

CHAPTER 4

FEDERAL OVERLAYS

PROCUREMENT REQUIREMENTS

The use of federal grant funds must be carried out in a manner that ensures the funds are awarded through fair and open competition and are spent on eligible and reasonably priced goods and services.

Depending on the activities, CDBG-DR and/or CDBG-NDR Grantees may need to hire outside entities to carry out all or part of the work associated with the activity. Payment of any CDBG funds (whether the funds are grant, program income, and/or revolving loan funds) for the purchase of materials, products or any services (work performed by non-Grantee employees) must be in compliance with all federal and state procurement requirements as outlined in 2 CFR Part 200-Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (adopted by HUD on December 19, 2014, at 2 CFR Part 2400, and the conforming rule for the CDBG program is January 6, 2016), the California State Administrative Manual, and must meet the local procurement standards. If there are inconsistencies among federal, state and local procurement requirements, the strictest of the requirements applies.

Any purchases associated with the CDBG grant - from an occasional office supply to a large, multimillion-dollar piece of equipment, any construction services or the hiring of an engineer - must meet the requirements governing how federal funds are contracted.

A primary duty of local elected officials and officials is to ensure that policies and procedures are in place and comply with all federal, state and local procurement laws and regulations. Per 2 CFR Part 200, the minimum requirements are:

- Free, open and competitive for specific products or services, and
- Full documentation of the history, results and all decisions, and
- Offer opportunities to local and disadvantaged firms, and
- The prices paid for goods and/or services are competitive and good value, and
- Require the appropriate bonds and insurance for large construction contracts and/or subcontracts, as described in Part 200-Uniform Administrative Requirement, Cost Principles, and Audit Requirements for Federal Awards, section 200.304.

The procurement policy must require and define a clear separation of duties. The person(s) delegated to do the ordering should not be the same person(s) accepting the goods, and the person(s) paying for the order(s). When the size of the organization limits the ability to have separate staff handle parts of the functions, other processes should be in place, such as limiting the dollar amount authorizations and periodic reviews by an independent individual.

Grantees must ensure that only the designated individual(s) has the authority to make binding contracts. If the size of the organization is small, a method for independent oversight needs to be created.

The person that manages (handles) the funds, whether this be cash, checks, or electronic versions, or handles mail or goods purchased, that employee should not manage (handle or control) the accounting records.

Grantees and subgrantees must ensure that the procurement policies and procedures are comprehensive regarding the level of documentation to be maintained for the purchase of any goods or services. Whenever outside parties (contractors) or subrecipients conduct procurement process, the Grantee must obtain all original records (contractors or subrecipients may keep copies for their records) and make them available and readily accessible for audit, monitoring or other reviews.

Grantees' procurement policies and procedures must be structured to maximize the competition for awarding contracts with CDBG-DR or CDBG-NDR funds. The following items indicate the procurement policies and procedures should be reviewed before making awards with CDBG funds, to ensure that procurements are being made appropriately:

- Use of sole-source contracts;
- Insufficient price or rate quotes from qualified sources;
- Lack of independent cost estimates or cost analyses;
- A failure to rotate vendors on lower prices purchases;
- The use of unreasonably narrow or specific qualification criteria or bid specifications;
- Short time frames for responding to offers;
- An insufficient number of responsive bidders;
- Overuse of change orders;
- Failure to check government debarment lists;
- Overuse of small purchase contracts;
- Lack of outreach to women and minority business enterprises; and
- An excessive number of small purchase contracts close to the small purchase dollar limit.

Records to review on a periodic basis include:

- An expenditure report detailing the dates, payees, and purposes of the costs. This report will help Grantees understand both how and for what the grant funds are being spent.
- A contractors register of vendors, contractors, and subcontractors by date and type of procurement (micro-purchase, small purchase, requests for proposals or qualifications, sole-source and/or competitive bids), funding source, and amount of the contract, along with a brief description.

- A summary of any change orders by contract.
- A report that cross-checks vendor addresses and phone numbers with those of employees (of anyone associated with the grant).
- A report of any purchases made without invoices.

These reports will help identify red flags, and inconsistencies must be reconciled.

Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, Grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the respondents are required to submit the elements of their estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

Grantees must uphold ethics and bar conflicts of interest in their procurement standards. This includes real and perceived conflicts of interest. The appearance of a conflict of interest includes any indirect or noncash gifts, such as donations to employee fund-raising drives, event tickets, meals, or giveaway gifts like a Thanksgiving turkey or iPad drawing given in an employee-affiliated organization. These gifts could be considered potential conflicts of interest as they may create influence, real or perceived, over the decisions regarding awards of federal funds.

Grantees must include strong financial controls to avoid embezzlement and theft of assets. Policies must include the inventory, management and disposal of CDBG-DR or CDBG-NDR purchased property, both real and personal, such as equipment.

Training of contracting staff must be sufficient to enable the employees to perform their duties and meet the federal, state and local procurement responsibilities. Training should be provided to any employees new to the process, as well as existing staff on an on-going basis.

Most often, procurement and contracting issues arise from complaints and protests. Procurement policies must include a process for accepting, investigating and resolving complaints and protests.

It is important to note that there is no separation of requirements for CDBG-DR or CDBG-NDR Grantees and any sub-recipients they may hire. Sub-recipients are required to follow all procurement procedures, maintain the same records and ensure compliance of any and all expenditures of CDBG-DR or CDBG-NDR funds for the purchase of goods or services as the Grantee.

GENERAL PROCUREMENT STANDARDS

Per 2 CFR 200.318, all of the following are required for procurement when using federal funds:

- Have a documented procurement policy, to include all applicable federal, state and local procurement laws and regulations, requiring all procurements be in conformance to all of the requirements (the most restrictive method must be used).
- Maintain, perform and document oversight to ensure that contractors complete the work in accordance with the terms, conditions and specification of their contracts or purchase orders.
- Maintain written standards of conduct covering any conflicts of interest and governing the performance of the employees and any subrecipients' employees engaged in the selection, award and administration of contracts.

No employee, officer or agent is allowed to participate in the selection, award or administration of a contract supported by federal funds if he or she has a real or apparent conflict of interest. Such conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the Grantee must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, Grantees may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Grantee.

If a Grantee's subrecipient has a parent, affiliate, or subsidiary organization, the subrecipient must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest refers to situations where, because of the relationships with a parent company, affiliate, or subsidiary organization, the subrecipient entity (that is not a governmental body) is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

- Procedures must avoid acquisition of unnecessary or duplicative items, and requirements for the consideration for consolidating or breaking out procurements to obtain a more economical purchase must be evident. This

includes, where appropriate, an analysis of a lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

- Grantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.
- Grantees are encouraged to use federal and state excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs. (The website for how to purchase federal surplus property is located at: www.gsa.gov/portal/content/102085, while the State of California's Surplus Property and Reutilization website is located at: <http://www.dgs.ca.gov/ofam/Programs/StSurplus/Auctions/SurplusPropAuction.aspx>.)
- Contracts may only be awarded to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
- Grantees must maintain records sufficient to detail of the history of procurement. These records include, but are not limited to a rationale for the method, selection of the contract type, contractor selection or rejection, and the basis for the contract price.
- Time and material type contracts may be used only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at their own risk. Time and material type contracts are a contract whose cost is the sum of:
 - The actual costs of the materials, and
 - Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses and profit.

A time and materials contract provides no positive profit incentive to the contractor for cost control or labor efficiencies. Therefore, Grantees must document how they will maintain a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

“Cost plus a percentage of cost” pricing is not allowed under any procurement methods.

- Procurement procedures must demonstrate that the Grantee is solely responsible, in accordance with good administrative practices and sound business judgment, for the settlement of all contractual and administrative issues arising out of their procurements. These issues include (but are not limited to) source evaluation, protests, disputes, and claims. The standards will not release the Grantee of any contractual responsibilities under its contracts, and HCD will not substitute its judgment for that of the Grantee unless the matter is primarily a federal concern. Violations of law will be referred to the local, state and/or federal authority having proper jurisdiction.
- Grantees and subgrantees must have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to HCD. A protestor must exhaust all administrative remedies with the Grantee and subgrantee before pursuing a protest with HCD, and with HUD. Reviews of protests by HCD will be limited to:
 - Violations of State or Federal law or regulations and the standards of procurement, and
 - Violations of the Grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by HCD other than those specified above will be referred to the Grantee or subgrantee.

COMPETITION

All procurements must be conducted in a manner providing full and open competition. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specification, requirements, statement of work, and invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

- 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 contracts 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 or other relevant requirements of the procurement; and
- Any arbitrary action in the procurement process.

Grantees must conduct all procurements in a manner that prohibits the use of statutorily or

administratively imposed state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. (This does not preempt state licensing laws.) When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

The Grantee must have written procedures for procurement transactions that ensure all solicitations incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and, when necessary, must set forth the minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specification should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which be met by offers must be clearly stated and identify all requirements which the respondents must fulfill and all other factors to be used in evaluating bids or proposals.

Grantees must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services and current and include enough qualified sources to ensure maximum open and free competition. Also, Grantees must not preclude bidders from qualifying during the solicitation period.

FIVE PROCUREMENT METHODS

The Grantees must use one of the following methods of procurement, as defined in 2 CFR 320.

- Micro-purchase (2 CFR 200.67): Purchases where the aggregate dollar amount does not exceed \$3,000 (or \$2,000 if the procurement is construction and subject to Davis-Bacon). When practical, the entity should distribute micro-purchases equitably among qualified suppliers. No competitive quotes are required if management determines that the price is reasonable.
- Small purchase: Includes purchases up to the Simplified Acquisition threshold, which is currently \$150,000. Informal purchasing procedures are acceptable, but price or rate quotes must be obtained from an adequate number of sources.
- Sealed bids: Used for purchases over the Simplified Acquisition Threshold, which is currently \$150,000. Under this purchase method, formal solicitation is required, and the fixed price (lump sum or unit price) is awarded to the responsible bidder who conformed to all material terms and is the lowest in price. This method is the most common procurement method for construction contracts. In order for sealed bidding to be feasible, the following conditions must be present:

1. A complete, adequate, and realistic specification or purchase description is available;
2. Two or more responsible bidders are willing and able to compete effectively for the business; and
3. The procurement lends itself to a firm fixed contract and the selection of the successful bidder can be made principally on the basis of price.

If sealed bids are used, the following apply:

1. 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, and for local and tribal governments, the invitation for bids must be publically advertised;
 2. The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
 3. All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
 4. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
 5. Any or all bids may be rejected if there is a sound documented reason.
- Competitive proposals: Used for purchases over the Simplified Acquisition Threshold, which is currently set at \$150,000. This procurement method requires formal solicitation, fixed-price or cost-reimbursement contracts, and is used when sealed bids are not appropriate. The contract should be awarded to the responsible firm whose proposal is most advantageous to the program, with price being one of the various factors.

If this method is used, the following requirements apply:

1. Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
2. Proposals must be solicited from an adequate number of qualified sources;

3. The non-federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
 4. Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
 5. The non-federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.
- Noncompetitive proposals, also known as sole-source procurement: this may be appropriate *only* when specific criteria are met, such as:
 1. When an item is available only from one source;
 2. When a public emergency does not allow for the time of the competitive proposal process;
 3. When the federal awarding agency authorizes noncompetitive proposals in response to a written request from the non-federal entity; or
 4. After solicitation of a number of sources, the competition is deemed inadequate.

PROCUREMENT OF RECOVERD MATERIALS

Cities, counties or state agencies and their contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conversation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

CONTRACT COST AND PRICE

A Grantee must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the Grantee must make independent estimates before receiving bids or proposals.

Grantees must negotiate profit as a separate element of the price for each contract in which there is a no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

Costs or prices based on estimated costs for contracts under the federal award are allowed only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the Grantee under federal Cost Principles listed in the OMB regulations.

The cost plus a percentage of cost and percentage of construction cost methods of contracting must *not* be used.

INSURANCE COVERAGE REQUIREMENTS FOR REAL PROPERTY AND EQUIPMENT ACQUIRED OR IMPROVED WITH FEDERAL FUNDS

Grantees must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with federal funds as provided to property owned by the non-federal entity. Federally-owned property need not be insured unless required by the terms and conditions of the federal award.

CONTRACTING PROVISIONS AND REQUIREMENTS

CDBG-DR and CDBG-NDR Grantees must ensure that all purchase orders and contracts include clauses required by Federal statutes, executive orders and implementing regulations (24 CFR 570.489(g) and Appendix 2 of 2 CFR Part 200). Specifically, all contracts and subcontracts must include provision covering, if applicable:

- A. Contracts for more than the simplified acquisition threshold currently set at \$150,000, 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.
- B. 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.
- C. All contracts must include the equal opportunity clause provided under 41 CFR 60–1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964–1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

- D. All prime construction contracts in excess of \$2,000 must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. Any CDBG-DR or CDBG-NDR Grantee must report all suspected or reported violations to HCD.
- E. All contracts awarded by CDBG-DR and/or CDBG-NDR Grantees in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under Section 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- F. Contracts and subcontracts 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).

- G. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
- H. A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide Excluded Parties List System 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." The Excluded Parties List System in SAM 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.
- I. Contractors that apply or bid for an award of \$100,000 or more 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 contractor tier to contractor tier up to the non-Federal award.
- J. Procurement of recovered materials, as per 2 CFR 200.322.

DEBARRED, SUSPENDED OR PROHIBITED PARTIES LIST

Since CDBG-DR and CDBG-NDR are federal funds, the requirements outlined in the U.S. Government Services Administration (GSA) policies apply to all contract relationships paid with any CDBG funds. The Suspended and Debarred (S&D) process protects the federal government from fraud, waste and abuse by using a number of tools to avoid doing business with non-responsible contractors. Suspensions, Proposals for Debarment, and Debarments are the most widely known tools as these actions are visible to the public via SAM (formerly EPLS). However, Hearings, Show Cause Letters, Requests for Information, which are not visible to the public, are also effective tools used to protect the Government and taxpayers' interests. Terminations of Review are also important as they inform the contractor under review that a determination has been made that the contractor is presently responsible and can continue conducting business with the Government.

