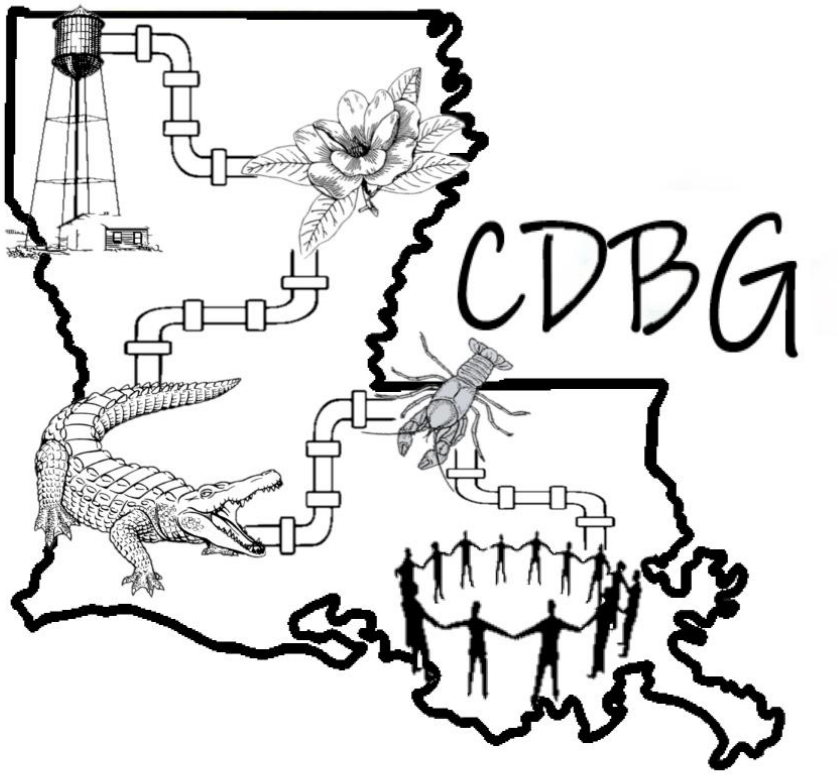
LOUISIANA COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM



2023 GRANTEE HANDBOOK

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SECTION A. PROGRAM ADMINISTRATION

INTRODUCTION

Presented in this section are the administrative requirements of the Louisiana Community Development Block Grant (LCDBG) Program. It describes each task that requires completion from the grant award date to project closeout. 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.

CITIZEN PARTICIPATION

24 CFR 91.115(e)

24 CFR 570.486(a)

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.

DEVELOPING CITIZEN PARTICIPATION PLAN REQUIREMENTS

All applicants and grantees must have developed and adopted a Citizen Participation Plan prior to application preparation in order to comply with Section 104[a] of the Housing and Community Development Act of 1974, as amended. The plan, at a minimum, should include the following:

- 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's 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; such 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 procedure which will accommodate a timely written response to written complaints and grievances within 15 days where practicable.

- 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 participateFor all applications, the Citizen Participation 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 discussed herein.

SCHEDULING AND PROVIDING NOTICES OF PUBLIC HEARINGS

Adequate notice must be given of the public hearing. A notice must be published in the official journal named in the Citizen Participation Plan a minimum of five calendar days in advance of the meeting. Applicants should make other efforts to inform those who might not be reached through the newspaper. 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 persons with disabilities 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 first public notice:

- The amount of funds available for proposed community development.
- 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.
- 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.
- The applicant must provide citizens with information regarding the applicant's performance in prior LCDBG programs funded by the State, if applicable.

State officials must keep written minutes of hearings and an attendance roster for review. 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 provide the location and hours that the application will be available for review.

The application must be fully executed and available for review when the notice is published in the newspaper.

The sample Citizen Participation Plan, **Exhibit A-1**, incorporates all of the required elements. **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 Block Grant 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. Exception: A public hearing is not required if the activity of acquisition will be eliminated from the program. See "Program Administration: Financial Management – Preparing Budget Reconciliations, Budget Revisions, and Program Changes and Amendments."

COMPLAINT PROCEDURES

Each applicant/grantee must have written citizen and administrative complaint procedures that provide the address, phone number, and times for submitting complaints as well as a maximum of 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-1**, the complaint procedure has been included in the Citizen Participation Plan.

All written citizen complaints that identify deficiencies relative to the applicant's/recipient's Community Development Block Grant 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 15 working days, where practicable. A copy must be forwarded to the Office of Community Development (OCD), 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 94005, 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 at 1-877-297-0995, 225-326-6079, 711 or 800-846-5277 for TTY users or by email at HUD@ag.state.la.us. The office's physical address is 1885 N. Third St., Baton Rouge, Louisiana 70802.

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:

- The applicant's description of needs and objectives is plainly inconsistent with available facts and data.
- The activities to be undertaken are plainly inappropriate to meeting the needs and objectives identified by the applicant.
- The application does not comply with the requirements set forth in the Method of Distribution or other applicable laws.

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

PERFORMANCE HEARINGS

Prior to closeout of the Community Development Block Grant Program, the recipient must conduct 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 closeout documents.

24 CFR 91.115(e)

24 CFR 570.486(a)

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

THE PERFORMANCE SCHEDULE

A project performance schedule, developed as part of the application, shows each activity's major milestone and estimated expenditures. The LCDBG contract references the performance schedule and OCD uses it to monitor the program's progress. Grantees must adhere to this schedule. The quarters are indicated on the performance schedule and coincide with the four quarters in the State's fiscal year. The completed schedule should begin in the quarter that the date of Authorization to Incur Costs (Exhibit A-61) occurs. This date must be entered in the space provided on this form. The form can be found on OCD's website under the Grant Management tab at https://www.doa.la.gov/media/5lph2ell/lcdbg-performance-schedule.docx.

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

EXECUTING THE LCDBG CONTRACT

The grantee will receive an unsigned LCDBG contract that identifies activities funded, budgeted cost, general terms and conditions, and identification of any activities with conditional approval and conditions that must be met before the State will release funds for those activities. After carefully reviewing and signing the contract, return it to the Office of Community Development. When all contract conditions are met and the

State executes the contract, a copy of the executed contract is sent to the grantee for its records. The contract is fully executed only after all signatures have been obtained.

The LCDBG contract will contain contract conditions that must be met prior to the release of grant funds.

REMOVING CONTRACT CONDITIONS/RELEASE OF 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 may 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 the OCD of such prior to the submission deadline date and request an extension of time.** All of the contract conditions listed below must be received and have met any further requirements identified below within five months of the date of the Authorization to Incur Costs letter (**Exhibit A-61**).

- Completion of an environmental review record – The Environmental Review Record (ERR) must be submitted to the OCD, reviewed, and the grantee be given authority by the OCD to publish appropriate notices and to request release of grant funds.
- Section 504 Assurance – Received and reviewed by OCD.
- Fair Housing Assurance – Received and Reviewed by OCD.
- Performance Schedule—Received and Reviewed by OCD.
- Residential Anti-Displacement and Relocation Plan and Certification – Received and reviewed by OCD.
- Application revisions, if requested – Received and reviewed by OCD.
- Project Plans and Specifications, and Final Cost Estimate – Received by OCD.
- Certification from engineer that plans and specifications have been submitted to Louisiana Department of Health (LDH), if applicable – Received by OCD.
- Actions taken in accordance with approved rate study, if applicable – Received and reviewed by OCD.
- Firm commitments from other project funds, if applicable – Received by OCD.
- Any other documentation, if requested – Received and approved, if necessary, by OCD.
- A rate study must be completed on the utility system that is funded by this grant (applicable to all water and sewer improvements grants). The Louisiana Rural Water Association (LRWA) will work with the grantee to complete the rate study. If the rate study determines that actions should be taken regarding the utility rates, the grant recipient must take actions to implement the changes.

Prior to receiving an executed contract and a release of 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 LDH for approval (if applicable). **A copy of those plans and specifications plus a final cost estimate must also be submitted to OCD for review. If, at the end of the five-month calendar period, the plans and specifications have not been submitted to both LDH (if applicable) and OCD, $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.

If, by the deadlines described previously 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. If failure to clear contract conditions within the required timeframe is the fault of another party (e.g., the engineer), then the penalty will be assessed accordingly. 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. If an extension is needed due to the Environmental Review Record process, part of this determination will be based on how quickly the grantee began the process after receiving the Authorization to Incur Costs (**Exhibit A-61**). **All grantees should begin the ERR process (including mailing letters to appropriate agencies requesting determinations) within six weeks of the Authorization to Incur Costs date.**

Please note that if the grantee fails to complete any required processes or procedures during the completion of the ERR and incorrectly publishes the Notice of Intent to Request Release of Funds or the Combined Notice prior to being given authority to do so as previously described, then the Notice of Intent to Request Release of Funds or the Combined Notice must be republished after the required process or procedure 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 the grantee is not sure about which processes and procedures should be completed during the ERR process, please contact the OCD for assistance.

If, by the deadlines described previously, or if the grantee refuses to take needed action identified by the approved rate study, then the OCD will not give permission to the grantee to bid, and the project will be terminated. 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.

HUD Form 7015.15

Until a release of funds from the State is approved, funds cannot be obligated or expended except those items identified in the Authorization to Incur Costs letter (**Exhibit A-61**) 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 which can also be found on the HUD website Item 1 on the form requires the OMB Catalog Number, 14.228. Item 2 requests the HUD/State Identification Number, which is B-23-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, the 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.

FINANCIAL MANAGEMENT

2 CFR 200.302

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. 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.

ESTABLISHING THE LCDBG ACCOUNT

The following forms must be completed as per the instructions and returned to the Office of Community Development, unless otherwise designated, in order for the State to establish the Grantee's LCDBG account in the State's accounting system:

- Authorized Signature Form – One Authorized Signature Form (**Exhibit A-3**) 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 form by his/her signature. The form designates authorized persons to sign the community's Requests for Payment. Detailed line-by-line instructions are included on the form. If persons authorized to sign Requests for Payment should change at any time during the project, a new Authorized Signature Form must be submitted to the State. (See section on "Bank Account Rules", Signatures on Checks and section on "Signatures on Request for Payment Form.")

- Electronic Funds Transfer (EFT) Enrollment Form – **Contact the Office of Statewide Reporting and Accounting Policy (OSRAP)** at DOA-OSRAP-EFT@la.gov or 225-342-1097 for the EFT enrollment form. This form designates where the LCDBG funds will be deposited. The completed form should be sent directly to OSRAP. Documentation verifying the submission of the form must be provided to the Office of Community Development. These forms can be revised at any time during the project. When a revision is necessary, the Grantee must provide the State with a revised Vendor Information Form (**Exhibit A-4**) and contact OSRAP for a revised EFT Enrollment Form. It takes approximately 14 days to process a revision. The revision process must be completed prior to the next Request for Payment's approval.

- Vendor Information Form (**Exhibit A-4**).

- IRS W-9 Request for Taxpayer Identification Number and Certification (**Exhibit A-5**).

No funds can be drawn until the Grantee's LCDBG account is established. Once payments begin, if LCDBG funds are being deposited into the wrong account, or if payment is received in the form of a paper check, notify the Office of Community Development immediately for instructions. Future funds will be withheld until the issue is resolved.

FINANCIAL RECORDKEEPING

Accounting Records and Financial Reporting

The CDBG financial management regulations require that the Grantee's accounting records:

24 CFR 570.489(d)

1. Be sufficiently specific to ensure that funds received under this subpart are used in compliance with all applicable statutory and regulatory provisions and the terms and conditions of the award;
2. Ensure that funds received under this subpart are only spent for reasonable and necessary costs of operating programs under this subpart; and
3. Ensure that funds received under this subpart **are not used for general expenses** required to carry out other responsibilities of State and local governments.

Therefore, the Grantee's accounting records (to include the Grantee's annual financial report) must identify adequately the source and application of funds for CDBG-funded activities. The Grantee can facilitate compliance with this requirement if it accounts for the CDBG program in a separate accounting fund (**Capital Projects** or **Special Revenue Fund**). The appropriate classification of a governmental fund for a financial activity is principally determined by its funding source(s). The financial assistance provided by the LCDBG program is in the form of an intergovernmental grant with statutory and regulatory compliance requirements which place certain restrictions on the use of those funds.

2 CFR 200.302

24 CFR 570.490

In cases where the assistance is provided to fund the capital improvements of a Grantee's proprietary fund, the program has deemed the CDBG expenditures, not as outflows financed by the proprietary fund itself, but external to it. Therefore, using a separate governmental accounting fund for reporting purposes is justified. If the Grantee reports the CDBG expenditures in its enterprise/proprietary fund it must include a supplemental schedule in the back of the audit report in order to meet the regulatory reporting requirements of information pertaining to grant awards including assets, liabilities, expenditures, and revenue.

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 should be on a modified accrual basis. *If acquisition of fixed assets (other than land) using LCDBG funds is needed, contact the OCD.*

Supporting Documents

2 CFR 200.302

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..

- Never make payment without invoices and vouchers physically in hand.
- All vouchers/invoices should be on vendors' letterhead.

Books of Entry

Federal regulations require that the Grantee establish certain accounting records for documenting LCDBG-related transactions. These books of original and final entry are an integral part of the required system. The book of original entry is the General Journal. The book of final entry is the General Ledger. Each is briefly described below.

2 CFR 200.302

2 CFR 200, Subpart E (Cost Principles)

- Chart of Accounts (**Exhibit A-6**) – This should be suitable for a Capital Projects Fund, a Special Revenue Fund, or a supplemental schedule.
- General Journal – This is a book of original entry that chronologically lists all fund transactions.
- 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 must be utilized. Supporting documentation should be maintained to summarize expenditures and revenues by the following categories:
    - Expenditure Accounts – These accounts should correspond to those activities identified in the grant application's Cost Summary. At a minimum, the Grantee should utilize the following Expenditure Accounts: Administration, Acquisition, Engineering, Construction, and if necessary, Planning and Clearance/Demolition. 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.
    - Revenue Accounts – These accounts should be used to identify all revenues earned by the LCDBG program, such as the LCDBG revenue, program income, other revenue, and local contributions.

Monthly Financial Statements

2 CFR 200.328

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. 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-7**. 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.

Bank Account Rules

- Non-Interest Bearing Account – Funds are to be deposited into and disbursed from a separate non-interest bearing account that is to be reconciled on a monthly basis. If the Grantee has more than one open grant, then a separate bank account should be maintained for each grant. It is acceptable for one

account to be utilized for more than one project, as long as the account is **used only for CDBG projects funded by the OCD-LGA,** including projects funded with CDBG-CV funds. Separate financial statements for each LCDBG and CDBG-CV project must be produced. Pre-printed, pre-numbered checks, not counter checks, must be utilized. If the Grantee uses computer-generated checks, appropriate safeguards must be in place.

- Central Bank Account or Clearing Account – Prior written approval from this office for each project 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 OCD. Please contact Janelle Dickey at (225) 342-7412 regarding approval to use this type of account. If interest is accrued on LCDBG funds, the State must collect it from the Grantee.

- Signatures on Checks – Checks must be signed by two of the authorized persons listed on the Financial Management Questionnaire (1.h). 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. Checks must not be pre-signed. If the checks are computer generated, there must be adequate controls.

System of Internal Controls

2 CFR 200.303

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. The State requires that each LCDBG recipient establish a system of internal controls that meet the following 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. Recordkeeping 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. Pre-signing or pre-stamping of a blank check is prohibited. The practice of pre-signing checks is a specific violation of the internal control structure.
7. **All persons who sign checks for LCDBG shall have a current bond or fidelity policy.**
8. Identification of the staff person or contractor who has the qualifications and training to apply generally accepted accounting principles (GAAP) in recording the entity's financial transactions or preparing the financial statements.

Those communities whose limited personnel make complying with steps 2 through 5 more difficult 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 appropriate financial records and will facilitate compliance with state and federal requirements.

Financial Management System Adequacy

The Grantee is required to submit a Financial Management Questionnaire.

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. Persons not listed on the Financial Management Questionnaire with a specific responsibility cannot perform that responsibility for the LCDBG project.

Include a copy of the bond or fidelity policy for those persons who are signing checks. If the bond or fidelity policy has expired, please provide proof of renewal.

The Financial Management Questionnaire and a copy of the bond or fidelity policy, and proof of renewal (if needed), must be sent to the grant representative at the Office of Community Development along with other information to clear contract conditions.

This office will review the information to determine the adequacy of the Grantee's financial management system subsequent to the grant award.

2 CFR 200.302

Allowable Cost Items

Cost items that are charged to federal programs must meet several criteria to be allowable under federal awards:

2 CFR 200.405

24 570.489(d)

- Be necessary and reasonable for the performance of the federal award and be allocable thereto under these principles.
- Conform to any limitations or exclusions set forth in these principles or in the federal award as to types or amount of cost items.
- Be consistent with policies and procedures that apply uniformly to both federally financed and other activities of the non-federal entity.
- Be accorded consistent treatment. A cost may not be assigned to a federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the federal award as an indirect cost.
- Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.
- Be adequately documented.

General Provisions for Selected Items of Cost

All administrative or program delivery costs must adhere to the requirements 2 CFR 200 subpart E "Cost Principles."

2 CFR 200 Subpart E (Cost Principles)

The CDBG regulations provide that funds may be used for administrative activities either through reimbursement of the Grantee's personnel compensation costs and expenses, payment for professional services costs under an independent contractor relationship, or using the personnel services of existing local public agencies that are designated as a subrecipient by the chief executive officer of the Grantee.

Employees Paid from LCDBG Funds

2 CFR 200.430

2 CFR 200.431

Reimbursement of employees or local public agency subrecipients must adhere to the requirements of CFR 200.430 "Compensation-personal services" and 200.431 "Compensation–fringe benefits." 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. 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. The Timesheet shown in **Exhibit A-8** is an example of records providing reasonable assurance that the charges are accurate, allowable, and properly allocated. The Grantee may use its own timesheet or other records that contain the same information, including the distribution of payroll costs, and that reflect a system of internal control for the assurances made above. According to 2 CFR 200.444, the salaries and expenses (except as provided in §200.474 Travel costs) of the chief executive of a local government or parish, or their legislative bodies, are unallowable.

2 CFR 200.444

2 CFR 200.474

Professional Service Contractors Paid from LCDBG Funds

2 CFR 200.459

Professional Service Costs – Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the Grantee, are allowable. Reimbursement of professional service contractors must adhere to the requirements of 2 CFR 200.459 "Professional Service Costs". As authorized in the contract, the vendor must identify the task or description of the service provided, the effort (in hours), the hourly rate of compensation, as well as the nature and amount of expenses, in order to sufficiently describe the work product performed.

EXAMPLE – Invoicing for Labor Compliance

Review of 5 payrolls x .5 hour each = 2.5 hours @ $50.00 per hour	**$125.00**
Conducted 4 labor interviews total 6 hours w/travel @ $50.00 per hour	**$300.00**
Conducted 1 wage restitution 2 hours @ $50.00 per hour	**$100.00**
Labor compliance invoice total	**$525.00**

In accordance with the Federal audit standards for professional services, the work product for each individual service must provide sufficient evidence to support allowability and to support the amount being billed in the invoice.

EXAMPLE – Documentation of Work Product

Weekly payrolls with comments or corrections
Labor interview form [x 4]
Letter issuing demand for wage restitution

Notwithstanding any contract provisions otherwise, the Grantee must adhere to the documentation requirements of the Uniform Administrative Requirements to be reimbursed with federal funds for professional services.

2 CFR 200.439

2 CFR 200.320

Office Equipment – Reimbursement of equipment and other capital expenditures must adhere to the requirements of 2 CFR 200.439. 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 2 CFR 200.320, 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 and necessary for the grant and was not a general expense required to carry out the overall responsibilities of local government as required by 24 CFR 570.489(d). 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.

24 CFR 570.489(d)

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.

2 CFR 200.439

Real Property vs. Rent – Reimbursement of rental payments must adhere to the requirements of 2 CFR 200.465. 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 ensures that the maximum amount of LCDBG funds is spent for activities that benefit low-to-moderate income residents.

Program Income

24 CFR 570.489(e)

Regulations define Program Income 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.

For projects funded by the CDBG-CV Love Louisiana Outdoors Program for the development or rehabilitation of outdoor recreational facilities, annual reporting to the OCD-LGA is required. All income earned by each facility through any means, including fees or rent charged for use of the facility, must be documented. The Love Louisiana Outdoors Program – Annual Report (LLOP – Annual Report), which can be accessed on the OCD-LGA website, is to be utilized to report all revenue and expenditures for each facility for each calendar year. The LLOP – Annual Report is due on January 31st of each year following Authorization to Incur Costs (**Exhibit A-61**). The report must be submitted each year thereafter, with the final report being submitted the year following 5 years after final closeout of the project (i.e. if the project closes out on June 15, 2023, the final report will be due on January 31, 2029). If annual revenue exceeds annual expenditures, a check must be written from the grantee to "State of Louisiana, Division of Administration" and sent to the OCD-LGA, along with the LLOP – Annual Report. A notation on the check should indicate the purpose of the check, "return of revenue," and the CDBG-CV grant agreement number.

