-68*, *A-70*, *A-71*, *B-1*, *B-2*, *B-3*, *B-4*, *B-5*, *B-6*, *B-7*, *B-8*, *B-9*, *B-11*, *B-12*, *B-13*, *B-14*, *B-16*, *B-17*, *B-18*, *B-24*, *C-1*, *C-2*, *C-3*, *C-4*, *C-6*, *C-7*, *C-8*, *C-9*, *C-10*, *C-11*, *C-12*, *C-13*, *C-14*, *C-15*, *D-6*, *D-7*, *D-9*, *D-13*, *D-14*, *D-15*, *D-16*, *D-18*, *D-20*, *D-21*, *D-22*, *D-23*, *D-24*, *D-25*, *D-28*, *D-29*, *D-30*, *D-32*, *D-33*, *D-34*, *D-35*, *D-36*, *D-37*, *D-38*, *D-39*, *D-40*, *D-41*, *D-43*, *D-49*, *D-51*, *D-52*, *D-53*, *D-54*, *D-57*, *D-58*, *D-59*, *D-60*, *D-61*, *D-63*, *D-64*, *D-65*, *D-67*, *D-68*, *D-69*, *D-70*, *D-72*, *E-4*, *E-6*, *E-7*, *E-8*, *E-9*, *E-14*, *F-1*, *F-2*, *F-3*, *F-4*, *F-5*, *F-8*, *F-9*, *F-10*, *F-11*, *F-12*, *F-13*, *G-2*, *G-3*
Contract Work Hours and Safety Standards Act, *B-1*
Contractor Licensing Law, *D-35*, *D-36*, *D-66*
Contractor's Guide to Davis-Bacon, *B-1*, *B-12*
Copeland Act, *B-1*
Corrected payroll, *B-22*, *B-24*, *B-26*, *B-27*, *B-28*
Cost estimate, *A-23*, *A-24*, *A-28*, *A-39*, *A-67*, *A-70*, *C-4*, *C-7*, *C-9*, *C-12*, *D-3*, *D-9*, *D-23*, *D-24*, *D-29*, *D-30*, *D-31*, *D-37*, *D-46*, *D-59*, *D-62*, *D-67*
CWHSSA, *B-1*, *B-20*, *B-24*, *B-25*, *B-26*, *B-27*, *B-29*, *B-30*

D

Davis-Bacon Act, *B-1*, *F-7*
Davis-Bacon and Related Acts, *B-1*
DBA, *B-1*
Deductions, *A-69*, *B-1*, *B-19*, *B-20*, *B-23*, *B-24*, *B-26*
Deferred Payment Loan, *D-1*, *D-6*, *D-14*, *D-18*, *D-32*, *D-41*, *D-45*
Demolition, *A-5*, *A-6*, *A-7*, *A-63*, *A-71*, *B-12*, *C-5*, *D-2*, *D-3*, *D-4*, *D-7*, *D-9*, *D-10*, *D-11*, *D-12*, *D-13*, *D-14*, *D-16*, *D-17*, *D-18*, *D-23*, *D-24*, *D-25*, *D-30*, *D-31*, *D-32*, *D-33*, *D-34*, *D-37*, *D-38*, *D-40*, *D-70*, *E-15*, *E-17*, *E-19*, *E-23*, *E-29*
Demolition Policy, *D-11*, *E-17*, *E-23*
DEQ Approved Inspection For Asbestos and Lead, *D-20*, *D-57*
Designation of Depositary Card, *A-16*, *A-65*
Drawing funds, *A-17*

E

Economic development, *A-2*, *A-4*, *A-6*, *A-8*, *A-12*, *A-29*, *A-37*, *D-16*, *D-17*, *D-53*, *D-54*, *E-2*, *F-1*, *F-4*, *F-9*, *F-12*
ED, *A-44*, *F-1*, *F-2*, *F-3*, *F-4*, *F-5*, *F-6*, *F-8*, *F-10*, *F-12*
Effective wage decision, *B-5*, *B-6*, *B-7*, *B-8*
Electronic Funds Transfer, *A-16*

Employee interviews, *A-69*, *B-13*, ***C-2***, ***C-3***, *C-14*, *F-5*
Environmental review, *A-1*, *A-2*, *A-3*, *A-5*, *A-6*, *A-13*, *A-14*, *A-15*, *A-27*, *A-37*, *A-64*, *D-2*, *D-24*, *D-33*, *D-46*, *D-59*, *D-63*, *F-1*, *F-3*, *F-5*
Expropriation, *E-10*, *F-5*