Any party listed on in SAM may not conduct business with the Federal government as an agent or representative of other contractors or of participants in Federal assistance programs, nor may act

as an individual surety to other Government contractors.

In addition to the GSA requirements, 24 CFR 570.489(l) requires that no CDBG funds be provided to any parties on the S&D list. Prior to scoring any responses to Requests for Proposals, Requests for Qualifications, sealed bid proposals or any other procurement methods, Grantees are required to check the S&D list for:

- All contractors (each name that will be paid with grant funds)
- All sub-recipients (each name that will be paid with grant funds)
- All local units of government (all parties that will handle or be paid with grant funds)

The list must be checked several ways, using exact names of businesses and individuals, as well as variations, and social security number. Printouts of the results dated prior to the execution of any contracts for CDBG-DR or CDBG-NDR work must be maintained in the procurement files of the Grantees. The list of debarred contractors is located at: <https://www.sam.gov> .

CONFLICTS OF INTEREST

Conflict of interest requirements are specified by HUD; however, these will also be dictated by state and local law. CDBG Grantees must ensure compliance by reviewing their local government situations and determining if the decision-making process was followed appropriately to ensure HUD as well as California and local standards are followed.

California's conflict of interest standards of conduct apply to all procurement activities.

All non-procurement activities (acquisition and disposition of property, direct assistance to individuals, businesses) are subject to the HUD requirements described in 570.489(h).

The general rule is persons acting on behalf of state or local government in a State CDBG decision making role or who are in a position to gain inside information (and their family members) cannot obtain a financial interest or benefit from State CDBG funded activities. – Prohibition ends 1 year after the decision-making person has left their position.

HCD evaluates and decides the outcome of a CDBG Grantee employee, agent, consultant, officer, or elected official or appointed official of the state, or locality, or of any designated public agencies, or subrecipients or other recipient on behalf of their employees or agents which are receiving CDBG funds. The regulations contain a list of factors to be included in any requests, and which must be considered when evaluating them. Those include:

- Whether the exception would provide a significant cost-benefit or essential degree of expertise that would otherwise be missing;
- Whether an opportunity was provided for open competitive bidding;
- Whether the person affected is a member of a group or class of low- or moderate-income persons intended to be the beneficiaries, and the exception

- will allow the person to receive the same benefits as other members of the class;
- Whether the person has withdrawn from the role of decision- maker;
 - Whether the interest or benefit was present before the affected person became an employee, agent, consultant, officer, or elected official or appointed official of the state, or locality, or of any designated public agencies, or subrecipients which are receiving CDBG funds;
 - Whether undue hardship will result to the State, Grantee or affected person when weighed against the public interest;
 - Any other relevant considerations; and/or
 - Request for exception must include public disclosure & attorney opinion that exception does not violate state or local law.

DISADVANTAGED BUSINESS ENTERPRISES, MINORITY BUSINESS ENTERPRISES AND WOMEN BUSINESS ENTERPRISES (MBE/WBE) REQUIREMENTS

Disadvantaged Business Enterprises (DBEs) are entities owned and/or controlled by a socially and economically disadvantaged individual, as described Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 note) (10% statute), and Public Law 102-389 (42 U.S.C. 4370d) (8% statute), respectively;

- a Small Business Enterprise (SBE);
- a Small Business in a Rural Area (SBRA);
- a Labor Surplus Area Firm (LSAF); or
- a Historically Underutilized Business (HUB) Zone Small Business Concern, or a concern under a successor program.

Minority Business Enterprises (MBEs) are entities that are at least 51% owned and/or controlled by a socially and economically disadvantaged individual as described by Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 note), and Public Law 102-389 (42 U.S.C. 4370d), respectively.

Women’s Business Enterprises (WBEs) are entities that are at least 51% owned and/or controlled by women (under the 10% and 8% statutes).

2 CFR 200.321 requires that all non-Federal entities must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises

are solicited whenever they are potential sources;

- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) above.

Each Grantee must have sufficient documentation to show HUD's minimum requirements for outreach to ensure minority- and woman-owned businesses have opportunities for contracting HUD-funded projects have been met. HUD's outreach standards include:

- A good faith, comprehensive and continuing outreach process that is:
 - Supported statement of public policy and commitment published in the print media of the widest local circulation;
 - Supported by an office and/or a key, ranking staff person with oversight responsibilities and access to the chief elected official; and
 - Designated to utilize all available and appropriate public and private sector local resources.

To ensure inclusion, to the maximum extent possible, of entities owned by minorities and women, Grantees should:

- Develop a systematic method for identifying and maintaining an inventory of certified DBEs, MBEs and WBEs, their capabilities, services, supplies and/or products;
- Utilize the local media, electronic and print, to market and promote contract and business opportunities for DBEs, MBEs and WBEs;
- Develop informational and documentary materials (fact sheets, program guides, procurement forecasts, etc.) on contract/subcontract opportunities for DBEs, MBEs and WBEs;
- Develop procurement procedures that facilitate opportunities for DBEs, MBEs and WBEs to participate as vendors and suppliers of goods and services;
- Sponsor business opportunity-related meetings, conferences, seminars, etc., with DBEs, MBEs and WBEs organizations; and

- Maintain centralized records with statistical data on the utilization and participation of DBEs, MBEs and WBEs contractors/subcontractors in all HUD-assisted program contracting activities.

SECTION 3 COMPLIANCE REQUIREMENTS

Section 3 of the Housing and Urban Development Act of 1968 (Section 3), as amended by the Section 915 of the Housing and Community Development Act of 1992, requires that economic opportunities generated by HUD financial assistance for housing and community development programs be targeted toward low- and very low-income persons. This means that whenever HUD assistance generates opportunities for employment or contracting, all Grantees and other recipients or subrecipients of HUD funds must, to the greatest extent feasible, provide these opportunities to low- and very low-income persons and to businesses owned by or employing low- and very low-income persons.

Section 3 requirements apply to job training, employment, contracting and subcontracting and other economic opportunities arising from assistance provided for construction, reconstruction, conversion, or rehabilitation (including lead-based paint hazard reduction and abatement) of housing, other buildings, or improvements assisted with housing or community development assistance, including CDBG-DR and CDBG-NDR.

Section 3 applies to all:

- Projects where HUD's share of the project costs exceeds \$200,000; and
- Contracts and subcontracts awarded on projects for which HUD's share or project costs exceed \$200,000, and the contract or subcontract exceeds \$100,000.

Recipients whose projects do not fall under Section 3 are nonetheless encouraged to comply with the Section 3 preference requirements.

Recipients and their contractors and subcontractors must show preferences for giving training and employment opportunities to low-income persons, to the greatest extent feasible. They must show priority considerations for hiring low-income persons as follows:

1. Low-income persons residing in the service area or neighborhood in which the project is located.
2. Participants in HUD Youth-build programs.
3. If the project is assisted under the McKinney Act, homeless persons in the project area.
4. Other Section 3 residents.

The persons hired should be qualified to perform the work required; however, the above groups should be given preferences to being hired.

Recipients and their contractors and subcontractors must direct their efforts to award Section 3 business concerns, to the greatest extent feasible, to Section 3 business concerns in the following preference order:

1. Section 3 businesses that operate in the project area.
2. Entities that carry out Youth-build programs.
3. Other Section 3 business concerns.

The business must be able to demonstrate that it can successfully perform under the terms and conditions of the proposed contract. In addition, these requirements do not restrict competition to only businesses meeting one of the priorities, nor do they authorize set-asides.

CDBG-DR and CDBG-NDR Grantees must:

- Amend their employment and procurement policies to comply with Section 3, and
- Include the Section 3 clause in covered contracts and subcontracts, and
- Document their best efforts to comply with Section 3 and their success at hiring low-income persons, and
- Monitor their own compliance and the compliance of their contractors and subcontractors, and
- Provide annual reports of their Section 3 progress to HCD in the format required by HCD.

DRUG-FREE WORKPLACE

All Grantees receiving CDBG-DR or CDBG-NDR funds through a Standard Agreement or Inter-Agency Agreement must make a good faith effort, on a continuing basis, to maintain a drug-free workplace. This involves publishing a drug-free workplace statement and establishing a drug-free awareness program to inform employees about:

- (a) The dangers of drug abuse in the workplace;
- (b) The Grantee's policy of maintaining a drug-free workplace;
- (c) Any available drug counseling, rehabilitation, and employee assistance programs; and
- (d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

As part of the documentation required, evidence must be maintained to show that each employee to be engaged in the performance of the grant was given a copy of the statement as a condition of employment, was given a copy of the statement notifying them that:

- compliance with the drug-free policy is a condition of their employment; and

- the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Grantee's workplace; and
- specific actions that will be taken against employees for violation of such prohibition is required.
- the employee must:
 - (a) abide by the terms of the statement; and
 - (b) notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.

Grantees are required to notify HCD immediately upon receiving notice from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice that includes:

- position and title, to every grant officer or other designee on whose grant activity the convicted employee was working; and
- identification number(s) of each affected grant; and
- that with respect to any employee who is so convicted, that within 30 calendar days of receiving notice or knowledge of such conviction, the following actions are being taken:
 - (a) all appropriate personnel actions against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - (b) requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

Each Grantee must continue to make a good faith effort to maintain a drug-free workplace through implementation of their drug-free policy and awareness programs.

HCD will notify HUD in writing, within ten calendar days after receiving notice from any CDBG-DR or CDBG-NDR Grantee of the above information.

ANTI-LOBBYING

All CDBG-DR and/or CDBG-NDR Grantees must maintain a certification that:

1. No federally appropriated CDBG-DR and/or CDBG-NDR funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any

- cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
2. If any funds other than federal appropriated CDBG-DR and/or CDBG-NDR funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Grantee will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
 3. The Grantee will require that the language of paragraph 1 and 2 of this anti-lobbying section be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

ENVIRONMENTAL REVIEW REQUIREMENTS

BACKGROUND AND APPLICABLE REGULATIONS

The purpose of the environmental review process is to analyze the effect a proposed project will have on the people and the natural environment within a designated project area and the effect the material and social environment may have on a project.

Units of general local government who receive CDBG-DR or CDBG-NDR funds are considered responsible entities and must complete an environmental review of all project activities prior to obligating CDBG-DR or CDBG-NDR funds. This requirement also applies to any projects funded with CDBG-DR or CDBG-NDR generated program income.

The HUD rules and regulations that govern the environmental review process can be found at 24 CFR Part 58. The provisions of the National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) regulations in 40 CFR Parts 1500 through 1508 also apply. In addition, a myriad of other Federal and state laws and regulations (some of which are enforced by State agencies) also apply depending upon the type of project and the level of review required.

THE RESPONSIBLE ENTITY & OFFICIAL DESIGNATIONS

Under 24 CFR Part 58, the term "responsible entity" (RE) means the unit of general local government receiving CDBG-DR or CDBG-NDR assistance. The responsible entity must complete the environmental review process. The RE is responsible for ensuring compliance with NEPA and the Federal laws and authorities has been achieved, for issuing the public notification, for submitting the request for release of funds and certification, when required, and for ensuring the Environmental Review Record (ERR) is complete.

In order to fulfill its obligations under 24 CFR Part 58, the RE should designate two responsible parties:

- Certifying Officer: The responsible entity must officially designate a Certifying Officer -- the “responsible Federal official” -- to ensure compliance with the National Environmental Policy Act (NEPA) and the Federal laws and authorities cited at section 58.5 has been achieved. This person is the chief elected official, chief executive official, or other official designated by formal resolution of the governing body. The certifying officer must have the authority to assume legal responsibility for certifying that all environmental requirements have been followed. This function may not be assumed by administering agencies or consultants.
- Environmental Officer: The funding recipient must also designate an Environmental Officer, who is responsible for conducting the environmental review including such tasks as: writing the project narrative, obtaining maps of the project area, soliciting comments from appropriate local, state and federal agencies, and facilitating responses to comments received on the environmental findings.

ENVIRONMENTAL REVIEW RECORD

Each responsible entity must prepare and maintain a written record of the environmental review undertaken for each project. This written record or file is called the Environmental Review Record (ERR), and it must be available for public review upon request.

The ERR shall contain all the environmental review documents, public notices (and proof of their publication), and written determinations or environmental findings required by 24 CFR Part 58 as evidence of review, decision making and actions pertaining to a particular project. The document shall:

- Describe the project and each of the activities comprising the project, regardless of individual activity funding source; and
- Evaluate the effects of the project or the activities on the human environment;
- Document compliance with applicable statutes and authorities; and
- Record the written determinations and other review findings required by 24 CFR Part 58.

The ERR will vary in length and content depending upon the level of review required for the categories of activities. ❑ Public comments, concerns and appropriate resolution by the recipient are extremely important and must be fully documented in the ERR.

ACTIONS TRIGGERING ENVIRONMENTAL REVIEW AND LIMITATIONS PENDING CLEARANCE

- ❖ According to the NEPA (40 CFR 1500-1508) and Part 58, the responsible entity is required to ensure that environmental information is available before decisions are made and before actions are taken. In order to achieve this objective, Part 58 prohibits the commitment or expenditure of CDBG-DR or CDBG-NDR funds until the environmental review process has been completed and the RE receives an HCD issued release of funds, as evidenced by an Authority to Release Grant Funds (ATUGF).

- ❖ REs may not spend either public or private funds (CDBG-DR, CDBG-NDR, other Federal or non-Federal funds), or execute a legally binding agreement for property acquisition, rehabilitation, conversion, repair or construction pertaining to a specific site until environmental clearance has been achieved.
- ❖ REs must avoid any and all actions that would preclude the selection of alternative choices before a final decision is made – that decision being based upon an understanding of the environmental consequences and actions that can protect, restore and enhance the human environment (i.e., the natural, physical, social and economic environment).
- ❖ Activities that have physical impacts or which limit the choice of alternatives cannot be undertaken, even with the RE’s or other project participant’s own funds, prior to obtaining environmental clearance as evidenced by the ATUGF.

