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CHAPTER 1 – WELCOME TO CDBG

Purpose of Manual

The Nebraska Department of Economic Development (Department) provides this manual as a valuable resource for local government officials and program administrators implementing Community Development Block Grant (CDBG) funded projects and for those contemplating applying for CDBG funds.

The on-line version of the manual contains the latest information provided by the Department to assist CDBG grantees in complying with state and federal requirements. Located on the Department's website (www.neded.org) in close proximity to the on-line manual are current forms and reference materials to assist implementation of projects.

Updates

Users of this manual are encouraged to check for monthly updates at the Department's website (www.neded.org). Updated material is clearly identified for those wanting only to print off new or updated material to incorporate into their hard copy manuals. Information may change for a variety of reasons, including changes in federal regulations, state requirements, and in the interpretation of a federal regulation or clarification of a requirement.

The CDBG Program

The CDBG Program is authorized under Title I of the Housing and Community Development Act of 1974 (HCD Act), as amended, codified at 42 U.S.C. §5301 et seq.

The primary objective of the CDBG Program is to develop viable communities by providing the following, principally to persons of low and moderate income:

- Decent housing;
- A suitable living environment; and
- Expanded economic opportunities.

The United States Department of Housing and Urban Development (HUD) administers the CDBG Program. The regulations created by the Office of the Assistant Secretary of Community Planning and Development that pertain to Community Development Block Grants are contained within 24 CFR Part 570.

Since states are in the best position to know and to respond to the needs of local governments, Congress amended the HCD Act in 1981 to give each state the opportunity to administer CDBG funds for non-entitlement areas. Non-entitlement areas include those units of general local government that do not receive CDBG funds directly from HUD as part of the entitlement program. Non-entitlement areas are cities with populations of less than 50,000, and counties with populations of less than 200,000 although some entitlement cities have a population of less than 50,000 (cities that are designated central cities of Metropolitan Statistical Areas).

The State CDBG Program has replaced the Small Cities Program in states that have elected to participate. Currently, 49 states and Puerto Rico participate in the program. HUD continues to administer the program for non-entitled small cities and counties in the State of Hawaii because it has not elected to participate in the State CDBG Program.

States participating in the CDBG Program award grants only to units of general local government that carry out development activities. Annually each state develops funding priorities and criteria for selecting projects. HUD's role under the State CDBG Program is to ensure state compliance with federal laws, regulations and policies.

Participating states have three major responsibilities:

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

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

HUD distributes funds to each state based on a statutory formula that takes into account population, poverty, incidence of overcrowded housing, and age of housing. Neither HUD nor states distribute funds directly to citizens or private organizations; all funds (other than the 1% technical assistance set-aside) are distributed by states to units of general local government.

The state must certify that:

- It is following a detailed citizen participation plan and that each funded unit of general local government is following detailed citizen participation plan.
- It has consulted with affected units of general local government in the non-entitled area to determine the method of distribution of funding; it engages or will engage in planning for community development activities; it will provide assistance to units of general local government; it will not refuse to distribute funds to any unit of general local government based on the particular eligible activity chosen by the unit of general local government, except that a state is not prevented from establishing priorities based on the activities selected.
- It has a consolidated plan that identifies community development and housing needs and short-term and long-term community development objectives.
- It will conduct its program in accordance with the Civil Rights Act of 1964 and the Fair Housing Act of 1988 and will affirmatively further fair housing.
- It will set forth a method of distribution that ensures that each of the funded activities will meet one or more of the three broad national objectives and at least 70% of the amount expended for activities over a period of one, two, or three consecutive program years will benefit low– and moderate-income families.

- It will require units of general local government to certify that they are adapting and enforcing laws to prohibit the use of excessive force against nonviolent civil rights demonstrations, and they will enforce laws against barring entrance and exit from facilities that are the targets of nonviolent civil rights demonstrations in their jurisdiction.
- It will comply with Title I of the HCD Act and all other applicable laws.

All activities must meet one of the following national objectives for the program:

- Benefit low- and moderate-income persons.
- Prevent or eliminate slums or blight.
- Fulfill community development needs that have a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community.

CDBG in Nebraska

The State of Nebraska elected to administer the CDBG program in non-entitlement areas beginning in 1983. The Department administers the program for the State. The cities of Omaha and Lincoln are the only entitlement areas in Nebraska, and receive CDBG funds directly from HUD.

The following are the principal means by which the Department describes community development objectives, details the distribution of CDBG funds and provides administrative guidance:

- The Nebraska Consolidated Plan – prepared in accordance with 24 CFR Part 91, which describes needs, resources, priorities and proposed activities to be undertaken with respect to HUD programs, including CDBG.
- The Annual Action Plan
- Application Guidelines
- CDBG Administration Manual
- CDBG Administration Workshop
- Department Staff

CHAPTER 2 – ADMINISTRATIVE OVERVIEW

Administrative Requirements

The Department fully expects recipients of State of Nebraska CDBG funds to comply with all administrative requirements. Recipients must become educated on all administrative components, elements and requirements for CDBG. A project management plan should include a list of responsibilities for each project team member, a timeline of implementation steps and a detailed outline of a filing system.

The requirements in this manual provide grantees with standards for administering the CDBG Program in a consistent manner. These requirements are in addition to the Federal Housing and Community Development Act (the Act), as amended. The federal requirements for the program are described in 24 CFR Part 570, 24 CFR Part 85, OMB Circular A-87 and OMB Circular A-133.

Eligibility

Eligibility requirements for participation in the CDBG Program are specified in the Application Guidelines that are published annually and are consistent with the Annual Action Plan for the CDBG Program. The Department will approve only those activities that meet one of the three criteria set forth in Section 104(b)(3) of the Act.

Administrative Training

The Department provides training on administering CDBG through the Certified Administrators Training Program. Find information and registration forms on upcoming workshops at the Department's website.

The principal contact at the Department for a particular CDBG project is the program representative assigned to the project. The program representative is familiar with the project and assists the local government and the Certified Administrator with implementation.

Certification Requirements for Administering a CDBG project

1. General Requirement.

All grantees who receive a CDBG grant from the Department must have a Certified Administrator. The Certified Administrator is the person in charge of the project on a day-to-day basis. The Certified Administrator may be an employee of the grantee or a consultant procured and contracted by the grantee that is recognized as Certified by the Department.

Certified Administrators are designated as such by the Department after successful completion of a written examination offered during the Department's Certification Workshop, which is conducted at least once each year. As part of satisfying the special conditions of their CDBG contract, grantees must identify the Certified Administrator who will administer their project.

The Department will verify that the person named is a Certified Administrator prior to issuing a Notice of Release of Funds.

2. Certification Requirements.

Certification of professional administrative personnel by the Department is based upon the premise that the person who will be assisting the grantee in meeting CDBG requirements must have a high level of proficiency in all areas of CDBG project management. The five major competencies needed by all Certified Administrators are:

a. Knowledge of Federal Community Development Block Grant Programs as related to the Department's CDBG Program.

b. Ability to understand, interpret and apply federal regulations.

c. Basic knowledge of community-based and economic development programs.

d. Leadership ability.

e. Organization and management skills.

3. The Certification Process.

All persons seeking the Certified Administrator designation must complete a written exam. This written exam will consist of questions that cover and examine the five competencies noted above. The exam will be given by the Department at least once each calendar year and will be preceded by a Certification Workshop, which will cover information and material necessary for the successful completion of the certification exam. Those who do not successfully complete the exam will not be certified. Those individuals may retake the exam at the regularly scheduled next exam time or make special arrangements with the CDBG Program Manager.

4. The Recertification Process.

The initial certification is effective for two years. The continuance of the certification beyond two years requires completion of any mandatory training courses offered during the time between certification and recertification through the CDBG Certified Administrators Training Program. Recertification occurs following attendance and successful completion of a CDBG Recertification Workshop during the year in which certification expires. Upon recertification, certification becomes effective for three-year periods with the requirements of attending mandatory training courses offered during the period and then a CDBG Recertification Workshop and passing the administered exam at the Recertification Workshop for renewal. Find information and registration forms on upcoming workshops at the Department's website.

Those who doe not pass the exam at the Recertification training will be put on probation until the next Full Certification. The person on probation may continue with current agreements; however, the person will not be eligible to enter into new agreements. In order to be removed from probation and regain status as a CDBG Certified Administrator, the person will need to attend the Full Certification and pass the written exam given at the next scheduled Full Certification training. Failure to attend the next Full Certification results in being decertified.

The due date for recertification is noted on the Certification Certificate. Note that certification expiration and renewal is based upon a specific calendar date and not based on the CDBG program year. Certified Administrators may need to be recertified during an ongoing project.

5. Decertification Policy and Process.

A Certified Administrator may be decertified if these following actions are documented and verified by Department staff. These actions include but are not limited to:

a. Consistently bypassing federal or state policy and regulations.

b. Actions that result in the de-obligation or refund of grant awards.

c . Two or more complaints are lodged against an individual by the grantee, agent, elected official or other individual in the implementation of federal grants.

d . Poor performance by the grantee, as evidenced by consistent grant modifications, and project delays.

e. Improper procurement of contractors.

f. Blatant conflicts of interest, which, if disclosed would result in the loss of the contract.

g. Inability to attend the mandatory trainings and pass the exam administered at the Recertification training.