F

Fair Housing, *A-43*, *A-54*, *A-55*, *A-58*, *A-66*, *E-18*, *E-27*, *E-31*, *F-4*, *F-12*
Federal Flood Insurance Administration, *D-9*, *D-45*
Final status list, *D-15*, *D-22*, *D-23*, *D-52*, *D-59*
Final Wage Compliance Report, *A-69*, *B-29*, *C-14*, *G-2*
Financial recordkeeping, *A-21*
Flood insurance, *C-6*, *D-9*, *D-14*, *D-45*
Force account, *A-70*, *B-16*, *B-17*
Fringe benefits, *B-10*, *B-20*, *B-21*, *B-22*, *B-23*, *B-24*, *B-29*

H

Helpers, *B-15*
Home improvement contractor, *D-35*, *D-66*
Homeowner Application, *D-4*, *D-5*, *D-15*, *D-18*, *D-19*, *D-21*, *D-22*, *D-31*, *D-32*, *D-47*, *D-48*, *D-52*, *D-54*, *D-55*, *D-56*, *D-57*, *D-58*, *D-62*, *D-63*
Homeowner approval form, *D-28*, *D-30*, *D-31*, *D-32*, *D-33*, *D-62*, *D-63*, *D-64*
Household Survey Form, *D-45*, *D-46*, *D-47*, *D-48*, *D-52*, *D-55*
Housing Rehabilitation/Reconstruction Policy, *D-2*, *D-6*, *D-7*, *D-9*, *D-11*, *D-13*, *D-14*, *D-18*, *D-19*, *D-22*, *D-23*, *D-29*, *D-30*, *D-31*, *D-32*, *D-38*, *D-39*, *D-42*

I

Individual unit advertising method, *D-34*, *D-64*
Internal controls, *A-21*, *A-22*
International Building Code, *D-8*, *D-50*
Invoices, *A-16*, *A-17*, *A-18*, *A-19*, *A-20*, *A-22*, *A-24*, *A-65*, *D-3*, *D-16*, *D-17*, *D-37*, *D-40*, *D-43*, *D-45*, *D-46*, *D-53*, *D-67*, *D-70*, *D-72*, *E-21*, *F-4*, *F-12*

J

Job requirements, *C-11*, *F-12*

L

Labor standards, *A-68*, *A-69*, *B-2*, *B-9*, *B-12*, *B-13*, *B-17*, *B-19*, *B-24*, *B-28*, *B-29*, *B-30*, *B-31*, *C-2*, *C-3*, *C-6*, *C-11*, *C-12*, *C-14*
Labor Standards Enforcement Report, *B-29*, *B-30*
Laborers and mechanics, *B-1*, *B-12*, *B-17*, *F-6*
Lead testing, *D-15*, *D-16*, *D-17*, *D-20*, *D-21*, *D-23*, *D-52*, *D-53*, *D-54*, *D-56*, *D-57*
Lead-based paint, *C-6*, *D-8*, *D-18*, *D-20*, *D-21*, *D-25*, *D-50*, *D-54*, *D-55*, *D-56*, *D-57*, *D-60*, *E-25*, *E-29*
Liquidated damages, *B-17*, *B-24*, *B-25*, *B-27*, *B-28*, *B-29*, *B-30*
Loan, *A-2*, *A-7*, *A-71*, *A-73*, *B-23*, *D-1*, *F-1*, *F-2*, *F-4*, *F-7*, *F-10*, *F-11*, *F-12*, *F-13*
Louisiana State Plumbing Code, *D-8*, *D-50*

M

Mechanical Contractor, *D-36*, *D-66*
Mobile homes, *D-5*, *D-9*, *D-14*, *D-48*, *D-51*

N

National Electric Code, *D-8*, *D-50*
Non-interest bearing account, *A-16*
Notice of Acceptance of Work, *D-40*, *D-44*, *D-45*, *D-70*, *D-74*
Notice of Contract Award, *A-68*, *B-9*, *C-10*, *C-12*
Notice to proceed, *A-70*, *C-10*, *C-11*, *C-12*, *D-39*, *D-40*, *D-41*, *D-42*, *D-69*, *D-72*

O

One prime contractor per housing unit, *D-25*, *D-60*
Outbuilding, *D-10*, *D-30*, *D-31*, *D-51*