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

- Execution of a legally binding agreement (such as a property purchase or construction contract);
- Expenditure of CDBG-DR or CDBG-NDR funds;
- Use of non-CDBG-DR or CDBG-NDR funds on actions that would have an adverse impact- e.g., demolition, dredging, filling, excavating; and/or
- Use of non-CDBG-DR or non-CDBG-NDR funds on actions that would be “choice limiting”- e.g., acquisition of real property; leasing property; rehabilitation, demolition, construction of buildings or structures; relocating buildings or structures, conversion of land or buildings/structures.

With HCD approval, it is acceptable to execute non-legally binding agreements prior to completion of the environmental review process. A non-legally binding agreement contains stipulations that ensure the project participant does not have a legal claim to any amount of CDBG-DR or CDBG-NDR funds to be used for the specific project or site until the environmental review process is satisfactorily completed.

CLASSIFYING THE ACTIVITY AND CONDUCTING THE APPROPRIATE LEVEL OF REVIEW

To begin the environmental review process, funding recipients must first determine the environmental classification of the project. The term “project” can be defined as an activity or group of activities geographically, functionally, or integrally related, regardless of funding source, to be undertaken by the RE, or a public or private entity in whole or in part to accomplish a specific objective.

If various project activities have different classifications, the RE must follow the review steps required for the most stringent classification. The four environmental classifications are:

- Exempt Activities,
- Categorically Excluded Activities,
- Activities Requiring an Environment Assessment, or
- Activities Requiring an Environmental Impact Statement.

Regardless of the number of activities associated with a project, a single environmental review is required. Aggregating related activities ensures the recipient adequately addresses and analyzes the separate and combined impacts of a proposed project. Conditions under which project aggregation would occur include:

- Activities are in a concentrated area;
- Activities are within unspecified sites;
- Multi-year activities; or
- Special HUD initiatives.

In project aggregation, the RE must group together and evaluate as a single project all of the individual activities that are related. They may be related geographically or functionally or are logical parts of a group of contemplated actions.

Related activities are ones that:

- Automatically trigger other actions;
- Cannot or will not proceed unless other actions are taken beforehand or at the same time; or
- Are mutually dependent parts of a larger activity/action.

EXEMPT ACTIVITIES

Certain activities are by their nature highly unlikely to have any direct impact on the environment. Accordingly, these activities are not subject to most of the procedural requirements of environmental review. Listed below are examples which may be exempt from environmental review. For complete details refer to the environmental regulations.

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

If a project is determined to be exempt the responsible entity is required to document in writing

that the project is exempt and meets the conditions for exemption as spelled out in § 58.34.

In addition to making a written determination of exemption, the RE must also determine whether any of the requirements of 24 CFR Part § 58.6 are applicable and address as appropriate.

- The requirements at 24 CFR § 58.6 include the Flood Disaster Protection Act; the Coastal Barriers Resources Act; and HUD’s requirement for disclosure of properties located in airport runway clear zones.

CATEGORICALLY EXCLUDED ACTIVITIES CATEGORICALLY EXCLUDED ACTIVITIES NOT SUBJECT TO 58.5

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

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

To complete environmental requirements for Categorically Excluded projects not Subject to 24 CFR Part § 58.5, the responsible entity must take the following steps:

- Make a finding of Categorical Exclusion Not Subject to § 58.5 and put in the ERR.
 - The ERR must contain a written determination of the RE’s finding that a given activity or program is categorically excluded not subject to § 58.5. When these kinds of activities are undertaken, the RE does not have to issue a public notice or submit a request for release of funds (RROF) to HCD.
 - In order to document the finding of categorical exclusion not subject to §58.5, the RE must cite the applicable subsection of § 58.35(b), identify and describe the specific activity or activities, and provide information about the estimated amount of CDBG-DR or CDBG-NDR or other funds to be used.
- Carry out any applicable requirements of 24 CFR Part § 58.6 and document the

ERR as appropriate.

- The RE must determine whether the activity triggers any of the other requirements at 24 CFR 58.6, which are: the Flood Disaster Protection Act; the Coastal Barriers Resources Act; and the requirements for disclosure of properties located in airport runway clear zones.

CATEGORICALLY EXCLUDED ACTIVITIES SUBJECT TO 58.5

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

The following are categorically excluded activities subject to 58.5:

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

- changed in size or capacity by more than 20 percent; and
 - The activity does not involve a change in land use, e.g. from commercial to industrial, from non-residential to residential, or from one industrial use to another.
- An individual action on up to four-family dwelling where there is a maximum of four units on any one site. “Individual action” refers to new construction, development, demolition, acquisition, disposition or refinancing (does not include rehabilitation which is covered previously). The units can be four one-unit buildings or one four-unit building or any combination in between;
- An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site;
- Acquisition (including leasing) or disposition of or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use.
- Combinations of the above activities.

The ERR must contain a written determination of the RE’s finding that a given activity or program is categorically excluded subject to § 58.5. This determination should:

- Include a description of the project (including all the related activities, even though CDBG-DR and/or CDBG-NDR funds may not be used for all of them);
- Cite the applicable subsection of § 58.35(a);
- Provide the total estimated project cost; and
- Provide written documentation as to whether or not there were any circumstances which required compliance with any of the Federal laws and authorities cited in §58.5.

The RE must use the HUD recommended Statutory Checklist, or an equivalent format, to document its environmental findings. (Contact the HUD Environmental Representative for a copy of the most current version of the checklist and instructions for its completion.)

The RE’s documentation must support its determinations related to compliance with the Federal laws and authorities cited in §58.5, including correspondence with the applicable agencies having jurisdiction over the various areas on the checklist.

Upon completion of the checklist, the RE will make one of three environmental findings:

- The project converts to exempt [§ 58.34(a)(12)];
- The project invokes compliance with one or more of the laws and/or authorities and, therefore, requires public notification and approval from HUD; or
- The unusual circumstances of the project may result in a significant

environmental impact and, therefore, compliance with NEPA is required.

If upon completing the Statutory Checklist, the RE determines compliance is required for one or more of the Federal laws and authorities listed in § 58.5, then the RE must publish or post a public notification known as the Notice of Intent to Request Release of Funds (NOI/RROF).

After the seven-day comment period has elapsed, the responsible entity must prepare the Request for Release of Funds (RROF) and Environmental Certification. The Environmental Certification certifies that the RE is in compliance with all the environmental review requirements. The RROF and Certification must be signed by the Certifying Officer and submitted to HUD. The RE must receive the release of funds from HUD before proceeding forward with the project.

ACTIVITIES REQUIRING AN ENVIRONMENTAL ASSESSMENT

Activities which are neither exempt nor categorically excluded (under either category) will require an environmental assessment (EA) documenting compliance with NEPA, HUD and with the environmental requirements of other applicable Federal laws.

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

- Complete the Modified Format II: Environmental Assessment form completely. The responsible entity must ensure that reliable documentation sources are cited for every item on this assessment checklist. The state's HUD Environmental Representative can provide detailed guidance on the Modified Format II, including appropriate documentation for each area of the checklists.
- Once the Format II has been completed, including consultation with applicable agencies and persons, the state must make a determination as to whether the project will or will not have a significant impact on the environment. This can be done once the review has been completed and any comments have been addressed appropriately. The Responsible Entity must select one of the following two findings/determinations:
 - The project is not an action that significantly affects the quality of the human environment and, therefore, does not require the preparation of an environmental impact statement; or
 - The project is an action that significantly affects the quality of the human environment and, therefore, requires the preparation of an environmental impact statement. Both the finding and the environmental assessment must be signed by your environmental certifying officer and included in the ERR.

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

- Publish and distribute a public notice called a Combined/Concurrent Notice of Finding of No Significant Impact (FONSI) and Notice of Intent to Request Release of Funds (NOI/RROF).

- The RROF and Environmental Certification must be submitted to HUD or the state no sooner than 16 days after publishing the combined/concurrent notice. The Certification must be signed by the Certifying Officer of the jurisdiction.
- HCD must hold the Release of Funds for a 15-day period to allow for public comment. If no comments are received during this time, HUD will send back a signed Release of Funds and the project may proceed.

If the environmental assessment will result in a finding that the project will significantly affect the environment and, therefore, requires an environmental impact statement, the state should contact its HCD Contract Management Representative for guidance.

ENVIRONMENTAL IMPACT STATEMENT

An Environmental Impact Statement (EIS) details the RE's final analyses and conclusions, according to NEPA, related to potential significant environmental impact of the project. REs must follow prescribed steps in the course of preparation, filing and review of an Environmental Impact Statement (See 24 CFR 58, Subpart G, and 40 CFR 1500-1508).

An EIS may be required when:

- The project is so large that it triggers density thresholds, and common sense suggests it may have a substantial environmental impact.
- A Finding of Significant Impact (FOSI) is found as a result of completing an environmental assessment for the project.
- Preparation of an EIS is mandatory if the project meets any of these requirements below:
 - Any project to provide a site or sites for hospitals and nursing homes with a total of at least 2,500 beds.
 - Any project to remove, destroy, convert or substantially rehabilitate at least 2,500 existing housing units.
 - Any project to construct, install or provide sites for at least 2,500 housing units.
 - Any project to provide water and sewer capacity for at least 2,500 housing units.
 - Any project that exceeds the 2,500-unit threshold for nonresidential housing construction.

EISs are very rare under the CDBG program. Contact your HUD Environmental Officer if there is any indication an EIS may be necessary.

UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970 (UNIFORM ACT OR URA)

Whenever Federal funds are used in a project involving the acquisition, rehabilitation or demolition of real property, a Federal law known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) generally applies. In some cases, the use of CDBG-DR or CDBG-NDR funds in a project involving the demolition or conversion of lower income dwellings may also trigger another Federal law under Section 104(d) of the Housing and

Community Development Act of 1974 (Section 104(d)). The purpose of the following is to provide CDBG-DR and/or CDBG-NDR Grantees with a general understanding of the requirements under both Federal laws in addition to where additional information and assistance may be obtained.

The Uniform Act, passed by Congress in 1970, is a Federal law that establishes minimum standards for federally funded programs and projects that require the acquisition of real property (real estate) or that displace persons from their homes, businesses, or farms. The Uniform Act's protections and assistance apply to the acquisition, rehabilitation, or demolition of real property for Federal or federally funded projects.

- **49 CFR Part 24** are the government-wide regulations that implement the URA. A formatted copy of these regulations is attached to this chapter.
- **HUD Handbook 1378** provides HUD policy and guidance on implementing the URA and 49 CFR Part 24 for HUD funded programs and projects.
- Grantees are urged to contact their HCD Contract Management Representative, as well as referring to the regulations, HUD handbook, and HUD's website for additional guidance.

The URA's objectives are to:

- provide uniform, fair, and equitable treatment of persons whose real property is acquired or who are displaced in connection with Federally funded projects;
- ensure relocation assistance is provided to displaced persons to lessen the emotional and financial impact of displacement;
- ensure that no individual or family is displaced unless decent, safe, and sanitary (DSS) housing is available within the displaced person's financial means;
- help improve the housing conditions of displaced persons living in substandard housing; and
- Encourage and expedite acquisition by agreement and without coercion.

HOW URA REQUIREMENTS IMPACT CDBG-DR AND/OR CDBG-NDR PROJECTS

Agencies conducting a program or project under the URA must carry out their legal responsibilities to affected property owners and displaced persons. Agencies should plan accordingly to ensure that adequate time, funding, and staffing are available to carry out their responsibilities.

RESPONSIBILITIES INCLUDE, BUT ARE NOT LIMITED TO:

For Real Property Acquisition (Involuntary Acquisition – under threat or use of eminent domain):

- Appraise property before negotiations;
- Invite the property owner to accompany the appraiser during the property inspection;
- Provide the owner with a written offer of just compensation and a summary of what is being acquired;
- Pay for property before possession; and
- Reimburse expenses resulting from the transfer of title such as recording fees, prepaid real estate taxes, or other expenses.

Note that agency responsibilities for voluntary acquisitions differ. Refer to 49

CFR 24.101(b) and **HUD Handbook 1378** Chapter 5 for additional information.

For Residential Displacements Grantees Must

- Provide relocation advisory services to displaced tenants and owner occupants;
- Provide a minimum 90 days written notice to vacate prior to requiring possession; Reimburse for moving expenses; and
- Provide payments for the added cost of renting or purchasing comparable replacement housing.

For Nonresidential Displacements (Businesses, Farms, and Nonprofit Organizations)

- Provide relocation advisory services.
- Provide a minimum 90 days written notice to vacate prior to requiring possession. Reimburse for moving and reestablishment expenses.
- For additional information, sample forms and templates visit HUD’s Real Estate Acquisition and Relocation website at:
<http://www.hud.gov/offices/cpd/library/relocation/index.cfm>.

SECTION 104(D) OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT (SECTION 104(D)) “THE BARNEY FRANK AMENDMENT”

Section 104(d) of the Housing and Community Development (HCD) Act provides minimum requirements for CDBG funded programs or projects when units that are part of a community’s low-income housing supply are demolished or converted to a use other than low- or moderate-income dwellings.

24 CFR Part 42 are the regulations that implement Section 104(d), and HUD Handbook 1378 provides HUD’s policy and guidance on implementing Section 104(d).

Section 104(d) requires:

- Replacement, on a one-for-one basis, of all occupied and vacant, occupy-able, low- or moderate-income dwelling units that are demolished or converted to a use other than low- or moderate-income housing in connection with an activity assisted under the HCD Act; and
- Provision of certain relocation assistance to any lower income person displaced as a direct result of the following activities in connection with Federal assistance:
 - Demolition of any dwelling unit; or
 - Conversion of a low- or moderate-income dwelling unit to a use other than a LMI residence.