A decertified administrator, who fails to attend the required trainings, will need to wait one year before attending the Full Certification training (see Section 3). The Department reserves the right, with cause, to add to this list any action detrimental to the efficient conduct and timely execution of a grant award that is attributable to the performance of a Certified Grant Administrator. No action will be taken without due process.

Appeal of Department Decisions

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

Procedures

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

(2) The CDBG Program Manager will consider the issues and respond within 30 days to the applicant, grantee or Certified Administrator.

(3) If dissatisfied with the CDBG Program Manager's decision, the applicant, grantee or Certified Administrator may appeal to the Department Director. The Department Director may, at the request of the parties, schedule a hearing or simply render a written decision. If a hearing is held, all interested parties will participate.

(4) The purpose of this informal hearing, will be to determine the facts of the situation, the appropriateness of the decision, and the justification and the appropriateness of the appeal.

(5) The Director will make a decision within 30 days of the hearing. This written decision will be sent to all parties.

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

Complaints

Individuals or authorized representatives of individuals who believe they have been the subject of discrimination based upon a disability may file a complaint with the Department or the Fair Housing and Equal Opportunity Office of the Department of Housing and Urban Development located in Kansas City.

Against Grantee Administration

The Department will accept complaints against grantee administration of the program. . Only written complaints against the grantee's administration of the program will be received and acted upon by the Department.

The Department will implement the following procedures for disposition of complaints against local administration.

a. The Department will forward a copy of the written complaint to the grantee.

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

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

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

e. The Complaint Review Committee will review the Grantee's actions to resolve the complaint. If the actions are deemed satisfactory, the Grantee will be notified along with the party lodging the complaint.

f. If the Complaint Review Committee does not consider the grantee's actions satisfactory in resolving the complaint, the Department will impose administrative sanctions upon the grantee. The sanctions will not be lifted until the Department is satisfied with the grantee's actions.

g. The Department Director or their designee may be consulted to arbitrate all complaints. If after consulting with the Director or their designee the local government and the party lodging the complaint are not satisfied with the decision, the party lodging the complaint may appeal to HUD officials.

Against State Administration

The Department will receive complaints against state administration of the program. The Department will respond to only written complaints against the state's administration of the program.

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

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

b. Within 30 days of receiving the complaint the CDBG Program Manager, in consultation with the appropriate parties, will respond to the complaint.

c. Complaints will be responded to in writing.

d. If dissatisfied with the disposition of the complaint, the party may lodge an official appeal of a decision to the Department Director.

Administration of a CDBG Project – The Keys

Application

Most funding within the CDBG Program is available to local governments on a competitive basis. The Department notifies potential applicants when CDBG application guidelines are available for an upcoming application period. The guidelines describe eligible applicants, eligible activities, the application process and the deadline for acceptance of an application. The Department also holds workshops on the CDBG applications each year. It is a good idea to contact a Department staff member before starting an application. Look for information on Department staff contacts, application guidelines and workshops on the Department's website (www.neded.org).

Notice of Approval or Denial

Following the Department's application review period, letters will be sent to all applicants informing each of the decision to fund or not fund their application. Those applicants not funded are encouraged to meet with Department staff and work towards a fundable application in the future.

The Notice of Approval notifies the grantee of the amount and type of funds awarded and the activities that the grantee will undertake with the funds. **However, the grantee must not obligate or incur project costs prior to satisfying contract conditions and receiving a Notice of Release of Funds from the Department.** Prior to the Notice of Release of Funds and after Notice of Approval, costs necessary to complete general administrative requirements such as satisfying the Special Conditions contained in the CDBG Program Contract can be obligated and incurred.

Administrative Costs

Administrative costs are the reasonable costs of overall program management, coordination, monitoring and evaluation. Project or activity costs are those related to the implementation and execution of the activity and can be classified as delivery costs.

A Grantee may be reimbursed for approved administrative costs provided:

(1) the costs are reasonable for the services provided and are in accordance with OMB Circular A-87, 24 CFR Part 85, or 24 CFR Part 570, and the rules and regulations of the program and do not exceed the amount authorized, as amended, in the contract, unless the Department has provided prior written approval;

(2) the costs are incurred following written Notice of Approval

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

(4) if applicable, the Grantee has followed 24 CFR Part 85 or 24 CFR Part 570 when contracting with consultants.

If the grantee withdraws from the program at any time, the Department reserves the right to determine the amount of funds to reimburse to, or recapture from the grantee for incurred administrative costs.

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

CDBG Contract

The Department will send the grantee a CDBG Contract shortly after the Notice of Approval. The contract contains a project description, time of performance, sources and uses of funds, conditions governing the use of CDBG funds and the special conditions for release of funds.

The contract must be signed by the recipient and returned to the Department within one month. In most cases, the special conditions of the contract must be satisfied within three months and the project completed within two years. (See Chapter 6 – CDBG Contract for more information)

The contract between the Department and the grantee provides for termination for cause and or for convenience. In the event the Department suffers a loss of funding or termination of the federal grant that permits it to fund in full or in part a CDBG grant, the contract will terminate in full or in part.

Special Conditions for Release of Funds

Recipients of CDBG funds are advised to carefully review their CDBG Contract before implementing the funded project. Contained within the contract is a section entitled Special Conditions for Release of Funds. The section begins by stating that "Funding of the amount stipulated in §1:01 will not be released to the Recipient by the Department until the following Special Conditions for Release of Funds are met." These Special Conditions must be satisfactorily completed by the identified date, or the Department reserves the right to cancel the contract if these special conditions are not met within this specified time frame.

Project costs cannot be obligated or incurred prior to the Department issuing a written Notice of Release of Fund to the Grantee.

Typical Special Conditions for Release of Funds

Grantee Information Sheet

Documentation that the grantee has completed and returned this form.

Environmental Review

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

Authorization to Request Funds

Documentation that the grantee has completed and returned this form.

Financial Management

Documentation evidencing completion of all financial management system requirements and execution of the financial management certification form prescribed by the Department.

Procurement Standards and Code of Conduct

Documentation is required evidencing adoption of Procurement Standards and Code of Conduct equivalent to those established in 24 C.F.R. Part 85 and 24 C.F.R. Part 570.

Excessive Force Certification

Documentation that the grantee has adopted a policy to prohibit the use of excessive force by law enforcement agencies against any individual engaged in nonviolent civil rights demonstrations.

Fair Housing

Documentation that the grantee has specifically provided a description of the actions it will take during the course of the grant to fulfill the requirements to affirmatively further fair housing.

Implementation Schedule

Completion and submission to the Department of this form.

Disclaimer: The above list represents a list of typical standard special conditions, however all CDBG Contracts are tailored to a specific project with unique standard conditions. The Special Conditions for Release of Funds in the CDBG Contract must be satisfied before the Notice of Release of Funds will be issued for that project.

Additional guidance on fulfilling contract conditions is available in Chapter 6 – CDBG Contract. More information is also in this manual on environmental review, procurement and financial management. The Department's website contains forms needed to complete Special Condition requirements.

Release of Funds

Upon receiving the "Notice of Release of Funds" letter, the grantee may obligate non-administrative costs and draw down funds for eligible costs incurred. A Release of Funds will not be allowed if there are any unresolved audit findings relating to a past grant and remains unresolved beyond the normal period or is deemed to be extreme misconduct.

Requesting CDBG Funds

After receiving a Notice of Release of Funds, the grantee may request CDBG funds from the Department. The grantee must complete and send to the Department a Request for CDBG funds only as funds are needed for the project. CDBG funds will be disbursed electronically to the grantee's bank account generally within two weeks if the request contains no errors. The grantee has only 10 working days to spend CDBG funds following receipt. More information on requesting funds is available in Chapter 13 – Financial.

Matching Requirements/Other Funds

The availability of matching and leveraged funds is part of the CDBG Contract. Grantees must ensure that funds are available for expenditure during the project period. Matching and leveraged funds may be cash or in-kind contributions as defined and governed by 24 CFR Part 85, OMB Circular A-87, and 24 CFR Part 570, or unless restricted by category guidelines.

Grantees are required to certify on each CDBG Request for Funds form the amount of local and matching funds applied to the project. Project costs are to be paid from grant and local matching funds in the proportions approved in the project budget. Local funds expended for an activity for which no match is required may not be counted as part of the matching or leveraged funds required in other activities.

If the Grantee is unable to provide local matching funds in the exact proportions stated in the approved budget for all expenditures, a temporary waiver may be requested. The waiver request must include:

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

Contract Amendments/Extensions

Grantees must <u>request approval</u> from the Department for any of the following four changes:

1. Changes to the budget that
   - reallocate 10% or more of the total original grant amount; and/or
   - include a new activity; and/or
   - delete an approved activity; and/or
   - increase the amount budgeted for General Administration and/or Housing Administration
2. Extensions of the contract end date
3. Decreases in proposed accomplishments
4. Amendments to housing program guidelines

The Department will review amendment requests using the following factors:
(a) The effect the amendment will have on the points earned in the selection process.
(b) Grantee's performance and capacity. An on-site visit may be required before a determination can be made.