AUDITS

2 CFR 200.504

All reports must be prepared in accordance with the Louisiana Governmental Audit Guide. It is the responsibility of the Grantee to procure or otherwise arrange for the audit required and to ensure that it is properly performed and submitted when due. The appropriate type of governmental fund for the LCDBG program is a **Capital Projects Fund or Special Revenue Fund**; 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. The financial report must clearly identify program expenditures as an eligible activity(ies) by one or more of the activities listed in the **Exhibit A-6,** General Ledger Chart of Accounts - Expenditures.

Single Audits

Under the provisions of the Single Audit Act Amendments of 1996 (31 USC Chapter 75), an audit under 2 CFR 200 subpart F is required whenever the amount of federal expenditures (LCDBG program funds plus all other federal expenditures) in a year exceeds $750,000. 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 $750,000 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, the Grantee must submit one of the following reports:

- Annual sworn financial statements if revenue received was $75,000 or less
- An annual compilation if revenue received was more than $75,000 but less than $200,000
- A review/attestation if revenue received was $200,000 or more but less than $500,000
- An annual audit if revenue received was $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 not received within this six-month time period will be placed on the Louisiana Legislative Auditor's Non-Compliance 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 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 Louisiana Legislative Auditor within 10 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.

Audit Scope

CDBG funds are federal funds. They are a pass-through grant from HUD; the CFDA or ALN # is 14.228. This information must be forwarded by the Grantee to the CPA firm that completes the annual audit.

Upon completion of the financial report (audit), please advise the CPA to submit to the Louisiana Legislative Auditor.

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

2 CFR 200.509(a)

If audit costs for single audits are to be charged to the LCDBG program, the Grantee must follow the procurement guidelines explained in this section 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.

REQUESTING PAYMENT

The pro-rated portion of the single 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.

Funds can be drawn once a Notice of Removal of Contract Conditions is received from the State.

Request for Payment Form

Funds are requested using the LCDBG Request for Payment Form, **Exhibit A-9**. The RFP form can be completed in Excel and printed, or printed and manually filled in. The form must be completed accurately, or it cannot be processed. Requests can 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, e.g., 2.A

Where dollar amounts are indicated, show a decimal and cents (do not round).

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.

Signatures on Request for Payment Form (RFP)

Two of the people listed on the Authorized Signature Form (**Exhibit A-3**) and the Financial Management Questionnaire must sign the RFP. Signatures on the request form must be **identical** to those on the Authorized Signature Form, including signee'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 and/or services were received. If goods are provided, the vendor must identify the items(s), quantities, and unit costs. If services are rendered, the vendor must state the time period covered by the invoice, from XX- XX-20XX to XX-XX-20XX; for professional services, the vendor must identify the task, the effort (in hours), and the hourly rate. Invoices included with the RFP must be signed, indicating approval, by the person listed with that responsibility on the Financial Management Questionnaire. The Financial Management Questionnaire is discussed under "Program Administration: Financial Recordkeeping – Financial Management System Adequacy." An original and one copy must be sent to the State.

Submitting a Request for Payment (RFP)

Requests for funds must be received by the Office of Community Development with appropriate signatures and invoices by **Thursday at noon** for payment on Wednesday of the following week.

Receipt of Requested Funds

The Grantee should check with its financial institution when expecting LCDBG funds to see that the funds were deposited in its account. Contact the LGR in 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

LCDBG funds must be expended within three working days. This procedure minimizes the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by Grantees.

2 CFR 200.305(b)

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 Wednesday, checks totaling the entire amount must be written by close of business the following Monday. 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.

BUDGET RECONCILIATION REPORT (**EXHIBIT A-10**)

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 RFPs by category. 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.

2 CFR 200.308

BUDGET REVISION REPORT (**EXHIBIT A-11**)

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 previous 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. The Grantee must submit the report with a letter that details the changes and explains why it is necessary.

COMPLETING ENVIRONMENTAL REVIEW REQUIREMENTS

The LCDBG contract requires the Grantee to conduct and submit an environmental review of the project to the State. The purpose of the Environmental Review Record (ERR) is to document the environmental review process, including all actions taken by the Grantee.

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. Please refer to 24 CFR Part 58 for the laws and authorities pertaining to environmental review.

40 CFR Parts 1500-1508

24 CFR Part 58

The process for developing your ERR should begin with the completion of the Statutory Worksheet (**Exhibit A-17**). The Statutory Worksheet is a step-by-step guide for evaluating projects with respect to 58.5. The information gathered with this document can be used to complete the Statutory Checklist (**Exhibit A-18**).

The Chief Elected Official will be the Environmental Certifying Official or Responsible Entity. He/she will assume overall responsibility for the environmental review process. He/she must sign all letters, certifications, 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. In completing the review of an ERR, the OCD uses the checklist found in **Exhibit A-12**. ERRs must be cleared within five months of the "Authorization to Incur Costs" letter (**Exhibit A-61**).

HUD Form 7015.15

24 CFR Part 58

PLEASE NOTE: All certifications and checklists must include a sufficient description of the project, in addition to the required general project description discussed later in this section.

Special Requirements for Economic Development Projects

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 to be accomplished in the entire project must be environmentally cleared, including those activities financed by private funds.

24 CFR 58.32

For economic development projects, close attention must be given to 24 CFR part 58.22. **It is imperative that this regulation be understood by all parties to avoid possible disallowed costs.** 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 (private) 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 the Grantee's application is 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.

24 CFR 58.22

It is both HUD and the State's strong recommendation that both the application and the ERR be submitted to the State simultaneously; otherwise, a private developer may have to stop the commitment of funding to the project until the ERR review is complete. After reviewing the ERR and awarding funding, the OCD will give permission for the Grantee to publish the Notice of Intent to Request a Release of Funds (for Categorically Excluded Activities Subject to 58.5) or the Combined Notice of Finding of No Significant Impact and Notice of Intent to Request a Release of Funds (for activities requiring an Environmental Assessment) and submit the Request of Release of Funds and Certification. It should take approximately two weeks after receipt until the environmental review is approved.

Special Requirements for CDBG – CV Projects

An environmental review record must be submitted for all CDBG- CV projects. The Grantee should follow information provided in this section to guide them through the review process. Program specific forms can be found online:

Parks: https://www.doa.la.gov/doa/ocd-lga/lcdbg-cv/llop-forms/

HVAC: https://www.doa.la.gov/doa/ocd-lga/lcdbg-cv/hvac-err/

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.

Public facility rehabilitation activities (such as hook-ups) should be cleared in conjunction with the regular public facility activity.

Exempt Activities

Certain activities are Exempt from environmental review requirements of NEPA and the environmental requirements of other relevant federal laws. These activities include the following:

24 CFR 58.34

- Environmental studies
- Project planning
- Administrative costs
- Project engineering and design costs for a proposed eligible activity
- Public services that 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 10 days of determining that a situation exists that poses an imminent threat to 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-13**) 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-14**.

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

24 CFR 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-15** 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-14**. In addition, the Grantee must clear all other contract conditions listed in the LCDBG contract prior to the release of funds. These activities include the following:

- Supportive services and operating costs
- Equipment
- Economic development activities not associated with construction or expansion of existing operations
- Activities to assist homebuyers that result in the transfer of title

Categorically Excluded Activities Subject to 58.5

24 CFR 58.35(a)

The following 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:

- 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 Certification of Categorical Exclusion (subject to 58.5), shown in **Exhibit A-16**, 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 to avoid incorrect findings.**

The following items must be included in the ERR for Categorically Excluded activities:

- Certification of Categorical Exclusion (subject to 58.5), **Exhibit A-16**.
- Documentation of compliance with other federal laws through the completion of the Worksheet for Preparing 24 CFR 58.5 Statutory Checklist (**Exhibit A-17**).
- A completed Statutory Checklist (**Exhibit A-18**) using documentation obtained duringthe completion of the Statutory Worksheet (**Exhibit A-17**).
- Documentation of compliance with part 58.6 (**Exhibit A-14**).
- A detailed description of the project, including location, indicating if the ERR is site specific.
- Evidence of publication or posting of the Notice of Intent to Request Release of Funds (**Exhibit A-19**).
- Request for Release of Funds and Certification (**Exhibit A-2**).
- A map of the entire jurisdiction showing the location of the project area with clear boundaries indicated and specific activities in relation to streets or other landmarks (if site specific).
- A floodplain map delineating the target area is required regardless of whether or not the project is located in a floodplain.

Activities Requiring an Environmental Assessment

24 CFR 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:

- Environmental Assessment Signature Form (**Exhibit A-20**).
- A completed Environmental Assessment Checklist (**Exhibit A-21**).
- A completed Statutory Checklist (**Exhibit A-18**) using documentation obtained during the completion of the Statutory Worksheet (**Exhibit A-17**).
- Documentation of compliance with other federal laws through the completion of the Worksheet for Preparing 24 CFR 58.5 Statutory Checklist (**Exhibit A-17**).
- Documentation of compliance with part 58.6 (**Exhibit A-14**).
- A detailed description of the project, including location, that also indicates whether or not the ERR is site specific.
- 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-22**) and the Notice of Finding of No Significant Impact Distribution List (**Exhibit A-23**).
- Request for Release of Funds and Certification (**Exhibit A-2**).

- A map of the entire jurisdiction showing the location of the project area with clear boundaries indicated and specific activities in relation to streets or other landmarks (if site specific).
- A floodplain map delineating the target area is required regardless of whether the project is located in the floodplain or not.
- For projects involving new construction, a wetlands map delineating the target area is also required.

Environmental Impact Statement (EIS)

In most instances, an Environmental Impact Statement will not be needed. However, if the proposed project is determined to have a potentially substantial impact on the environment, an Environmental Impact Statement must be prepared. **The OCD must be contacted if it is determined that an EIS is required.**

24 CFR 58.37

GENERAL ENVIRONMENTAL REVIEW RECORD REQUIREMENTS

Project Description and Map

In addition to the shorter project descriptions found at the top of each certification form and required checklist, a more specific description must identify, in detail, the project type, area served, location, linear feet of pipe to be installed, number of new service connections, 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 and identify all sources of funding, especially for economic development projects. For all projects, the description should identify the items/activities for which the LCDBG funds will be expended, and the items/activities for which private funds will be expended.

A map clearly delineating the project area and location of project activities should also be included. The project description and map must indicate whether the ERR is site specific or area wide for public facilities projects.

If the project involves the installation of a water well and the location of the well site is known, it should be indicated both in the project description *and* on the ERR map. For a site-specific project, the project description and the ERR map indicating the location of the proposed improvements must 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 yet been determined, but the well will be drilled somewhere within the project area, it is necessary to clear the entire project area by indicating its boundaries in the project description and on the ERR map.

Completing the Statutory Worksheet and Statutory Checklist

Exactly what activity is being cleared and its location, whether site specific or area wide, must be made apparent to the data source, either by letter or verbally. The ERR must also indicate the project description and which map was used when contacting the data sources. **If specific locations of proposed improvements are indicated on documents used to obtain comments from data sources, the OCD will consider the ERR to be site specific.**

For Categorically Excluded (subject to 58.5) activities and those requiring an Environmental Assessment, the Statutory Worksheet (**Exhibit A-17**) and the Statutory Checklist (**Exhibit A-18**) must be completed to document compliance with other federal laws. Completion of the Statutory Worksheet is the first step in the ERR process. This worksheet will indicate which, if any, agencies should be contacted for comments. The Statutory Checklist is a summary of the information obtained from the Statutory Worksheet. Please read each question carefully and follow the instructions. At the end of each compliance area section, the answers provided to the questions on the worksheet will indicate whether the Grantee should mark box A or box B on the Statutory Checklist.

Marking box A indicates that the area of compliance is not applicable to the project or that there is sufficient documentation that compliance has been met and no mitigation or consultation is required. This information must be listed in the Compliance Finding column of the Statutory Checklist. If the area of compliance is not applicable, the Grantee should indicate this and include an explanation as to why it is not applicable. This explanation should refer back to the determination on the Statutory Worksheet.

The Grantee must also list all references consulted to reach the determination. If box A is marked for all areas of compliance, then the project can be converted to Exempt. In this instance, the Grantee does NOT submit the Request for Release of Funds and Certification form; however, the Exemption Determination of Activities Listed form must be completed. Item number 12 in the table should be marked.

If box B should be marked on the Statutory Checklist, the Grantee must include one of the following in the Compliance Finding column of the Statutory Checklist along with a summary of the determination and actions taken:

- Consultation/Review procedures required – This is when consultation is required with federal or federally authorized agencies or when additional studies are needed (e.g., section 106 concurrence memo or Eight-Step Process).
- Determination of consistency, approvals, and permits obtained – This is needed when areas require consistency or where projects require permits, licenses, or other forms of approval (e.g., consistency with state coastal zone management plan).
- Conditions or mitigation actions required – This is when a project requires conditions or mitigation. Any that are required should be listed in the Mitigation Measures and Conditions for Project Approval section of the Statutory Checklist. Also, this information must be included in the "Project Activity/Project Description" section on the HUD 7015.15 form.

When box B is marked, the Grantee is required to publish a Notice of Intent to Request Release of Funds and submit a Request for Release of Funds form (HUD 7105.15) with the completed ERR document.

All areas of compliance require contact with a qualified individual from a local, state, or federal agency, or other qualified information. If an individual is used as a source, their title, agency, name, and the date of correspondence or verbal contact should be included in the Source Documentation column on the Statutory Checklist.

If the project will have an impact, positive or negative, on the environment, the degree and nature of the impact on the environment must be discussed in the Compliance Finding column on the Statutory Checklist.

If contact is verbal, a telephone log should be kept documenting the call. The OCD may request that this log be submitted for review. If a plan or publication is cited, the title, date, and page number must be shown. If the preparer of the checklist is used as a reference, it is imperative that the preparer is knowledgeable in the event that the validity of the ERR is ever questioned.

All letters, documents, etc., pertaining to the ERR must be included in the record. If a website is used as a data source for the compliance documentation, the website and date visited must be listed in the Source Documentation column. Also, a printout from the website with the data used to make the determination should be recorded in the ERR.

HUD Environmental Review Website

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. The HUD Environmental Review website can be used for more information and resources on environmental review compliance.

Historic Preservation

Requirements are met by contacting the Louisiana Historic Preservation Officer and all Native American tribes identified by HUD as having an interest in the project's location to determine if the project will impact a historic or culturally significant structure or site. A letter signed by the Chief Elected Official describing the project and its location must be mailed to the Historic Preservation Officer and each appropriate tribe (**Exhibit A-24**).

HUD Tribal Directory Assessment Tool

To determine which, if any, Native American tribes should be consulted, the Grantee must use HUD's Tribal Directory Assessment Tool. Include a copy of the printout from this tool in the ERR. Each tribe member listed in the directory must be contacted. The letter to, and the response from, the Historic Preservation Officer and each appropriate tribe must be included in the ERR. If a tribe requests that a clause be incorporated into the contract (e.g., an inadvertent discovery clause), then the Grantee must comply. If no tribes reply within 30 days, document this by writing "no tribes responded" in the Compliance Finding column of the Statutory Checklist.

Floodplain Management

24 CFR Part 55

24 CFR 55.12(b)

24 CFR 55.2(b)(8)

24 CFR 55.12(c)

For this area, the project must comply with federal Executive Order No. 11988, covered in HUD regulations 24 CFR part 55. Most physical actions taken in a 100-year floodplain are subject to part 55, including structures, roads, and pipelines with the exception of minor clearing and grubbing. If an *incidental* portion of a project site is in the floodplain, part 55 does not apply. For projects involving building structures, part 55.12(b)(2) states that minor rehabilitation that does not meet the threshold for substantial improvements is not subject to part 55. The definition of substantial rehabilitation is given in part 55.2(b)(8). HUD funds cannot be used in floodways unless an exception in section 55.12(c) applies, or the project is a functionally dependent use (e.g., dams, marinas, and port facilities) or a floodplain function restoration activity."

On the checklist, indicate as to whether part 55 applies to the project and is located within a 100-year floodplain identified by FEMA maps or if it is a critical action (emergency facilities or facilities for mobility

impaired persons) within a 500-year floodplain. **Water and sewer treatment plants are considered critical actions, so the Eight-Step Process must be completed if they are in a 500-year floodplain.**

The compliance documentation must also include the floodplain map panel number and date, or contact with another source if there is no FEMA map for the project area. If FEMA has developed preliminary maps, they must be used. If FEMA has not published flood maps or developed preliminary 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. However, a base flood elevation from an interim, preliminary, or non-FEMA source cannot be used if it is lower than the current FIRM and FIS. FEMA maps are available on the FEMA Flood Map Service Center. The ERR must include a floodplain map with the project area marked even if the project is not in a floodplain.

FEMA Flood Map Service Center

If part 55 does apply to the project, the Grantee must complete an Eight-Step Process, which is summarized below. Documentation must be provided in the ERR for each of the following steps:

24 CFR 55.20

HUD 8 Step Process Flowchart

- Determine if the project is located in a 100-year floodplain or has an impact on the floodplain by locating the project on a floodplain map. Record the results and date of this examination in the ERR.
- Involve the public in the decision-making process by publishing an Early Public Review Notice (**Exhibit A-25**) 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 15-day comment period.
- 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 floodplain, or no action.
- Identify adverse impacts on the base flood plain, e.g., whether it will directly or indirectly support flood plain development, whether the impact is concentrated or dispersed, and if it is short or long lived.
- Identify methods to be used to minimize, restore, and preserve the floodplain.
- 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?
- Announce and explain the decision to the public by publishing a Notice of Explanation (**Exhibit A-26**) in a local newspaper. This notice requires a seven-day comment period and can be published simultaneously with the Notice of Intent to Request Release of Funds if the project is Categorically Excluded Subject to 58.5, *not* if the project requires a full Environmental Assessment.
- Implement the project with appropriate mitigation.

Grantees must use the current format for notices and carefully review them before publishing to ensure that all information is included and correct.

Wetlands Protection

This area must comply with federal Executive Order 11990. The E.O. 11990 applies to **new construction, land use conversion, major rehabilitation, and/or substantial improvements**. The Grantee should contact the OCD if there are any questions as to whether or not this area of compliance applies to their project.

Executive Order 11990

The National Wetlands Inventory defines wetland areas broadly and is maintained by the U.S. Fish and Wildlife Service.

Instructions for Checking the Wetlands Mapper

1. Go to https://www.fws.gov/wetlands/Data/Mapper.html.
2. Click on the map in the Wetlands Mapper box at the bottom of the page.
3. Accept the terms and conditions.
4. Select "Find Location," then enter the location of the project in the box and click "Go."
5. Select "Basemaps," then "Streets."
6. Use the zoom bar on the left to bring the project location into view.
7. Select "Print" at the top, enter a title, and click "Print" again.
8. When the title appears below "Print Jobs," click on the link to view your map.
9. Print a color copy to include in the ERR.
10. Mark the project location on the map.

A copy of the National Wetlands Inventory Map for the project area showing its specific location and activities (if conducting a site-specific ERR) must be included in the ERR. However, not all areas of the state have been added to the website map at this time. If the project area is not included and the USACE (U.S. Army Corps of Engineers) makes a determination that wetlands do not exist there, the Grantee must then decide 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."

Executive Order 11990

If it is obvious to the ERR preparer and certifying official that no wetlands exist in the project area based on the above, this determination is acceptable. However, if the Grantee is unable to make this determination, 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.

In summary, no wetlands exist if not indicated by the U.S. Fish and Wildlife Service's National Wetland Inventory Map OR if the area has not been mapped and the ERR preparer and certifying official have made a determination that there are no wetlands.

HUD regulations found at 24 CFR part 55 cover both floodplain management and protection of wetlands. Therefore, if a project involves new construction or substantial improvements and is located within a designated wetland, the Eight-Step Process is required. The Eight-Step Process should be conducted jointly if the project is also located in a floodplain. If this is done, both floodplains and wetlands must be addressed and referenced throughout all eight steps and in the published notices.

24 CFR Part 55

HUD 8 Step Process Flowchart

Please review the notices carefully prior to publication to ensure all information is included and correct.

Coastal Areas

Review the Coastal Zone Boundary Map found on the Office of Coastal Management website to determine if the project falls within the 20 coastal zone parishes. If it is, the Grantee must contact the Louisiana Department of Natural Resources, Office of Coastal Management (OCM) for comment.

Louisiana Coastal Boundary Map

Projects that are near the coastal zone boundary or those which may involve discharges into waters that flow into the coastal zone should be submitted to OCM for review as well. If the project is clearly not within the coastal zone, the Grantee may use the Coastal Zone Act, Louisiana Legislation Act 361, Revised, as a reference. A copy of the map must be included in the ERR with the project area indicated.

If the Grantee is seeking comments on the need to obtain a Coastal Use Permit or other authorization from OCM, a Request for Determination or Solicitation of Views should be submitted to OCM's Permits and Mitigation Division. Instructions as well as downloadable and online applications are located at http://dnr.louisiana.gov/index.cfm?md=pagebuilder&tmp=home&pid=85&ngid=5 . In Step 3 of the application, the box for Request for Determination or Solicitation of Views should be checked.

OCM Permits and Mitigation Division

Questions regarding this process may be directed to OCM Permits Section staff.