P

Payroll review, *B-17*, *B-18*, *B-25*, *B-29*, *F-5*
Physical Accessibility Policy, *D-46*, *D-48*, *D-49*, *D-50*, *D-51*, *D-54*, *D-56*, *D-58*, *D-59*, *D-62*, *D-63*, *D-69*, *D-71*
Preconstruction conference, *B-9*, *B-11*, *B-12*, ***C-3***, *D-41*, *D-71*
Preliminary and final inspection, *D-44*, *D-73*
Prevailing wages, *B-1*, *B-2*, *B-11*, *B-12*, *B-13*, *B-20*, *B-22*, *F-7*
Procedures for financial administration, *A-18*, *F-4*
Procurement, *A-22*, *A-27*, *A-29*, *A-30*, *A-31*, *A-34*, *A-35*, *A-36*, *A-65*, *B-7*, *E-8*, *F-4*, *F-5*

Program amendment, *A-1*, *A-24*, *A-25*, *A-57*, *A-64*, *F-7*, *G-2*
Program income, *A-20*, *A-23*, *A-25*, *F-7*, *F-12*
Property rehabilitation standards, *D-7*, *D-14*, *D-49*, *D-51*

Q

Qualification Statements, *A-33*, *A-34*, *A-35*, *A-36*, *A-41*, *A-44*, *A-65*

R

Reconstruction, *A-5*, *A-37*, *A-46*, *A-71*, *B-3*, *D-1*, *D-2*, *D-3*, *D-4*, *D-5*, *D-6*, *D-7*, *D-8*, *D-9*, *D-12*, *D-13*, *D-14*, *D-15*, *D-16*, *D-17*, *D-18*, *D-19*, *D-20*, *D-21*, *D-22*, *D-23*, *D-24*, *D-25*, *D-26*, *D-28*, *D-29*, *D-31*, *D-32*, *D-33*, *D-34*, *D-35*, *D-36*, *D-38*, *D-39*, *D-40*, *D-41*, *D-42*, *D-43*, *D-44*, *D-45*, *D-60*, *D-65*, *D-69*, *D-72*
Rehabilitation, *A-5*, *A-6*, *A-7*, *A-8*, *A-9*, *A-12*, *A-17*, *A-20*, *A-37*, *A-41*, *A-42*, *A-46*, *A-59*, *A-70*, ***C-1***, *C-5*, *D-1*, *D-2*, *D-3*, *D-4*, *D-5*, *D-6*, *D-7*, *D-8*, *D-9*, *D-10*, *D-11*, *D-12*, *D-13*, *D-14*, *D-15*, *D-16*, *D-17*, *D-18*, *D-19*, *D-20*, *D-21*, *D-22*, *D-23*, *D-24*, *D-26*, *D-29*, *D-30*, *D-31*, *D-32*, *D-33*, *D-34*, *D-35*, *D-36*, *D-37*, *D-38*, *D-39*, *D-40*, *D-41*, *D-42*, *D-43*, *D-44*, *D-45*, *D-48*, *D-53*, *D-54*, *D-60*, *D-65*, *D-68*, *D-69*, *D-72*, *E-19*, *E-26*
Relocation, *A-28*, *A-60*, *A-63*, *A-72*, *C-4*, *C-5*, *D-31*, *D-39*, *D-41*, *D-42*, *D-62*, *D-72*, *E-1*, *E-3*, *E-4*, *E-5*, *E-6*, *E-7*, *E-14*, *E-15*, *E-16*, *E-17*, *E-18*, *E-19*, *E-20*, *E-21*, *E-22*, *E-23*, *E-24*, *E-26*, *E-27*, *E-28*, *E-29*, *E-30*, *E-31*, *E-32*, *F-6*
Relocation that exceeds one year, *D-42*
Request for payment, *A-16*, *A-17*, *A-18*, *A-27*, *B-31*, *C-14*, *D-16*, *D-17*, *D-43*, *D-53*, *D-72*, *D-73*
Request for Proposals, *A-33*, *A-34*, *A-35*, *A-36*
Request for Vendor Information, *A-16*
REQUESTING PAYMENT, *A-17*, *F-4*
Residential Anti-displacement and Relocation Assistance Plan, *A-63*, *E-14*, *E-15*
Residential building contractor, *D-35*, *D-66*
Responsive and responsible, *A-32*, *B-7*, *D-34*, *D-37*, *D-38*, *D-65*, *D-67*, *D-68*
Restitution, *A-69*, *B-11*, *B-24*, *B-25*, *B-26*, *B-27*, *B-28*, *B-29*, *B-30*, *C-14*
Revolving Loan Fund, *F-7*