Grantees must notify the Department if:

1. Changes to the budget involve reallocating less than 10% of total original grant amount and
   - does not include a new activity,
   - does not delete an approved activity, and
   - does not increase the budget for General Administration or Housing Administration

More information on amendments is available in Chapter 6 – CDBG Contract and a CDBG Contract Amendment Request Form is available at the Department's website.

Conflict of Interest

As a general rule no employee, officer or agent of the grantee will participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: the employee, officer or agent; any member of their immediate family; their partner; or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements, during office tenure or for one year after the closeout of the grant.

This stipulation must be included in all other contracts and subcontracts to this grant.

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

(1) A disclosure of the nature of the possible conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made,

(2) An opinion from the Grantee's attorney or the Accountability and Disclosure Commission that the interest for which the exception is sought would not violate applicable State laws.

(3) Verification that the affected person has withdrawn from active involvement in any grant-related issues.

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

(1) Whether the exception would provide a significant cost benefit or essential expert knowledge to the program or project.

(2) Whether an opportunity was provided for open competitive bidding.

(3) Whether the affected person has withdrawn from his/her functions or responsibilities or from the decision-making process.

(4) Whether the interest or benefit was present before the affected person was in the position described in (3).

(5) Whether undue hardship would result either to the Grantee or to the person affected when weighed against the public interest served by avoiding the prohibited conflict.

Recordkeeping Requirements

Grantees must establish a system for record keeping that assists the Department's review of files for compliance. In other words, records should be kept in a manner that clearly tells the whole story of a CDBG project from beginning to end. A tool that the Department prescribes is using the monitoring checklist as a guide for the organization of grant files.

Financial records, supporting documents, statistical records and all other records pertinent to a grant will be retained for a period of four years after closeout (certificate of closeout) of the grant. The four-year rule is not applicable if:

a. Any litigation, claim or audit is started before the expiration of the four-year period, the records will be retained until all litigations, claims, or audit findings involving the records have been resolved.

b. Records for nonexpendable property acquired with CDBG funds will be retained for 4 years after its final disposition.

c. When records are transferred or maintained by the Department. The Department may request the transfer of certain records to its custody or to HUD when it determines that the records possess long-term retention value.

Representatives of HUD, the Inspector General, the General Accounting Office, the Comptroller General of the United States, the State Auditors Office, and the Department or any of their duly authorized representatives will have access to any pertinent books, records, accounts, documents, papers, and other property belonging to or in use by the grantee or sub-grantee in order to make audits, examinations, excerpts or transcripts.

Reporting Requirements

The Department requires grantees to report on grant progress through the life of the project. These reports include:

- **Project Status Reports** – All grantees must submit this report every six months by January 10 and July 10

- **Job Creation/Retention Reports** – Grantees funded under the economic development category and other grantees funded with job creation and/or retention as the national objective must submit a this report every six months by January 10 and July 10
- **Program Income Reports** - Grantees must report on program income earned from CDBG projects every six months by January 15 and July 15
- **Notification of Annual Audit** – Grantees must submit this report for each year CDBG funds are expended by October 15
- **Final Reports** - The Department requires the submission of a Final Performance, Final Financial reports, and a copy of the affidavit and minutes for the second public hearing for every project before closing out the project. Some projects also require the submittal of a Final Job Creation/Retention report and/or Final Wage Compliance Report. Planning projects also need to submit a final product prior to closeout.

Grantees should use the most current form for a particular report they are submitting. Current forms are available at the Department's website near the on-line version of this manual in an area called "Forms". The grant's program representative will provide assistance, if needed, with locating and/or sending the current on-line form.

See Chapter 14 – Reporting Requirements for additional information.

Monitoring

The Department conducts two basic types of monitoring that is determined by the established "Risk Analysis" process: off-site, or "desk" monitoring, and on-site monitoring. Department staff regularly reviews each project to verify that it is proceeding in the manner set forth in the CDBG Contract in accordance with applicable laws and regulations. The "Risk Analysis" monitoring plan determines whether a project review is conducted by a "desk" monitoring or on-site monitoring.

Desk monitoring is an ongoing process in which the program representative responsible for overseeing the grantee's project uses all available information to review the grantee's performance in carrying out the approved project. This review process enables the Department to identify problems requiring immediate attention and to schedule projects for on-site monitoring. Material used for this review includes, but is not limited to: Amendments/Extensions to the CDBG Contract; Project Status Reports, Requests for a Draw-down of Funds; and other supporting documents.

On-site monitoring is a structured review conducted by the program representative at the locations where project activities are being carried out or project records are being maintained. The Department expects the grantee to have all documents needed for review to be available at the site of the visit. All grant records must be maintained and under the control of the grantee. The records must be readily accessible by the Department. Furthermore, all documentation should be well organized for easy review. A good organization approach should be based upon the structure of the monitoring checklist.

The monitoring review will be conducted to determine, among other things, whether the grantee has the capacity to carry out the project in a timely manner or to carry out in a timely manner activities in a subsequent grant. If the Department determines that the grantee is making or has made substantial progress in implementing the project, that the program undertaken conforms to the approved application, and that the program is in compliance with the Act and the Administrative Requirements, the grantee will be considered to have a continuing capacity.

A determination that the grantee lacks continuing capacity may be based on any single or any combination of factors. These include, but are not limited to, the grantee's ability to implement the approved program in a timely manner or to implement, in a timely manner, a subsequent grant. Primary factors include whether the responsibility for administering the program has been or will be assigned to specific departments or persons, and whether necessary staff has been or will be directly or contractually employed.

If at any time the Department determines that the objectives set forth in the federal statutes, the Administrative Requirements, or the approved program have not been met, the following procedures may be utilized:

(1) Warning. A written warning will be issued when a violation of a program requirement has occurred. This warning will cite the violation, and if the violation is occurring, a deadline when it must be remedied.

(2) Suspension. Grant funds will be discontinued for any grant which is found to be in noncompliance and for which corrective action by the grantee has not been initiated. Funding may be discontinued for the entire project or for a specific activity. Funding may be reinstated upon the correction of the violating condition.

(3) Reimbursement. The grantee will be required to reimburse CDBG funds that have not been spent in accordance with the approved application and program requirements. The amount of the reimbursement will be determined by the amount that has been disallowed and for which no other costs may be substituted.

(4) Payment Adjustments. If the grantee has not demonstrated responsible fiscal and administrative capacity, the Department may adjust the payment method in which the grant funds are disbursed.

(5) Grant Adjustment. Grant awards may be adjusted, reduced or the total amount withdrawn when there is noncompliance and the violation cited has not been remedied as specified.

(6) Nonparticipation in the CDBG Program. Grantees, which have not complied with actions administered by the Department, may be prohibited from future participation. The Department may allow grantees to participate in the program if the grantee has complied with the required actions.

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

See Chapter 15 – Monitoring for additional information including a monitoring checklist.

Closeout

Closeout is the process by which the Department determines that all requirements of the contract between the Department and the Grantee have been completed. As activities are completed and funds drawn down, closeout will begin.

The Department will issue a Notice of Closeout letter to each grantee near the time of the contract completion date or upon payment of all project funds in the grant, whichever occurs sooner. The Notice of Closeout letter will also be sent if the grantee requests initiation of the closeout process on the grant or indicates on a request for CDBG funds that it is a final request.

The Notice of Closeout requires grantees to submit:

- The Final Financial Report within 60 days;
- The Final Performance Report within 60 days;
- The Final Wage Compliance Report, if applicable, within 60 days (only for grants requiring adherence to labor standards, see Chapter 10 – Construction & Labor Standards);
- A copy of the affidavit and minutes from the second public hearing
- And other documents as applicable to complete closeout

A Certificate of Completion Letter will be issued to the grantee when the following criteria have been met:

1. CDBG grant funds have been expended in full.
2. Review of all grant requirements, including performance review, required documents, monitoring actions and reports.
3. Resolution of any applicable audit issues for the grantee.

The Certificate of Completion Letter will specify any follow-up actions required by state or federal regulations; however, this letter constitutes a certificate of satisfactory completion of all grant requirements.

The Department may recapture CDBG funds when the amount of CDBG funds exceeds an authorized eligible cost. Funds may also be recaptured on the basis of the performance monitoring report and review of financial expenditures, or audit of expenditures. The Department will request repayment of CDBG funds for all authorized or ineligible costs. The Department will reallocate these funds.

The Department will reallocate CDBG Funds remaining at the completion of the grantee's project as outlined in the Annual Action Plan.

See Chapter 16 – Audit & Closeout for additional information.

CHAPTER 3 - ECONOMIC DEVELOPMENT

Loan Closing, Requests for Funds and Job Creation Documentation Requirements

LOAN CLOSING:

It is the responsibility of the Grantee to provide properly executed loan documents for an economic development loan. The loan documents can be prepared and completed by the Grantee's attorney or by the Business receiving the loan. The Department does not provide forms or legal advice regarding loans. Depending on the nature of the project, loan documents may include some or all of the items listed under the Legal Files section of the Performance Review Monitoring Checklist located in Chapter 15 – Monitoring. A Promissory Note and Loan Agreement should be signed for any economic development loan.

REQUEST FOR CDBG FUNDS (DRAWDOWN):

Following the issuance of a Release of Funds letter, the Grantee may request funds on behalf of the Business by completing a Request for CDBG Funds (drawdown) form. Drawdown forms may be obtained from the Department's website at www.neded.org. The CDBG funds can only be disbursed in accordance with the budget established in the CDBG contract between the Department and the Grantee. Supporting documents that demonstrate payment or an obligation to purchase by the business must be submitted with the drawdown form.