Section 104(d) is triggered by the use of HOME, CDBG, Section 108 Loan Guarantee, or UDAG funding in a project involving the demolition or conversion of low- or moderate-income housing. It should be noted that CDBG-DR or CDBG-NDR funding used solely for relocation assistance or project administration does not trigger Section 104(d) requirements.

Relocation requirements under Section 104(d) include:

- Relocation assistance and payments for eligible persons under Section 104(d) are similar to those required for the URA, but there are a number of differences. One significant difference is the period of time used to calculate a rental assistance payment: Section 104(d) factors in 60 months vs. 42 months for the URA. Section 104(d) eligible displaced persons may choose to receive relocation assistance under either Section 104(d) or the URA.
- Grantees with questions about section 104(d) are urged to contact their HCD Contract Management Representative, as well as referring to the regulations, HUD handbook, and HUD’s website for additional guidance.

For additional information and helpful resources visit HUD’s Real Estate Acquisition and Relocation website at <http://www.hud.gov/offices/cpd/library/relocation/index.cfm>.

FAIR HOUSING, ACCESSIBILITY, AND EQUAL EMPLOYMENT

FAIR HOUSING, ACCESSIBILITY, AND EQUAL EMPLOYMENT

Fair housing and equal opportunity laws are like an umbrella, intended to protect individuals from discrimination in housing, employment, through business opportunities such as contracting, or through other benefits created by CDBG-DR and/or CDBG-NDR projects. To be in compliance, Grantees must adhere to all the basic tenets of fair housing and equal opportunity regulations. To demonstrate support for ensuring these tenets, Grantees must endorse in attitude and deed all regulations for fairness in the provision of CDBG-DR and/or CDBG-NDR funded programs and projects.

ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING CHOICE

In accordance with the Fair Housing Act, the Grantees must 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 completing an analysis of impediments to fair housing choice and taking the actions necessary to overcome the effects of any impediments identified through that analysis. Below is a reference to the major regulations and requirement covering fair housing and equal opportunity?

	Fair Housing and Non-discrimination	Accessibility	Equal Employment and Contracting
Federal and State Laws and Regulations (included amendments) Title VI of the Civil Rights Act of 1964: This Act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination based on race,	X		

color, and/or national origin under any program or activity receiving Federal financial assistance.			
Title VIII of the Civil Rights Act of 1968 (The Fair Housing Act): This Act prohibits discrimination in housing on the basis of race, color, religion, sex and/or national origin. This law also requires actions which affirmatively promotes fair housing.	X	X	
Restoration Act of 1987. This Act restores the broad scope of coverage and clarifies the application of the Civil Rights Act of 1964. It also specifies that an institution which receives Federal financial assistance is prohibited from discriminating on the basis of race, color, national origin, religion, sex, disability, or age in a program or activity which does not directly benefit from such assistance.	X		
Section 109 of Title 1 of the Housing and Community Development Act of 1974: This section of Title 1 provides that no person shall be excluded from participation (including employment), denied program benefits, or subject to discrimination on the basis of race, color, national origin, or sex under any program or activity funded in whole or in part under Title I of the Act.	X		X
The Fair Housing Amendment Act of 1988: This Act amended the original Fair Housing Act to provide for the protection of families with children and people with disabilities, strengthen punishment for acts of housing discrimination, expand of the Justice Department jurisdiction to bring suit on behalf of victims in Federal district courts, and create an exemption to the provisions barring discrimination on the basis of familial status for those housing developments that qualify as housing for persons age 55 or older.	X		
Federal and State Laws and Regulations (included amendments)	Fair Housing and Non-discrimination	Accessibility	Equal Employment and Contracting
The Housing for Older Persons Act of 1995 (HOPA): Retained the requirement that the housing must have one person who is 55 years of age or older living in at least 80 percent of its occupied units. The Act also retained the requirement that housing facilities publish and follow policies and procedures that demonstrate intent to be housing for persons 55 and older.	X		
The Age Discrimination Act of 1975: This Act provides that no person shall be excluded from participation, denied program benefits, or subject to discrimination on the basis of age under any program or activity receiving Federal funding assistance. Effective January 1987, the age cap of 70 was deleted from the laws. Federal law preempts any State law currently in effect on the same topic including: KRS 18A.140; KRS 344.040; 101 KAR 1:350 Paragraph 11; 101 KAR 1:375 Paragraph 2(3); 101 KAR 2:095 Paragraphs 6 and 7.	X		
Section 504 of the Rehabilitation Act of 1973: It is unlawful to discriminate based on disability in Federally assisted programs. This section provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving Federal funding assistance. Section 504 also contains design and construction accessibility provisions for multi-family dwellings developed or substantially rehabilitated for first occupancy on or after March 13, 1991.	X	X	X
The Americans with Disabilities Act of 1990 (ADA) modifies and expands the Rehabilitation Act of 1973 to prohibit discrimination against “a qualified individual with a disability” in employment and public accommodations. The ADA requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal employment opportunity in all phases of employment. Kentucky adopted this Act in 1992 with the enrollment and passage of Senate Bill 210.	X	X	X

Executive Order 11063 provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in housing and related facilities provided with Federal assistance and lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the Federal government.	X		
Executive Order 11259 provides that the administration of all Federal programs and activities relating to housing and urban development be carried out in a manner to further housing opportunities throughout the United States.	X		
Section 109 of Title I of the Housing and Community Development Act of 1974 Requires that no person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded with CDBG funds on the basis of race, color, religion, national origin, or sex.	X		X
The Equal Employment Opportunity Act empowers the Equal Employment Opportunity Commission (EEOC) to bring civil action in Federal court against private sector employers after the EEOC has investigated the charge, found “probable cause” of discrimination, and failed to obtain a conciliation agreement acceptable to the EEOC. It also brings Federal, State, and local governments under the Civil Rights Act of 1964.			X
The Immigration Reform and Control Act (IRCA) of 1986. Under IRCA, employers may hire only persons who may legally work in the U.S., i.e., citizens and nationals of the U.S. and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9).			X
Federal and State Laws and Regulations (included amendments)	Fair Housing and Non-discrimination	Accessibility	Equal Employment and Contracting
Section 3 of the Housing and Urban Development Act of 1968, as amended, requires the provision of opportunities for training and employment that arise through HUD-financed projects to lower-income residents of the project area, to the greatest extent feasible and consistent with Federal, State and local laws and regulations. Also required is that contracts be awarded to businesses that provide economic opportunities for low- and very low-income persons residing in the area. Amendments to Section 3 in 1992 included requirements for providing these opportunities in contracts for housing rehabilitation, including lead-based paint abatement, and other construction contracts.			X
The Vietnam Era Veterans’ Readjustment Act of 1974 (revised Jobs for Veterans Act of 2002) was passed to ensure equal employment opportunity for qualified disabled veterans and veterans of the Vietnam War. Affirmative action is required in the hiring and promotion of veterans.			X
Executive Order 11246 applies to all Federally assisted construction contracts and subcontracts. It provides that no person shall be discriminated against on the basis of race.			X

FAIR HOUSING

Prohibited Discrimination

Units of general local government must be aware that fair housing provisions apply to the locality as a whole and not just those activities that are CDBG-DR or CDBG-NDR funded; and that implementing fair housing activities is an essential part of the Grantee’s responsibilities. No person shall be subjected to discrimination because of: race, color, religion, sex, disability, age, familial

status, or national origin.

Fair housing actions should increase housing opportunities and affirmatively promote fair housing throughout the entire housing market at all income levels. These activities may include independent actions by the jurisdiction or cooperative ventures with housing related industries, such as mortgage lenders, home builders, and local non-profits working in housing. The jurisdiction is expected to take progressive actions to further fair housing with each CDBG-DR or CDBG-NDR project.

Jurisdictions must assure that all CDBG-DR or CDBG-NDR funded activities undertaken as part of the project are conducted in a manner which will not cause discrimination on the basis of race, color, religion, sex, disability, familial status, or national origin. Segregated facilities, services, or benefits and different treatment are prohibited.

CDBG-DR and CDBG-NDR Grantees must take care to ensure the following:

- Access to any advantage arising out of the project is not:
 - Denied solely on the basis of race, color, religion, sex, disability, familial status, or national origin; or
 - Offered for the enjoyment of a segment of the population in such a way as to intentionally exclude any member of these protected groups.

In addition, decisions regarding the selection of sites and locations for facilities and improvements must not have an exclusionary or discriminatory effect. Jurisdictions cannot impose evaluation criteria and administrative practices that not have a discriminatory effect. Affirmative actions must be used to overcome the effects of past discrimination, and a Fair Housing Poster must be displayed in a prominent place at any office where applications for assistance are being taken.

The Fair Housing Act provides that, in connection with the design and construction of multi-family housing, the public use and common areas must be accessible and usable by persons with handicaps, all doors must be designed to be wide enough for wheelchair accessible, and all premises should be of adaptive design (e.g., reinforcements within a bathroom to allow installation of grab bars).

Grantees undertaking housing projects and activities must ensure fair housing rules are followed in the provision of housing services and assistance. Opportunities for purchase or rental, terms and conditions, advertising and marketing information, and availability of real estate services should not discriminate.

Some examples of possible actions to ensure fair housing are

- Developing and implementing a fair housing resolution;
- Marketing information concerning housing services and activities should be disseminated through agencies and organizations that routinely provide services to protected groups;
- Criteria for selecting recipients of housing services or assistance should be evaluated for any discriminatory effect;

- Policies guiding the provisions of relocation housing and services for persons displaced by housing activities should be evaluated for discriminatory effect; and
- Legal documents used by Grantees and lending institutions should be reviewed and revised if necessary to eliminate any discriminatory intent or practice.

It is important for GRANTEES to understand both the Fair Housing Amendment and Section 504. The Fair Housing Amendment requires that a landlord must allow a tenant to make reasonable modifications to a unit paid for by the tenant. Section 504 provides that the landlord is responsible for making needed reasonable accommodations. Finally, the accessibility logo should be used in housing projects where units are available for the disabled.

Affirmative Marketing

Grantees must adopt affirmative marketing procedures and requirements for all CDBG-assisted housing with five or more units. Requirements and procedures must include:

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

HANDICAPPED ACCESSIBILITY AND SECTION 504

Program Accessibility

Communication is an important component of program accessibility. Disabilities involving impairments to hearing, vision, speech or mobility may affect communication. Members of the community who have disabilities must be able to access and enjoy the benefits of a program or activity receiving CDBG-DR or CDBG-NDR funds; therefore, varied approaches may be required to assure effective communication and information dissemination.

Specifically, the Grantee must be receptive to the requests and needs of the disabled person(s) within the community when determining which auxiliary aids or services are necessary. For the purposes of Section 504 compliance, the target population includes: the hearing impaired, visually impaired, mobility impaired, developmentally disabled, and those persons requiring in-home care or institutional care. Grantees must furnish auxiliary aids and services, as necessary, which may include:

For persons with hearing impairments:

- Qualified sign language interpreters;
- Note takers;
- Telecommunication devices for deaf persons (TDDs);

- Telephone handset amplifiers;
- Assertive listening devices (devices that increase the sound in large group settings);
- Flashing lights (where aural communication is used, such as warning bells);
- Video text displays (devices that display text that is simultaneously being spoken can be used where a public address system provides information);
- Transcription services; and
- Closed and open captioning.

For persons with vision impairments:

- Qualified readers;
- Written materials translated into alternative formats (e.g., Braille, audio tape, large print);
- Aural communication (e.g., Bells or other sounds used where visual cues are necessary); and
- Audio description services (i.e., through a headset, a narrator describes what the visually impaired person cannot see).

Grantees must ensure effective communication with persons with all types of disabilities in all activities. Where the Grantee communicates with applicants and beneficiaries by phone, a TDD is required or an equivalent system must be available. Please note that Grantees are not required to take any action that would result in a fundamental alteration in the nature of a program or activity or undue financial and administrative burdens.

Housing

Section 504 also includes accessibility requirements for new construction and substantial rehabilitation of multi-family rental housing. Section 504 provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation in (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving Federal funding assistance. Section 504 also contains design and construction accessibility provisions for certain new multi-family dwellings developed for first occupancy on or after March 13, 1991.

For the purposes of compliance with Section 504, “accessible” means ensuring that program and activities, when viewed in their entirety, are accessible to and usable by individuals with disabilities. For housing purposes, accessible means a dwelling is on an accessible route and adaptable inside.

The following requirements apply to both federally assisted newly constructed multi-family rental housing containing five or more units and substantial rehabilitation of multi-family rental housing with 15 or more units. A rehabilitation project is considered substantial when the rehab costs will be 75 percent or more of the replacement cost of the complete facility;

- A minimum of five percent of total dwelling units (but not less than one unit) accessible for individuals with mobility impairments;
- An additional two percent of dwelling units (but not less than one) accessible for persons with hearing or vision impairments; and

- All units made adaptable that are on the ground level or can be reached by an elevator.

Facilities

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

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

Methods of improving program access in existing facilities can include the following:

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

Special Requirements for GRANTEEs with 15 or More Employees

There are two additional requirements for Section 504 compliance for Grantees (called “recipients” under 504 to include public agencies, instrumentalities, and public and private entities including nonprofits) with 15 or more full or part-time employees:

- Designation of responsible employee and adoption of grievance procedures:
 - At least one person must be designated to coordinate 504 and related compliance efforts. The agency coordinator should be designated in writing and identified in any written notices.
 - A grievance procedure must also be adopted incorporating due process standards and allowing for prompt local resolution of any complaints of discrimination based on disability. Existing grievance procedures can often be adapted to satisfy this requirement.
 - Any individual or authorized representative who believes that they have been denied opportunities or treated differently due to their race, color, national origin, sex, age disability, religion and familial status may file a complaint. The complaint may be filed with the Grantee, HCD or HUD.