S

Section 104, *A-72*, *E-6*, *E-14*, *E-17*
Section 3, *A-41*, *A-42*, *A-43*, *A-45*, *A-46*, *A-47*, *A-48*, *A-49*, *A-50*, *A-51*, *A-52*, *A-53*, *A-54*, *A-67*, *A-68*, ***C-1***, ***C-2***, ***C-3***, *C-6*, *C-8*, *C-11*, *D-25*, *D-60*, *F-4*
Section 504, *A-28*, *A-37*, *A-41*, *A-42*, *A-59*, *A-60*, *A-62*, *A-63*, *A-66*, *A-67*
Section 8 Housing Quality Standards, *D-7*, *D-8*, *D-50*
Signatures on checks, *A-16*, *A-17*
Small purchase, *A-22*, *A-31*, *A-32*, *A-33*, *A-50*, *B-6*, *B-7*, *C-7*
Smoke detectors, *D-10*
Sources and Uses Report, *F-4*, *F-9*
Space heaters, *D-29*
Spot rehabilitation, *D-2*, *D-3*, *D-5*, *D-6*, *D-9*, *D-14*, *D-16*, *D-18*, *D-20*, *D-22*, *D-23*, *D-24*, *D-29*, *D-30*, *D-31*, *D-33*, *D-35*, *D-38*, *D-39*, *D-40*, *D-41*, *D-42*, *D-44*, *D-65*, *D-69*, *D-72*
Statement of Compliance, *B-17*, *B-18*, *B-20*, *B-21*, *B-22*, *B-23*, *B-24*, *B-25*, *B-26*, *B-27*, *B-28*, *B-29*
Stick built, *D-5*, *D-48*
Substantial completion, *D-1*, *D-40*, *D-44*, *D-45*, *D-70*, *D-73*, *D-74*
Supplementary statement, *B-20*, *B-22*, *B-24*, *B-28*, *B-29*

T

Target area, *A-5*, *A-6*, *A-8*, *A-24*, *A-25*, *C-6*, *D-2*, *D-4*, *D-5*, *D-6*, *D-10*, *D-15*, *D-19*, *D-22*, *D-45*, *D-46*, *D-47*, *D-52*, *D-55*, *D-58*
Target Area Survey Form, *D-2*, *D-4*
Temporary and voluntary displacement, *D-42*, *D-71*
Ten day call, *B-5*, *B-6*, *B-7*
Ten day responsibility, *B-5*
Ten day search, *B-5*, *B-6*, *B-7*, *B-8*
The 75% rule, *D-5*, *D-6*, *D-14*, *D-49*
Three day expenditure rule, *A-18*
Trainee, *A-48*, *A-51*, *A-69*, *B-15*, *B-16*

U

Unfound workers, *B-30*
Uniform Act, *C-4*, *E-1*, *E-2*, *E-3*, *E-4*, *E-7*, *E-8*, *E-11*, *E-12*, *E-13*, *E-17*, *E-19*, *E-23*, *F-5*
Usufruct, *D-4*, *D-5*, *D-18*, *D-19*, *D-47*, *D-48*, *D-54*, *D-55*

V

Verification of contractor eligibility, *A-68*, *B-8*, ***C-3***, *D-36*, *D-67*
Verification of the wage decision choice, *B-7*

W

W-9, *A-16*
Wage decision, *B-1*, *B-2*, *B-3*, *B-4*, *B-5*, *B-6*, *B-7*, *B-8*, *B-10*, *B-11*, *B-12*, *B-13*, *B-14*, *B-15*, *B-16*, *B-19*, *B-20*, *B-21*, *B-22*, *B-23*, *B-26*, *B-29*, *C-9*, *D-67*
Warranties, *A-71*, *D-44*, *D-73*
Work write-up, *A-70*, *D-3*, *D-23*, *D-24*, *D-29*, *D-30*, *D-31*, *D-38*, *D-39*, *D-44*, *D-59*, *D-60*, *D-61*, *D-62*, *D-64*, *D-68*, *D-69*, *D-73*
Working foreman, *B-19*, *B-20*