Sole Source Aquifers

This compliance area must be addressed if the project involves new construction or land use conversion. A map designating the location and boundary of the Chicot aquifer system and the Southern Hills aquifer system is located on the EPA Sole Source Aquifers Interactive Map.. If this map is used as a reference, a copy of the map with the project's location marked must be included in the ERR. The Grantee should contact the EPA/Water Management Division for projects that are located in the Southern Hills or Chicot aquifer systems. All documentation must be included in the ERR and summarized in the Statutory Checklist.

EPA Sole Source Aquifers Interactive Map

Endangered Species

According to the Statutory Worksheet, if the project involves "resurfacing, repairing, or maintaining existing streets where additional ground disturbance, outside of the existing surface, is not necessary," the Responsible Entity may make the determination that consultation is not needed.

If the project does not meet the description above as per the HUD Environmental Field Officer, the Grantee is required to determine if contact with the agency is necessary. Instructions for contacting the U.S. Fish &

Wildlife Service/Louisiana Ecological Services can be found at https://www.fws.gov/office/louisiana-ecological-services . The Grantee must complete a USFSW Report and include it with the ERR if compliance with this section is necessary. If the consultation with USFWS indicates that the project will not adversely affect threatened or endangered species or modify critical habitats, the Grantee will mark box A on the Statutory Checklist. If the USFWS's response specifies that the project will have an effect, the Grantee must mark box B and enter into a formal consultation with the agencies in accordance with procedural regulations contained in 50 CFR part 402.

50 CFR Part 402

Please note that the Responsible Entity (Grantee) must make this finding and include a memorandum in the ERR; consultants and engineers cannot be the source for this determination.

Wild and Scenic Rivers

If the project involves new construction or meets the definition of substantial improvements, then the Grantee must determine if the project is located within one mile of a designated Wild & Scenic River or a river being studied as a potential component of the Wild & Scenic River system. If it is, a determination must be obtained from the National Park Service (NPS) that shows that the project will not have a direct and adverse effect on the river or invade or diminish values associated with the rivers. For rivers included in the Nationwide River Inventory, consultation with the NPS is required to identify and eliminate direct and adverse effects. According to the NSP Wild and Scenic River System map, the Saline Bayou is the only river in Louisiana listed in the National Wild and Scenic Rivers system. A listing of the rivers being studied as a potential component of the Wild & Scenic River system can be found online. The Nationwide River Inventory (NRI) listed rivers can also be found on the NPS website. Supporting documentation must be included in the ERR.

National Wild and Scenic River System

Wild and Scenic River Studies

Nationwide River Inventory (NRI)

Air Quality (Clean Air Act)

Projects that involve new construction or substantial improvements must get a determination if the community meets the National Ambient Air Quality Standards. The Louisiana Department of Environmental Quality may be contacted to get this determination. The compliance documentation should state if the community is attainment or non-attainment and if the project will affect air quality. If the project is in a non-attainment zone, the Grantee must obtain a letter showing that the project is consistent with the State Implementation Plan (SIP). If the project is not consistent with the SIP, then the Grantee must contact the EPA to determine if a permit is required. Region 6 Air State Implementation Plans can be found at https://www.epa.gov/approved-sips/approved-sips-region-6.

Farmland Conversion

The Farmlands Protection Policy Act (FPPA) minimizes the extent to which federally assisted actions and projects convert farmland to non-agricultural uses. The FPPA (7 USC Sec. 4201 et seq.) defines prime farmland, unique farmland, and farmland of state or local importance. If the project is located in an area that is committed or zoned to urban use, no further review is necessary. The Natural Resources Conservation Services (NRCS) web soil survey maps and instructions can be found on the Web Soil Survey page.

NRCS Web Soil Survey

When a proposed project converts farmlands to non-agricultural uses, the Farmland Conversion Impact Rating Form AD-1006 must be completed. It can be obtained from the NRCS website.

Farmland Conversion Impacting Rating Form (AD-1006)

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

This section should include one of the following forms of documentation:

- A determination that the project does not include any activities, including new construction, acquisition of undeveloped land, or conversion, that could potentially convert one land use to another
- Evidence that the exemption applies, including all applicable maps
- Evidence supporting the determination that "Important Farmland," including prime farmland, unique farmland, or farmland of statewide or local importance regulated under the FPPA does not occur on the project site
- Documentation of all correspondence with NRCS, including the completed AD-1006 and a description of the consideration of alternatives and means to avoid impacts to Important Farmland

Noise Abatement and Control

This area is covered by 24 CFR part 51. The compliance documentation must contain a statement that noise assessments will be prepared for any building involving substantial rehabilitation or replacement located within a noise sensitive area (1,000 feet of a street having 4 lanes of traffic, 3,000 feet of railroad, or 15 miles of a civilian or military airfield with more than 9,000 carrier operations annually). Projects that only involve minor rehabilitation will not require noise assessments, which should be referenced in the Compliance Documentation column. A noise handbook, which contains detailed instructions for the noise assessment, is available upon request from the OCD. The assessment is ONLY required for projects that are noise sensitive, such as places where people sleep or congregate.

HUD Noise Abatement Assessment Tools

Explosive and Flammable Operations

This area is covered by 24 CFR part 51 and is applicable to projects that involve development, construction, rehabilitation, modernization, or land use conversion of a property intended for residential, institutional, recreational, commercial, or industrial uses. If applicable, an Acceptable Separation Distance (ASD) must be determined for properties within one mile of above-ground storage facilities containing explosive materials. It should be indicated in the Checklist's Compliance Documentation column that this will be accomplished for each property selected. If the property is not within the ASD, the Grantee must provide mitigating measures unless they are already in place. A copy of the Acceptable Separation Distance Guidebook and tools can be found on the HUD website.

HUD Acceptable Separation Distance Guidebook

HUD Acceptable Separation Distance Assessment Tool

Contamination and Toxic Substances

This area is covered by 24 CFR Part 50.3(i) and CFR 58.5(i)(2) and applies to projects at the CEST, EA, and EIS level, including those that are categorically excluded from NEPA review but subject to the related federal laws and authorities, all environmental assessments, and environmental impact statements.

"All property proposed for HUD program assistance shall be free of hazardous materials, contamination, toxic chemicals, gases and radioactive substances where the hazard could affect the health and safety of occupants or conflict with the intended utilization of the property."

The environmental review record should contain one of the following:

- Evidence the site is not contaminated: A report should be obtained from NETROnline https://environmental.netronline.com/ A Phase I Environmental Site Assessment is also required for all HVAC projects and may be needed if the results of the NERO search yields significant findings on any other project.
- Evidence supporting a determination the hazard will not affect health and safety of the occupants or conflict with the intended use of the site, including any mitigation measures used
- Documentation the site has been cleaned up according to EPA or state standards for residential properties, which requires a letter of "No Further Action" (NFA) required from the appropriate state department/agency, or a RAO letter from the LSRP

Permits

If any compliance area of the Statutory Checklist involves a permit that is necessary to comply with

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. If the U.S. Army Corps of Engineers requires a permit under section 404 of the Clean Water Act, HUD has determined that this permit is not required prior to completing the ERR since the Clean Water Act is not listed under the requirements of sections of 58.5 and 58.6. If the section 404 permit is required by the Corps of Engineers for the project, the permit must be obtained before beginning project construction.

Notice of Intent to Request Release of Funds (for Categorically Excluded Activities Subject to 58.5)

After the Statutory Checklist is complete and signed by both the preparer and the Chief Elected Official, all comments have been received, and the comment periods for the floodplain/wetlands notices have expired, the Grantee must then notify the public that the ERR has been completed and that the Grantee intends to request the release of funds from the State. The OCD requires the Grantee to submit the ERR documents for review prior to publishing this notice. The Grantee should **not** publish the notice until directed to do so by the OCD. For Categorically Excluded projects, it is ONLY necessary to publish or post the Notice of Intent to Request Release of Funds (**Exhibit A-19**), not the Combined Notice. 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-2**) no sooner than 7 full days after publication or 10 days after posting. The local comment period begins the day AFTER the notice is published

or posted. For publication, the actual day to submit the request for funds to the State would be day 8. For posting, it would be day 11. The notice must give a projected date of not less than 15 days from receipt of the ERR by the State as the State's last day to receive objections or comments to the request for release of funds. **If the projected date for the State's 15-day comment period falls on a holiday or weekend, the date should be the next working day.** 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:

	Published	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 7/2/xx

Completing the Environmental Assessment

The Environmental Assessment should be prepared following the format in **Exhibit A-21**. The Grantee must carefully address the narrative discussions in the assessment and include all relevant maps, site plans, photographs, budgets, etc. **Discussion must be specific to each project rather than using language that is generic in nature.**

A brief discussion of the purpose of the project and possible alternatives (e.g., the feasibility of the project, the reason the particular project design was chosen, etc.) should be included in the "Purpose of the Project" section. The "Existing Conditions and Trends" section must contain a discussion of what the result would be if the project was not completed, as well as any other existing conditions of the area.

Following the assessment, the Grantee will determine if the project will significantly affect the quality of the environment and require the preparation of an Environmental Impact Statement (EIS).

Any mitigation actions or modification measures adopted by the Grantee to eliminate or minimize environmental impacts should be listed in the "Conditions for Approval" section on the EA form.

The EA Checklist provides the choices for determinations under each area of compliance. The source documentation must meet the same standards required in the completion of the Statutory Checklist.

It is important that careful attention is given to each section for each project and generic language is not used in any of the sections. Each section must be answered even if the same information is included in other areas of the ERR.

Combined or Concurrent Notice (for Activities Requiring an Environmental Assessment)

When the Statutory Checklist and the Environmental Assessment are both complete and signed by the

preparer and the Chief Elected Official, all comments have been received, and the comment periods for the floodplain/wetlands notices have expired, the Grantee must inform the public that it has determined that the project will not significantly affect the environment and that it intends to request the release of funds from the State.

The OCD requires the Grantee to submit the ERR documents for review prior to publishing this notice. The Grantee should *not* publish the notice until directed to do so. This notice (**Exhibit A-22**) 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 15- or 18-day review period, notifies the public of the community's intent to request a release of funds, and includes a 15-day period for the State to receive public comments. After the first local public comment period (FONSI) has elapsed, the Request for Release of Funds and Certification, the Environmental Review Record, 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 public comment period, not the final date of the FONSI's local public comment period.

The State's 15-day public 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 15-day public 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 public comment periods for the Combined Notice:

	Publication Date	**Posted Date**
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 7/7/xx	6/26/xx to 7/10/xx
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 7/7/xx	6/26/xx to 7/10/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, local, state (**including the OCD**) 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-23** shows a sample Distribution List.

Request for Release of Funds and Certification

Any written comments received in response to the notices must be addressed and filed in the ERR.

This form shown in **Exhibit A-2** must be completed and submitted to the State following the final

publications discussed above. **The form must be signed by the Chief Elected Official AFTER the end of the local public comment period required by either the Notice of Intent to Request Release of Funds or the Combined Notice, whichever is applicable to the project's ERR.** Also, as per HUD, the form must be shown on the front and back of a single sheet, not on two sheets of paper.

Once the State receives the ERR documentation and Request for Release of Funds and Certification form, the OCD will inform the Grantee that no objections to the release of grant funds were received by the OCD following the State's required 15-day public comment period. This letter will confirm whether the ERR cleared is site specific or project area based.

ERR AMENDMENTS

If the project site/location or scope of work 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, all areas of compliance must be reconsidered during this process. If the project requires an Environmental Assessment and the determinations made are still valid and have not changed from the original ERR, the Grantee must only submit the revised ERR that includes the new determinations on the checklists. No further publication of a Finding of No Significant Impact is required. This includes projects that are expanding the project area that is contiguous to the original project area. However, if any of the determinations regarding the areas of compliance differ from the original ERR or if the project is amended to add a new activity or location, a new notice of Finding of No Significant Impact will be required.

*For a Summary of Environmental Review Requirements, see **Exhibit A-27**.

PROCUREMENT

GENERAL 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 applicable in securing contract services [engineering, consulting and other professional services, and construction and supplier services] are located at 2 CFR part 200.318-200.326.

2 CFR 200.318 – 326

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 2 CFR 200.318-200.326. 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-28** as a guide. The sample policy should be adjusted based on community size.

The Grantee's procurement policy must address the following:

- 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.

  2 CFR 200.318(c)(1)

- Proposed procurements must be reviewed by staff to avoid unnecessary and duplicative purchases. Also, consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase.

  2 CFR 200.318(d)

- 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.

  2 CFR 200.321

- 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.

  2 CFR 200.318 – 326

- Procedures to handle and resolve disputes relating to procurement actions of the Grantee must be included.

  2 CFR 200.318(k)

- All procurement transactions, regardless of dollar amount, must be conducted to provide "full and open competition". Some of the situations considered to be restrictive of competition include, but are not limited to, the following:

  2 CFR 200.319

  - Placing unreasonable requirements on firms in order for them to qualify to do business.
  - Requiring unnecessary experience and excessive bonding.
  - Noncompetitive pricing practices between firms or between affiliated companies.
  - Noncompetitive awards to consultants that are on retainer contracts.
  - Organizational conflicts of interest.
  - 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.
  - Any arbitrary action in the procurement process.

- Methods of procurement to be followed when purchasing materials and supplies or contracting for services must be included.

2 CFR 200.320

Conflicts of interest in the award and/or administration of contracts must be avoided. "No employee, officer, or agent must participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract." Grantees must also comply with conflict of interest requirements in 24 CFR 570.611.

2 CFR 200.318(c)(1)

24 CFR 570.611

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

Since 2014, the Federal grant regulations regarding full and open competition state: "In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids, or requests for proposals must be excluded from competing for such procurements."

2 CFR 200.319(b)

A solicitation that just follows the minimum State or local requirements for publicizing solicitations and which fails to obtain two or more qualified responses will not be considered sufficiently publicized under the Federal procurement regulations and guidance. Federal procurement guidance states that a solicitation must be run for a period sufficient to achieve effective competition. Advertising in a local newspaper whose circulation area does not provide an appropriate number of qualified firms or sources in the circulation area will not be deemed sufficiently publicized. Advertising may also include publishing the solicitation on the entity's website, Facebook page, or other public forum.

Policy and records. The federal procurement regulations require that the Grantee document rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price for all procurement transactions in adherence to its procurement policy.

The five allowable methods of procurement that conform to federal procurement requirements are

briefly described below.

OCD-LGA must approve the solicitations prior to publishing to ensure open and fair competition.

METHODS OF PROCUREMENT

Micro-Purchase

Procurement by micro-purchase is the acquisition of services, the aggregate dollar amount of which does not exceed the micro-purchase threshold of $10,000.00. To the extent practicable, the non-federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-federal entity considers the price to be reasonable.

2 CFR 200.320(a)(1)

Small Purchase

2 CFR 200.320(a)(2)

Louisiana Small Purchase Procedures (EO# JBE2020-21)

This is a simple and informal method used for securing services, supplies, or other property that do not cost more than the Small Purchase procedures provided by the Louisiana Procurement Code R.S. 39:1596, are currently $30,000. Small purchase procurement consists primarily of a comparison of quotations to each other and to other sources of pricing information (e.g., past prices paid, catalog prices, etc.). This procurement method should be used when an item or a service can be solicited through a simple description, so that all potential vendors can understand and offer a quote. Another procurement method should be used if a scope of work consists of several tasks, detailed specifications, or selection procedures, such as formal evaluations, determining competitive ranges, conducting detailed negotiations, or requesting best and final offers are required. Any procurement exceeding the State Small Purchase procedures must be conducted using another procurement method. The Grantee shall not break down requirements aggregating more than the small purchase threshold to avoid any requirements that apply to purchase that exceed the State Small Purchase procedure. When the small purchase method is used, the Grantee shall do the following:

1. Obtain price or rate quotations from at least three sources for purchases between $10,000 and $20,000. They can be obtained by fax, email, telephone, or in writing. Three quotes must be obtained, not just requested. In addition, a response of "not interested" does not qualify as a quote.
2. For purchases between $20,000 and $30,000, price quotations shall be solicited from five or more bona fide, qualified vendors. This method of purchase is not acceptable for professional services.
3. 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.
4. Issue a purchase order or execute a contract that identifies the scope of work and the terms of compensation, as needed.
5. Payment is made after performance, delivery, and acceptance.

Sealed Bids

2 CFR 200.320(b)(1)

Louisiana Public Bid Law

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 services. Used when the primary basis for award is cost. Should have two or more responsible bidders willing and able to compete effectively for the business.

- Initiated by publishing an advertisement for bids. Also bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids.
- Must hold a public bid opening at the time and place set in the advertisement for bids.
- Must have a written review and tabulation of bids according to selection criteria.

- Contract must be awarded to the lowest responsive and responsible bidder. Must be a firm fixed-price contract (fixed price or unit price).
- Any or all bids may be rejected if there is a sound documented reason.
- A contract detailing a scope of work and the terms of compensation is executed.

Competitive Proposals

2 CFR 200.320(b)(2)

Unlike sealed bidding, the competitive proposal method permits the following: consideration of technical factors other than price; discussion with offertory concerning offers submitted; negotiation of contract price or estimated cost and other contract terms and conditions; revision of proposals before the final contractor selection; and the withdrawal of an offer at any time up until the point of award. Award is normally made on the basis of the proposal that represents the best overall value to the Grantee, considering price and other factors, e.g., technical expertise, past experience, quality of proposed staffing, etc., set forth in the solicitation and not solely the lowest price.

Generally, the competitive proposals method should be used whenever any of the following conditions exist:

1. The requirement cannot be described specifically enough to permit the use of sealed bidding. In other words, the work is not definite enough to accurately estimate the total cost of the contract. Therefore, the contractor would have to build monetary contingencies into his/her price to ensure that his/her costs were covered. The Grantee, in turn, would end up paying for the increase in price due to the contingency costs.
2. The nature of the requirement is such that the Grantee needs to evaluate more than just price to be sure that the prospective contractor understands the Grantee's needs and can successfully complete the contract, especially when contracting for professional services (e.g., legal, architect-engineer, accounting, etc.) where the Grantee needs specific expertise and experience.
3. The requested work lends itself to different approaches, e.g., proposals.

Noncompetitive Proposals

2 CFR 200.320(c)

Noncompetitive Proposals – Use only under the following conditions:

- The Office of Community Development expressly authorizes noncompetitive proposals in response to a written request from the Grantee;
- The item is available only from a single source;
- The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; or
- After solicitation of a number of sources, competition is determined inadequate.

If the solicitation method(s) used results in the Grantee receiving only one offer/proposal the Grantee must contact OCD for further instructions. It will be important for the Grantee to document its justification for why there is **inadequate** competition. Before OCD can approve moving forward with a noncompetitive award, without revising or cancelling the solicitation and re-soliciting offers or bids, OCD must review the documentation.

TYPES OF CONTRACTS

The federal procurement regulations identify three general types of contracts that may be used for contracting with private parties. They are; fixed –price, cost reimbursement and time and materials. They are described below.

2 CFR 200.324

Firm fixed-price. This contract type requires the delivery of products or services at a specified price, fixed at the time of the contract award and not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. It is appropriate for use when fair and reasonable prices can be established at time of award, definite design or performance specifications are available, products are off-the-shelf or modified commercial products or services for which realistic prices can be offered, and any performance uncertainties can be identified, and reasonable cost estimated in advance. Its advantages are that it encourages contractor efficiency and places total responsibility and risk on the contractor. Its disadvantages are that it lacks flexibility in pricing and performance. It is the most preferred type of contract and the most commonly used, requiring the least amount of contract administration. However, as discussed below under other types, it is not always possible to use firm fixed-price contracts.

Cost-reimbursement. Cost-reimbursement types of contracts provide for payment of allowable incurred costs, to the extent prescribed in the contract. These contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at its own risk) without the approval of the Grantee. Unlike a fixed price contract, the contractor may not necessarily receive the total amount of the cost ceiling. Cost- reimbursement contracts are suitable for use only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed- price contract. A cost-reimbursement contract may be used only when the contractor's accounting system is adequate for determining costs applicable to the contract, and appropriate surveillance during performance will provide reasonable assurance that efficient methods and effective cost controls are used.

Time and materials.

1. A time-and-materials contract provides for acquiring supplies or services based on the following:

    a) Direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit; and,

    b) Materials at cost, including, if appropriate, material handling costs as part of material costs.

2. In accordance with **2 CFR 200.318(j)(1)** a time-and-materials contract may be used only when the Grantee has determined that no other type of contract is suitable (i.e., it is not possible at the time of placing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence), and the contract includes a ceiling price that the contractor exceeds at his/her own risk. The contracting officer shall document the contract file to justify the reasons for and amount of any subsequent change in the ceiling price. Identified in the regulation as "Time and Materials," this type of contract is also known as a "Labor Hour," "Indefinite Delivery," or as a type of "Cost Reimbursement" contract.

2 CFR 200.318(j)(1)

CONTRACT PRICES

Below are descriptions of four different categories of prices. The types of prices are closely associated with types of contracts; Lump Sum and/or Unit Price with specified quantity for a Fixed Price contract. A Cost-Reimbursement contract may have Lump sum or Unit Price components in addition to and Billable Hours and/or Reimbursable Costs.