JOB CREATION/RETENTION FORMS:

Job creation and/or retention are a requirement of any CDBG funded economic development project. The Business demonstrates that it is meeting this requirement by providing job creation/retention information to the CDBG Administrator. It is the responsibility of the CDBG Administrator to submit the completed job creation/retention report and the project status report to the Department. These reports are submitted semi-annually for the periods ending June 30 and December 31.

The Business must have each employee hired or retained under the terms of the project complete and sign an Employee Certification Form. Information from the Employee Certification Form is used to complete the semi-annual job creation/retention reports. Employee Certification Forms can be found in the CDBG Economic Development Application Guidelines. The Business must keep the completed Employee Certification Forms for all employees until project closeout is complete. Department staff will monitor job creation/retention information.

Chapter 4 – Community Development

Reserved for Future Use

CHAPTER 5 – HOUSING

The Department funds eligible housing activities on a competitive basis through the Nebraska Affordable Housing Program (NAHP). Funds in the program include CDBG. On the federal level CDBG housing activities are governed by:

- Title IV of the Lead-Based Paint Poisoning Prevention Act and regulations at 24 C.F.R. Part 35.
- Title I of the Housing and Community Development Act of 1974, as amended ("Act")
- 24 C.F.R. Part 570

The Department places further restrictions (such as eligible activities, incomes, rents, rehabilitation standards, etc.) on housing funded through the NAHP via:

- The Housing and Community Development Annual Action Plan
- NAHP Application Guidelines
- CDBG Contracts
- CDBG Administration Manual

Eligible housing activities under the State CDBG Program are described in 24 C.F.R. Subpart I, 570.483 Criteria for National Objectives. The Department further restricts the activities that are eligible for funding in the NAHP.

24 C.F.R. Part 570.483 as pertaining to housing:

Housing activities. An eligible activity carried out for the purpose of providing or improving permanent residential structures that, upon completion, will be occupied by low and moderate income households. This would include, but not necessarily be limited to, the acquisition or rehabilitation of property by the unit of general local government, a subrecipient, an entity eligible to receive assistance under section 105(a)(15) of the Act, a developer, an individual homebuyer, or an individual homeowner; conversion of nonresidential structures; and new housing construction. If the structure contains two dwelling units, at least one must be so occupied, and if the structure contains more than two dwelling units, at least 51 percent of the units must be so occupied. If two or more rental buildings being assisted are or will be located on the same or contiguous properties, and the buildings will be under common ownership and management, the grouped buildings may be considered for this purpose as a single structure. If housing activities being assisted meet the requirements of paragraphs (e)(4)(ii) or (e)(5)(ii) of this section, all such housing may also be considered for this purpose as a single structure. For rental housing, occupancy by low and moderate income households must be at affordable rents to qualify under this criterion. The unit of general local government shall adopt and make public its standards for determining "affordable rents" for this purpose. The following shall also qualify under this criterion:

i. When less than 51 percent of the units in a structure will be occupied by low and moderate income households, CDBG assistance may be provided in the following limited circumstances:

A. The assistance is for an eligible activity to reduce the development cost of the new construction of a multifamily, non-elderly rental housing project; and

B. Not less than 20 percent of the units will be occupied by low and moderate income households at affordable rents; and

C. The proportion of the total cost of developing the project to be borne by CDBG funds is no greater than the proportion of units in the project that will be occupied by low and moderate income households.

ii. Where CDBG funds are used to assist rehabilitation delivery services or in direct support of the unit of general local government's Rental Rehabilitation Program authorized under 24 CFR part 511, the funds shall be considered to benefit low and moderate income persons where not less than 51 percent of the units assisted, or to be assisted, by the Rental Rehabilitation Program overall are for low and moderate income persons.

iii. When CDBG funds are used for housing services eligible under section 105(a)(21) of the Act, such funds shall be considered to benefit low and moderate income persons if the housing units for which the services are provided are HOME- assisted and the requirements of 92.252 or 92.254 of this title are met

The Department may specify, among other things, more restrictive income, rent and affordability requirements. Rehabilitation projects must meet the rehabilitation standards as attached to this chapter.

HUD provides some further guidance on eligible housing activities via interpretation of the Act. This chapter excerpts information from HUD's State Guide to National Objectives and Eligible Activities.

The Department describes housing activities under the following three areas:

- Owner-Occupied Rehabilitation
- Tenant-Occupied Rehabilitation Programs for Multiple Properties
- Tenant-Occupied Rehabilitation for a Targeted Property
- Homeownership Programs

Owner-Occupied Rehabilitation

Task #1	Review laws, regulations and administrative requirements
Task #2	Design program and procedural requirements
Task #3	Hire staff and/or contract for professional services
Task #4	Solicit applicants and perform preliminary screening
Task #5	Establish files
Task #6	Prepare work write-ups, cost estimates, select recipients
Task #7	Contract jobs, monitor work, complete rehab

Task #1 Review Laws, Regulations and Administrative Requirements

Caution: following are some applicable laws, regulations and administrative requirements. As related to specific areas the most restrictive applies. *For example, HUD's State Guide to National Objectives and Eligible Activities indicates that costs for materials is an eligible type of assistance, but the NAHP application guidelines may indicate this as an ineligible expense. In this case the NAHP application guidelines would apply.*

- Title IV of the Lead-Based Paint Poisoning Prevention Act and regulations at 24 C.F.R. Part 35.
- Title I of the Housing and Community Development Act of 1974, as amended ("Act")
- 24 C.F.R. Part 570
- HUD's State Guide to National Objectives and Eligible Activities

HUD provides some further guidance on eligible housing activities via interpretation of the Act. The following is from HUD's State Guide to National Objectives and Eligible Activities.

Rehabilitation Activities

Eligible types of property:

Residential – Residential property, whether privately or publicly owned. This includes manufactured housing when such housing constitutes part of the community's housing stock and is classified as real property.

Eligible types of assistance:

Costs – Costs of labor, materials, supplies and other expenses required for the rehabilitation of property, including repair or replacement of principal fixtures and components or existing structures (for example, the heating system).

Financing – Grants, loans, loan guarantees, interest supplements and other forms of financial assistance may be provided under this category.

Refinancing – Loans for refinancing existing indebtedness secured by a property being rehabilitated with CDBG funds, if such refinancing is determined by the grant recipient to be necessary or appropriate to achieve its community development objectives.

Property acquisition – Assistance to private individuals and entities (whether profit or not-for-profit) to acquire for the purpose of rehabilitation and to rehabilitate properties for use or resale for residential purposes.

Insurance – The costs or initial homeowner warranty premiums and, where needed to protect the grant recipient's interest in properties securing a rehabilitation loan, hazard insurance premiums, as well as flood insurance premiums for properties covered by the Flood Disaster Protection Act of 1973, as amended, pursuant to 24 CFR 570.605

Conservation – Costs required to increase the efficient use of water (for example, water saving faucets and shower heads) and improvements to increase the efficient use of energy in structures through such means as installation of storm windows and doors, insulation, and modification or replacement of heating and cooling equipment.

Barrier removal – Costs to remove material and architural barriers that restrict the mobility and accessibility of elderly and severely disabled persons to buildings and improvements that are eligible for rehabilitation under this category.

Renovation of closed buildings – The conversion of a closed building from one use to another (for example, the renovation of a closed school building to residential use).

Historic preservation – This category also authorizes the costs of preserving or restoring properties of historic significance, whether privately or publicly owned, except that buildings for the general conduct of government may not be restored or preserved with CDBG assistance (see the section on Public Facilities and Improvements concerning this limitation). Historic properties are those sites or structures that are either listed in or eligible to be listed in the National Register of Historic Places, listed in a state or local inventory of historic places, or designated as a state or local landmark or historic district by appropriate law or ordinance.

Lead-based paint hazard evaluation and reduction – The costs of evaluating and treating lead-based paint may be undertaken in the State CDBG program in conjunction with other rehabilitation activities under Section 105(a)(4) of the HCDA or as a separate activity under Section 105(a)(25). In addition to lead hazard abatement work itself, CDBG funds may be used for: testing the blood of children to determine the lead levels, inspecting and testing homes for lead hazards, temporarily relocating families during lead control work, community education and outreach, job training for lead hazard control workers, and collection and analysis of data on lead hazards.

Rehabilitation services – Staff costs and related expenses required for outreach efforts for marketing the program, rehabilitation counseling, screening potential applicant households and structures, energy auditing, preparing work specifications, loan underwriting and processing, inspections, and other services related to assisting owners, tenants, contractors, and other entities

who are participating or seeking to participate in rehabilitation activities eligible under this category.

*Rehabilitation does **not** include:*

- Creation of a secondary housing unit attached to a primary unit;
- Installation of luxury items, such as a swimming pool;
- Costs of equipment, furnishings, or other personal property not an integral structural fixture, such as:

    1. a window air conditioner, or
    2. a washer or dryer (but a stove or refrigerator is allowed); or

- The value of the homeowner's sweat equity to rehabilitate their own property.