Notification to participants, beneficiaries, applicants and employees of their nondiscriminatory provisions. In summary, the Grantees must provide notice regarding the following, and must:

- Publish in a newspaper of general circulation the notice “Policy of Non-

- Discrimination on the Basis of Disability Status.”
- include the same language found in their policy of nondiscrimination (mentioned in the first bullet) in all material used for recruitment or general information.
 - Ensure that all members of the population with visual or hearing impairments are provided with the information necessary to understand and participate in the programs offered.

Methods for ensuring participation may include qualified sign language and oral interpreters, readers, or the use of taped and Braille materials.

Other Accessibility Rules

Americans with Disabilities Act of 1990 (ADA)

The Americans with Disabilities Act of 1990 (ADA) guarantees equal opportunities for persons with disabilities in employment, public accommodations, transportation, state and local government services, and telecommunications. Unlike Section 504 which applies only to programs and activities receiving federal financial assistance, the ADA applies even if no federal financial assistance is given. Title II of ADA prohibits discrimination based on disability by state and local governments.

Facilities

Title II also requires that facilities that are newly constructed or altered, by, on behalf of, or for use of a public entity, be designed and constructed in a manner that makes the facility readily accessible to and usable by persons with disabilities. Facilities constructed or altered in conformance with either the Uniform Federal Accessibility Standards (UFAS) or the ADA Accessibility Guidelines for Buildings and Facilities (ADAAG) shall be deemed to comply with the Title II Accessibility requirements, except that the elevator exemption contained in Section 4.1.3(5) and Section 4.1.6(1)(j) of ADAAG shall not apply.

Roads and Pedestrian Walkways

Title II specifically requires that all newly constructed or altered streets, roads, highways, and pedestrian walkways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level or pedestrian walkway and that all newly constructed or altered street level pedestrian walkways must have curb ramps at intersections . Newly constructed or altered street level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads, or highways.

Architectural Barriers Act of 1968

The Architectural Barriers Act of 1968 (ABA) requires that certain buildings financed with Federal funds must be designed, constructed, or altered in accordance with standards that ensure accessibility for persons with physical disabilities. The ABA covers any building or facility financed in whole or in part with Federal funds, except privately-owned residential structures. Covered buildings and facilities designed, constructed, or altered with CDBG funds are subject to the ABA and must comply with the Uniform Federal Accessibility Standards (UFAS). In practice, buildings built to meet the requirements of Section 504 and the ADA will conform to the requirements of the ABA.

Self-Evaluation Plan and Transition Plan Self Evaluation Plan

Self-evaluation is required by both Section 504 and the Americans with Disabilities Act. Self-evaluation promotes inclusion of the programmatic and project-specific alternations that are necessary to ensure long term compliance with the requirements.

If a Grantee has not already performed a Section 504 self-evaluation of programs, services, and activities to determine if they are programmatically and physically accessible to person with disabilities, they must conduct such evaluation and document all needs. Note: If a Grantee has already performed a self-evaluation, a new one is not required.

Grantees should also involve persons with disabilities in these evaluations. While performing the self-evaluation, a careful inspection of the following should be performed to determine if they are free from discriminatory effects and practices:

- Evaluate current policies and practices and analyze them to determine if they adversely affect the full participation of individuals with disabilities in its programs, activities, and services. Be mindful of the fact that a policy or practice may appear neutral on its face, but may have a discriminatory effect on individuals with disabilities.
- Modify any policies and practices that are not or may not be in compliance with Section 504 or Title II and Title III of the ADA regulations. (See 24 CFR Part 8 and 28 CFR Parts 35, 36.)
- Take appropriate corrective steps to remedy those policies and practices that either are discriminatory or have a discriminatory effect. Develop policies and procedures by which persons with disabilities may request a modification of a physical barrier or a rule or practice that has the effect of limiting or excluding a person with a disability from the benefits of the program.
- Document the self-evaluation process and activities. HUD recommends that all recipients keep the self-evaluation on file for at least three years, including records of the individuals and organizations consulted, areas examined and problems identified, and document modifications and remedial steps.

A recommended approach to examine service and program accessibility is to do a walk-through of the process required for participation. Analyze not only the physical path traveled, but also the administrative requirements, service delivery, eligibility criteria, and application procedures.

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

Transition Plan

If structural barriers have been identified during the self-evaluation process and cannot be removed with nonstructural solution, a Transition Plan must be completed and made available for public review and comment.

The plan must address the following items:

- Identification of physical obstacles in the facilities that limit program accessibility;
- Description of the method that will be used to make facilities accessible;

- Specify a schedule to achieve full program compliance and, if the plan is longer than one year, identify steps to be taken during each year;
- Indicate the person responsible for implementing the plan; and
- Identify the person or groups with whose assistance the plan was prepared.

The Grantee is not necessarily required to make each existing facility or every part of an existing facility accessible. The Transition Plan must involve persons with disabilities and/or representative organizations.

EMPLOYMENT AND CONTRACTING

Employment and contracting activities also trigger employment and contracting rules related to equal employment practices.

Employment

Nondiscrimination is a requirement of employment and employment practices. Employment opportunities may not be denied on the basis of race, color, national origin, sex, age, religion, familial status, or disability. Affirmative action and equal employment opportunity policies are fundamental aspects of CDBG funded activities.

The Americans with Disabilities Act modifies and expands the Section 504 Rehabilitation Act of 1973 to prohibit discrimination against “a qualified individual with a disability” in employment and public accommodations. The ADA requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal employment opportunity in all phases of employment.

The Equal Employment Opportunity Act empowers the Equal Employment Opportunity Commission (EEOC) to bring civil action in Federal court against private sector employers after the EEOC has investigated the charge, found “probable cause” of discrimination, and failed to obtain a conciliation agreement acceptable to the EEOC. It also brings Federal, State, and local governments under the Civil Rights Act of 1964.

Steps that can be taken to prevent discrimination in employment include the following:

- Review of jurisdictional employment policies and procedures for discriminatory intent or practice and document review;
- Advertise employment opportunities and/or to recruit employees for project-related positions;
- Develop and maintain employment data that indicates staff composition by race, sex, handicap status and national origin; and
- An Equal Employment Opportunity Poster must be displayed in a prominent place at the office of the Grantee.

Specifically, Section 504 has a number of general prohibitions against employment discrimination. Grantees must ensure that the following items are adhered to:

- No qualified individual with a disability shall, solely on the basis of their disability

be subject to discrimination in employment under any program or activity that receives Federal assistance.

- Grantees cannot legally limit, segregate or classify applicants or employees in any way that negatively affects their status or opportunities because of disability.

In pre-employment and employment activities, discrimination based on a disability must not occur and reasonable accommodations must be made to the physical or mental limitations of otherwise qualified individuals unless it creates undue hardship for the Grantee. HUD regulations specify that an employer is prohibited from discrimination in the following instances:

- Recruiting, advertising, and processing of applications;
 - Hiring, upgrading, promoting, tenure, demotion, transfer, layoffs, termination right or return from layoffs, illness, and rehiring;
 - Rates of pay and any other forms of compensation;
 - Job assignments, classifications and descriptions, organizational structures, lines, progression, and seniority lists;
 - Leaves of absence, sick leave, or any other leave;
 - Fringe benefits available by virtue of employment;
 - Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities and selection for leaves of absence for training;
 - Employer sponsored activities (including social or recreation programs); and
 - Any other term, condition, or privilege of employment.

Grantees may not participate in a contractual or other relationship that subjects qualified disabled applicants or employees to discrimination.

Reasonable accommodation, under Section 504, in employment is determined on a case-by-case basis. It means reasonable modifications on the job or in the workplace to enable a disabled person to perform the job for which she/he is qualified. Section 504 does not require the hiring or promotion of someone simply because she/he has a disability.

Contracting - Section 3

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

Section 3 applies when a housing construction, housing rehabilitation or other public construction project or activity exceeds certain thresholds. Contractors and subcontractors providing services

on projects for which the total amount of the housing and community development assistance exceeds \$200,000 and the amount of the contract or subcontract exceeds \$100,000 are required to comply with Section 3. If a Grantee receives housing or community development assistance for a covered project that is funded in part with CDBG funds, Section 3 requirements apply to the entire project or activity.

It is important to document efforts made to comply with Section 3 through recordkeeping. Files should contain memoranda, correspondence, advertisements, etc., illustrating contractor and subcontractor attempts to hire low income residents and business concerns.

LEAD DISCLOSURE RULE

Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992, also known as Title X, to protect families from exposure to lead from paint, dust, and soil. Section 1018 of this law directed HUD and EPA to require the disclosure of known information on lead-based paint and lead-based paint hazards before the sale or lease of most housing built before 1978.

Most private housing, public housing, federally owned housing, and housing receiving federal assistance, including CDBG-DR and/or CDBG-NDR funds are affected by this rule.

What is required?

As of December 6, 1996, before ratification of a contract for housing sale or lease, sellers and landlords must:

- Give an EPA-approved information pamphlet on identifying and controlling lead-based paint hazards ("Protect Your Family from Lead In Your Home" pamphlet, currently available in English, Spanish, Vietnamese, Russian, Arabic, and Somali).
- Disclose any known information concerning lead-based paint or lead-based paint hazards. The seller or landlord must also disclose information such as the location of the lead-based paint and/or lead-based paint hazards, and the condition of the painted surfaces.
- Provide any records and reports on lead-based paint and/or lead-based paint hazards which are available to the seller or landlord (for multi-unit buildings, this requirement includes records and reports concerning common areas and other units, when such information was obtained as a result of a building-wide evaluation).
- Include an attachment to the contract or lease (or language inserted in the lease itself) which includes a Lead Warning Statement and confirms that the seller or landlord has complied with all notification requirements. This attachment is to be provided in the same language used in the rest of the contract. Sellers or landlords, and agents, as well as homebuyers or tenants, must sign and date the attachment.
- Sellers must provide homebuyers a 10-day period to conduct a paint inspection or risk assessment for lead-based paint or lead-based paint hazards. Parties may mutually agree, in writing, to lengthen or shorten the time period for inspection. Homebuyers may waive this inspection opportunity.

Recordkeeping

Sellers and lessors must retain a copy of the disclosures for no less than three years from the date of sale or the date the leasing period begins. CDBG-DR and CDBG-NDR Grantees must maintain copies of the disclosures in their project files for any housing assisted with CDBG-DR or CDBG-NDR funds.

INCOME QUALIFICATIONS for CDBG-DR and CDBG-NDR

Federal regulations for CDBG allow states to choose between three different income calculation methods. The regulations allow for the use of different methods based on different activities.

The State of California Department of Housing and Community Development (HCD) requires that all Community Development Block Grant (CDBG) Program Grantees (including CDBG-DR and CDBG-NDR) use the “Part 5” definition of annual (also referred to as gross) income to measure the eligibility of applicants to HOME Program and CDBG Program housing activities. The term “Part 5” annual income is used to refer to a household’s, person’s or family’s annual income as defined at 24 CFR 5.609. This was formerly called the “Section 8” definition of income.

HCD’s requirement of only using the Part 5 method for determining income eligibility is intended to reduce confusion and the resulting income calculation errors found in monitoring visits. The consistent use of the Part 5 annual income definition will allow HCD to focus training efforts and to provide standardized forms for calculating initial eligibility.

CDBG Grantees must follow the procedures and policies as set in the Department’s *Income Calculation and Determination Guide for Federal Programs*, referred hereafter as the “Guide,” and located at: <http://www.hcd.ca.gov/financial-assistance/community-development-block-grant-program/incomemanual.html> .

Throughout the Guide, the term “annual income” will be used to refer to annual income as calculated using Part 5 and as defined at 24 CFR 5.609. Further, “adjusted income” will be used to refer to adjusted income calculated according to the rules at 24 CFR 5.611.

Income-Related Program Requirements

For the CDBG program the terms ‘family,’ ‘person’ and ‘individual’ are interchangeable with the term ‘household’. The Guide refers to “household” income, which must be calculated for a number of different uses under federal programs, including:

Eligibility

To receive federal program assistance, households must have incomes at or below 80% of the area median household income (AMI), adjusted for household size, and determined annually by HUD. This is commonly referred to as the Section 8 Low-Income Limit. To determine whether a household is eligible, a Grantee must determine annual income in accordance with the Part 5 definition and compare that income to the Section 8 low-income limit. The ‘at or below 80%’ refers only to the maximum, under CDBG. For example, some activities and rental units may require

lower income limits; however, the process for determining the annual income, present in the Guide, would be unchanged.

Targeting of Funds

Income determinations are also necessary to comply with program targeting requirements. Eligibility for certain housing activities may require households of 50% or 60% of AMI to meet program requirements.

In addition to meeting the 70 percent test (at least 70 percent of all CDBG funds must be used on activities that benefit low- and moderate-income persons), Grantees must ensure that the CDBG activities, when taken as a whole, will not benefit moderate-income persons *to the exclusion of* low-income persons. This does not mean that each activity has to include both low- and moderate income beneficiaries, but it further ensures that the CDBG program will *primarily* benefit low-income persons.

Calculation of Rent

For certain activities, such as infrastructure in support of housing projects, annual income is used to determine eligibility and additional calculations may be used to determine the amount of rent an eligible household can afford.

Displacement Activities

Income calculations are also used to determine assistance to households, families or persons who may be displaced as a result of federally-funded activities.

Documentation of the method to be used

Chapter Two, titled “General Requirements,” reviews the general requirements that relate to determining and calculating income in accordance to the Part 5 definition of annual income used by the Grantee. Chapter Two also discusses and illustrates the determination of household size which is a critical factor in determining program eligibility.

Self-Certification in the CDBG Program

A limited number of CDBG activities allow the self-certification of income. In some cases the self-certification is required for the “beneficiary” of the activity (public service) and in some cases the self-certification is required for the employee being hired/retained (economic development activity).