Lump Sum Price

For definable work product(s) or deliverable(s) whose value can be expressed as a single price inclusive of all production costs [labor, materials and purchased service costs, allowable overhead and profit]. The contractor will bear all the risks in producing the work product or deliverable at the agreed upon price. Because of the presumed certainty of contract task or item performance that qualifies a contract task or item as a Lump Sum price no adjustments to contract price are permitted. For fixed price contracts no change in quantities for any Lump Sum task(s) or item(s) would be permitted. Payment of total contract price will be made upon satisfactory performance, delivery and final acceptance of contract task(s) or item(s).

Unit Price

For definable work products or deliverables whose value can be expressed as a single price inclusive of all production costs [labor, materials and purchased service costs, allowable overhead and profit] for contract tasks or items and will be needed in two more iterations at the same agreed upon price. The contractor agrees to bear all the risks and cost variance in producing or performing the contract tasks or items at the agreed upon price per unit and for the quantities specified. For fixed price contracts, no change in quantities are permitted.

Billable Hours

For work efforts that are composed of preponderantly personnel compensation costs with a minimum of outside purchases of materials and services needed to produce a work product or provide a service; the contractor will be reimbursed for applied work efforts at the agreed upon billable hourly rate(s) inclusive of direct labor compensation, overhead, general and administrative expenses, and profit [fully burdened] by job title.

Reimbursable Costs

For work efforts that require significant outside purchases of materials, services or from subcontractors in addition to the contractor's personnel compensation costs needed to produce a work product or service. The contractor's personnel compensation costs will be reimbursed for applied work efforts at the agreed upon hourly rate(s) by job title. The contractor's itemized outside purchases of materials and services will be reimbursed at invoice cost identifying items by quantities and/or cost per unit.

SELECTING THE RIGHT PROCUREMENT METHOD, CONTRACT TYPE AND PRICE

The Grantee begins by analyzing the nature of the purchase.

a. Is the purchase a definable work product[s] and/or deliverable[s]?

b. Does contract performance require a specified level of accomplishment?

c. Are [all] the performance requirements reasonably certain?

d. Are [all] the iterations or quantities certain?

e. Will [or must] the contractor assume most [all] of the cost risk?

f. Is price/cost the most important [or only] consideration for contractor selection?

If the answer to all of the above questions is "yes," then one form of a fixed price purchase method is allowed—**small purchase** or **sealed bids**. Fixed price purchases typically focus on the product to be purchased with less consideration given to the producer. To qualify as a **small purchase,** it must be an item that can be procured through a simple product or task description and not require design specifications or a detailed scope of work. Typically for a **small purchase** a single payment can be made upon completion delivery/performance. Finally, to qualify as a **small purchase** the total acquisition cost cannot exceed $30,000. If the purchase requires specifications or a detailed scope of work and cannot be simply described, then the **sealed bid** method is appropriate. If public advertisement of specifications is required, the **sealed bid** method must be used. The required type of contract when using **sealed bids** or **small purchase** is **fixed price** (2 CFR 200.320(c)(2)(iv). The appropriate type of price is either **lump sum** or **unit price** with specified quantities. The **sealed bid** method is required for construction services and can also be used for equipment, materials and some non-professional services.

2 CFR 200.320(b)(1)

For further details on the use of **sealed bids** for construction activities, see the section below "BID PACKAGE DOCUMENTS, ADVERTISING FOR BIDS, AND BID OPENING PROCEDURES."

If the answer to some of the purchase questions above is "No," especially "C. Are all the performance requirements reasonably certain?" and "F. Is price/cost the only consideration for selection?"

Then the **competitive proposal** method would be more appropriate. Unlike the fixed price purchase methods above where the focus is on the product to be purchased (principally its price), the **competitive proposal** method allows for consideration of the producer and the quality of the product to be purchased. If the answers to "A", "B", "C" and "D" above is "Yes" a **fixed price** contract may be permitted. If the answer is "No" to any of the preceding four, then a **cost reimbursement** contract will be required. Typically, the compatible type of price for a **cost-reimbursement** type of contract will be **billable hours** for professional services or **reimbursable costs** when other significant costs are involved. In situations where the answer to all the purchase analysis questions is "No" a **time and materials** contract would be appropriate. However, use of a **time and materials** contract must be approved by OCD after a justification for its use.

2 CFR 200.320(b)(2)

PROFESSIONAL SERVICES

Procuring professional services prior to the submittal of the LCDBG application enables the local government 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 government chooses to enter into a contract with another firm different from the one procured during the application process, the local government 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.

The Competitive Proposal method described herein is applicable if the Grantee intends to use LCDBG funds for general administrative services. (*This is not applicable if local funds are to pay for professional services. In this case, the Grantee should use local laws and procedures.*)

Competitive Proposals

2 CFR 200.459(b)

2 CFR 200.320(d)

The first step in procuring professional services is for the Grantee to determine what Grantee management tasks it can perform considering its own capability in the particular area and what tasks will have to contracted out. The "Administrative Cost Reasonableness" spreadsheet on OCD's website has a comprehensive listing of program tasks to be performed. After selecting the tasks to be contracted out you can develop a scope of services for your solicitation. The next step is to select the appropriate procurement method; because of the performance uncertainties involved a fixed price method is not appropriate therefore the **competitive proposal** method will be used. This method allows for evaluating more than just price; to consider qualitative factors as well. The Grantee must decide what qualitative factors to assess in its selection process.

When using the **competitive proposal** method, the federal procurement guidance requires "consideration of one or more non-cost evaluation factors."

Qualitative factors that can be considered are offeror's/proposer's qualifications, capabilities, experience, past performance, and proposer's approach to the project. The Grantee will next decide how to evaluate the non-cost qualitative factors—either as threshold requirements or competitive factors. Qualification thresholds are minimum qualifications that all proposers/offerors must have in order to compete but are not competitively ranked. Competitive criteria are items that will be compared and ranked among the proposals/offers. Competitive criteria must support meaningful comparison and discrimination between and among competing proposals/offers. The Grantee must then decide how much weight to assign to the competitive criteria. While **competitive proposals** typically gives lesser consideration to price/cost in the scoring system; the federal guidance provides that price/ cost when combined with the non-cost evaluation factors can be significantly more important, approximately equal, or significantly less important than the qualitative factors. When considering the weighting the Grantee should assess how likely the non-cost factors will distinguish the different proposers among them.

The **competitive proposal** evaluation process can be either simple or extensive. An extensive process will include a pre-proposal conference and conducting an initial selection review by establishing 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". Proposals not in the competitive range, shall be eliminated from consideration for award. The remaining proposals would then be re-evaluated and the highest scoring firm would be chosen.

In the simplified process the Grantee would evaluate the proposal(s) according to the publicized selection criteria and award the contract to the proposal which is the most advantageous to the program, with price and other factors considered.

The simplified method is recommended in situations where the purchase requirements are repeat or familiar; the project goals or objectives are well defined, the contract tasks can be specified, the proposer's particular performance approach is less important, the evaluation of the qualitative factors can be accomplished by

thresholds rather than competitive ranking and price/cost will be a significant factor because of the minimal differentiation in the qualitative factors offered by the various proposals.

The extensive method is recommended in situations where the purchase requirements are new or unfamiliar; the project goals or objectives are general, the contract tasks are proposed by the proposer and negotiated, the particular performance approach is very important, the evaluation of the qualitative factors will be accomplished mostly by competitive ranking and price/cost will be a lesser factor because of the extensive evaluation of the qualitative factors.

The evaluation process chosen must be identified in the solicitation, and the procedure cannot be changed once the procurement process is initiated. If the extensive evaluation process is used the solicitation must identify the date of the pre-proposal meeting and the projected date of the oral interviews.

The competitive proposal process.

- Begin by publicizing the 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.
- To assure "proposals will be solicited from an adequate number of qualified sources" as required in the federal regulations, the Grantee should perform the following actions:

  2 CFR 200.320(d)

  - Advertise the solicitation in a general circular newspaper and/or the Grantee's nearest metropolitan statistical area newspaper.
  - Post the solicitation on the Grantee's website if available.
  - Do direct solicitation by mailing a copy of the request for proposals to several firms that provide administrative services.

The Grantee may do one or all three of the solicitation methods above. In order to avoid the procurement from being classified as "noncompetitive" the Grantee must obtain at least two or more responsive offers/proposals. "Adequate" competition for competitive proposals is judged on the number offers/proposals received, not the particulars of the solicitation process. [See "Noncompetitive proposals" above under the "METHODS OF PROCUREMENT" section.

- The solicitation should state the following:
  - the city/parish is applying for or has been awarded an LCDBG grant;
  - the type of professional service(s) that is being solicited;
  - the location and time where the scope of services, selection criteria, minimum requirements, etc., can be obtained; and
  - the deadline for the submittal of the proposal or qualification statements.
- The solicitation cannot require one firm to provide both administrative and engineering services. However, the same firm may be procured for both services.

- The following information must be provided to all parties that responded to the solicitation (and/or mailing):
    - A cover letter from the Grantee signed by the Chief Elected Official;
    - Scope of services;
    - Name and phone number of Grantee's contact person;
    - Deadline and location for submittal of proposal and/or qualification statements;
    - 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
    - A statement that the amount of funds available for the contract will be subject to LCDBG restrictions and approval.
    - An evaluation process 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.

NOTE: 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. 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/police jury meeting, civil services procedures, etc.), rate of pay, hours worked on the LCDBG program (time sheets), and details of tasks undertaken.

The federal procurement procedures must be followed if there is not a staff attorney and the Grantee intends to use grant funds to pay for such services. The Grantee must follow federal procurement procedures even if it has an attorney hired on a retainer basis and intends to use grant funds to pay for services performed for the grant.

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 will be a significant factor if the simplified evaluation method is used or be a lesser amount of the total possible points when the extensive evaluation method is used. Geographical preference may not be a criterion in accordance with federal regulations.

2 CFR 200.319(c)

PLEASE NOTE: A firm may include the experience and background of other firms only when:

1. **A written contractual agreement exists between firms as a partnership or as a subcontractor with a specific list the services to be provided as a subcontractor; and**
2. **The solicitation issued specifically provides for this option.**

Qualification Statements

Qualification statements are used to procure the services of an engineering firm or architectural firm, 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.

2 CFR 200.320(b)(2)(iv)

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-29 — Sample Advertisement Requesting Proposals (Modify for requesting qualification statements.)

Exhibit A-30 — Sample Request for Proposals for Administrative Services

Exhibit A-31 — Sample request for Qualification Statements for Engineering/Architectural Services

ALLOWABLE COSTS

Cost Reasonableness

Normally, competition establishes price reasonableness. Where there is minimal or no price competition to tell you if the price or estimated cost is reasonable, the Grantee must obtain a breakdown of the proposed costs and perform a cost analysis. LCDBG has provided Cost Reasonableness Forms for both consultants and engineers on the LCDBG Forms and Information page that can be used to meet this requirement. 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.

Engineering Cost Reasonableness Form

Administrative Cost Reasonableness Form

Pre-Agreement Costs

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.

In addition to administrative allowances, a maximum of $3,700 is allowed for economic development, and demonstrated needs projects. Within the allowable administrative costs for demonstrated needs projects, $5,000 will be allowed if the Environmental Review record is submitted prior to or at the time of application submittal. Within the allowable administrative costs for economic development projects, an allowable cost ceiling is $9,000 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, the allowable cost ceiling is $4,000 In addition, basic engineering design fees may be included as pre-agreement costs for economic development, and demonstrated needs projects. (*Refer to the FY 2023 Method of Distribution for a breakdown of these maximum amounts.*) Pre-agreement costs must be identified separately in administrative contracts and engineering/architectural contracts.

Administration Allowances

A cost ceiling of $35,000 (for applications requesting funds up to $600,000) and $40,000 (for

applications requesting funds in excess of $600,000) is allowed for public facilities projects. A maximum of $39,000 is allowed for economic development projects. A maximum of $25,000 is allowed for demonstrated needs 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

2 CFR 200.444

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. Staff time does not include mayors, parish presidents and council members, as their costs are unallowable under federal regulations Reimbursements for travel costs 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 selected contractor must provide a completed engineer cost reasonableness form found on the OCD website. The funds allowed will not exceed those identified in the engineering fee schedules and policies located on OCD's website. 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.

CONTRACT REQUIREMENTS

A professional services contract must include the following provisions:

General Requirements

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

Scope of Services

- Detailed description of extent and character of the work to be performed.
- Time for contract performance and completion including project milestones, if any.
- Specification of materials or other services to be provided by both parties, such as maps, reports, printing, etc.
- No additional services may be added beyond what was publicized in the solicitation.

Method of Compensation

The type of contract prices for different services can vary within the same contract. Each separate service or deliverable needs to specify the type of contract, price and amount in the contract. **Never pay in advance of work.**

Federal Contract Provisions for Professional Services Contracts

- Contracts for more than the simplified acquisition threshold currently set at $250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Appendix II to Part 200, Contract Provisions for Non-Federal Entity under Federal Awards

- Contracts for more than the simplified acquisition threshold currently set at $250,000, must include language requiring domestic preferences for procurements in compliance with 2 CFR 200.322 and the Build American, Buy America Act (BABA).
- All contracts in excess of $10,000 must address termination for cause and for convenience by the non-federal entity including the manner by which it will be effected and the basis for settlement.

- Rights to Inventions Made Under a Contract or Agreement. If the federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

- Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

- Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

- Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used federal-appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.

It is recommended that the Grantee have its attorney review the contracts prior to execution. **Exhibit A- 32** is a sample Contract for Professional Services.

ADMINISTRATIVE CONTRACT REQUIREMENTS

The following conditions must be included:

- All services to be performed (including the submittal of closeout documents with the exception of the audits) will be completed within the 36-month period covered by the Grantee's contract with the State. If the solicitation and contract do not contain a provision for contract extension, a new procurement must commence after the 36-month period.

- The Environmental Review Record must be submitted to the OCD, reviewed, and the Grantee be given authority by the OCD to publish appropriate notices and to request release of grant funds within five

months of the date of authorization to incur costs. All other contract conditions will be cleared within five months of the date of the "Authorization to Incur Costs" letter. If the administrative contract conditions have not been cleared at the end of the five-month calendar period, $250 per working day will be deducted from the amount of LCDBG funds allowed for administration. If the Grantee is not using LCDBG funds to pay for administrative services, the penalty will be deducted from the construction line item in the contract and disallowed. The State reserves the right to grant a time extension where reasons for not meeting the time requirement were beyond the control of the administrative consultant.

- The amounts to be charged for pre-agreement (for approved programs only) and project administration should be separated.
- Ten percent of the contract amount will be retained until the Grantee has received the State's approval of all closeout 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 Contract Provisions identified in part II of **Exhibit A-32** must be made a part of the contract.

- The following conditions must be included in the contract:
  - Plans and specifications will be completed within five months of the date of the "Authorization to Incur Costs" letter (**Exhibit A-61**).
  - The advertisement to solicit bids for the construction contract will be published within 30 days of the State's "authorization to advertise for bids."
  - The amounts for pre-agreement, basic, and additional services should be identified separately.
- Include in the contract:
  - A scope of services (*basic and additional*)
  - A timeframe for rendering services
  - Payment schedules
  - Opinions of cost
  - The Grantee's responsibilities
  - General considerations
  - Definitions
  - Special provisions
  - Related exhibits

- Any standard contract shall be modified to include LCDBG program requirements. The program requirements are the following:
    - 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.
    - The basis of payment cannot be cost plus a percentage of cost or a percentage of construction cost.
    - 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.
    - The final plans and specifications and cost estimate must be submitted to the Office of Community Development for review within five months of the Grantee's receipt of an "**Authorization to Incur Costs**" letter. In addition, the same information must be submitted to LDH for approval for those projects subject to LDH 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 five-month calendar period, $250 per working day will be deducted from the amount of LCDBG funds allowed for basic 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. 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.
    - 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. 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. 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.
    - The Terms and Conditions in part II of **Exhibit A-32** must be revised to refer to the engineer/architect and must be made a part of the contract.

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-33** Verification of Professional Services Eligibility). Clearance must be obtained following grant award and **before any costs**

are incurred other than pre-agreement costs for eligible programs. 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:

2 CFR 200.302(b)

24 CFR 570.490(b)

- Copy of the advertisements requesting RFP's or qualification statements.
- Names and addresses of the three (or more) firms that were sent copies of the RFP
- 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.
- Description of the method used to select consultants.
- The RFP's and qualification statements received.
- Written evaluation of the RFP's and qualification statements received.
- Written statement explaining the basis of selection.
- Copy of the completed Cost Reasonableness form
- Verification of clearance of firms.

MATERIALS, SUPPLIES, AND CONSTRUCTION SERVICES

The procurement process must be in accordance with the federal requirements of 2 CFR 200 and Louisiana's Public Bid Law. One of the three methods below must be followed when procuring materials and supplies and construction services.

2 CFR 200.318 - 200.326

Louisiana Public Bid Law

- Micro-Purchase – Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold of $10,000.00. To the extent practicable, the non-federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-federal entity considers the price to be reasonable.
- Small Purchase – A simple and informal method used to purchase materials, supplies or construction services costing less than $30,000 and
    - Obtain price or rate quotations from at least three sources for purchases between $10,000 and $20,000. They can be obtained by fax, email, telephone, or in writing. Three quotes must be

obtained, not just requested. In addition, a response of "not interested" does not qualify as a quote.

- For purchases between $20,000 and $30,000, price quotations shall be solicited from five or more bona fide, qualified vendors. This method of purchase is not acceptable for professional services.
- Obtain price or rate quotations from no less than three sources. They can be obtained by fax, telephone or in writing. Quotes must be obtained and not merely requested. A response of "not interested" does not qualify as a quote.
- 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).
- Prepare and execute a formal contract that identifies the scope of work and the terms of compensation.

- 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 services. Used when the primary basis for award is cost. Should have two or more responsible bidders willing and able to compete effectively for the business.
  - Initiated by publishing an advertisement for bids. Also bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids.
  - Must hold a public bid opening at the time and place set in the advertisement for bids.
  - Must have a written review and tabulation of bids according to selection criteria.
  - Contract must be awarded to the lowest responsive and responsible bidder. Must be a firm fixed-price contract (fixed price or unit price).
  - Any or all bids may be rejected if there is a sound documented reason.
  - A contract detailing a scope of work and the terms of compensation is executed.

BID PACKAGE DOCUMENTS, ADVERTISING FOR BIDS, AND BID OPENING PROCEDURES

A bid package includes 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 also 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 Grantee's files.

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 must be co-signed by a Grantee official and filed in the contract documents file. A copy of the certification must be sent to the Office of Community Development. 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 A-34**, Architect's Certification: Compliance with Minimum Standards for Accessibility by the Physically Handicapped.

Prior to the start of construction, the Grantee must have obtained all lands, rights-of-way and easements necessary for carrying out the project. All property acquired 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 the Office of Community Development very early and make sure the acquisition is undertaken according to the provisions of the Uniform Act.

Although only local governments may apply for LCDBG funds, many of the public improvements are made on behalf of various third parties such as water, and sewer districts, as well as port authorities. If ownership of the LCDBG funded public facilities improvement applied for will be transferred to one of these third parties, it will be necessary for the local government to get approval from OCD to do this.

After receiving such approval, the local government will be required to enter into an Intergovernmental Cooperative Agreement that will stipulate the conditions of transfer of ownership. This agreement must be executed and a copy forwarded to the Office of Community Development prior to closeout. Refer to **Exhibit A-35** for a sample 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 must 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. The estimates will be based on the mobilization, labor, material, and equipment costs of correcting each punch list item. The design professional must retain in his/her working papers documentation used to determine the cost of the punch list items should these matters be disputed at a later date. The Grantee must not withhold from payment an amount more than the value of the punch list. Punch list items completed by the contractor/subcontractor(s) must be paid for upon the expiration of the forty-five-day lien period.

The base bid must include all components of the approved project. The base bid must 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.

Approved plans and specifications that include service connection lines and hook-up fees are considered "financing of costs associated with the connection of residential structures to water distribution lines or local sewer collection lines" is an eligible cost 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:

- 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 Grantee 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.

- In order for low- and moderate-income persons to qualify for financial assistance to pay for the construction or replacement of service connection lines under the LCDBG program, all applicants must first complete an application form provided by the local government 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 C, Acquisition/Anti-Displacement/Relocation/Demolition of the handbook. A sample application and temporary construction easement form is shown as **Exhibit A-36**, 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.

- LCDBG funds cannot be used to pay for 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 contributes to meeting Section 3 requirements. The cost of the project sign should be included in the bid package. **Exhibit A-37**, 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, the following

provisions for LCDBG assisted projects must be included, as applicable. These are shown in the Contract Documents Guide (**Exhibit A-38**). They include the following:

- Bonding and Insurance Requirements
- Conflict of Interest
- Access to Records/Maintenance of Records
- Clean Air/Water
- Special Conditions Pertaining to Hazards, Safety Standards and Accident Prevention (including Lead-based Paint Prohibition)
- Flood Insurance, if applicable

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 A-38.** 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**.

Additionally, 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 A-38**), 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 (**Exhibit A-61**), 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 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 solicited within thirty days of the date of that letter by public advertisement in accordance with the Louisiana Public Bid Law, and a copy of the publicized bid advertisement, including the publication date, must be submitted to the Office of Community Development. A sample Advertisement for Bids is included in the Contract Documents Guide, (**Exhibit A-38**).