Conversion: It should be noted that the cost of converting an existing non-residential structure to residential is not generally considered to constitute new construction under the CDBG program and is thus covered under the basic eligibility category of Rehabilitation. However, in some cases, the conversion may involve construction that goes beyond the envelope of the non-residential structure. Where this is the case, the grant recipient should consult with the local HUD field office to ensure that the extent of such construction would not constitute new construction of housing and thus be ineligible for CDBG assistance.

The Department uses the following to regulate the use of CDBG funds for owner-occupied rehabilitation:

- The Housing and Community Development Annual Action Plan
- NAHP Application Guidelines
- CDBG Contracts
- CDBG Administration Manual

Definition

Become familiar with commonly accepted rehab practices and procedures and the applicable laws, regulations and administrative requirements governing CDBG assisted housing rehabilitation.

Procedures

It is generally agreed that housing rehabilitation (rehab) is one of the most complex activities eligible for CDBG funding. In order to successfully design and implement a rehab program, it is essential to have a thorough understanding of sound rehab practices and the applicable laws and regulations that govern them.

It is of critical importance to understand the HUD regulation on controlling lead-based paint hazards in housing receiving federal-assistance (24 CFR Part 35). Subpart J of the regulation provides guidance on meeting lead-based paint requirements for rehabilitation assistance programs.

Common Deficiencies

- Unfamiliarity with accepted rehab practices and procedures
- Unfamiliarity with applicable laws and regulations
- Unfamiliarity with lead-based paint requirements

Task #2 Design Program and Procedural Requirements

Definition

Formulate program guidelines regarding the type of financial assistance, program recipients, rehabilitation standards, advisory committees (if any), and operational procedures.

Procedures

Detailed written eligibility criteria and property rehabilitation standards must be developed to guide program operation. The governing body for the grantee must adopt standards and guidelines for rehabilitation before the Department will issue a release of funds for this activity. The program guidelines must address:

- specification of types of financial assistance available;
- applicant eligibility;
- property eligibility
- eligible improvements/rehab standards;
- contracting requirements;
- applicant selection process;
- utilization of an advisory committee; and
- operating procedures, including a grievance procedure.

Remember that there is no model that is perfect for all grantees. How the grantee resolves each of the above issues should reflect local conditions and needs. The grantee should contact the Department and communities in the area to get an idea of the kinds of programs that have worked well. Many of the developed procedures or processes may be transferable. These guidelines would be available at no cost since they were originally developed through the CDBG program.

Maximum Amounts

In addition to deciding whether to go with either a grant or loan program, or a mix, the grantee must specify the maximum amount of assistance to be made available to any applicant. There are several factors to take into consideration:

- what is the general condition of the housing to be rehabilitated?
- what standards of rehabilitation will be adopted?
- how much money is needed to bring the target housing up to the proposed rehab standards?

If the housing to be rehabbed is badly deteriorated, a small maximum grant amount (say $5,000) will probably not be sufficient to bring the property up to the minimum Department Rehab Standards as attached to this chapter. Most communities with badly deteriorated target housing have found a $10,000 - $12,000 maximum insufficient to meet these standards. On the other hand, if the housing is only mildly deteriorated a modest grant/loan maximum may be appropriate. Have a contractor or building inspector actually estimate needed repairs on a couple of typical units. Use these estimates as the basis for setting grant/loan limits. Also, be sure to specify a procedure which will allow the limits to be changed over time, as needed.

Eligible Applicants

The written program guidelines must also delineate applicant eligibility. In accordance with 24 CFR 85.36, (Procurement), the guidelines should include provisions barring conflict of interest to the extent feasible. This is extremely important. A rehab program provides direct benefits to individuals. A rehab program is therefore subject to political pressures, cronyism, and nepotism.

In addition, the guidelines must specify income limits that are in compliance with HUD's definition of low and moderate income households. The Department specifies that applicants' gross income be computed as defined in 24 CFR Part 5.

Eligible Property

The guidelines should also identify the geographic eligibility criteria pertaining to the target area(s). If rehab is only eligible within the designated target area(s), the guidelines should say so and describe the area(s). The grantee may want to consider funding public improvements, using other funds, in the target area to maximize program impact and generate an improvement momentum. The Department may permit spot rehab outside the target area(s) for the benefit of low to moderate income families or to eliminate specific conditions detrimental to public health and safety. Spot rehab can, however, open a program to substantial pressure to spread the benefits around and this undermines the potential for private activity stimulated by concentration of resources. On the other hand a program can find itself unable to assist households in acute need who live outside target areas. It is recommended that provisions be made for spot rehab and that the guidelines explicitly describe the conditions under which it will be made available.

If a property is located within a HUD designated area of flood hazard and the grantee proposes a substantial repair, then it is required that flood insurance be purchased by the time of completion of the rehab. The cost of the insurance is an eligible CDBG activity.

Length of ownership is also a factor some grantees may want to consider. If a high vacancy rate is a problem, the program may only require that the unit become occupied at the completion of the rehab. This way new owners may be enticed into the community to buy vacant, but fixable units. As long as they are otherwise qualified, there is no reason that a new owner cannot participate.

Eligible Improvements and Rehab Standards
The guidelines must also specify the standards that properties must meet after rehab. The grantee has to adopt the Department's rehab standards at a minimum. Another option is to use local housing or occupancy codes if they exist. The amount of money needed to bring a significantly dilapidated unit up to code is usually greater than the amount needed to bring it up to Department Rehab Standards. If the maximum grant or loan is modest (under $10,000), adoption of local codes as the minimum property standard means that some of the worst housing in the community will not be eligible for assistance because they cannot be brought to code within the grant amount. The standard the grantee adopts is a local decision. The minimum standards for rehabilitation are contained in Attachment 1. The standards chosen should depend on the condition of target housing, the income of the clients, and the maximum grant/loan amount. The standard must also include the elimination of lead-based paint hazards.

Any improvement needed to bring a unit up to the adopted standards should be specified as an eligible improvement. It is recommended that the grantee consider making energy conservation improvements a priority. Energy conservation standards must be included in standards that are adopted for housing rehab. Many cities include exterior painting or siding as eligible improvements since the work is immediately noticeable and can have a significant "bandwagon" effect on rehab in the neighborhood. It is not recommended that general property improvement—carports, patios, decks, recreation room additions, etc.—be eligible for grant funding. For a loan, the grantee may want to allow such improvements but limit their cost to a low percentage of the total loan.

Contracting Requirements
The homeowner is to authorize the contract for rehab services. Because the grantee remains responsible for monitoring contractor compliance with federal standards, financial management, and other program requirements you probably will want a three-party contract to afford the grantee greater visibility in the process.

The guidelines should specify contracting procedures and any other procedures which govern the conduct of work, such as those relating to change orders, dispute resolution, and acceptance of work. Regarding the latter, the grantee should assume final authority for sign-off on completion of work, if the homeowner has not borrowed the CDBG funds.

Applicant Selection
Since demand for rehab assistance typically outstrips the resources available, a grantee must establish procedures for selecting recipients and include them in the program guidelines.

A priority rating system combined with staggered review and award periods will allow the grantee to meet such demand in an equitable fashion. A priority rating system means that each application is assigned points and ranked on the basis of such household characteristics as income and housing condition. In addition elderly and/or disabled applicants may receive priority points. A rating system must be carefully thought out to assure that the criterion used does not have the effect of discriminating against racial minorities or women. For example, a credit worthiness criteria could easily discriminate against female-headed households. The

grantee may want to differentiate rating guides for grant versus loan assistance, as shown in the sample.

Development of the priority rating system is something for which citizen board or resident representative input can be appropriately requested. The actual selection, however, should be a staff responsibility. It should not be done by a citizen board. Information on applicants is confidential and should remain so.

Operating Procedures

The guidelines should specify such other issues as complaint procedures, responsibilities of the recipient, infeasible rehabs, relocation policies in the event of the need for temporary relocation, and so forth. Complaints are a given with rehab programs. It is important to distinguish between the rational and the irrational. The best prevention is to conduct frequent on-site inspections of the work, and stop the work when there are problems. Also make sure that the recipients are well-informed about the contract work, have signed-off on the work write-up, and have a copy of the program guidelines. The complaint procedure itself should include written responses from city representatives and an appeal procedure.

The guidelines should be developed by staff, with input from citizens and elected officials. They should always include a clause describing the process by which they can be changed.
They should be adopted by resolution. They should be written in plain language and be available to all potential applicants. And changes to the guidelines must also be approved by the Department. They should also be followed as written.

Common Deficiencies

- Guidelines are not written
- Guidelines lack conflict of interest provisions
- Guidelines lack housing alternatives for infeasible rehab
- Priority Rating Guides included but not used
- Lack of prompt response to homeowner/contractor complaints

Supporting Materials

- Minimum Standards for Rehabilitation (Attachment 1)

Task #3 Hire Staff and/or Contract for Professional Services

Definition

Identify staffing needs and obtain qualified personnel.

Procedures

In staffing a rehab program, it is helpful to understand the specific skills that will be needed.

First, there is a need for a person who can deal with applicants, process paper, and manage the program. Someone must talk to applicants, visit their homes to complete family surveys, and keep track of the rehab program and process.