Chapter Seven of the Guide provides details about the CDBG requirement to verify income for families and persons for activities that the use of the Part 5 method is not practical. For example, under public service activities it is impractical to require the extensive Part 5 income determination to each individual receiving job skills training, or picking up food from a food bank. Chapter Seven details the use of self-certification, when it will be allowed and the process needed for the Grantee to do its due diligence.

A matrix showing the CDBG activity and the allowed methods of income qualification follows.

ALLOWED QUALIFICATION METHODS for CDBG ECONOMIC DEVELOPMENT ACTIVITIES

CDBG Activity	Income Qualification Method			
	Part 5	Self-Certification	Limited Clientele	Area Benefit
Investor Housing Rehabilitation	YES (Renters)	NO	NO	NO
Owner Occupant Housing Rehabilitation	YES (Owners)	NO	NO	NO
Homebuyer Assistance	YES (Buyers)	NO	NO	NO
Public Facility	NO	YES	YES (w/approval from HCD)	YES (w/approval from HCD)
Public Improvement	YES (Assessments)	NO	NO	NO
ALLOWED QUALIFICATION METHODS for CDBG ECONOMIC DEVELOPMENT ACTIVITIES, continued				
CDBG Activity	Income Qualification Method			
	Part 5	Self-Certification	Limited Clientele	Area Benefit
Public Improvement in Support of Housing	YES (each housing unit)	NO	NO	NO
Public Service	NO	YES	YES (w/approval from HCD)	YES (w/approval from HCD)
Business Assistance	NO	Yes (Employees)	NO	Yes (Employees)
Micro-Enterprise Financial Assistance	YES (Owners)	NO	NO	NO
Micro-Enterprise Technical Assistance	NO	Yes (Owners)	NO	NO

Self-Certification forms are available at: <http://www.hcd.ca.gov/financial-assistance/community-development-block-grant-program/incomemanual.html>

“Red Flag” Questions & Answers are in Chapter Eight of the Guide. The Department has compiled questions received from Grantees and provided the answers as guidance.

LABOR STANDARDS (DAVIS-BACON AND RELATED ACTS) COMPLIANCE

When Congress passed the Housing & Community Development Act of 1974 (HCDA), which created the CDBG program, Section 110 specifically required that any construction work that is financed in whole or in part with CDBG funds must adhere to certain federal labor standards requirements.

The labor laws that may apply to CDBG-funded construction work include the following:

- The **Davis-Bacon Act** (40 USC, Chapter 3, Section 276a-276a-5; and 29 CFR Parts 1, 3, 5, 6 and 7) is triggered when construction work over \$2,000 is financed in whole or in part with CDBG funds. It requires that workers receive no less than

- the prevailing wages being paid for similar work in the same area. Davis-Bacon does not apply to the rehabilitation of residential structures containing less than eight units or force account labor (construction carried out by employees of the Grantee). HUD has concluded that new construction (as well as rehabilitation) of residential property is exempt from Federal labor standards if the property contains less than 8 units. HUD should be contacted if there is any situation where the applicability of Davis-Bacon is in question; however, here are a few examples of 8+ unit properties:
- 5 townhouses side-by-side which consist of 2 units each.
 - 3 apartment buildings each consisting of 5 units and located on one tract of land.
 - 8 single-family (not homeowner) houses located on contiguous lots.
- The **Copeland Anti-Kickback Act** (40 USC, Chapter 3, Section 276c and 18 USC, Part 1, Chapter 41, Section 874; and 29 CFR Part 3) requires that workers be paid weekly, that deductions from workers’ pay be permissible, and that contractors maintain and submit weekly payrolls.
- The **Contract Work Hours and Safety Standards Act** (40 USC, Chapter 5, Sections 326-332; and 29 CFR Part 4, 5, 6 and 8; 29 CFR Part 70 to 240) applies to contracts over \$100,000 and requires that workers receive overtime compensation (time and one-half pay) for hours they have worked in excess of 40 hours in one week. Violations under this Act carry a liquidated damages penalty (\$10 per day per violation).
- **Section 3 of the Housing and Urban Development Act of 1968**, as amended requires the provision of opportunities for training and employment that arise through HUD-financed projects to lower-income residents of the project area. Also required is that contracts be awarded to businesses that provide economic opportunities for low- and very low-income persons residing in the area. Please see the Section 3 topic of this manual for more information.

Collectively, these laws are referred to as “Davis-Bacon and the Related Acts,” or DBRA.

HUD has published two guides that are available for downloading from its web site on labor standards requirements. These documents are “Making Davis Bacon Work: A Practical Guide for States, Indian Tribes and Local Agencies” and “Contractor’s Guide to Davis-Bacon: Prevailing Wage Requirements for Federally-Assisted Construction Projects.”

BIDDING AND CONTRACTING REQUIREMENTS

Once it is determined that a construction project is subject to federal labor standards requirements, certain steps must be taken to ensure compliance. Specifically, Grantees must include all applicable labor standards language and the appropriate wage decision in construction bid and contract documents (see the Procurement topic in this manual).

WAGE RATE DECISIONS

The Davis-Bacon wage decision that applies to a project contains a schedule of work/job classifications and the minimum wage rates that must be paid to persons performing particular jobs. Some wage decisions cover several counties and/or types of construction work.

The Grantee must contact HCD to obtain the federal wage rate decisions. Federal wage determinations are generally issued for four categories: Building, Residential, Heavy, and Highway. It is important to understand the differences when determining which rate category to request to avoid paying wages from an inappropriate determination.

- **Building construction** generally includes construction of sheltered enclosures with walk-in access for housing persons, machinery, equipment or supplies. This includes all construction within and including the exterior walls, both above and below grade.
- **Residential projects** involve the construction, alteration or repair of single-family houses or apartment buildings no more than four stories tall.
- **Heavy construction** is generally considered for all construction not properly classified as highway, residential, or building. Water and sewer line construction will typically be categorized as heavy construction.
- **Highway projects** include construction, alteration or repair of roads.

HCD must be consulted if there are questions about properly identifying the type of wage determination and/or modifications.

If a work classification that is needed for the project does not appear on the wage decision that will be used, the Grantee must request an additional classification and wage rate from HCD. Requests must be made in writing and must meet certain HUD criteria to be approved. HCD will consult with HUD, and requests which fail to meet HUD approval are forwarded to DOL for final determination.

Apprentices and trainees may be paid less than the journeyman's rate for their craft only if registered in a program approved by the DOL (California apprenticeships are not recognized by DOL).

LABOR CLAUSES AND WAGE DECISIONS IN BID AND CONTRACT DOCUMENTS

The construction bid package for any CDBG construction work must physically contain the labor clauses, which are contained in HUD-4010, and the applicable wage rate decisions (and any additional classifications). The labor clauses obligate the contractor to comply with the Davis-Bacon wage and reporting requirements and provide remedies and sanctions should violations occur.

ENFORCEMENT OF REQUIREMENTS DURING CONSTRUCTION

During construction, the Grantee is responsible for enforcing the labor standards requirements described in this section. This includes good construction management techniques (e.g., pre-construction conferences, issuance of notices to proceed and payments tied to compliance with the labor requirements), in addition to payroll reviews and worker interviews.

Pre-construction Conference

Pre-construction conferences are no longer required in order to comply with Federal labor standards requirements. However it is recommended that Grantees hold them prior to the start of work to review contractual requirements, including labor, and performance schedules. This is an opportunity for the Grantee to set performance expectations. Items that should be covered in the pre-construction conference include, but are not limited to:

- Provide and review with the contractor with a copy of the “Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects.” This guide can be downloaded from at: <http://www.hud.gov/offices/olr/library.cfm> .
- Explain that the contractor must submit weekly payrolls and Statements of Compliance signed by an officer of the company, and that the prime contractor is responsible for obtaining and reviewing payrolls and Statements of Compliance from all subcontractors.
- Explain that wages paid must conform to those included in the wage rate decision included in the contract. Discuss the classifications to be used. If additional classifications are needed, contact HCD immediately.
- Explain that employee interviews will be conducted periodically during the project.
- Emphasize that a copy of the wage rate decision must be posted at the job site.
- Explain that apprentice or trainee rates cannot be paid unless the apprentice or training program is certified by the Department of Labor. If apprentices or trainees are to be used, the contractor must provide the Grantee with a copy of the certification of his/her program.
- If the contract is \$100,000 or greater, explain that workers must be paid overtime if they work more than 40 hours in one week, and that failure to pay workers at least time and a half whenever overtime violates the Contract Work Hours and Safety Standards law. In addition to restitution, noncompliance with this law makes the contractor liable for liquidated damages of \$10 per day for every day each worker exceeded 40 hours a week without being paid time and a half.
- Explain that any payroll deductions that are not specifically listed in the Copeland Anti-kickback Act provisions require the contractor has obtained written permission of the employee prior to making the deductions. Unspecified payroll deductions are a serious discrepancy and must be resolved prior to further contractor payments.
- Provide contractor with posters for the job site, such as the “Notice to All Employees Working on Federal or Federally Financed Construction Projects.” These posters and others that are required are available at: <http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf>
- The Grantee should also describe the compliance monitoring that will be conducted during the project, and indicate that discrepancies and underpayments discovered as a result of compliance monitoring must be resolved prior to making further payment to the contractor. Remind the contractor that labor standards provisions are as legally binding as the technical

specifications, and failure to pay specified wages will result in contractor payments being withheld until all such discrepancies are resolved and potentially restitution, liquidated damages and/or recommendation for debarment.

Notice to Proceed

Following execution of the contract documents and completion of the pre-construction conference, it is typical practice to issue a Notice to Proceed to the prime/general contractor to begin performance of the work. The Notice to Proceed establishes the construction start date and the scheduled completion date, and provides the basis for assessing liquidated damages. The construction period and basis for assessing liquidated damages must be consistent with those sections of the contract documents.

Payroll Review

Once construction is underway, the prime/general contractor must complete a weekly payroll report for its employees on the covered job and sign the Statement of Compliance. The prime/general contractor must also obtain weekly payrolls (including signed Statements of Compliance) from all subcontractors as they work on the project.

Certified payroll reports must be submitted by the prime/general contractor to the Grantee within a reasonable timeframe so as to ensure compliance, typically no more than 10 working days following the end of the payroll period.

The HUD payroll form (WH-347) does not have to be used, but alternative payroll documentation must include all of the same elements in order to determine compliance with applicable regulations. The Statement of Compliance must be completed and signed by an authorized representative of the company and submitted in conjunction with the payroll form (or alternate equivalent payroll documentation).

The payrolls should be reviewed by the general contractor to ensure that there are no discrepancies or underpayments. Remember that the prime contractor is responsible for the full compliance of all subcontractors on the project and will be held accountable for any wage restitution that may be necessary. This includes restitution for underpayments and, potentially, liquidated damages that may be assessed for overtime violations.

Grantees must review payrolls to ensure that workers are being paid no less than the prevailing Davis-Bacon wages, that there are no un-allowed withholdings, and that there are no other falsifications.

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

- The correct classification of workers;
- A comparison between the classification and the wage determination to determine whether the rate of pay is at least equal to the rate required by the determination;
- A review to ensure that work by an employee in excess of 40 hours per week is

- being compensated for at rates not less than one and one-half times the basic rate of pay;
- Review of deductions for any non-permissible deductions; and
- The Statement of Compliance has been signed by the owner or an officer of the firm.

Any discrepancies and/or falsification indicators must be reported to the HCD, which will then be reported to HUD, along with the steps being taken by the Grantee to resolve the discrepancies. Where underpayments of wages have occurred, the Grantee is responsible to make sure the correct wages are paid and that the employer will be required to pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less permissible and authorized deductions. Grantees should contact HCD immediately for assistance if a violation occurs.

On-Site Interviews

The labor standards requirements include periodically conducting job site interviews with workers. The purpose of the interviews is to capture observations of the work being performed and to get direct information from the laborers and mechanics on the job as to the hours they work, the type of work they perform and the wage they receive.

Interviews should occur throughout the course of the construction and include a sufficient sample of job classifications represented on the job as well as workers from various companies to allow for a reasonable judgment as to compliance.

Information gathered during an interview is recorded on the Record of Employee Interview form (HUD-11).

- The interview should take place on the job site and conducted privately (this is a one-on-one process).
- The interviewer should observe the duties of workers before initiating interviews. Employees of both the prime contractor and subcontractors should be interviewed.
- To initiate the interview, the authorized person shall:
 - Properly identify himself/herself;
 - Clearly state the purpose of interview; and
 - Advise the worker that information given is confidential, and his/her identity will be disclosed to the employer only with the employee's written permission.
- When conducting employee interviews, the interviewer should pay particular attention to:
 - The employee's full name;
 - The employee's permanent mailing address;
 - The last date the employee worked on that project and number of hours worked on that day. The interviewer should make it clear that these questions relate solely to work on the project and no other work.
- The employee's hourly rate of pay. The aim is to determine if the worker is

being paid at least the minimum required by the wage decision.

- The interviewer should be sure the worker is not quoting their net hourly rate or "take-home" pay.
- If it appears the individual may be underpaid, the interviewer should closely question the worker:
 - (a) Ask for any records.
 - (b) Arrange to re-interview the employee.
- Enter the worker's statement of his/her classification.
- Observe duties and tools used:
 - If worker's statements and observations made by the interviewer indicate the individual is performing duties conforming to classification, indicate this on the Record of Employee Interview form.
 - If there are discrepancies, detailed statements are necessary.
- Enter any comments necessary.
- Enter date interview took place.

The HUD-11s must be compared to the corresponding contractor and subcontractor payroll information.

- If no discrepancies appear, "None" should be written in the comment space of the Record of Employee Interview form and it should be signed by the appropriate person.
- If discrepancies do appear, appropriate action should be initiated. When necessary action has been completed, the results must be noted on the interview form.