Failure to comply with the thirty-day bid advertisement 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 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.

The Public Bid Law requires the following:

Louisiana Public Bid Law

- The advertisement for any contract for public works must be published once a week for three different weeks in a newspaper in the locality, and the first advertisement must appear at least 25 days before the opening of bids for construction projects.
- For materials purchases, the advertisement must be published two times in a newspaper in the locality, and the first advertisement must appear at least 15 days before the opening of bids.
- The first series of advertisement(s) cannot occur on a Saturday, Sunday, or legal holiday.
- Plans and specifications must be available to bidders on the day of the first advertisement and must be available until 24 hours before the bid opening date.
- The advertisement must call the bidders' attention to the conditions of employment and requirements of federal prevailing wage rates, Segregated Facilities, Section 3, and Equal Opportunity.
- The advertisements must not be published on Saturdays, Sundays, or a legal holiday.
- Parishes with a population exceeding 20,000 and city or municipality with a population exceeding 10,000 in population shall provide a uniform and secure electronic interactive system for the submittal of bids.

The Public Bid Law states that if bid documents are amended during the advertisement period, addenda must be sent to all prospective bidders who have received bid documents. Additionally, it states that 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. 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 must be extended for at least 7 days, but not to exceed 21 days, without the requirement of re-advertising the project. The addendum must state the revised time and date for the opening of bids.

A copy of each addendum must 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 kept in a safe place until the bid opening. On the date scheduled, the public bid opening should be conducted. The bids must 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.

Pursuant to LRS 38:2227, public entities are required to obtain an attestation regarding past criminal convictions, if any, from each bidding entity responding to advertisements and letting for bids for public works contracts. Also, pursuant to LRS 38:2212.10, all bidders and contractors performing physical services with public entities must be registered and participate in a status verification system to verify that all employees in the state are legal citizens of the United States, or are legal aliens. In addition, bidders and contractors must certify that they are not being assessed penalties regarding unpaid worker's compensation insurance, as per LRS 23:1726. The bidder/contractor must sign an attestation that they are complying with these laws, and that all subcontractors will comply with these laws. Refer to **Exhibit A-38**, for the Past Criminal Convictions of Bidders, Verification of Employees, and Certification Regarding Unpaid Worker's Compensation Insurance form. The attestation form from each bidder must be included in each bid document.

Minutes of the bid opening, along with a tabulation of bids and a roster of attendees, must be placed in the contract file. Refer to **Exhibit A-39** (Sample Minutes of Bid Opening and Bid Tabulation). Reminder: A copy of the Bid Tabulation form must be submitted to this office as discussed in section B of this handbook.

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 38:2214(B). 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 and are discussed below. **The local government, the consultant, and/or the engineer must contact the Office of Community Development for consultation before exercising any of the options.**

- 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's engineer 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 and approval prior to re-advertising the project.
- 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.

- Make up the difference between the available funds and the amount of the lowest bid with other sources of funding such as local funds.
- Enter into a contract with the low bidder for the amount of the bid and subsequently, execute change orders to bring the cost of the project within the allocated funds. The Grantee must 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 by the local government official.

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

"(J) Bidding documents 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

Contracts must be awarded to the "lowest responsible bidder" in accordance with the Louisiana 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 Office of Community Development's Labor Compliance Officer within 30 days. 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.

US Department of Treasury Bureau of Fiscal Services List of Certified Companies

Following award of the contract, the contract documents and applicable bonding and insurance requirements must be completed and executed. **Contract documents include all of 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 Bureau of Fiscal Services list of certified

companies. The list is updated annually and can be found online. Grantees can also contact the bureau by phone at (304) 480-6635, or via email at surety.bonds@fiscal.treasury.gov. 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.

Louisiana Department of Insurance – Surety Bond Requirements

The Grantee must also contact the Louisiana Insurance Commissioner's Office to determine whether or not the surety company 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 A-40**, 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.

The Grantee is reminded of its responsibility to comply with the Louisiana Public Bid Law and to seek guidance from its legal counsel concerning such compliance.

The Grantee must notify the Office of Community Development's Labor Compliance Officer of the date that construction will begin.

NOTIFYING CONTRACTORS OF RESPONSIBILITIES

A pre-construction conference must 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 made 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 omitted items such as Section 3 Assurances, Workforce Reports, 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 A-41**) as a guide. Also, requirements for equal employment opportunity monitoring during site visits should be explained.

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

ISSUING A NOTICE TO PROCEED

After execution of the contract documents and notification to the contractor(s) and subcontractor(s) of their responsibilities, a **Notice to Proceed** must 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 by the Grantee to ensure all documentation is complete. The following is a list of construction contract file requirements:

- Preliminary design and cost estimates;
- Final design documents and cost estimates;

- Evidence that all necessary land or easement acquisition has been completed prior to advertising for bids;
- Bid documents;
- Documentation of submittal to and approval of plans and specifications by the cognizant state/federal agency having jurisdiction over the project;
- Certification of Compliance with Architectural Barriers Act, if applicable;
- Proof of publication/copy of advertisement for bids;
- Minutes of public bid opening;
- Tabulation of bids;
- Recommendation for award;
- Notice of contract award;
- Executed contract document;
- Certification of insurance/bonding;
- Notice to Proceed;
- Documentation verifying prime contractor and all subcontractors have an active DUNS number, and
- Evidence of project sign requirements as shown in **Exhibit A-37**.

CONSTRUCTION MANAGEMENT

The Grantee is responsible for monitoring the construction of the LCDBG project to ensure that the contractor is operating in compliance with technical specifications and state and federal requirements, maintaining adequate cost and budget controls, and processing 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 discussed in section A. The breakdown should be submitted to the Grantee 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 to the Grantee. Do not submit written inspection reports with Requests for Payments submitted to this office.

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 must attest to the RPR's qualifications and abilities to perform the appropriate duties and responsibilities. The Qualification Certification for Resident Project Representative (**Exhibit A-42**) must be completed and submitted to the Office of Community Development 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 the 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 the following:

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 limitedto, providing benchmarks and baselines to be used by the contractor in staking the construction project, 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 ensure that all payrolls have been received and checked, any restitution has been paid, employee interviews have been conducted, and all discrepancies have been corrected or resolved.

QUALIFICATION CERTIFICATION FOR RESIDENT PROJECT REPRESENTATIVE and a copy of the Resident

Project Representative's current resume showing qualifications and work history must be submitted to the Office of Community Development (OCD). If approved, the OCD will send the approved Certification back to the Engineering Consultant.

After a Resident Project Representative is qualified, there is no need to resubmit the certification or resume.

When the grant is monitored, the monitoring team will check to see that the RPR signing the inspection reports

is on the qualified RPR for the list for the grants Engineering Consultant.

- It will be a monitoring finding if someone is signing inspection reports that is not on the qualified RPR list.
- It will be a monitoring finding if the RPR was not qualified before the start of construction.

To streamline and lessen the Louisiana Community Development Block Grant (LCDBG) paperwork, we are establishing a qualified Resident Project Representative (RPR) database. The database will be established so that the Engineering Consultant will qualify a Resident Project Representative once for the CDBG program and not for every grant.

CHANGE ORDERS

Louisiana Public Bid Law

In accordance with the Louisiana 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 dated 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. If the change order is approved by this office, the local entity may then execute the change order. **The fully executed change order will contain the dated 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

In accordance with LRS 38:2248, 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.

When construction work has been completed, the contractor must certify completion of work and submit a final request for payment. The architect/engineer must make the final inspection and prepare a written report of the inspection prior to issuance of final payment, less retainage. The inspection report may or may not include a punch list of items to be completed by the contractor prior to the issuance of acceptance of work. 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), ensure that the following requirements are met:

- All weekly payrolls and Statements of Compliance have been received, checked, and any discrepancies resolved.
- All discrepancies identified via on-site interviews have been resolved.
- All other required equal opportunity and labor standards provisions have been satisfied.
- All contract submissions have been received.

- All claims and disputes involving the contractor have been resolved.
- All files are complete.
- As-built plans have been filed.

A Final Wage Compliance Report (included in **Exhibit E-6**) must be prepared, submitted to the State with closeout documents, and a copy placed in the Labor Standards Compliance file.

The contractor must file the "Notice of Substantial Completion" at the parish Clerk of Court's office. After 45 days from the filing of the Substantial Completion 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, the Grantee must take appropriate action for disposition of the retainage and all claims against the bonds in accordance with state law.

A comprehensive Construction Contract Checklist is included as **Exhibit A-43**.

CIVIL RIGHTS

Grantees are responsible for meeting all applicable civil rights laws and requirements such as equal opportunity, Section 3, fair housing, citizen participation, and Section 504.

EQUAL OPPORTUNITY REQUIREMENTS

Grantees are responsible for meeting equal opportunity requirements as follows:

- 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.

  Title VI of the Civil Rights Act of 1964

- 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.

  Title VIII of the Civil Rights Act of 1968

- 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.

  Section 109 of the Housing and Community Development Act of 1974

- 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, and owned in substantial part by persons residing in the area of the project who are lower income residents or who hire lower income residents.

  Section 3 of the Housing and Urban Development Act of 1968

- 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.

  Age Discrimination Act of 1975

- 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.

  Section 504 of the Rehabilitation Act of 1973

- Complying with the provisions of 24 CFR 570.490(b) by maintaining equal opportunity and other records.

  24 CFR 570.490(b)

To assure compliance, a recordkeeping and reporting system should include the following:

- Section 504 compliance
- Section 3 compliance
- Project Benefit to Population Groups
- Grantee Employment Records (See City/Parish Employment form, **Exhibit A-45,** or utilize an EEO4 form)
- Minority Business participation efforts
- Fair Housing Activities
- Affirmative Action measures (if applicable) to past findings of discrimination
- Displacement Activities (if applicable)

Minority Business Enterprise

Federal procurement regulations require 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:

24 CFR 200.321

- 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.

- Dividing total requirements into smaller tasks or quantities to permit maximum participation by small and minority-owned enterprises and women's business enterprises when economically feasible.
- Establishing delivery schedules that will encourage participation by small and minority-owned businesses and women's business enterprises where the requirements permit.
- Using the services and assistance of the Small Business Administration as necessary.
- Requiring the prime contractor to take the above affirmative steps if any subcontracts are to be let.

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 the end of September 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-46** 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. Proof of affirmative action taken to hire minorities is required.

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-47**, Project Benefit Profile, assists with maintaining this information. It does not have to be submitted to this office. The Grantee 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, rehabilitation 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, e.g., Economic Development job applicants, applicants for water and sewer hook-ups, and applicants for employment on jobs resulting from this project (new hires). This information will be submitted as part of the closeout procedures of the program.

Maintain Local Government Employment Records

Equal Opportunity Posters

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 and other posters may be found on the U.S. Equal Opportunity Commission website.

Preparing Contract Documents to Meet Equal Opportunity Requirements

Equal employment opportunity requirements ensure that applicants for employment and employees are not discriminated against because of their race, color, religion, sex or national origin.

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 A-38**, and include the following:

- Section 3 Clause
- Contractor's/Subcontractor's Section 3 Statement of Assurances (if HUD funding on the project exceeds $200,000)
- Subcontract Utilization Reports (**Exhibit A-51**)
- Contractor's/Subcontractor's Project Workforce Reports (**Exhibit A-52**)
- Section 3 Worker/Targeted Worker Certification Form (**Exhibit A-49**)
- Section 3 Business Certification Form (**Exhibit A-50**)
- Section 3 Final Labor Hours Compliance Report (**Exhibit A-44**)
- Special Equal Opportunity Provisions
    - Activities and contracts not subject to Executive Order 11246, as amended – Contracts/subcontracts less than or equal to $10,000
    - Executive Order 11246 – Contracts/subcontracts exceeding $10,000.
        - Section 202 Equal Opportunity Clause
        - Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity – If contract/subcontract exceeds $10,000
        - Standard Federal Equal Employment Opportunity Construction Contract Specifications – If contract/subcontract exceeds $10,000
    - Certification of Non-Segregated Facilities – (included in Section 3 Assurances)

These provisions must be included in all bid and contract documents, especially the Standard Federal 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 Metropolitan Statistical Areas (MSA) and "Economic Areas;" therefore, 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 A-48** (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 only those jobs that 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 both MSA X and MSA Y, even though that contract is not LCDBG-assisted.

A copy of **Exhibit A-41,** Commonly Asked Questions Concerning Equal Opportunity, should be distributed to and discussed with the contractor either during a preconstruction conference, or through another method to advise the contractor of his/her responsibilities.

In addition, the Grantee must visit the construction site (usually in conjunction with employee interviews for labor standards compliance) to ensure 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 must be noted in the contract compliance file.

The Grantee is also responsible for monitoring each contractor during the course of work to determine compliance with the Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246) contained in the contract.

At project completion, the equal opportunity compliance documentation in the contract compliance file must contain the following items:

- A copy of the construction contract with all applicable equal opportunity provisions.
- Evidence that the contractor established his/her own equal opportunity file.
- Records of any equal opportunity complaints and actions taken.
- Any correspondence concerning the contractor's equal opportunity compliance.
- Verification of contractor eligibility, cross-referenced with the labor standards compliance file.
- A preconstruction conference report, if applicable, cross-referenced with the labor standards compliance file.
- Site visit reports indicating that the equal opportunity poster was displayed on site and that the contractor complied with equal opportunity provisions, cross-referenced from labor standards compliance file.
- Documentation of any equal opportunity problems uncovered in employee interviews and evidence of resolution.

SECTION 3 COMPLIANCE

Introduction

Section 3 of the Housing and Urban Development Act of 1968, as amended, ("Section 3") requires that economic opportunities generated by certain U.S. Department of Housing and Urban Development (HUD) financial assistance for housing and community development programs be directed to low and very low-income persons in the project area (regardless of race or gender). The priority of assistance should be to those who are recipients of government assistance for housing, and business concerns which provide economic opportunities to low and very low-income persons.

The Section 3 program was created to ensure that persons living in communities where HUD assisted programs were being funded could economically benefit from the resources being spent. This would improve the overall socioeconomic condition of not only the community, but also the low and very low-income residents that reside within the neighborhoods.

The implementing regulation for Section 3 can be found at 24 CFR Part 75.

Applicability

Whenever any portion of CDBG funding is invested into projects involving housing construction, demolition or rehabilitation, commercial/private improvements for economic development, or other public construction (e.g., roads, sewers, community centers, and public facilities), the requirements of Section 3 may apply.

Section 3 applies to all projects that receive $200,000 or more in CDBG, HOME, or other HUD covered assistance, including projects that are financed in conjunction with state, local or private matching or leveraged funds. **Accordingly, if $200,000 of Section 3 covered financial assistance is invested into a project involving housing demolition, rehabilitation or construction, or the rehabilitation or construction of public buildings, facilities, or infrastructure, the requirements of Section 3 apply to the entire project, both HUD and non-HUD funded portions.** In particular:

- Section 3 applies to recipients of CDBG funding, as well as its subrecipients, contractors and sub-contractors; and
- Professional service contract labor hours (construction contract oversight, engineering, architectural, environmental and property evaluation, construction progress and construction draw inspection and prevailing wage labor compliance) are not required to be reported.
- If a contract covers both professional services and other work and the recipient or contractor or subcontractor chooses not to report labor hours from professional services, the labor hours under the contract that are not from professional services must still be reported.

The regulations should not be construed to mean that recipients are required to hire Section 3 Workers or award contracts to Section 3 Business Concerns other than what is needed to complete covered projects and activities. If the expenditure of funding for an otherwise covered project and activity does not result in new employment, contracting, or training opportunities, reporting is still required.

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. When CDBG (and other HUD funding) to the project exceeds $200,000, the Section 3 Assurances (included in **Exhibit A-38**), the Project Workforce Report (**Exhibit A-52**), the Subcontractor Utilization Report (**Exhibit A-51**) must be completed by the prime and all subcontractors **prior to receiving CDBG funds.**

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

Section 3 Part 75 Definitions

The following definitions also apply to this part:

Contractor means any entity entering into a contract with a recipient or subrecipient to perform work in connection with a Section 3 project.

Labor hours means the number of paid hours worked by persons on a Section 3 project.

Low-income person means a person as defined in Section 3(b)(2) of the 1937 Act. These limits are typically established at 80 percent of the area median individual income. HUD income limits may be obtained from: https://www.huduser.gov/portal/datasets/il.html.

Material supply contracts means contracts for the purchase of products and materials, including, but not limited to, lumber, drywall, wiring, concrete, pipes, toilets, sinks, carpets, and office supplies.

Professional services means non-construction services that require an advanced degree or professional licensing, including, but not limited to, contracts for legal services, financial consulting, accounting services, environmental assessment, architectural services, and civil engineering services.

Recipient means any entity that receives directly from HUD public housing financial assistance or housing and community development assistance that funds Section 3 projects, including, but not limited to, any State, local government, instrumentality, PHA, or other public agency, public or private nonprofit organization.

Section 3 means Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).

Section 3 business concern means:

1. A business concern meeting at least one of the following criteria, documented within the last six-month period:
    a) It is at least 51 percent owned and controlled by low- or very low-income persons;
    b) Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers; or
    c) It is a business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.
2. The status of a Section 3 business concern shall not be negatively affected by a prior arrest or conviction of its owner(s) or employees.
3. Nothing in this part shall be construed to require the contracting or subcontracting of a Section 3 business concern. Section 3 business concerns are not exempt from meeting the specifications of the contract.

Section 3 projects are housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds a threshold of $200,000.

Section 3 worker means:

1. Any worker who currently fits or when hired within the **past five years** fit at least one of the following categories, as documented:
    a) The worker's income for the previous or annualized calendar year is below the income limit established by HUD.
    b) The worker is employed by a Section 3 business concern.
    c) The worker is a YouthBuild participant.
2. The status of a Section 3 worker shall not be negatively affected by a prior arrest or conviction.
3. Nothing in this part shall be construed to require the employment of someone who meets this definition of a Section 3 worker. Section 3 workers are not exempt from meeting the qualifications of the position to be filled.

Section 8-assisted housing refers to housing receiving project-based rental assistance or tenant-based assistance under Section 8 of the 1937 Act.

Service area or the neighborhood of the project means an area within one mile of the Section 3 project or, if fewer than 5,000 people live within one mile of a Section 3 project, within a circle centered on the Section 3 project that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census.

Subcontractor means any entity that has a contract with a contractor to undertake a portion of the contractor's obligation to perform work in connection with the expenditure of public housing financial assistance or for a Section 3 project.

Subrecipient has the meaning provided in the applicable program regulations or in 2 CFR 200.93.

Targeted Section 3 worker for CDBG assisted projects is a Section 3 worker who:

1. is employed by a Section 3 business concern; or
2. currently fits or when hired fit at least one of the following categories, as documented within the past five years:
    a. Living within the service area or the neighborhood of the project, as defined in 24 CFR § 75.5; or
    b. A YouthBuild participant.and
    c. Does not exclude an individual that has a prior arrest or conviction.

Very low-income person means the definition for this term set forth in section 3(b)(2) of the 1937 Act. These limits are typically established at 50 percent of the area median individual income. HUD income limits may be obtained from: https://www.huduser.gov/portal/datasets/il.html.

YouthBuild programs refers to YouthBuild programs receiving assistance under the Workforce Innovation and Opportunity Act (29 U.S.C. 3226).

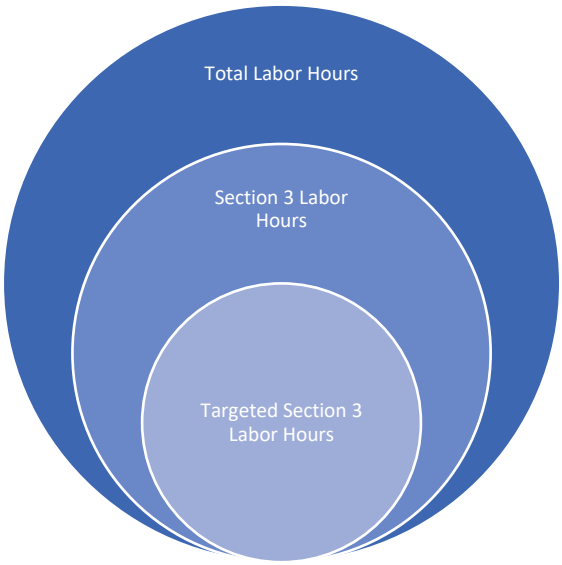
Grantee Responsibilities

A local government that receives CDBG funding has the responsibility to comply with Section 3 requirements. The Grantee is also required to "ensure compliance" of their contractors and subcontractors. This responsibility includes:

1. Notifying Section 3 Workers and business concerns about jobs and contracts generated by Section 3 covered assistance so that they may submit bids/proposals for available contracts and job openings with the Grantee;
2. Notify potential contractors of their responsibilities under Section 3;
3. Include Section 3 language in all applicable contracts;
4. Require subrecipients, contractors, and subcontractors to meet the requirements of §75.19, regardless of whether Section 3 language is included in recipient or subrecipient agreements, program regulatory agreements, or contracts.
5. Document action(s) taken to meet the HUD benchmarks;
6. Respond to Section 3 complaints; and
7. Submit required Section 3 reporting as a component of the final close-out report

It is imperative to notify Section 3 residents and businesses about economic opportunities. The contractor must post signs advertising new employment, training, or subcontracting opportunities that will be available as a result of the Section 3 covered projects in conspicuous places at the work site where potential applicants can review them.