Second, there is a need for a person with experience and knowledge in the areas of home construction, local codes, inspection (building, electrical and plumbing), and cost estimating. These skills are found in experienced contractors, building inspectors, and architects familiar with rehab.

For small rehab programs, it may not be feasible to hire full-time staff. The grantee may be able to locate people to assist on a contract basis. The grantee might also consider a cooperative arrangement with nearby communities or a regional agency to pool resources and share staff. Special arrangements utilizing the staff of larger city programs may also be worked out.

The quality and success of a rehab program depends on the abilities and experiences of the people implementing the program. Every effort should be made to hire qualified staff.

Lead-based paint requirements necessitate using people with the proper qualifications to do specific functions of the rehab project.

Common Deficiencies

- Inadequate number of staff
- Unqualified staff
- Lack of adequate administrative budget for rehab
- Lack of budget for staff training and development

Task #4 Solicit Applicants and Perform Preliminary Screening

Definition

Inform target area residents about the program, conduct family surveys, distribute information on lead-based paint and make preliminary determination of eligibility.

Procedures

The grantee must inform property owners of the availability of rehab assistance. Generally, communities have found that very little information solicits a large number of persons interested in rehab grants while a greater "sales" effort is necessary to obtain eligible loan applicants. Since the grantee has designated one or more target areas in the application, they should direct their efforts to reaching that population. The program should be well-publicized, and thoroughly explained to all interested individuals to allow for equal opportunity to all potential eligible beneficiaries.

All interested applicants should be screened first for eligibility under income and other criteria as specified in the guidelines. Although the cost of improvements is also a critical factor, a preliminary eligibility review can spare substantial costs of inspections and work write-ups for ineligible applicants. The information needed to determine basic eligibility can be obtained

through a household survey guide that solicits information on income, family composition, place of employment, tenure and so forth. Usually, the rehab officer will conduct the interview. The grantee must verify ownership, income, and employment. Verification should be done carefully and sensitively since many people do not wish others to know they have applied for assistance. The information solicited is confidential and should be treated as such.

All applicants are to be informed of the hazards of lead based paint. This information should be distributed to everyone even if they don't qualify.

Common Deficiencies

- Solicitation of recipients is left to chance
- Preliminary assessments of eligibility are not conducted
- Income, employment, and ownership are not verified

Task #5 Establish Files

Definition

Maintain documentation that rehab is being carried out in conformance with applicable laws, regulations and sound rehab practices.

Procedures

A separate file must be maintained for each rehab applicant with all of the documentation. Unsuccessful as well as successful applications must be kept.

Files must be retained for a period of four years following program closeout.

Common Deficiencies

- Inadequate documentation, forms not signed by all parties
- No documentation from the State Historical Preservation Office (an environmental review requirement)
- Files not retained for four years

Task #6 Prepare Work Write-ups, Cost Estimates, Select Recipients

Definition

Screening applicants for those whose homes can be brought up to established standards within the grant amount, and select which applicants shall receive the grants/loans.

Procedures

An inspection of the property should be conducted to determine the type and cost of work necessary to bring the property into compliance with the established property rehab standard. This is termed a work write-up or deficiency list. The work write-up should be designed so that it

can form the basis of bid specifications if a loan or grant is made. The work write-up should specify all the work that must be done to bring the building to the standards adopted, including the elimination of lead-based paint hazards. A deficiency list identifies all items to be repaired, but leaves the repair method up to the contractor. In both cases a technical specification manual or code book should be referenced for specific and acceptable construction method. Some grantees with experienced staff have blank forms the inspector fills in as she/he goes along. grantees with inexperienced staff have sometimes adopted very detailed check-off forms. The inspector checks for each one and specifies action needed to remedy the problem. It is better to err on the side of caution. If local codes are the standard, the city inspector should certify by signature to the work write-up that the specified repairs will be adequate to bring the unit up to code.

Computerized write-ups are also used by some rehab specialists. The software is easy to use but would require access to a personal computer and printer.

Once the work write-up has been prepared, the cost of the work has to be estimated. The cost estimate is necessary to know whether or not the work can be done within the grant/loan limits, and, if a loan, is within the owners ability to repay. The person doing cost estimates should be familiar with the going rates for materials and labor in the area and be able to estimate accurately the time required to complete each task. Although there is no substitute for experience, if staff are inexperienced, they should talk with building supply people, contractors, and other communities in order to increase their knowledge of local costs. Cost estimation is important because if your estimates are low, contractors will not bid the job within grant/loan limits, or they will and will then attempt to get change orders. Good, reliable cost estimates are critical.

Some grantees allow property owners to perform some of the required improvements themselves. Self-help can increase the resources available to bring the house up to rehab standards. If self-help is to be allowed, the grantee must assume responsibility for judging that the property owner possesses sufficient skill to perform agreed-upon improvements and must inspect the work for quality of workmanship and timely completion.

With the work write-up and cost estimate in hand, eligible applicants are rated according to the adopted priority rating guides. A rating sheet should be prepared for each applicant and placed in the file, permitting the grantee to explain to each applicant, if requested, the basis upon which they were selected or denied.

The grantee should write a letter to each applicant as to the results of the review process, indicating next steps for successful applicants and informing unsuccessful applicants that their application will be automatically reconsidered during the next review period.

Caution: Title IV of the Lead-Based Paint Poisoning Prevention Act and regulations at 24 C.F.R. Part 35 provides specific circumstances in which additional procedures and trained professionals are required in order to ensure there are no lead-based paint hazards remaining after or created by the rehab activity.

Common Deficiencies

- Work write-ups are insufficiently detailed or do not reference a technical specification
- Cost estimates are not based on current costs
- Selection procedure is informal and undocumented
- Selecting applicants whose homes cannot be brought up to rehab standard within the maximum loan/grant amount

Task #7 Contract Jobs, Monitor Work, Complete Rehab

Definition

Contract for rehab services; monitor progress and performance.

Procedures

The lack of availability of interested and/or qualified contractors has been a major impediment for some grantees to implement a rehab program. Depending on the level of construction activity in the area, home building and remodeling contractors may not be interested in relatively small jobs for repairing homes in poor condition. The grantee staff should try to identify possible contractors and attempt to interest them in program participation. The yellow pages of the telephone book, the Chamber of Commerce, conversations with construction materials suppliers, and word of mouth are all information resources to aid in developing a bidders list.

In order to promote the participation of small contractors, try to eliminate procedural barriers. Bonding requirements for small contractors can be prohibitive. Grantees should demand the minimum bonding and insurance required by local law. Technical assistance approaches some Grantees have adopted are: financial management assistance to small contractors; talking to local suppliers to assure them of payment for any credit extended to rehab contractors for CDBG funded jobs, guaranteed through two party checks, if necessary; talking to local financial institutions to encourage them to extend lines of credit. In order to expedite payment to small contractors, who often have cash flow problems, discuss with them the drawdown process and set specific procedures for providing ample notice for payment.

The pool of qualified contractors has been further limited by the additional requirements of the lead-based paint regulations associated with construction worker qualifications for rehab in pre-1978 housing.

Rehab Contract

The contract for rehab must include the language and requirements specified in applicable federal, state, and local laws binding the program. Davis-Bacon and other Labor Standards provisions do not apply unless the rehab to be undertaken in the contract is for eight or more units. However, the payment of overtime is a law by which rehab contractors must abide.

Grantees should also consider including provisions in rehab contracts which require the contractor to obtain and pay for all necessary permits and licenses; perform all work in

conformance with local codes and requirements whether or not covered by the specification and drawings; keep the premises clean and orderly during repairs and remove all debris at the completion of work; obtain written consent for changes to the specifications; not assign the contract without written consent; and warrant the work for one year from final acceptance. In order to be a complete contract document, the applicable CDBG and local terms and conditions must be included.

Contractor Selection

Requirements of the grantee concerning bidding are dictated by 24 CFR Part 85.36 and State Law. If the grantee is not directly contracting for the rehab, i.e. they approve the contract on a third party basis, competitive bidding is not required. Homeowners should be given maximum preference with selecting their contractor.

Following award of the contract, the contract package should be executed by all parties. It is a good idea to have the homeowner sign the work write-up to reduce possible misunderstandings about the scope of work to be performed. Following any Right of Recission period, a Notice to Proceed must be issued to the contractor that must specify the time period within which the work should begin and when the work should be completed. Many small contractors will want progress payments. However, these payments must be tied to inspection of the work. Progress payments should generally not total more than 80% of the work satisfactorily completed and cannot include the value of uninstalled material or equipment. Project milestones triggering progress payments should be specified in the contract.

Inspections

Systematic, thorough and frequent inspections are critical to successful housing rehab. Inspection should identify and remedy problems as early as practical. Payments are the primary leverage over contractors and should be withheld until faulty work is corrected. If serious deficiencies are identified through inspection, the grantee can terminate the contract, compute the cost of unsatisfactory work and escrow this money, and solicit another contractor to complete the job paying the original contractor from the escrow account only if sufficient funds remain for the new contractor to complete the work. The grantee should also recognize that its staff may have to intercede on behalf of the contractor with the property owner who may have unfounded complaints about the repairs.