If there are wage complaints, the interviewer should complete the Federal Labor Standards Complaint Intake Form (HUD Form 4731). The complaint must be investigated and resolved. Contact HCD if necessary.

Progress Payments

Upon receipt of requests for payment during construction, the Grantees should check that labor standards compliance is being met.

- All weekly payrolls and Statements of Compliance have been received, reviewed and any discrepancies resolved; and
- Employee interviews have been conducted as necessary, checked against payrolls and the wage rate decisions, and all discrepancies corrected.

Although retainage is not a requirement, many UGLs have found it helpful to maintain 10 percent retainage from partial payments until after final inspection, in case of any unresolved problems.

Final Payment

When construction work has been completed, the contractor will submit a final request for payment. Before making final payment, the Grantee must ensure that:

- All weekly payrolls and Statements of Compliance have been received and any discrepancies have been resolved;
- All discrepancies identified through job site interviews have been resolved; and
- All files are complete.

RESTITUTION FOR UNDERPAYMENT OF WAGES

Where underpayments of wages have occurred, the employer will be required to pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less permissible and authorized deductions.

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

Grantees must notify the prime contractor in writing of any underpayments that are found during payroll or other reviews. The notification should describe the underpayments and provide instructions for computing and documenting the restitution to be paid. The prime contractor is allowed 30 days to correct the underpayments.

The employer is required to report the restitution paid on a correction certified payroll. The correction payroll will reflect the period of time for which restitution is due (e.g., payrolls #1 through #6; or a beginning date and ending date). The correction payroll must list:

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

A signed Statement of Compliance must be attached to the corrected payroll form and each employee who has received restitution should sign the corrected payroll as evidence of their receipt of the payments.

The Grantee should review the correction payroll to ensure that full restitution was paid. The prime contractor shall be notified in writing of any discrepancies and will be required to make additional payments, if needed. Additional payments must be documented on a supplemental correction payroll within 30 days.

Sometimes, wage restitution cannot be paid to an affected employee because, for example, the employee has moved and can't be located. In these cases, at the end of the project the prime contractor will be required to place in a deposit or escrow account an amount equal to the total amount of restitution that could not be paid because the employee(s) could not be located. The Grantee should continue to attempt to locate the unfound workers for three years after the completion of the project. After three years, any amount remaining in the account for unfound

workers should be forwarded to HUD.

Additional information is available from HUD on disputes, withholding, deposits and escrow accounts including in the publication “Making Davis-Bacon Work: A Contractor’s Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects.”

DOCUMENTATION & REPORTING REQUIREMENTS

Documentation

Grantees and states must maintain documentation to demonstrate compliance with the labor standards requirements including, but not limited to:

- Bid and contract documents with the labor standards clause and wage decision;
- Payroll forms from the contractor and subcontractors, including signed statements of compliance;
- Documentation of on-site job interviews and review of the corresponding payroll to detect any discrepancies;
- Documentation of investigations and resolutions to issues that may have arisen (e.g., payments to workers for underpayments of wages or overtime); and
- Enforcement reports (see below for more information).

The labor standards compliance documents contain highly sensitive and confidential information. With the growing rise in identity theft and fraud, it is critical to carefully guard this sensitive information so that the person(s) for whom the information has been collected are not unduly exposed to financial or personal risk.

The standard compliance documents must be preserved and retained for a period of five years following the completion of work. Therefore, it is important to follow guidelines outlined in the Labor Relations Letter 2006-02 to minimize risk of improper and/or unnecessary disclosure, including:

- Keep sensitive materials secret at all times (in locked file cabinet, not left in areas accessible to the public);
- Do not include Social Security Numbers on documents and records unless it is absolutely necessary;
- Do not disclose the identity of any informant unless it is necessary and only if authorized by the informant; and
- Dispose of documents and records containing sensitive information responsibly.

Reporting

Grantees and states must report to the Department of Labor on all covered contracts awarded and on all enforcement actions taken each six months. HUD collects the reports from its client agencies and compiles a comprehensive report to DOL covering all of the Davis-Bacon construction activity.

Semi-annual labor reports are due to HCD in April and October. Labor Standards Reports forms are located on the HCD CDBG website at: <http://www.hcd.ca.gov/financial-assistance/community-development-block-grant-program/formsreports.html>.

CITIZEN PARTICIPATION

CDBG-DR and CDBG-NDR Grantees are responsible for holding the required public hearings and maintaining a public information file. A public hearing is a public meeting that has been publicly noticed in a local newspaper of general circulation, or noticed in a fashion which otherwise follows local procedures for formal noticing of public hearings. While the CDBG public hearings are not required to take place before the local governing body, some actions require a Resolution (authorization of submission of an application; appointing an authorized signor for a contract and/or funds requests, etc.) All other public hearings may be conducted by any designated employee or agent of the city or county who is knowledgeable about the program. Hearings are required at the following critical stages of a CDBG grant: pre-submission of an application for CDBG-DR or CDBG-NDR funding, getting public feedback on the activities and/or projects to undertake with CDBG grant and/or program income funds; closeout

Content of Pre-Application Hearings

It is important to fully disclose the following information to the public at the public hearings held prior to submitting the application to the Department.

1. Project Design Phase:

At least one public hearing must be held during the time when the jurisdiction is deciding for which local project(s) or activity(s) to apply for CDBG funding. It need not be held before the governing body. This hearing should be held far enough in advance of the application due date that citizen input from this hearing may be seriously considered as the governing body seeks to identify the best use of CDBG funds. If you anticipate applying for a special circumstance such as the multi-year funding, this information should be included in this hearing. Residents of the area where CDBG funds will be used should be encouraged to participate. At this hearing, the following information should be offered:

- An explanation of the CDBG program.
- An opportunity for attendees to ask questions and suggest possible uses of funds.
- Information about the amount of funding available, the range of possible activities that may be undertaken with CDBG funds, and the opportunities for citizen involvement as the program progresses.
- Discussion of the national objective of benefit to Targeted Income Group (TIG) persons or other national objective.
- Information about plans to minimize displacement that may occur as a result of grant funding.
- Information that any assessments resulting from a CDBG-funded project will not be paid by members of the lowest Targeted Income Group and whether Targeted Income Group households who benefit from the project must pay any assessments.

- An invitation for written comments and how to submit such comments.
- Information about the availability of technical assistance to groups representing TIG persons that request such assistance in developing proposals.

2. Before Submitting an Application for Funding

After the application has been prepared, and before it is submitted to the Department, the jurisdiction must hold a second hearing in front of the governing body. At this time, the same information listed above should be covered. In addition, the jurisdiction should:

- Fully describe the proposed activity(s) in the application.
- provide information about the amount of funding that is being requested.
- Describe where each activity will be carried out and how it will meet the national objective of benefit to TIG persons.
- Provide information on the estimated time schedule to accomplish the activity.
- Provide opportunity for attendees to comment on the program, subject to the applicant's normal rules governing public hearings.

3. Noticing Requirements

All hearings should be noticed as widely as possible and held at a time and place convenient to the public, with accommodations for persons with disabilities. Where a significant number of non-English persons can reasonably be expected to participate, the notice must be in the appropriate language(s) and provision should be made for interpreters at the hearing. Public notices always should contain the following information:

- a) The time and place of the hearing.
- b) The availability of a public information file about the CDBG program.
- c) An invitation to submit written comments and information about where to direct such comments.

In addition to the information above, specific public hearings require specific information in the public notice:

- A. At the Project Design Stage, the Public Notice should contain information about:
 - The amount of CDBG funds available, and
 - The kinds of activities that are eligible for funding.
- B. At the Application Submittal Phase, the Public Notice should contain information about:
 - The amount of funds being applied for.

- The activities being applied for.
 - A relocation plan, if relocation of residents will be required as a result of the proposed activity.
- C. When any changes are made or actions are taken during the term of the grant that have not already been disclosed to the public, the notice should include:
- Information about the action being taken.
- D. Before submitting the final Grantee Performance Report at the end of the CDBG contract term, the notice should include:
- Notice that the accomplishments under the grant will be disclosed.

4. Recordkeeping

The applicant/Grantee should keep a record of these public hearings. The record should contain copies of the Public Notices; minutes that document the topics announced in the Notice were discussed at the hearing, and a list of attendees. Attendees are not required to sign a sign-in sheet, but the file should show that a list was made available for sign-in at the start of the hearing. If attendees were present but did not sign or if no one attended, the file should so indicate.

5. Applications Content, Grievances, and Complaints

The local governing body has the sole discretion of deciding the contents of an application for funding. Any allegations made by any resident of the community that the procedural or legal requirements of the program are being violated should be thoroughly investigated. Any written complaints and grievances must receive a written response within 15 days where practicable.

6. Public Information File

A file containing information about your CDBG-funded activities should be kept in a location easily accessible by the public (for example, a binder at the public counter). Information to be provided in the public information file is listed in Chapter 7, Accounting and Recordkeeping.

BUYOUT AND ACQUISITION POLICIES (CDBG-DR ONLY)

Grantees can use CDBG-DR funds to buy properties, both commercial and residential, in a target area with the intent to demolish the structures and create park amenities, open space, or flood storage/overflow areas. Such programs are typically part of a multi-pronged approach to community revitalization that includes relocation of residents and businesses in addition to business development activities. Buyout programs are especially effective in communities that have endured multiple disasters in the same neighborhood in the recent past, or sustained severe damage where there is high risk of additional disasters, such as a 100-year flood plain. These programs can help reduce the impact of future disasters while encouraging targeted

revitalization efforts and public spaces.

The typical steps in a Disaster Recovery Buyout Program are:

1. Define the program’s geography and end use,
2. Market the program,
3. Conduct intake and verify documentation
4. Determine buyout amounts and check for duplication of benefits,
5. Purchase the property and relocate participants, and
6. Conduct clearance and demolition.

The purpose of the Buyout program is to assist property owners relocate their homes and/or businesses outside the threat of the recurring disaster area, such as flooding or wildfires. The Buyout program must meet one of the three CDBG National Objectives, based on the requirements in the funding appropriation, the Federal Register Notice or subsequent waivers. If the final use of the land is available for the use of an eligible low-moderate income area use, and the end use service area meets the limit criteria (which may be lower than 51%, if a waiver has been issued), Low/Moderate Area (LMA) may be the national objective. Most often, however, the national objective is achieved through either Urgent Need (for areas with households above 80% AMI), or Low/Mod Housing.

Direct Benefit

Most Buyout programs involve activity types that the property satisfies either a direct benefit under the national objective of Urgent Need or Low- or Moderate-Income Housing (LMH).

As part of the assistance application process, the applicant provides documentation of household income. Grantee staff verifies income and whether the applicant meets LMH or Urgent Need (the households above the 80% AMI limit). The national objective used for the assistance to the household is the same for all activities associated with the applicant’s parcel (acquisition, clearance and demolition, as well as relocation assistance).

Note: Applicants for Buyout assistance that owner the property but reside elsewhere are not eligible for relocation benefits; however, tenants of the property would will be eligible for relocation benefits.

Program files must contain evidence that the assisted household is occupying replacement housing, if the end use was replacement housing and there was replacement housing in the award.

Below is a chart showing the activity and the possible national objective: Urgent Need – direct benefit, or LMH – direct benefit.

Activity Type	National Objective: Urgent Need Direct Benefit	National Objective: LMH Direct Benefit
Acquisition – buyout of nonresidential property	X	Not allowed
Acquisition – buyout of	X	X

residential property		
Clearance and Demolition	X	X
Relocation Payment and Assistance	X	X

Low- and Moderate-Income Area Benefit (LMA)

The LMA national benefit may be used, in addition to a direct benefit, when the end use will benefit a residential LMA. For instance, the purchase of commercial real estate for the purpose of demolishing the structures and developing the property into a green space for a Low- and Moderate Income residential area's benefit. The green space service area must be defined and depending on the location:

- LMA is allowed when the area will be maintained as a green space and the residential service area, which will benefit from the green space, is LMI. The allowed activity is: Acquisition of nonresidential property.
- LMH Direct Benefit would be used if any applicants are LMI and located outside of the residential service area. The allowed activity is: Acquisition of residential property.

Environmental Requirements for Buyout Program Activities

All CDBG environmental regulations must be followed for any Buyout Program activities. Environmental review and clearance must be completed prior to releasing funds. CDBG environmental regulations can be found in the 24 CFR Part 58.

Eligibility Requirements of Proposed Buyout Property /Owner

To be considered an eligible property for a Buyout program activity, the property must satisfy one or more of the three following requirements:

- The property is located in the designated area, or
- The property is located outside the designated area AND satisfies either:
 - The property is substantially damaged (51% or more of the pre-disaster fair market value of the structure is damaged), or
 - The property is considered a health/safety risk.

Eligible property types are:

- Single and multi-family residences (both owner occupied and rentals),
- Vacant lots, including those that never had a structure,
- Commercial properties, and
- Certain types of non-profit organizations.

Acquisition Award Determination Policy

The methodology used to determine the fair market value of a property must be defined at the

local level and applied consistently for each activity. Grantees must maintain documentation supporting the methodology and adherence to the policies.

Buyout applicants who purchased the property after the date of the disaster

Grantees may determine whether to use pre- or post-disaster fair market values for the determination of the offer amount to owners that purchased after the disaster event. Using that as the “fair market value,” documentation of the following limitation and duplication benefit review is required:

- Individuals and entities that purchased a disaster impacted home after the date of the disaster located in the designated area will be limited to the price the owner paid for the property, not to exceed the applicable fair market value (Grantee determined above). If repairs had been made to the property, eligible repair receipts are added to the price of the acquisition.
- Banks that have been deeded the property on a post disaster basis will be limited to the amount of the mortgage balance (amount to pay-off the mortgage). This is the amount that the bank would have received had the owner participated on the buyout.
- Properties that are in foreclosure where the pre-disaster owner receives any remaining proceeds of the sale of the property after sale expenses, taxes, and liens, receive an award based on the fair market value of the property.
- Contract sellers are limited to the amount of the contract balance. This is the amount that the contract seller would have received had the contract buyer participated in the buyout, provided the contract balance is less than the fair market value. If the contract balance is more than the fair market value, the contract seller will be limited to the fair market value.