Minimum numerical goals



Contractors and subcontractors on Section 3 covered projects are required to comply with Section 3. Accordingly, the recipient must attempt to reach the Section 3 minimum numerical goals found at 24 CFR Part 75, Subpart C, currently identified as:

- Twenty-five (25) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Section 3 workers;

$$\frac{\textbf{Section 3 Labor Hours}}{\textbf{Total Labor Hours}} = \textbf{25\%}$$

And

- Five (5) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Targeted Section 3 workers.

$$\frac{\textbf{Targeted Section 3 Labor Hours}}{\textbf{Total Labor Hours}} = \textbf{5\%}$$

Contracting

Section 3 requirements apply to both the prime contractor and any subcontractors that conduct work on an LCDBG project, if HUD assistance for the project exceeds $200,000. Section 3 of the Housing and Urban Development Act of 1968 requires, to the greatest extent feasible, opportunities for training and employment to be given to lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns that provide economic opportunities to low-income persons.

The Section 3 Assurances and accompanying Section 3 Subcontractor Utilization Report (**Exhibit A-51**) and Contractor's Project Workforce Report (**Exhibit A-52**) of the Contract Documents Guide found in **Exhibit A-38** must be completed by the prime contractor(s) and all subcontractors if the HUD funding on the project is over $200,000.

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.**

Other Economic Opportunities

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 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

HUD Section 3 Webpage

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 in Exhibit A-44, Final Labor Hours Compliance Report)**. 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. Additional guidance may be found on the HUD Section 3 webpage.)**

- Personally notify certified residents of employment opportunities.
- 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 job site, churches, apartments, and other places that low-income residents would frequent.
- Contact community organizations and resident organizations and request assistance in notifying residents of the employment positions to be filled.
- 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.
- Arrange assistance in conducting job interviews and completing job applications for residents of the service area where the project is located.
- Arrange for a location in the service area of the project where job applications may be collected by the Grantee or contractor representative.

- 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.
- Advertise the jobs to be filled through the local media, such as community television networks, newspapers of general circulation, and radio.
- Maintain a list of certified Section 3 residents for future employment positions.
- 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 after selection of bidders, but prior to execution of contracts.
- Post a project notification sign in the project service area. Contracting (Also applies to contractors hiring subcontractors)
- Consider potential contractors' past records of Section 3 compliance and their current plans for the pending contract when determining their responsibility. **Refrain from entering into contracts with contractors who fail to comply with Section 3.**
- Utilize minority contractors' associations and community organizations to assist in identifying Section 3 businesses who may be potential bidders.
- Advertise contracting opportunities by posting notices concerning the work to be contracted in common areas of housing developments.
- Provide written notice to all known Section 3 business concerns of the contracting opportunities. The SBA Registry in the categories of minority, HUBZone, and disadvantaged businesses may be used to find potential Section 3 businesses.
- 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.
- Coordinate pre-bid meetings at which Section 3 business concerns could be informed of the upcoming contracting opportunities.
- 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.
- 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.
- Arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways to facilitate the participation of Section 3 business concerns.
- Break out contract work items into economically feasible units to facilitate participation of Section 3 business concerns where appropriate.

- Contact agencies administering HUD YouthBuild programs and notify these agencies of the contracting opportunities.
- Advertise the contracting opportunities through trade association papers, local media, such as television, newspapers, and radio. Refer to Section 3 in bid packages.
- Establish numerical goals (dollar amounts and number of awards) for contracts to Section 3 business concerns.
- Use small purchase procedures (contract may not exceed $30,000), 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.
- Post a project notification sign in the project service area.

Certification

Grantees are responsible for certifying the eligibility of workers 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 Section 3 Worker/Targeted Worker Certification Form (**Exhibit A-49**) from each new hire requesting Section 3 status if they are not automatically qualified by the contractor/subcontractor based on annualized salary. A Section 3 Business Certification Form (**Exhibit A-50**) should be collected from each subcontractor claiming Section 3 status.

Section 3 Reporting

The Grantee must report information on all Section 3 Final Labor Hours Compliance Reports (**Exhibit A-44**). This report will be due before final payment can be made to the contractor and will be submitted with the Program Completion Report (**Exhibit E-6**).

NOTE: This form has been changed and requires additional information from that of previous years.

Section 3 Complaints

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 with the local HUD field office. The appropriate office can be found at www.hud.gov.

Section 3 Contract Clause

Grantees must include the **Section 3 Contract Clause** in all covered contracts. All contractors must ensure the clause is included in all subcontracts on the covered project.

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

As a recipient of CDBG funds, Grantees are required 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. This includes promoting and publicizing Fair Housing laws as explained below and in **Exhibit A-53** (Suggested Activities to Affirmatively Further Fair Housing). The Grantee also agreed to develop and maintain records of efforts to assure fair housing.

42 USC 3608(e)(5)

E.O. 12259(1-202)

24 CFR 570.601

LCDBG Grantees are required to further fair housing efforts by conducting an assessment to identify **impediments to fair housing choice** within its jurisdiction, taking appropriate actions to overcome the effects of any impediments identified through that assessment, and maintaining records reflecting the assessment and actions in this regard.

24 CFR 570.487(b)

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 assessment 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-54**. Upon completing the assessment, the grantee should address Fair Housing efforts in the areas determined most critical**. The assessment must be signed by both the CEO and the preparer.** 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)

FAIR HOUSING ASSURANCE

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. **Posting of the Fair Housing Flyer does not satisfy compliance.** This documentation must be available when this 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-53** 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-53**.

Each Grantee shall certify that there have been no findings made by or open complaints with the HUD

FHEO or Louisiana Attorney General. Further, the Grantee shall notify OCD at any time during the grant if a complaint is filed.

A sample assurance is attached as **Exhibit A-55**.

SECTION 504 REQUIREMENTS

Grantees are required to comply with Section 504 of the Rehabilitation Act of 1973, as amended. 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."

29 USC 794

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.

Grantee Assurance

Each Grantee shall submit an assurance to the Office of Community Development that the LCDBG

24 CFR 8.50(a)

program will be operated in compliance with Section 504 requirements. 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-56**, Section 504 Assurance form.

Self-Evaluation

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.

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. 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.

Each Grantee shall modify any policies and practices that do not meet the requirements for program accessibility. Compliance with 504 does not necessarily require a Grantee to make each of its existing facilities accessible to and usable by individuals with disabilities. It also does not require a

Grantee to take any action that would result in a demonstrable 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-57 (Summary of Actions Taken to Achieve Compliance with Section 504) of this handbook.

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 within six months of the date of the "Authorization to Incur Costs" letter (Exhibit A-61).**

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

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.

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

24 CFR 8.21(4)

24 CFR 8.21(c)(3)

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. 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 (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 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

- A responsible employee must be designated to coordinate the community's efforts to comply with Section 504.
- 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.

- 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 notice must contain this specific language.)** 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.

- The Grantee must maintain a file, make available for public inspection, and provide the following 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.

Section 504 Recordkeeping

Each Grantee must maintain data for the State showing the extent to which individuals with disabilities

are beneficiaries of federally assisted programs.

Limited English Proficiency

HUD Limited English Proficiency FAQ

All Grantees will be required to complete and adopt a Language Access Plan (LAP) for Limited English Proficiency (LEP) Persons, as required by Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d) and Executive Order 13166 which states that recipients of federal funds take responsible steps to ensure meaningful access by persons with Limited English Proficiency.

In preparing this LAP, Grantees must conduct a four-factor analysis, considering (1) the number or proportion of LEP persons eligible to be served or likely to be encountered by the Grantee or its federally funded programs, (2) frequency with which LEP persons come into contact with the Grantee's programs, (3) nature and importance of the program, activity, or service to people's lives, and (4) resources available and costs. **This plan must be adopted within one year of the "Authorization to Incur Costs" letter and reviewed/updated on an annual basis to ensure continued responsiveness to community needs.**

LEP FAQ's

Depending upon the site of a particular language group, translation of "vital" documents may become necessary. These requirements are outlined under the topics: "What is a vital document?" and "What is a safe harbor?" on the LEP.gov Frequently Asked Questions page.

The Office of Community Development's LAP is found in **Exhibit A-58**, which can be used as a sample. The federal LEP website has resources available to help formulate the LEP, including links to I-Speak Cards. More information can be found on the HUD language access webpage.

LEP.gov

HUD Limited English Proficiency Webpage

The Grantee should utilize Table S1601, provided by the U.S. Census Bureau's American Community Survey, to find the data at the Parish or the City/Town/Village level.

U.S. Census Bureau American Community Survey (Table S1601)

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 C, "Acquisition/Anti-Displacement/Relocation/Demolition: Residential Anti-Displacement and Relocation Assistance Plan," of this handbook for more information on this requirement.

SUBRECIPIENTS

Federal regulations stipulate that the LCDBG program may make CDBG program grants only to units of general local government (Villages, Towns, Cities and Parishes). However, a general unit of local government recipient of the LCDBG program may utilize an unaffiliated public or non-profit entity to carry out the eligible activity(ies) of its LCDBG program when that entity has a special jurisdiction and/or capability that is outside the normal jurisdiction or capability of the local government. The local government recipient may make a "subaward" to the entity with the special jurisdiction and/or capability to carry out the eligible activity(ies) of its LCDBG program.

24 CFR 570.480(g)

The recipient of the subaward is called a "subrecipient". A subrecipient will be responsible for all applicable federal compliance requirements of the CDBG program, including compliance with the Federal Audit regulations, just as the local government recipient of the LCDBG program.

2 CFR Part 200, Subpart F

A subrecipient relationship exists when the subrecipient, through its operations:

- determines who is eligible to receive what Federal assistance or who is a beneficiary of the program;
- has its performance measured in relation to whether objectives of a Federal program were met;
- has responsibility for programmatic decision-making;
- and will utilize the assistance of the subaward to complete the eligible activity and meet the national objective of the program.

The subrecipient will be responsible for collecting and/or maintaining any records necessary to establish compliance with the national objective.

The local government recipient must enter into a written subrecipient agreement with their subrecipient. The written agreement must comply the requirements of 2 CFR 200. A sample subrecipient agreement can be found in **Exhibit A-59**.

2 CFR 200.332

NOTE: Under the federal Uniform Administrative Requirements [2 CFR 200.331(a)] a subrecipient is different from a contractor [2 CFR 200.331(b)]. A contractor does not have the program compliance responsibilities of a subrecipient and cannot earn program income, may be a for profit entity, may charge fees above actual costs, and must be selected through a competitive procurement process.

PROGRAM CHANGES AND 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 the bidding process and/or implementation of the change.

PROGRAM CHANGES

Some changes that become necessary for project implementation do not involve a change in scope of work or number of project beneficiaries and may not require a full program amendment. These program changes generally must be requested in writing by the grantee.

The request should describe the intended change to the project, and statements regarding whether the change will affect the intent/scope of the project, number of project beneficiaries, and the Environmental Review Record. Upon receipt of the request, this office may ask for additional information in order to make a determination to approve or disapprove the request.

PROGRAM AMENDMENTS

Single changes or cumulative changes in the program budget greater than 10 percent of the grant award amount, changes that result in the deletion or addition of an activity or item, and changes to the scope of work or that would affect the original rating of the application require prior state approval. This approval must be requested through the submittal of a Request for Program Amendment, **Exhibit A-60**. 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 only 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. Any changes that are not necessary to complete the originally approved project

and/or require an amendment to the originally approved ERR will not be considered.

Expansions must generally 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 are selected for funding based on their proposed program and are expected to complete the program 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. 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 that 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.

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

RECORDKEEPING AND REPORTING

24 CFR 570.490(b)

24 CFR 570.4909(c)

24 CFR 570.4909(d)

2 CFR 200.334

HUD Model Recordkeeping Requirements

Grantees must 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. LCDBG records must be maintained for a period of three years after the State closes the CDBG grant year, from which funds were awarded, with HUD. The State will notify the grantee of the date its grant records can be destroyed. The filing system established to keep these records should be easy to use while providing a historical account of all activities for examination and review by the State, auditors, and local staff. The filing system should be established on a program year basis. LCDBG files must be maintained in a central location. The checklist below is a sample of the major file categories to be maintained and a listing of materials that should be kept in each file. This list is not all inclusive. **Although a grant consultant may maintain a set of files in his/her office, the local government is**

required to maintain the original files in the Town Hall/Courthouse. The local government files will be used by OCD to audit compliance during the on-site visit conducted by OCD during the grant period.

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
- 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 Financial Management
- Electronic Funds Transfer Enrollment Form
- Authorized Signature Form
- Financial Management Questionnaire (mailed with Application Revision letter)
- Requests for Payment
- Accounting books of original and final entry (Chart of Accounts, General Journal, Monthly Financial Statements, General Ledger)
- 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

Environmental Review Record

- Finding of Exemption (if applicable)
- Finding of Categorical Exclusion (if applicable)
- Statutory Checklist and Worksheet (if applicable)
- Project description
- Environmental Assessment/Checklist (if applicable)

- ERR Project Map with boundaries marked
- Floodplain Map
- Wetlands Map (if applicable)
- Coastal Zone Barrier Map
- Coastal Zone Map
- Wild and Scenic Rivers Map
- Airport Map
- Sole Source Aquifer Map
- Environmental Justice Map
- Memorandum by responsible entity regarding endangered species
- Floodplain/Wetlands Notices/Eight-step documentation (if applicable)
- US Corps of Engineers letters (to and from / if applicable)
- State Historic Preservation letters (to and from)
- Indian Tribe letters (to and from)
- Farmland Conversion Impact Rating form (if applicable)
- 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

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"
- Special studies, surveys, investigations, test results, etc.
- 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

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

- Grantee's Section 3 Plan (if grant exceeds $200,000)
- Section 3 Assurances for all Contractor and all Subcontractors
- Subcontractor Utilization Reports for all Contractors and Subcontractors (pre and post project)
- Contractor/Subcontractor Project Workforce Reports (pre and post project)
- Contractor/Subcontractor Section 3 Final Labor Hours Compliance Reports
- Certifications of Section 3 employees and businesses, if applicable

Labor Standards

Comprehensive labor standards compliance files must be established for each construction job. **Exhibit A-43** is a Comprehensive Construction Contract Checklist that includes all required labor standard compliance documentation and provides a system for documenting compliance activities.

- 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 recordkeeping requirements with respect to force account

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: The LCDBG reviewer shall assure himself or herself that notice actually transmitted is adequate.)**
- Invitation to accompany appraiser – Evidence that owner was invited to accompany each appraiser on his or her 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 the 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 the 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.

<u>Relocation Case Files (for each relocation claim)</u>

- 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.

SECTION B. LABOR COMPLIANCE

INTRODUCTION

Construction projects funded with CDBG require that certain procedures be followed to fully comply with applicable federal and state regulations.

This section describes the policies and procedures that must be followed when undertaking construction projects with CDBG funds, including bid preparation, contract award, pre-construction meetings and compliance with prevailing wage requirements.

REGULATIONS/REQUIREMENTS

- **Davis-Bacon and Related Acts (40. U.S.C. 3141)** 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 handbook will often use the following terms interchangeably: Davis-Bacon, Davis-Bacon requirements, prevailing wage requirements, DBA, and DBRA.

  Davis Bacon and Related Acts

  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. 3141)** 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 permission for pay deduction(s) not prescribed by law.

  Copeland Anti-Kickback Act

- **Contract Work Hours and Safety Standards Act (40 U.S.C. 3141) 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 hourly rate of pay for any time worked in excess of forty hours weekly.

  Contract Work Hours and Safety Standards Act

- **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, 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.

HUD has published two guides that are available for downloading on labor standards requirements. These documents are "Making Davis Bacon Work: A Practical Guide for States, Indian Tribes and Local Agencies" and "Making Davis Bacon Work: A Contractor's Guide to Prevailing Wage Requirements for Federally Assisted Construction Projects." HUD Handbook 1344.1 also provides detailed guidance on labor standards requirements.

Making Davis Bacon Work

HUD Handbook 1344.1

The local government must establish and maintain an adequate labor standards file(s) as specified in Section A: 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 to determine the prevailing wages for each locality. DOL then issues wage decisions for each locality. 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 that 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 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 is, including the work of subcontractors.

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 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 of addition to buildings •Fire stations •Hotels and Motels •Power Plants •Prefabricated Buildings •Remodeling, repairing, and renovating buildings •Warehouses •Water/Sewer Treatment Plants (bldg only)	•Curbs •Concrete Pavement including sidewalks •Parking Lots •Street Reconstruction •Roadbeds •Shoulders •Street Paving	•Drainage Projects •Pumping Stations (prefabricated drop-in units) •Sewers (sanitary, storm, etc.) •Sewer Collection •Water Storage Tanks •Water/Sewer Treatment (other than buildings) •Water Mains •Water Wells	•Apartment Buildings (4 stories or less) •Married Student Housing •Multi-family Housing •Townhouses or Row Houses •Single Family Houses (8 or more in a single contract)

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;

  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 the OCD's assistance. Guidance on choosing the proper wage decision and downloading can be found on the wage determination page of SAM.gov. If the local government is unable to download a decision(s), the Labor Compliance Officer of the Office of Community Development should be notified.

  SAM.gov Wage Determinations

  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 DAY CALL

- **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) be 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 10 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 and the "lock-in" date becomes the date of the contract award.

- **Ten-Day Responsibility** It is the local government's responsibility to ensure that the wage decision(s) that is in effect 10 days before the bid opening date was part of the original bid package or becomes part of the original bid package by addendum, 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 an updated wage decision(s).

- **Ten-Day Call** 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 the OCD 10 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. The OCD will then examine the SAM.gov wage determinations 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. The 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.

- **Ten-Day Search** 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 SAM.gov wage determination website to determine if there have been any updates.

  SAM.gov Wage Determinations

  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 $30,000, and the contract award is less than $30,000. 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 the 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 10 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 10 days to make changes to bids based on an update of the wage decision.

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. The 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 cases, 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 the OCD. To obtain clearance, the local government must complete and send to the 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, the OCD will verify the contractor(s) are not listed on the SAM.gov Exclusions List. The OCD's search of the website only determines whether the contractor is debarred; other types of performance information are not gathered. After reviewing the contractor's eligibility status, the OCD will indicate the results of the review on the Verification of Wage Decision(s) and Contractor Eligibility form and email the reviewed form to the local government via the email address listed on the face of the form. The local government may also search this site to obtain information, but the public availability of this site does not alter the requirement for the local government to obtain clearance through the OCD. Prior to contract award, the Grantee must receive the Verification of Wage Decision(s) and Contractor Eligibility form with the 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.

  SAM.gov Exclusions

  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.

  All contractors (primes and subs) are required to have a Unique Entity ID (UEI) number that is active on www.sam.gov. The UEI number(s) must be active prior to the start of construction and remain active until construction is complete for each respective contractor. The UEI number(s) for the prime, and any known subs, will be submitted and

  SAM.gov Entity Registration and Unique Entity ID (UEI)

reviewed at the time of the Verification of Wage Decision & Contractor Eligibility. If a subcontractor is added to the project at a later date, the Grantee is required to submit the subcontractor's UEI number to the OCD for verification of "active" status. It is the responsibility of the prime contractor to ensure that any subcontractor on the project has an active UEI number prior to the subcontractor beginning work on the project.

- **Subcontractor Clearance** The 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, proof of liability insurance, possession of a federal ID tax number, debarment, and state licensing requirements, and an active UEI number. The prime contractor may use the website, www.sam.gov, to determine if a subcontractor has been debarred at the federal level. The prime contractor assumes responsibility for the performance of the subcontractor; therefore, the OCD urges prime contractors to closely scrutinize subcontractors. As stated in the previous section, it is the prime contractor's responsibility to ensure that any subcontractors working on the project have an active UEI number prior to the subcontractor beginning work on the project.

  At the time of the monitoring review, evidence of active UEI numbers for subcontractors must be provided.

  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 the 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-33** (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 the OCD for all prime contracts. **The Notice of Contract Award form must be signed by the local government's Chief Elected Official and may not contain a typed signature.** This form must be received by the 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.

  Please provide only the bid tabulation along with the Notice of Contract Award. An array of other documentation, such as the Louisiana Uniform Public Work bid form, minutes of bid opening, etc., should not be packaged with the Notice of Contract Award.

- **Preconstruction Conference** The OCD **requires** 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 and **UEI number requirements**. 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 the following:

  Report of Additional Classification and Rate (HUD Form 4230A)

  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 subcontractor) 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 top half of HUD 4230A may be completed by the local government based on information from the contractor. A copy of the applicable wage decision should be provided as attached documentation. 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.

     Report of Additional Classification and Rate (HUD Form 4230A)

  3. The Office of Community Development will review and complete the report and send the form and supporting documentation 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.

  Report of Additional Classification and Rate (HUD Form 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. According to HUD, payrolls should report the hours worked and rates of pay for all laborers and mechanics.

- **Contractor's Guide to Davis-Bacon** The HUD desk guide, "Davis Bacon and Labor Standards: Agency/Contractor Guide and the Contractor Guide Addendum," are recommended (but not required) publications that the

  HUD's Contractor's Guide and Contractor Addendum

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.