When repairs are completed and a final invoice is received from the contractor certifying completion in accordance with the contract and warranty, the grantee must make a final inspection. If the work is satisfactory and complete, the job should be accepted. After the receipt of a release of liens and applicable warranties from the contractor, all subcontractors and suppliers, and the elapse of the requisite lien period, final payment can be made. The grantee should perform a follow-up visit to the property owner in roughly 60 days to determine the existence of any problems with the job. If problems have occurred, the grantee should assist the property owner to obtain corrective action according to the warranty. A second follow-up visit should be held prior to the expiration of the contractor's warranty period.

Common Deficiencies

- Failure to include required language in contract documents
- Failure to control the use of change orders
- Failure to perform thorough inspections
- Failure to set specific procedures for pay requests
- Failure to condition progress payments on inspection of "in-place" rehab work
- Failure to assure release of liens
- Failure to anticipate or promptly respond to complaints
- Failure to require prompt corrective action by the contractor and to withhold payment in complaint cases
- Failure to assist the property owner in receiving satisfaction under the warranty

Tenant-Occupied Rehabilitation Programs for Multiple Properties

Task #1	Review Laws and Regulations
Task #2	Determine Type of Rehab Program to be Implemented
Task #3	Determine Eligible Applicants
Task #4	Determine Eligible Property
Task #5	Determine Eligible Improvements and Rental Rehab Standards
Task #6	Owner's Responsibilities
Task #7	Comply with Contracting Requirements
Task #8	Determine Applicant Selection Process
Task #9	Develop Complaint Procedures
Task #10	Fair Housing Activities
Task #11	Develop Procedures for Rental Rehab Self-Help Projects
Task #12	Utilization of Funds

Task #1 Review Laws, Regulations and Administrative Requirements

Caution: following are some applicable laws, regulations and administrative requirements. As related to specific areas the most restrictive applies. *For example, HUD's State Guide to National Objectives and Eligible Activities indicates that costs for materials is an eligible type of assistance, but the NAHP application guidelines may indicate this as an ineligible expense. In this case the NAHP application guidelines would apply.*

- Title IV of the Lead-Based Paint Poisoning Prevention Act and regulations at 24 C.F.R. Part 35.
- Title I of the Housing and Community Development Act of 1974, as amended ("Act")
- 24 C.F.R. Part 570

- HUD's State Guide to National Objectives and Eligible Activities

HUD provides some further guidance on eligible housing activities via interpretation of the Act. The following is from HUD's State Guide to National Objectives and Eligible Activities.

Rehabilitation Activities

Eligible types of property:

Residential – Residential property, whether privately or publicly owned. This includes manufactured housing when such housing constitutes part of the community's housing stock and is classified as real property.

Eligible types of assistance:

Costs – Costs of labor, materials, supplies and other expenses required for the rehabilitation of property, including repair or replacement of principal fixtures and components or existing structures (for example, the heating system).

Financing – Grants, loans, loan guarantees, interest supplements and other forms of financial assistance may be provided under this category.

Refinancing – Loans for refinancing existing indebtedness secured by a property being rehabilitated with CDBG funds, if such refinancing is determined by the grant recipient to be necessary or appropriate to achieve its community development objectives.

Property acquisition – Assistance to private individuals and entities (whether profit or not-for-profit) to acquire for the purpose of rehabilitation and to rehabilitate properties for use or resale for residential purposes.

Conservation – Costs required to increase the efficient use of water (for example, water saving faucets and shower heads) and improvements to increase the efficient use of energy in structures through such means as installation of storm windows and doors, insulation, and modification or replacement of heating and cooling equipment.

Barrier removal – Costs to remove material and architural barriers that restrict the mobility and accessibility of elderly and severely disabled persons to buildings and improvements that are eligible for rehabilitation under this category.

Renovation of closed buildings – The conversion of a closed building from one use to another (for example, the renovation of a closed school building to residential use).

Historic preservation – This category also authorizes the costs of preserving or restoring properties of historic significance, whether privately or publicly owned, except that buildings for the general conduct of government may not be restored or preserved with CDBG assistance (see the section on Public Facilities and Improvements concerning this limitation). Historic properties are those sites or structures that are either listed in or eligible to be listed in the

National Register of Historic Places, listed in a state or local inventory of historic places, or designated as a state or local landmark or historic district by appropriate law or ordinance.

Lead-based paint hazard evaluation and reduction – The costs of evaluating and treating lead-based paint may be undertaken in the State CDBG program in conjunction with other rehabilitation activities under Section 105(a)(4) of the HCDA or as a separate activity under Section 105(a)(25). In addition to lead hazard abatement work itself, CDBG funds may be used for: testing the blood of children to determine the lead levels, inspecting and testing homes for lead hazards, temporarily relocating families during lead control work, community education and outreach, job training for lead hazard control workers, and collection and analysis of data on lead hazards.

Rehabilitation services – Staff costs and related expenses required for outreach efforts for marketing the program, rehabilitation counseling, screening potential applicant households and structures, energy auditing, preparing work specifications, loan underwriting and processing, inspections, and other services related to assisting owners, tenants, contractors, and other entities who are participating or seeking to participate in rehabilitation activities eligible under this category.

*Rehabilitation does **not** include:*

- Creation of a secondary housing unit attached to a primary unit;
- Installation of luxury items, such as a swimming pool;
- Costs of equipment, furnishings, or other personal property not an integral structural fixture, such as:

    1. a window air conditioner, or
    2. a washer or dryer (but a stove or refrigerator is allowed); or

Conversion: It should be noted that the cost of converting an existing non-residential structure to residential is not generally considered to constitute new construction under the CDBG program and is thus covered under the basic eligibility category of Rehabilitation. However, in some cases, the conversion may involve construction that goes beyond the envelope of the non-residential structure. Where this is the case, the grant recipient should consult with the local HUD field office to ensure that the extent of such construction would not constitute new construction of housing and thus be ineligible for CDBG assistance.

The Department provides guidance on tenant-occupied housing activities via:

- The Housing and Community Development Annual Action Plan
- NAHP Application Guidelines
- CDBG Contracts
- CDBG Administration Manual

Task #2 Determine Type of Rehab Program to be Implemented

Definition
When setting up a Rental Rehabilitation Program, the grantees in consultation with rental property owners must determine the type of program to operate.

Procedures
Specifically, two types of loans can be used: deferred/forgiven and deferred/repaid. A deferred/forgiven loan operates similar to a grant in that the rental property owner does not pay monthly or annual loan payments. However, a change in ownership or violation of the loan conditions within the time period of the loan can require repayment of the loan. A deferred/repaid loan requires the rental property owner to pay a fixed percentage of the principal of the loan until the debt is forgiven.

In addition to CDBG resources, grantees should provide information to rental property owner (borrowers) concerning lenders. Also, one should note that lenders can benefit from investing in low-income housing because the lenders' Community Reinvestment Act (CRA) file will be enhanced.

Task #3 Determine Eligible Applicant

Definition
An applicant is eligible for Rental Rehabilitation Programs if the rental properties are occupied by low to-moderate income persons, avoid conflicts of interests with other applicants and creates affordable rents for the tenants. The rental property owner's (owner invested) amount of income is irrelevant in determining his or her eligibility. However, the tenant's income must be low to moderate. Low-and moderate-income persons are defined as multi- or single-person families having incomes equal to or less than the income limits for their resident county. The income limits are determined for each Nebraska county on the higher of either: 80 % of the median income of the county, or 80 % of the median income of the entire non-metropolitan area of the state. Consequently, the rental property owner needs to provide verification of the tenant's income or a certification signed by the tenant.

Procedures
The applicant can be an individual, partnership, for-profit or nonprofit corporation. However, the applicant must have at least one-third interest in one of the following types of ownership in the property to be approved: 1) fee simple title, 2) fee simple subject to a mortgage, deed or trust, or other lien securing a debt, or 3) a mutually binding contract for the purchase of the property when the applicant is rightfully in possession of the property, the purchase price of this property is payable in installments and written permission from the fee title holder has been received prior to financial assistance being granted.

Task #4 Determine Eligible Property

Definition
Properties must be residential in character and in a neighborhood that generally will allow the units to remain affordable. Properties containing 8 or more units will require compliance with the Davis-Bacon Wage Act and other laws and regulations pertaining to labor standards (Chapter 10 – Construction & Labor Standards).

Procedures
If a grantee has created geographic eligibility guidelines (eg. target areas), then property under the Rental Rehabilitation Program must be eligible within these guidelines.

Grantees should be aware of the Section 106 of the 1966 Historic Preservation Act. This law provides:

* CDBG projects that are involved with expansion of existing buildings or excavation of sites shall be reviewed by the Nebraska Historical Society. This is in accordance with Section 106 of the Historic Preservation Act of 1966. The Nebraska Historical Society requires black and white photographs of the existing building that is to be remodeled, as well as photos of property and buildings to be acquired to accommodate the expansion, and general views of the area in which the project is planned. It is also necessary to provide a map that indicates the project site and location of photos, and the legal description of all affected property.

* As part of environmental review, the Department requires grant recipients involved in demolition, housing, commercial, and industrial rehab projects to consult with the Nebraska State Historic Preservation Officer (SHPO.

OTHER PROPERTY-RELATED ISSUES:

* Rental property owners should purchase insurance for rental rehab property.

* Rental property owners should pay taxes and file tax returns on rental rehab property.

* Rental property owners should adequately maintain the rental rehab property.