Duplication of Benefits Process

The program is required to conduct a duplication of benefits (DOB) verification for each eligible property, prior to providing any assistance or funding for acquisition, as required by the Robert T. Stafford Act.

Sources of duplication of benefits compensation include sources of funding assistance provided for structural damage and loss related to the disaster. The following sources are deducted from the award amount for the property:

- FEMA payments for structural damage
- USDA loans and/or SBA loans
- National Flood Insurance Program (NFIP) Insurance Payments, if applicable
- Private Insurance: all private insurance settlement amounts for loss to the structure(s) are considered in the award calculation. Private insurance payments for contents or other expenses are not considered.

Tax adjustments resulting from filings related to losses to rental property are not considered duplication of benefits and do not affect awards.

Stafford Act Policy

Section 414 of the Robert T. Stafford Act, 42 USC 5181 provides that “Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the [Uniform Act] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such [Uniform Act]”.

49 CFR 24.403(d) reflects this Section 414 requirement. In addition, the section provides that “No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these regulations for a reason beyond this or her control, including: (1) A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President.”

Also, Section 24.2(a)(15)(iv) Initiation of negotiations (Tenants.) states, If a tenant is not readily accessible, as a result of a disaster or emergency, the Agency must make a good faith effort to provide these notifications and document its efforts in writing.

The Section 414 references only replacement housing payments, therefore non-residential occupants are not eligible under this provision. To comply with Section 414 provisions, subrecipients must identify which properties proposed for acquisition were tenant-occupied as of the date of the disaster prior to making a written purchase offer.

Subrecipients should document reasonable efforts to locate such tenants for rental properties under contract/negotiation where title has not already been transferred to the city/county. The city/county may proceed with closings however property files must clearly document efforts to locate tenants for these properties. Any person who makes a claim for relocation assistance under Section 414 must receive reasonable consideration of the merits of their eligibility.

For acquisitions, where Section 414 of the Stafford Act applies to activities subject to the URA, subrecipients will take reasonable steps to identify current occupants of proposed sites as well as those who were in occupancy as of the date of the disaster. Per HUD Handbook 1378, efforts to locate former occupants may include notice in a local newspaper, posting notice in project locations, checking post office records and various other means reasonably available to the subrecipient.

Replacement housing award determination

Because of the voluntary nature of acquisition, property owners are not eligible for assistance under the Uniform Relocation Assistance (URA) and Real Property Acquisition Policies Act. However, displaced tenants (occupants present at the date of the disaster and/or “initiation of negotiations”) are entitled to assistance under the URA. Proper steps must be followed to comply with URA.

Purpose of Replacement Housing

Grantees may elect to include a replacement housing assistance. To do so, Grantees must submit documentation to HCD detailing the rationale for these additional costs. It is likely that there is a perceived gap between the median price of homes sold in the community and the average pre-

disaster fair market values of the designated area, for either all or a segment of its population. For example: “In 2013, the median price of a home sold in *Grantee’s* jurisdictional limits was \$130,000. As a result of the disaster, the average price of a home included in the Property Buyout Acquisition Program is \$89,000, leaving people who need to move with an average cost of replacement housing of just over \$40,000. For this reason, all homeowners participating in the Buyout are eligible for up to the maximum Replacement Housing Assistance allowed by the Stafford Act.”

HCD will contact HUD and FEMA representative to clarify the amounts are accurate.

If the Grantees chose to include Replacement Housing Assistance, all homeowners participating in the Buyout will be eligible for up to the maximum Replacement Housing Assistance approved by HCD and as allowed by the Stafford Act. Grantees must determine the maximum amount; for instance, \$25,000. This Replacement Housing Allowance will be included in the DOB evaluation when providing assistance to communities to implement critical property acquisition programs and assistance to people to purchase (or have purchased) replacement housing.

The policy would ensure that all income qualified buyout participants are eligible for up to a minimum in Replacement Housing Allowance plus the fair market value of their buyout home. Those who are not income qualified would be eligible for up to \$10,000 in Replacement Housing Allowance as long as their disaster-damaged home is located in the designated area. This result would hold true if the property owner participates in the FEMA or CDBG-DR or CDBG-NDR Buyout, their pre-disaster mortgage, or how much assistance they have received from FEMA, insurance or other duplicating benefits with only two exceptions:

1. Those who are not income qualified and received replacement housing before the buyout would be allowed to keep up to \$25,000 in Replacement Housing Assistance, and/or
2. In a few cases, counting replacement housing as a duplication of benefit against the buyout award will prevent an applicant from participating in the buyout. The \$25,000 Replacement Housing Allowance ensures that this group of applicants is small. To help this small group participate in the Buyout, the Grantee may need to include an “Unmet Needs” fund to cover the difference.

To qualify for a replacement housing award, all of the following requirements must be met:

- The buyout home must be located in the designated area or house a low-moderate income family,
- The homeowner must purchase a replacement home that is more expensive than the buyout home,
- The replacement home must be located within the jurisdiction of the CDBG-DR or CDBG-NDR Grantee, and
- The replacement home must be considered decent, safe, and sanitary.

If income qualified, the replacement housing award would be, at a maximum, \$25,000. However, the replacement home purchased must be at least \$25,000 more expensive than the buyout

home in order to receive the full award. If the replacement home is less than \$25,000 more expensive but is more than the fair market value of the buyout home, the applicant's replacement housing award will be capped at the difference. If the applicant is not income qualified, the maximum amount of replacement housing the applicant can receive is \$10,000.

Pre-disaster owners of vacant lots, commercial and rental properties are not eligible to receive a replacement housing award as they did not occupy the structure at the time of the disaster. In addition, post flood owners are not eligible to receive a replacement housing award, as they were not required to relocate as a result of the natural disaster. Homes proposed or purchased on contract are not eligible for a replacement housing award.

If a rental home is purchased through the buyout program and contains tenants that will be required to relocate, the tenants are considered displaced persons who are eligible for relocation benefits under the Uniform Relocation Act (URA).

As a displaced tenant under the URA, a tenant can receive two types of replacement housing assistance: a moving allowance, and a replacement housing allowance. The moving allowance can be an actual reasonable moving and related expenses reimbursement, or a fixed payment for moving expenses determined by a schedule published by the Federal Highway Administration. The replacement housing allowance can take two forms. If the displaced tenant chooses to continue to rent a dwelling, the award amount they are eligible for is 42 months times the difference in rent/utilities of their new home and their buyout dwelling (including lot rent, if a mobile home unit). Rental assistance is capped at \$5,250 for 90-day tenant occupants, except in situations where housing of last resort applies. Rental assistance is capped at \$22,500 for 180-day tenant occupants, except in situations where housing of last resort applies. Another option is for the displaced tenant to purchase a new home and receive a lump sum down payment form of assistance. If the displaced tenant elects to receive a lump sum down payment, their award cannot exceed what they would have been eligible for if they had continued to rent the unit.

HUD Handbook 1378 contains additional guidance on mobile home relocation under the URA:

"1) Replacement Housing Payment is based on "dwelling" and "site." Both the mobile home and mobile home site must be considered when computing a replacement housing payment. (A displaced mobile home occupant may have owned the displacement mobile home and rented the site, or rented the displacement mobile home and owned the site, or owned both the mobile home and the site, or rented both the mobile home and the site.) Also, a displaced mobile home occupant may elect to purchase a replacement mobile home and rent a replacement site, rent a replacement mobile home and purchase a replacement site, purchase both a replacement mobile home and replacement site, or rent both a replacement mobile home and site. In such cases, the total replacement housing payment shall consist of a payment for a dwelling and a payment for a site, each computed under the applicable requirements in 49 CFR 24.401 and 49 CFR 24.402."

When the maximum URA Replacement Housing Assistance is calculated, differential payments for the dwelling and site are both included. If a mobile home owner-occupant then chooses to

purchase a stick-built home rather than a mobile home, they are eligible to receive the same amount of replacement housing assistance as if they were to purchase a mobile home and lot. The State will allow the rental assistance payment for the site differential cost to be considered when computing the total replacement housing assistance due in this situation.

Guidance on Property Use/Disposition

Qualifying an acquisition activity under one of the CDBG-DR or CDBG-NDR national objectives depends entirely on the use of the acquired real property following its acquisition. A preliminary determination of compliance may be based on the planned use. The final determination must be based on the actual use of the property, excluding any short-term, temporary use. Where the acquisition is for the purpose of clearance that will eliminate specific conditions of blight or physical decay, the clearance activity may be considered the actual use of the property. However, any subsequent use or disposition of the cleared property must be treated as a “change of use,” under 24 CFR 570.489(j), as applicable.

Land banking is not allowed. If a property is to be acquired for a general purpose, such as housing or economic development, and the actual specific project is not yet identified, the Grantee must document the general use it intends for the property and the national objective it expects to meet. The Grantee must also make a written commitment to use the property only for a specific project under that general use that will meet the specified national objective.

- The identified “use of the property” is the expected CDBG-DR or CDBG-NDR identity of that property. The Grantee has 5 years after expenditure to fulfill the expected CDBG identity of that property. Within that time period, the Grantee may change the use of the property, with HCD approval, if:
 - A) The Grantee gives reasonable notice to affected citizens and allows them an opportunity to comment, and the new use meets one of the national objectives, **or**
 - B) If the new use will not meet one of the National Objectives, the Grantee must reimburse the CDBG-DR or CDBG-NDR program of the fair market value of the property.
- If the Grantee does not fulfill the CDBG-DR or CDBG-NDR identity within the 5 years after the expenditure, the Grantee must reimburse the State CDBG-DR or CDBG-NDR program. This is fully outlined in 24 CFR 570.489(j).

Logistics of Disposition of Properties After a Buyout

1. The property must be disposed of at fair market value and by competitive process. The Grantee can establish fair market value of the property by having the property appraised, or by selling the property at a public auction. (See below for details.) Once the sale proceeds have been returned to the Grantee, the CDBG identity of the property has been removed.
 - The subrecipient may have the property appraised to

determine fair market value. Once appraised, the opportunity to purchase the home (for no less than fair market value) must be publicly advertised. The subrecipient must accept the highest offer.

- The subrecipient may sell the property at public auction. The highest bidder determines the fair market value of the property.

NOTE: All proceeds from the sale of a property must be returned to the Grantee, even if the property is sold for more than the appraised value.

2. Donate the property to a 501(c) (3) non-profit organization that is purposed in its charter to supply housing to low-moderate income households. The property maintains the CDBG identity.

- The non-profit organization must provide documentation to support that:
 - o It is purposed in its charter to supply housing to low-moderate income individuals, and
 - o It qualifies under the purview of Section 105(a)(15) of the Housing and Community Development Act of 1974, and
 - o The project it will undertake is eligible under Section 105(a)(15).

❖ Neighborhood Revitalization

Activities undertaken under this provision must be of sufficient size and scope to have an impact on the decline of a designated geographic location within the jurisdiction of the community (but not the entire jurisdiction of an entitlement community unless it has a population of 25,000 or less.) The activities to be considered for this purpose are not limited to those funded with CDBG-DR or CDBG-NDR assistance.

❖ Economic Development

This type of project must include activities that increase economic opportunity principally for low-moderate income persons, or that are expected to create or retain businesses or permanent jobs within the community.

- To satisfy the L/M Income Housing national objective, the non-profit organization must document that the new housing is occupied by low-moderate income persons at affordable rents pursuant to 24 CFR 570.482(b)(3).
- If the subrecipient donates the property to a non-profit organization that is purposed to supply low-moderate income housing, the property is rehabilitated with non-CDBG funds,

and occupied by low-moderate income persons, the rental/sale proceeds are not considered program income and may be kept by the non-profit organization to further supply low-moderate income housing. The property maintains the CDBG identity.

- If the subrecipient donates the property to a non-profit organization that is purposed to supply low-moderate income housing and the non-profit then sells/rents the property to a non-income qualified household, the proceeds are considered program income and must be returned to the Disaster Recovery Grantee's CDBG program. The CDBG identity has then been removed.
3. Rehabilitate the property utilizing funds other than CDBG-DR or CDBG-NDR funds and sell the property as low-income housing. Because the property has a CDBG identity, the rehabilitation must meet all the federal standards for housing. The property maintains the CDBG identity.
 4. The lot may be sold to a developer/homeowner to be used for redevelopment into a single family residential unit. The lot must be located in the 500 year flood plain.
 - The property maintains the CDBG identity. Sale proceeds are considered program income.

SELF ASSESSMENT OF INTERNAL CONTROLS SYSTEM

An internal audit will be conducted by the HCD Audit and Evaluation Division during either Audit Plan Year 2017 or 2018. The audit concept and audit program will be subject to approval by the HCD Audit Committee, which consists of HCD Director, Chief Deputy Director, Chief Legal Counsel, and Audit and Evaluation Division Deputy Director. The general purpose of the audit will be to identify any internal control weaknesses and areas to improve business processes, ensuring the least amount of risk to the program and Department.

COST SHARING OR MATCHING FUNDS

Unrecovered indirect costs, including indirect costs on cost sharing or matching are not allowed.

Valued for non-Federal entity contributions of services and property must be established in accordance with 2 CFR Part 200.43 Contributions and Donations. If a non-Federal entity donates buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching must be the lesser of:

- The value of the remaining life of the property in the accounting records at the time of the donation, or
- The current fair market value.

Volunteer services furnished by third party professional and technical personal, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program and must be consistent with those paid for similar work in the labor market.

When a third party organization furnishes the services of an employee, these services must be valued at the employee's regular rate of pay plus an amount of fringe benefits that is reasonable, necessary, allocable, and otherwise allowable.