- **Site of Work** The site of work as related to Davis-Bacon is limited to the physical place(s) where construction was called for in the contract and will remain when work has been completed, as well as 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:

  - "Employee Rights Under the Fair Labor Standards Act" (http://www.dol.gov/whd/regs/compliance/posters/flsa.htm)
  - "Employee Rights Under the Davis-Bacon Act" (http://www.dol.gov/whd/regs/compliance/posters/davis.htm)

- "Equal Employment Opportunity is the Law" (http://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm)
- The U.S. Department of Labor's "Workplace Posters" website may be found at https://www.dol.gov/whd/resources/posters.htm.

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

EMPLOYEE INTERVIEWS

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

HUD Record of Employee Interview Form and Instructions

- **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.

  The OCD has determined that interviews must be conducted for at least 50% of the laborers and at least one 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. Interviews by mail are no longer acceptable.

- **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, employees of that subcontractor will not have to be interviewed—unless there are payroll problems. If awarded a subcontract for less than $100,000, the employees of future fence subcontractor will not 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 for time worked as a mechanic 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. The registered program should also provide information regarding fringe benefit payment levels for apprentices.

- **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.

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 the 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 payroll form (WH-347: DBRA Certified Payroll Form) along with instructions on the DOL Wage and Hour Webpage. A Payroll Review Flowchart is provided as **Exhibit B-13.**

Form WH-347 Instructions

Form WH-247

- **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 A-38**, sample Contract Documents Guide, and numbered within the Exhibit as HUD 4010). If the required provisions are not included in the subcontract, the prime contractor ultimately remains responsible for underpayments and Liquidated Damages of subcontractors.

  HUD 4010 Federal Labor Standards Provisions

  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 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 can be found on the DOL Wage & Hour Division website. A sample WH-347 has been provided as **Exhibit B-12**. 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 fringe benefits, 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 **the WH-347 Form** are included, but **the wording of the Statement of Compliance must be verbatim**.

  Form WH-347 Instructions

  Form WH-247

- **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 must not be listed. 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. Additionally, the signature must be an original signature. In cases where a designated employee signs, the contractor must submit written authorization signed by an officer of the company.

  Form WH-347 Instructions

  Form WH-247

- **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.

  Payroll Falsification Indicators

- **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 subcontractors do 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:

  1. the prime contractor agrees;
  2. the subcontractor is cooperative;
  3. 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), bid tabulation, 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.

Parties responsible for meeting or ensuring compliance with Labor Standards requirements, such as construction contractors and administrative consultants working on behalf of the local government, must not utilize or allow utilization of lower paid classifications to perform the work of higher paid classifications. The work of installation of steel or cast iron pipe with bolt- up flanges is properly the work of the higher-paid "pipefitter" classification and is considered beyond the skill level of the lower-paid "pipelayer" classification. Likewise, the work of installation of electrical panel boxes, conduit, and wiring is properly the work of an "electrician" rather than any other classification such as "carpenter." The work of coating manholes with an epoxy coating or construction of manholes is properly the work of a classification with a higher skill level and pay than the classification of "common laborer." Responsible parties of a project with a considerable amount of manhole rehabilitation or manhole construction should request an additional classification of "manhole rehabilitator" or "manhole builder" if the wage decision covering the project does not have the necessary classifications.

- **Excessive Use of the "Laborer" Classification** Contractors must not be allowed the excessive use of the "laborer" classification on Davis-Bacon covered projects. Since the classification of laborer is often the lowest paid classification on a wage decision, contractors might classify workers as laborers with the knowledge that such workers will actually perform some mechanic work. Payrolls must reflect a reasonable distribution of laborers to mechanics based on the types of work inherent in completing a project.

  For instance, a fire station project should not have nearly all workers classified as laborers because the nature of the work of constructing a fire station calls for a mixture of classifications, including backhoe operator, form builder, carpenter, cement finisher, metal building erector, plumber, and electrician in addition to laborer. The judgment that laborers are excessively listed on a payroll can be determined by information gathered from:

  - ✓ inspection reports,
  - ✓ observations during a site visit of the project,
  - ✓ employee interviews, and
  - ✓ payroll reviewer knowledge of industry practices regarding worker class distributions.

- **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 with a separate row being utilized for 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 a 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

resumes backhoe work. The employer may list Joe on one row of the payroll as a "backhoe/laborer" if Joe is paid at least the backhoe rate, which is the higher of the two rates.

- **Working Foreman Requirements** A working foreman who devotes more than 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 notation on the payroll in the "Comment" section of the Statement of Compliance
  - ✓ A supplementary statement from the contractor
  - ✓ A statement from the inspector associated with the project
  - ✓ 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," as on the wage decision, 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 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 of 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 considered as payment "in cash."

  If a wage decision contains fringe benefits for a classification utilized by a construction contractor, 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 by a construction contractor 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 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 in which the basic hourly rate and the fringe benefit per hour is properly identified:

Form WH-347 Instructions

Form WH-247

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 x 11) + (12 x 11 x 1.5) = $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(s) from the contractor that 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 payroll(s) is associated with the supplementary statement.

- **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 4b 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 4a of the Statement of Compliance must be checked. Checking box 4a 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, (d) results of the inquiry, (e) person(s) contacted at the institution, and (f) 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.

- **Overtime Calculation – Low Basic Hourly Rate but Adequate Total Compensation** 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.

- **Payroll Certification of the Self-Employed Contractors** The self-employed contractor has special requirements regarding the certification of payrolls for his/her own wages. HUD has provided additional guidance in Labor Relations Letter, LR-96-01.

HUD Guidance LR-96-01

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 example, Joe's Backhoe Service has one backhoe and no other workers other than the owner. Joe cannot certify his own payroll for an LCDBG project.

When a working subcontractor has no crew, the minimum information needed on the responsible employer's payroll regarding the working subcontractor are name address, classification(s), hours worked, estimated hourly pay, and estimated gross pay. Deduction amounts for social security and federal taxes of the working subcontractor are not the responsibility of the prime contractor, and such amounts may be unknown to the prime contractor; therefore, deduction listings are not required. The Statement of Compliance should indicate box 4c for the working subcontractor as an exception to the way fringe benefits may have been paid for regular employees. The explanation for box 4c could be "Fixed price contract, fringes, and deductions not measurable" or similar language.

Sometimes it may be confusing and/or technically impractical for a prime contractor to list on the payroll a working subcontractor along with regular prime contractor employees. In such cases, the prime contractor may prepare a separate weekly payroll listing only one person, the working subcontractor, using the WH 347 payroll form.

Form WH-347 Instructions

Form WH-247

Whatever method of compensation is utilized, such as a 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 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.

In contrast, owners of a business having at least one crew member can certify their own payroll.

For example, if Joe hires at least one employee on a given project, he could certify his own wages as well as the employee's wages. Joe would be considered an owner of a business working with his crew. As such, Joe would list his name, work classification(s) including "owner," daily hours worked, and total hours worked. Owners who certify their own wages do not need to list a rate of pay or amount earned.

- **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. Due to the Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015, as of January 16, 2023 the pre-determined penalty is $31 per worker, per day for overtime violation(s).

DOL Civil Money Penalty Inflation Adjustments

NOTE: The 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, **WH-347** from the Wage and Hour Division of DOL, contains all the necessary information for payroll reporting. 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.

  Form WH-347 Instructions

  Form WH-247

  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 (including scratch-throughs, "white-out" etc.) 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. See **Exhibit B-15**, Notice of Restitution Due. 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 that 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 covered. 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 attest 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.

- **The Use of Corrected Payrolls to Demonstrate Restitution** Some contractors may wish to provide corrected payrolls with a newly signed Statement of Compliance. A corrected payroll differs from a Certified Correction Payroll in the following ways:

    - A corrected payroll is 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 total of 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 $27 per worker for each calendar day he or she worked in excess of 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 $81 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 payments. 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 amount of Liquidated Damages for which a waiver is being requested and 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 the

appropriate HUD agency. 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 the 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 or classification clarification, 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.

- **Labor Standards Enforcement Report** The Payroll Review Flowchart, **Exhibit B-13**, is a diagram illustrating the three scenarios of payroll review and illustrates why and when a Labor Standards Enforcement Report becomes necessary.

  A Labor Standards Enforcement Report **(Exhibit B-16)** 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-16.**

The Labor Standards Enforcement Report is to be completed and sent to the OCD when most or all of the corrective action has been completed. The Labor Standards Enforcement Report should be sent during construction and before closeout documents are prepared.

- **Final Wage Compliance Report** Under all three scenarios, as the flow chart indicates, the last item regarding labor standards, the Final Wage Compliance Report (found in **Exhibit E-6**, Program Completion Report), must be sent to the 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 workweek. He was paid $10.00 per hour for 40 hours and

  $15.00 per hour for eight 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 FROM CONTRACTOR BASED ON NON-COMPLIANCE WITH LABOR STANDARDS

If violations regarding restitution have not been corrected within 30 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, the OCD must be notified.

If the 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, the 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 the OCD. A check made payable to the Louisiana Division of Administration, and a Labor Standards Enforcement Report (**Exhibit B-16**) covering the remaining withheld funds must be submitted to the 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. The OCD must be informed of the suspected falsification.

WITHHOLDING FUNDS FROM GRANTEE 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 RECORD 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 the OCD, HUD, and DOL.

SECTION C. ACQUISITION/ANTIDISPLACEMENT/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.

49 CFR 24.101

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 that 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 the preceding 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 a 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 to avoid the myriad variations that exist from state to state. In response to this need, Congress passed the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. This law is commonly called the "Uniform Act."

Uniform Relocation Assistance and Real Property Acquisition Policies 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:

Article I, Section 2, Louisiana Constitution

- A parcel of property owned by John Doe is needed by the local government for construction of 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, Inc., 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, Inc., is willing to enter into a lease with the local government for the long-term use of the parcel for a water well. Acquisition by means of a leasehold agreement with Private Enterprise, Inc., 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 that 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.

Temporary Construction Servitudes/Easements

49 CFR 24.101(c)(2)

HUD Handbook 1378 Section 5-2

A construction easement should be obtained for any temporary construction to be undertaken on private property and is subject to the Uniform Act. **However, there is an exception that allows for temporary easements to not be covered under the Uniform Act. The exception is for "temporary easements or permits needed solely to perform work intended exclusively for the benefit of the property owner, which work may not be done if agreement cannot be reached." The acquisition of temporary easements that do not satisfy the exception above remain subject to the Uniform Act and its requirements. See Exhibit A-36**.

ACQUISITION BY PRIVATE ENTITIES

49 CFR 24.101(b)

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, Inc., has been funded for an LCDBG economic development project. A parcel of land is to be acquired by Widget, Inc. The Office of Community Development will provide funds for infrastructure associated with the expansion, but Widget, Inc., will be the entity that acquires the parcel of land.

PURCHASES, DONATIONS, PARTIAL DONATIONS

49 CFR 24.108

HUD Handbook 1378 Section 5-5

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 that 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 that are for a duration of 15 years or longer are subject to the Uniform Act. Leases that are for a duration of less than 15 years but are automatically renewable are also subject to the Uniform Act.

HUD Memo: Acquisition of Real Property by Long-term Lease

LEASE APPROVALS

Should the local government decide to lease rather than purchase a piece of property, the local government must come to an agreement of the terms of the lease with the property owner. Prior to the lease, the local government must provide, in writing, to the owner: the details of the lease and an explanation of the terms, the believed fair market value of the property (either by a valuation from a knowledgeable person or the appraisal process), and that it will not acquire the property in the event negotiations fail to result in an amicable agreement Additionally, 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's Real Estate Acquisition and Relocation website provides access to HUD Handbook 1378 as well as a variety of HUD brochures including, *Relocation Assistance to Tenants Displaced From Their Homes* and *When a Public Agency Acquires Your Property* under the section "Publications."

HUD Real Estate Acquisition and Relocation

URA the HUD Way

HUD Handbook 1378

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:

49 CFR 24.102

HUD Handbook 1378 Section 5-4

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. Record the 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 that may be needed for an LCDBG project. A title search to determine ownership is often necessary.

Send the Preliminary Acquisition Notice

As soon as the local government decides that it wants to acquire property, a Preliminary Acquisition Notice must be sent to the owner (**Exhibit C-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 C- 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

Generally, either of two conditions will require an appraisal:

(1) the value of the property is estimated to be more than $10,000, or

(2) the owner of the property wants an appraisal. In certain instances, the costs of appraisals may begin to exceed acquisition costs.

In a case where the valuation of the property is uncomplicated and the anticipated value is estimated at $10,000 or less, it is up to the discretion of the Office of Community Development to determine if appraisals are necessary. If a property owner requests an appraisal, however, an appraisal is always required. If an appraisal is necessary, 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 a valuation of the property 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) a brief description (but not an official legal description) of the property, and

(3) an 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 C-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:

- Legal description and location of the property.
- Description of the interest to be acquired (e.g., full ownership, servitude, etc.).
- Inventory identifying the building, structures, fixtures, etc., which are considered to be a part of the real property.
- The amount of the offer.
- 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.
- Definition of fair market value.
- Explanation of the method used to value the property.
- 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.

HUD Handbook 1378

- 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.
- Any purchase option agreement should be attached.
- 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 C-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.

HUD Handbook 1378

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 the handbook or the 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 that 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 that 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 C-4**) that identifies all settlement costs regardless of whether they are paid at, before, or after closing and must clearly separate charges paid by the owner. 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 C-5**, Sample Notice of Intent Not to Acquire Property).

DONATIONS

49 CFR 24.108

HUD Handbook 1378 Section 5-5

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 C-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.

An appraisal will not be required if the property is donated under the following conditions:

(1) the property owner signs a written waiver releasing the local government from its obligation to appraise the property and has been informed of his entitlement to receive no less than the fair market value of the property, and

(2) the local government determines that an appraisal is unnecessary because:

(a) the property valuation is uncomplicated, and

(b) the anticipated value of the proposed acquisition is estimated at $10,000 or less based on a review of available data by a person with sufficient understanding of the local real estate market. Should the local government determine that an appraisal is unnecessary, it must thoroughly document the valuation process used in making such a determination.

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 ensure 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

49 CFR 24.103(d)

HUD Handbook 1378 Section 5-4, J.8-9

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 the following: https://www.asc.gov/appraiser.

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 C-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 C-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 C-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

Louisiana State Certified Appraisers General Appraisal List

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 certified and active on the State Certified Appraisers 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 C-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 C-10 (Short Appraisal Form for Servitude Takings) is an example of a short form that can be accepted as an appraisal establishing the value of servitudes. This form summarizes the complete documentation that 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 C-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

49 CFR 24.102(c)(2)

If the local government can determine that the valuation of a parcel of land or servitude 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. Additionally, in certain instances where appraisal costs begin to approach or exceed acquisition costs, the Office of Community Development may decide on a case-by- case basis to waive the appraisal process (provided that the valuation of the property is uncomplicated, the fair market value of the property is estimated to be $10,000 or less, and the owner of the property has not requested an appraisal).

An option to increase the $10,000 valuation amount to $25,000 may be requested in writing from the Office of Community Development.

EXPROPRIATION (Eminent Domain)

Expropriation Proceedings

If the local government cannot negotiate the sale, expropriation proceedings may be instituted. Expropriation is not necessarily cheaper than negotiated sales. Expropriation can be substantially more expensive than negotiation as courts may be very generous toward property owners, and 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 government 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 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

49 CFR 24.101(b)(1)

HUD Handbook 1378 Section 5-3

Four 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 four types are the following:

1. Acquisition from another public agency
2. Short term leases
3. Voluntary acquisition
4. Acquisition of streets under LRS 48:491

Acquisition from Another Public Agency

When a local government acquires property from another public agency that 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.

Short Term Leases

Leases that 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 5 more years at which time a new force main system will be installed that will render the lift station obsolete. The local government chooses to obtain a 10-year lease, not automatically renewable, from an appropriate property owner. Acquisition of the 10-year lease would not be subject to the Uniform Act.

Voluntary Acquisition

49 CFR 24.101(b)(1)

HUD Handbook 1378 Section 5-3

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 issued by the local government. 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) a brief description (but not an official legal description) of the location of the property, and (3) an estimate of the value of the property.

Voluntary Acquisition 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 C-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 C-12**. Exhibit C-12 also includes two examples of the Notice to Real Property Owner that contain all information that must be provided to potential sellers. 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, but it should not be used as 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

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

49 CFR 24.101(b)(1)

HUD Handbook 1378 Section 5-3

Requirements for acquisition of property that is not subject to the Uniform Act generally include the following:

- Determination of ownership
- Valuation of the property
- Offer and acceptance
- Act of sale or transfer
- A statement of settlement costs
- Recordation
- Any documentation of acquisition activity from start to finish in general
- Proof of at least one public advertisement if property is obtained via voluntary acquisition

ACQUISITION RECORDKEEPING

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 that 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 C-13**) must be completed on LCDBG projects having any acquisition. A Real Property Acquisition Checklist (**Exhibit C-14**) must be completed for each parcel acquired.

For each parcel acquired the Grantee files shall include the following:

- ✓ Identification of property and property owner(s)
- ✓ Determination of ownership
- ✓ If applicable, evidence that owner received a Preliminary Acquisition Notice accompanied by the notice entitled "When a Public Agency Acquires Your Property"
- ✓ A copy of valuation for each parcel obtained by purchase whether by appraisal or opinion of a knowledgeable person
- ✓ If applicable, a Statement of the Basis For the Determination of Just Compensation
- ✓ If applicable, a copy of the written purchase offer and documentation of the date of delivery
- ✓ If applicable, as in the case of a donation, a Property and/or Servitude Acquisition Waiver
- ✓ Copy of a Contract of Sale or Act of Donation
- ✓ 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
- ✓ Copy of recordation at the appropriate parish courthouse
- ✓ If applicable, a copy of an appeal or complaint filed and agency response

MONITORING ACQUISITION

At the time of monitoring, the Office of Community Development will review the local government's acquisition files in conjunction with the Acquisition of Property checklist included in the Onsite Monitoring Checklist (**Exhibit E-3**). Please note that for projects that do not include acquisition, documentation of ownership of all properties or maintenance of all streets involved with the project is required to satisfy part 1 of the acquisition checklist. The three most common forms of proof of ownership are the following:

- Attorney opinion – A signed and dated statement from an attorney that the records for the property indicate ownership by the local government.
- A copy of the title of the property(ies) as recorded at the courthouse.
- For streets – Proof of maintenance for at least three years (under Louisiana Revised Statute 48:491).

LRS 48.491

- Construction cannot begin until all acquisition documentation is completed.

ANTI-DISPLACEMENT

INTRODUCTION

24 CFR 42.325

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

24 CFR 42.325

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 C-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:

24 CFR 42.375

24 CFR 570-606(c)

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.
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 C-16**) that it is following the Residential Anti-Displacement and Relocation Assistance Plan.

DISPLACED PERSONS

49 CFR 24.2(a)(9)

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:

- A person who moves permanently from the real property, after receiving a notice from the agency to move permanently, is considered displaced if the move occurs after the agency initially submits a request for financial assistance that is later provided for the requested activity.

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).

Whenever the agency is the Grantee (includes state recipient), the request for financial assistance requires an initial submission of an application to the State by the state recipient requesting assistance.

- 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.

- 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 situations has occurred:

    - 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 (a) no unreasonable change in the character or use of the property, and (b) monthly cost for rent and utilities that does not exceed the greater of the tenant's monthly rent and estimated average monthly utility costs before the execution of such agreement and the "Total Tenant Payment" for that person.

    - The tenant was required to relocate temporarily for the project, but (a) 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 (b) 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. However, this does not relieve the agency of its obligation to reimburse the person for such out-of-pocket expenses.)

    - 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.

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."

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. The level of assistance required under section 104(d) should be reviewed closely before any individual is displaced under the LCDBG program.

HUD Handbook 1378

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 proceed.

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 C-17** contains a Recommended Local Relocation Policy/Grievance Procedure.

24 CFR 570-606(c)

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.

The recipient must adopt a written policy available to the public setting forth the relocation payments and assistance it elects to offer and providing for equal payments and assistance within each class of displaced person. 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.

NOTE: 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 State requires, at a minimum, that the local relocation policy provide for the following:

- The payment of reasonable moving expenses.
- The provision of advisory services, as needed to help the displaced person in moving, include the following:
    - Replacement site requirements.
    - Need for outside specialists required for move.
    - Early identification and resolution of realty/personal property issues.
    - Estimated time needed to vacate.
    - Anticipated difficulty in locating replacement site.
    - Identification of advanced relocation payments required for the move.
- 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 displaced persons have a choice between relocating within their own neighborhoods consistent with the recipient's responsibility to affirmatively further fair housing.
- 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 displaced person prior to the displacement activity or does not exceed 30 percent of the displaced person's household, including supplemental income from other public agencies, whichever is higher.
- The basis for determining the amount of relocation payments.
- A relocation plan to provide decent, safe, and sanitary housing at affordable costs.
- Transportation to inspect replacement housing.
- 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:
    - The conditions under which displacement may occur.
        - 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.
- Eligibility requirements for benefits and assistance.
    - Conditions for eligibility.
    - Conditions for providing temporary relocation payments.
    - 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.
- Benefits and assistance.
    - Types and amounts of payments for owner/renters.
    - Conditions of each type of payment.
    - Moving expenses, including the amount and conditions under which such expenses will be paid or not paid.
    - Under which circumstances benefits and assistance will be denied, e.g., early move and relocation into substandard housing.
    - Availability of other social services, if applicable.
- Replacement housing.
    - 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 displaced person in locating replacement housing.
    - Under the local policy, replacement housing need not be functionally equivalent to and substantially the same as the housing from which the displaced person 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.

HUD Handbook 1378

- Claims for payments and assistance.
    - Explanation of how, when, and where claims are to be filed.
    - Claim forms with an explanation of where assistance in completing claims can be obtained.

- Project location maps.
    - A copy of detailed maps showing project location in the jurisdiction and specific location of each activity (houses, streets, etc.).
- Replacement housing inventory.
    - The recipient should maintain a list of all known available housing and realtors who manage and typically list low-cost housing.
- Guidelines for displaced persons.
    - Explanation of displaced person's rights, responsibilities, and privileges.
    - Outline of specific steps they should follow in order to file an appeal.
    - Explanation of how the appeal will be reviewed.
    - Time limits for processing and reviewing appeals.
    - Statement of the displaced person's rights to appeal to the State if he or she is not satisfied with the local agency's decision. This should include identification of the address and telephone number of the Department of Community Affairs.
    - Statement of the displaced person's rights to appeal to the courts if not satisfied with the local agency's decision.
    - Statement of displaced person'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 (**Exhibit C-17**) 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

HUD Handbook 1378

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 HUD 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 C-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 on-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 C-19** (Relocation Eligibility and Benefits Chart).

MOVING COSTS

HUD Handbook 1378 Chapter 3, 3-2

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 that are supported by invoices and other documentation or receive a fixed payment. Actual moving and related expenses include the following:

- 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

49 CFR Subpart E

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:

- Owned and occupied the acquired dwellings for 180 days prior to initiation of acquisition negotiations.
- Purchased 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.
- Filed a claim within 18 months of the time the move is completed.

A 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 following:

- 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 shall 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.

   a) In the case of a tenant, use the date he/she moves from the acquired unit.

   b) In the case of an owner-occupant, use the date of receipt of final payment or the date of the move from the displacement dwelling, whichever is later.

49 CFR 24.402(a)

49 CFR 24.402(b)(1)

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.

HUD Handbook 1378

49 CFR 24.402(c)(1)

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.

HUD Handbook 1378

Certain benefits may be prorated for unrelated individuals living together. For guidance, check Handbook 1378.

NOTE: The benefits under the Uniform Act are rights to which the individual is entitled, and all displaced persons must receive the maximum amount of benefit to which they are entitled regardless of income level.

DEFINING RELOCATION PROCEDURES

The basic benefits described in the sub-section titled "Developing Local Relocation/Demolition Policy" of this section, 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.

HUD Handbook 1378 Chapter 1-10

24 CFR 24.10

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 C-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.

HUD Handbook 1378 Chapter 1-10

49 CFR 24.203(b)

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.

NOTE: If relocated persons 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 C-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 relocated person in a non-threatening, helpful manner.

During the family survey, the relocation process should also be reviewed with the relocated person. Special attention must be given to:

1. the assistance to be provided by the Grantee;
2. the benefits available;
3. the fact that replacement housing payments cannot be made unless the household relocates into a standard unit;
4. the importance of keeping in touch with the Grantee; and
5. the need to notify the Grantee before they move.

All significant contacts with displaced persons must be logged into section 5 of **Exhibit C-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.

The primary purpose of the household survey is to provide the information needed to determine replacement-housing needs. All replacement housing must be decent, safe, sanitary, and meet local housing or occupancy codes.

Section 8 Housing Quality Standards

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 C-22**.

COMPARABILITY/FUNCTIONALLY SIMILAR

49 CFR 24.2(a)(6)

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 they must be provided with three 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.

49 CFR 24.402(b)(2)

If comparable, affordable replacement housing using these standards cannot be identified, the project may be jeopardized. Other means of assisting displaced persons is shown under the "Last Resort Replacement Housing" provisions of the regulations.

49 CFR 24.2(a)(6)(viii)

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 relocated persons 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 relocated persons must be given at least one replacement housing choice in those areas before the Grantee can give such relocated persons a 90-day notice to vacate.

49 CFR 24.205(c)(2)(iv)

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 displaced persons to solicit information, establish rapport, provide referrals to rehousing resources, and accompany displaced persons 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 relocated persons 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 relocated persons still receive moving expenses); or
4. a pre-move inspection of their new quarters does not occur or is ineffective.

49 CFR 24.403(b)

HUD Handbook 1378 Chapter 3-7

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 relocated person 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 relocated persons 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 C-23** (Sample Letter to Relocate in a Substandard Unit).

HOUSING DISCRIMINATION IN RELOCATION

Private landlords are sometimes discriminatory in their renting practices. Individual displaced persons 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 displaced persons' claims of discrimination. The local Fair Housing Ordinance should be reviewed for guidance.

If a displaced person has been discriminated against, there are two (2) alternatives. A 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 displaced person, it can halt the sale of the house or the rental of the apartment to someone else and award the displaced person’s damages and court costs. Instead of taking his/her complaint directly to court, the second alternative is for the displaced person 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, Fair Housing Division.

COMMON DEFICIENCIES

The following are common deficiencies that occur during the relocation process:

- Failure to provide assistance in locating suitable housing
- Failure to provide replacement housing opportunities outside areas of low-income and/or minority concentration
- Failure to provide 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 relocated person, the Sample 90-DAY NOTICE TO VACATE/30-DAY NOTICE TO VACATE (**Exhibit C-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 C-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 relocated person inspecting units; certifying that 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 the following: Claim for Moving and Related Expenses, **Exhibit C-25**; Claim for Replacement Housing Payment for 180-Day Homeowners, **Exhibit C-26**; and Claim for Rental Assistance or Down Payment Assistance, **Exhibit C-27**.

TIMELY PAYMENT

49 CFR 24.207(c)

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 C-28**, Sample Letter of Acknowledgement Services and Payments Rendered).

USE OF RELOCATION PAYMENTS

HUD Handbook 1378 Chapter 1-10

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 the sub-section titled "Locating Replacement Housing" of this section, the Grantee's responsibilities, should a person makes a claim for payment that must be denied because the unit is substandard, were discussed. Inform the claimant why the claim is being denied, indicate the assistance available for bringing the current unit up to code, as well as 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 C-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 relocated person choose to waive relocation benefits, a Waiver of Relocation Assistance must be completed (**Exhibit C-29**) and documented in the file. Any case involving a waiver of relocation benefits will be carefully examined to ensure no coercion was involved.

RELOCATION RECORDKEEPING

Exhibit C-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 three years after OCD closes the grant year from which funds were awarded with HUD. The Relocation File Checklist (**Exhibit C-31**) identifies all the information required for each displaced household file. A copy of **Exhibit C-31** must be attached to and maintained for each relocation file for tracking purposes and to facilitate state and local review.

CONFIDENTIALITY OF RECORDS

49 CFR 24.9(b)

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 that 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.

- List of Occupants. For each project, the Grantee's files shall include a list or lists identifying the name and address of the following:
    - 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.
    - All persons moving into the property on or after the date on which the project begins but before completion of the project.
    - 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.
- Tenants Not Displaced. Documentation on tenants not displaced shall include the following:
    - Evidence that the tenant received timely written notice that the tenant would not be displaced by the project.
    - 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.
    - 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.

- 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).
- A copy of any appeal or complaint filed and Grantee/agency response.
- Displaced Persons. For persons displaced, there shall be separate case files that include the following:
- 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.
- 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.
- Evidence that the 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.
- Identification of relocation needs and preferences, dates of personal contacts, and services provided.
- 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.
- Copy of 90-day notice and vacate notice, if issued.
- Identification (address) of actual replacement property, rent/utility costs or sale price (if dwelling), and date of relocation.
- Copy of replacement dwelling inspection report showing condition of unit and date of inspection.
- Copy of each approved claim form and related documentation, evidence that person received payment, and if applicable, Section 8 Certificate or Housing Voucher.
- Copy of any appeal or complaint filed and Grantee response.

For additional recordkeeping requirements, refer to Section A: Program Administration, Recordkeeping and Reporting.

SECTION D. 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, and commercial-industrial equipment. ED projects can also be grants to local governments to purchase land, buildings, etc. or for public infrastructure improvements to assist a business.

ED projects are subject to the same federal provisions as 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. It also discusses areas that are particular to ED projects.

PROGRAM ADMINISTRATION

The text discusses the requirements of each task, references required forms, and cites examples of work contained in the supporting materials.

Items previously discussed in Section A: Program Administration 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 (Environmental Review Record, Anti-Displacement Resolution, Community Development Plan, Authorized Signature Form, Depositary Cards, etc.) 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

24 CFR 570.506 (b)(5)

After the local government receives an authorization to incur cost for planning and administration, the State will send the local government a contract (State contract) which details the responsibilities of the assisted business and the local government. The local government will develop a Written Agreement between it and the assisted business incorporating the provisions of the State contract. 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 D-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 government 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 government 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 government). **(Exhibit D-1)**

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 **(Exhibit D-1)** 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 assisted business and the local government, (and the State for a Three-Party Agreement) which specifies all parties' responsibilities in implementing the ED project, including the documentation requirements for meeting a national objective. As indicated earlier, this document should contain all provisions outlined in the State Contract. This document should contain provisions which protect the local government 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. The LCDBG ED staff can provide samples of these documents.

- ✓ Evidence of Assisted Business's Private Investment – Fully executed loan agreements with bank, public entities, etc., which indicates the dollar amount and terms of the loans must be submitted. Depending on the source of the Assisted Business's financial commitment, documentation of the evidence will vary. **Exhibit D-2** provides a Sample Evidence of Assisted Business'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 D-3** for a Sample Resolution of the Board of Directors.

- ✓ Certification of Legally Binding Agreements (**Exhibit D-4**) – The local government'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 the local government's attorney to be actively involved in this process due to potential liability faced by the local government.

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 Section A: Program Administration: Completing Environmental Review Requirements. Environmental Review requirements apply to the area that the assisted business is improving, as well as the area where infrastructure improvements, paid for by LCDBG are to be located.

24 CFR 58.35

One of the common problems noted with ED projects is that a finding of "Categorical Exclusion" is made inappropriately in many cases. 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, etc., and because it is consistent with the allowed use of the site, etc. 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 no project activities (other than "Exempt" activities) may be contracted or LEGALLY OBLIGATED from the time the application is submitted to the State 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 D-5** for a listing of common questions regarding Release of Funds. Environmental Review Requirements apply to all 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 section A, “Program Administration: Financial Management”). 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 assisted business 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 status reports.

These reports are due no later than 30 days after the end of the quarter. For instructions, see the sub-section titled "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 or construction. Private sector entities are not subject to the provision of 2 CFR 200.317-326 even when the activity is financed with federal funds.

24 CFR 200.317-326

IMPORTANT: All contract provisions apply to all public sector procurements.

Citizen participation requirements are outlined in section A, "Program Administration: Civil Rights," which the Grantee must comply with in addition to Equal Opportunity and Fair Housing requirements. Grantees must ensure that they comply with all provisions contained in the Statement of Assurances which was submitted in the application.

INFRASTRUCTURE PROJECTS

The requirements discussed in section A, "Program Administration," 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 2 CFR 200.317-326 (procurement) does not apply to the construction contract between the private sector party and their 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 A, "Program Administration." The contract oversight requirements, such as posted construction sites, employee interviews, payroll reviews, etc., are the same.

24 CFR 200.317-326

Appendix II to Part 200, Contract Provisions for Non-Federal Entity under Federal Awards

ACQUISITION

The Acquisition section (section C) 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.

Uniform Relocation Assistance and Real Property Acquisition Policy Act (URA)

The most important consideration for ED recipients is whether the Uniform Relocation Assistance and Real Property Acquisition Policy Act (URA) 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 a public entity (a city, parish redevelopment agency, etc.) or any other entity which has legal power to seize land and acquire private 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 an LCDBG Award.

Prior to any purchase of real property by the local government or assisted business, contact the Office of Community Development. 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 (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 C) of this Handbook. Regardless of whom 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.

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 whole or in part with LCDBG assistance. Davis Bacon does not apply to the construction contract between the private sector party and the contractor if the construction contractor for the LCDBG funded activity is a different contractor. If construction is not involved, Davis Bacon requirements will not apply.

Equipment – 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 D-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 assisted business 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.
- Application of section 110 of the Housing and Community Development Act of 1974 (Davis- Bacon Act provision) 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 D-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:

- payments of principal and interest on loans made using LCDBG funds;
- proceeds from the lease or disposition of real property acquired with LCDBG funds;
- interest earned on LCDBG funds held in a Revolving Loan Fund (RLF) account; and
- 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 government becomes aware of the income or of the possibility that program income will be received.

PROGRAM BENEFIT/TRACKING JOB REQUIREMENTS

24 CFR 570.483

To be eligible for LCDBG assistance, an activity must meet one of the national objectives required in 24 CFR 570.483. In the case of ED projects, primarily 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 either held by or were made available to low and moderate-income persons. For jobs "held by," the written agreement will contain a listing by job title of the permanent jobs to be created, identifying which are part-time. For each such low- and moderate-income person hired, the assisted business will obtain the size and annual income of the person's family prior to the person being hired for the job. The assisted business will continue to maintain a listing by job title of the permanent jobs filled and which jobs were initially held by low and moderate income persons in the event of job turnover.

24 CFR 570.483(b)(4)

For jobs "made available to," the written agreement shall contain a listing by job title of the permanent jobs to be created, indicating which jobs will be available to low and moderate income persons, which jobs require special skills or education, and which jobs are part-time, if any. The written agreement will also include a commitment from the business to provide training for any of those jobs requiring special skills or education beyond a high school education. Also, the assisted business will provide a description of how first consideration was given to such persons for those jobs. The description shall include what hiring process was used, which low and moderate income persons were interviewed for a particular job, and which low and moderate income persons were hired.

For certain qualifying census tracts, the Grantee may substitute records showing either the person's address at the time the determination of income status was made or the address of the business providing the job. The State will make the determination of whether the project or person's census tract(s) qualify for this substitution. The job title requirements and civil rights information [below] will continue to be obtained.

Obtaining this information is crucial to documenting project eligibility. The income information provided will determine if the Low-Moderate-Income (LMI) Job 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.

Exhibit D-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 D-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 Public Facilities projects, it is the Grantee's responsibility to determine specific statistical information on those persons applying for and benefiting from the project. According to 24 CFR 570.490 applicants and beneficiaries must be documented as to race, national origin, and gender of head of single-headed households. Some of this information cannot be obtained prior to or as a condition of employment. Therefore, all job applicants must be surveyed.

To count the number of jobs created, current payrolls of the company being assisted are required. The initial job title listing can be submitted at the pre-application meeting or any time prior to the date of the "Authorization to Incur Costs" letter. This payroll will determine the original number of positions. The company must submit a payroll with a listing by job title of the permanent jobs currently filled. If the company has no existing Louisiana employees, then it must submit a statement on company letterhead. Another payroll will 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.

NOTE: For projects that provide goods and services to predominantly low-to-moderate income households in residential areas, the State may determine that the area wide benefit national objective, like public facilities projects, may be more suitable than the job creation national objective. If the State so determines, the job documentation requirements above will not be applicable.

FINANCIAL REPORTING REQUIREMENTS

It is crucial to the monitoring process of any LCDBG ED grant that the State and Grantee receive status reports from the assisted business within the required timeframe. Quarterly reporting will be submitted on the Sources and Uses Report. See the sub-section titled "Sources and Uses Report."

When the State or local government requests a year-end financial statement from the assisted business, 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 assisted business employ 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 management for the annual financial report should contain language similar to the following:

> *"We have examined the balance sheet of XXX Corp as of (date), 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 (date), 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 following:

- ✓ 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 the local government on an annual basis.

The local government should ensure that the terms of engagement between the assisted business 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 assisted business's progress.

The LCDBG State contract and written agreement establishes 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 10, 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 government in carrying out its contractual responsibilities. It will allow the State to stay informed on the assisted business's progress, and it will 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 assisted business if unexpected problems arise, which could alter the schedule of events as approved in the application and in the contract between the local government and assisted business. 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 can be found in **Exhibit D-1** (Attachment D - Quarterly Status of Sources and Uses).

OCD requires the Sources and Uses report form to be submitted until the job requirement has been met. A letter of certification will be issued at that time.

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 as follows:

- Maintain records of total and low-to-moderate income employment.
- Monitor the financial condition of the business.
- Inform the State in a timely manner of any difficulties with the project.
- Take the proper legal remedies to recover the LCDBG investment if the business becomes insolvent or fails to comply with contract requirements.
- 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 assisted business.

CLOSEOUT

Many ED projects can move to closeout 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 project has been 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 E 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) (**Exhibit E-6**):

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 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. The sub-section titled "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, ethnicity, household size, and gender of head of single-headed households. The reporting arrangement with the assisted business should be discussed during negotiations.

24 CFR 570.490(b)

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 RECORDKEEPING

Refer to section A, "Program Administration: Recordkeeping and Reporting," in this handbook. For further questions related to the recordkeeping in this area, please call the Office of Community Development at (225) 342-7412 and reference 24 CFR Section 570.490 or Appendix I of the Guide to National Objectives and Eligible Activities for States: Model Recordkeeping Requirements.

24 CFR 570.490

Appendix I: Model Recordkeeping Requirements

SECTION E. MONITORING AND CLOSEOUT

MONITORING OF LCDBG PROGRAMS BY THE STATE

The LCDBG staff will conduct desktop monitoring of the grant when 25 percent of the grant amount has been expended. This monitoring will be conducted in the Office of Community Development with documents that are requested by letter from the grantee. The grantee will have 30 days from the date of the request to submit the documents.

The LCDBG staff may schedule an on-site monitoring visit with the grantee at any time to review the program performance. Generally, visits are scheduled when 50 percent of the grant amount has been expended and after the desktop monitoring process has been completed. 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 leave 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 subsequent 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 E-1** (Sample State's Monitoring Letter) provides an example. It is important to note that very serious findings could affect the potential for future funding.

The State generally allows 30 to 45 days to correct and respond to the findings of deficiency noted in the letter (Example Response to State's Monitoring Letter, **Exhibit E-2**). The corrective actions should 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 E-3 and **Exhibit E-4** contain the monitoring checklists that the LCDBG staff utilize when monitoring LCDBG programs. **Exhibit E-5** is a questionnaire that is sent to local governments at the time desktop monitoring is conducted; it must be completed in its entirety, signed by the local government's chief elected official, and returned to the Office of Community Development with any requested documentation. These checklists and questionnaire 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 a 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 E-6**. The instructions for the completion of each form in this report are also provided.

When preparing these forms, the following general guidelines should be kept in mind:

- Identify activities on the forms exactly as they are identified in the contract or as 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.
- Make sure that the rows and columns of figures subtotal accurately on all tables.
- 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 one copy 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 that 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 Certificate of Occupancy, if applicable, and a clear lien certificate prior to closing out the program.

Exhibit A-44 Section 3 Final Labor Hours Report must be completed by the Prime Contractor and all sub-contractors and submitted to the Grantee at project completion. The Report must be submitted to OCD-LGA before the final contractor payment can be made.

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. These costs must be clearly identified on the Certificate of Completion. The entry must include the amount, entity owed, and use of funds. 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 government 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.

RETENTION OF RECORDS

All grant records, including financial records, must be retained by the grantee for a period of three years following the closeout of the State's grant with HUD. Therefore, the State will notify the grantee at the time when it is appropriate to destroy the grant records.

AUDIT AND FINANCIAL REVIEW FINDINGS

Under the provisions of the Uniform Grant Guidance, 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 is equal to or exceeds $750,000. For further guidance, see Section A: 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 non-compliance with program requirements, he/she is required to make a supplemental report of findings and/or questioned costs. Grant recipients should ensure that their responses are included in the audit report. The Office of Community Development reviews all audit reports to ensure audit findings are addressed. Examples of audit findings and questioned costs are found in **Exhibit E-7**. A sample response is found in **Exhibit E-8**.

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. Desktop monitoring as well as 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, 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, actions the grantee must take in order to remedy the deficiency along with a deadline for doing so, and the consequences for failure to remedy the deficiency (e.g., 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, the following:

- 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.
- Suspension of grant payments.
- Reduction of grant amount.
- Termination of grant.
- Reimbursement of costs disallowed by the Office of Community Development.
- 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.

- 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:

1. The grantee must submit a written request for an appeal within 10 working days after the written notice of sanction has been received.
2. A written decision shall be rendered within 10 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.

24 CFR 570.482(a)

2 CFR 200 Subpart E

The sanction will remain in effect until the deficiency has been corrected or for no more than 10 LCDBG program years with the following exception: Sanctions involving LCDBG funds which were expended for ineligible activities as identified in the federal statute or regulation cannot be excused unless those funds have been repaid to the State or a satisfactory arrangement for the repayment of those funds has been made, and payments remain current. The grantee will be advised in writing when the sanction has been lifted.