Task #5 Determine Eligible Improvement and Rental Rehab Standards

Procedures
Grantees should provide guidelines that specify the standards that properties must meet after rehab. A grantee must use at a minimum the Department's Rehab Standards, local housing codes or local occupancy codes (if these local codes exist). One should note that local codes usually consist of higher standards than Department's Rehab Standards. As a result, more money

is needed to make improvements on units under local codes. The adoption of these standards is based on a local decision. Nevertheless, these standards must include the elimination of lead-based paint hazards. An example of eligible improvements standards includes limitations of eligible rehab activities. Eligible rehab activities are limited to correcting substandard conditions, making essential improvements, repairing major systems in danger of failure, undertaking energy related repairs and making improvements necessary to provide access to the physically disabled. The final determination of all rehab activities and the use of program funds can be made by the local lender and administrative inspector. Also, these standards reveal that program funds cannot be used for improvements covered by an existing warranty/guarantee from a contractor, supplier and/or manufacturer. Proposed improvements to correct or replace warranted work, materials or equipment will only be eligible if the applicant can demonstrate and document that no reasonable recourse to remedy defects in the workmanship, materials or equipment is available. All improvements funded by a local Rental Rehab Program must be physically attached to the property and permanent in nature (eg. funding for improvements to mobile homes and trailers is not taxed as real property).

Task #6 Owner's Responsibilities

Procedures

The owner-investor must be informed on certain rental rehabilitation programs issues. These issues are insurance, taxes, maintenance and various loan conditions. If a property is located within a flood hazard area, the purchase of flood insurance within the loan period is required. If the property is not located in a flood hazard area at the time of the loan closing, the rental property owner (borrower) should provide satisfactory evidence thereof. Also, adequate hazard insurance covering fire and other hazards can be purchased in at least the amount of the loan provided by the grantee with acceptable loss payee clauses in favor of the grantee.

Grantees should develop procedures to determine if owners-investors are paying taxes. Specifically, the rental property owners should pay all taxes, assessments and governmental charges upon the property at the time of application and keep all taxes current during the life of the loan.

Grantees should develop guidelines that specify upkeep and maintenance of the property. The property should be adequately maintained during the life of the loan. At a minimum, Section 8 HUD Housing Quality Standards should be used as guidelines for such maintenance.

Task #7 Comply with Contracting Requirements

Before engaging in a contract, it must be verified that the contractor is not on the federal de-barred list. Contact the Department for guidance.

Definition
Contract for rehab services; monitor progress and performance.

Procedures
The lack of availability of interested and/or qualified contractors has been a major impediment for some grantees to implement a rehab program. Depending on the level of construction activity in the area, home building and remodeling contractors may not be interested in relatively small jobs for repairing homes in poor condition. The grantee staff should try to identify possible contractors and attempt to interest them in program participation. The yellow pages of the telephone book, the Chamber of Commerce, conversations with construction materials suppliers, and word of mouth are all information resources to aid in developing a bidders list.

In order to promote the participation of small contractors, try to eliminate procedural barriers. Bonding requirements for small contractors can be prohibitive. Grantees should demand the minimum bonding and insurance required by local law. Technical assistance approaches some grantees have adopted are: financial management assistance to small contractors; talking to local suppliers to assure them of payment for any credit extended to rehab contractors for CDBG funded jobs, guaranteed through two party checks, if necessary; talking to local financial institutions to encourage them to extend lines of credit. In order to expedite payment to small contractors, who often have cash flow problems, discuss with them the draw down process and set specific procedures for providing ample notice for payment.

Rehab Contract
The contract for rehab must include the language and requirements specified in applicable federal, state, and local laws binding the program. Davis-Bacon and other Labor Standards provisions do not apply unless the rehab is to be undertaken in a structure with eight or more units or unless the structure is of mixed residential/commercial use. However, the payment of overtime is a law by which rehab contractors must abide.

Grantees should also consider including provisions in rehab contracts which require the contractor to obtain and pay for all necessary permits and licenses; perform all work in conformance with local codes and requirements whether or not covered by the specification and drawings; keep the premises clean and orderly during repairs and remove all debris at the completion of work; obtain written consent for changes to the specifications; not assign the contract without written consent; and warrant the work for one year from final acceptance. In order to be a complete contract document, the applicable CDBG and local terms and conditions mentioned on the preceding page must be included; a work write-up is also required.

Contractor Selection
Requirements of the grantee concerning bidding are dictated by 24 CFR Part 85.36 and State Law. If the grantee is not directly contracting for the rehab, i.e. they approve the contract on a third party basis, competitive bidding is not required. Rental property owners should be given maximum preference with selecting their contractor.

Following award of the contract, the contract package should be executed by all parties. It is a good idea to have the rental property owner sign the work write-up to reduce possible

misunderstandings about the scope of work to be performed. Following any Right of Rescission period, a Notice to Proceed must be issued to the contractor that must specify the time period within which the work should begin and when the work should be completed. Many small contractors will want progress payments. However, these payments must be tied to inspection of the work. Progress payments should generally not total more than 80% of the work satisfactorily completed and cannot include the value of uninstalled material or equipment. Project milestones triggering progress payments should be specified in the contract.

Inspections

Systematic, thorough and frequent inspections are critical to successful housing rehab. Inspection should identify and remedy problems as early as practical. Payments are the primary leverage over contractors and should be withheld until faulty work is corrected. If serious deficiencies are identified through inspection, the grantee can terminate the contract, compute the cost of unsatisfactory work and escrow this money, and solicit another contractor to complete the job paying the original contractor from the escrow account only if sufficient funds remain for the new contractor to complete the work. The grantee should also recognize that its staff may have to intercede on behalf of the contractor with the property owner who may have unfounded complaints about the repairs.

When repairs are completed and a final invoice is received from the contractor certifying completion in accordance with the contract and warranty, the grantee must make a final inspection. If the work is satisfactory and complete, the job should be accepted. After the receipt of a release of liens and applicable warranties from the contractor, all subcontractors and suppliers, and the elapse of the requisite lien period, final payment can be made. The grantee should perform a follow-up visit to the property owner in roughly 60 days to determine the existence of any problems with the job. If problems have occurred, the grantee should assist the property owner to obtain corrective action according to the warranty. A second follow-up visit should be held prior to the expiration of the contractor's warranty period.

Common Deficiencies

- Failure to include required language in contract documents
- Failure to control the use of change orders
- Failure to perform thorough inspections
- Failure to set specific procedures for pay requests
- Failure to condition progress payments on inspection of "in-place" rehab work
- Failure to assure release of liens
- Failure to anticipate or promptly respond to complaints
- Failure to require prompt corrective action by the contractor and to withhold payment in complaint cases
- Failure to assist the property owner in receiving satisfaction under the warranty

Caution: Title IV of the Lead-Based Paint Poisoning Prevention Act and regulations at 24 C.F.R. Part 35 provides specific circumstances in which additional procedures and trained professionals are required in order to ensure there are no lead-based paint hazards remaining after or created by the rehab activity.

Task #8 Develop Procedures for Rental Rehab Self-Help Projects

Procedures

The following procedures are minimum requirements that must be followed if the owner investor of a Rental Rehab project is accomplishing the rehab as the general contractor, a subcontractor and/or is contributing to the rehab through personal "sweat equity" or "self- help" efforts, or is using donated labor, materials or supplies. First, the grantee must include in the project file copies of an acceptable work write-up specifications and a rehab cost estimate.

Second, among any other appropriate elements of the "commitment to a specific local project" (often called the project agreement) between the owner and the grantee the Department strongly recommend that the following written provisions be specifically included for all self-help projects: (a) a specific enumeration of the work items that will be accomplished through donated labor and/or by the owner investor, and what materials and supplies will be used, (b) the schedule for completing each work item the owner investor and/or other volunteers will perform, and (c) an alternative means of accomplishing the work if the owner investor or the volunteers fail to perform adequately or at all.

Third, eligible project costs for self-help cases are to be limited to the out-of-pocket expenditures of the owner-investor for project costs and include such things as payments to the general contractor and/or subcontractors and for materials and supplies purchased and used in the project. However, materials and supplies need not have been purchased specifically for, nor at the same time as, the project to be included in project cost, provided that the cost to the owner of the materials and supplies, and the fact that they were used in the project, can be documented.

The value of the owner investor's own labor, labor donated to the project, materials and supplies donated to the project by third parties and the owner investor's overhead and profit may not be charged to the project by, or paid to the self-help project owner investor, with one exception. The single exception is when the owner investor is a practicing contractor and the grantee determines that there is an advantage to the grantee in having that owner investor perform the rote of the general contractor or a subcontractor. Then, and only then, may the eligible cost include a reasonable allowance for the owner investor's overhead and/or profit, in the percentage that owner investors might reasonably be expected to make on a similar project The total project cost in this instance must, of course, be within the cost estimate. Of course, an owner- contractor or subcontractor can pay his or her employees their usual wages or salaries (or Davis-Bacon wages when applicable) and may include such payments in the total cost of the project.

The effect of these policies is that where the owner is contributing sweat equity or donated labor or materials, the value of those only reduces the actual dollar cost of accomplishing the rehab. For example, a cost estimate determines that the actual dollar cost for a contractor to rehab a project would be $10,000. The owner investor of the project is willing and capable of contributing sweat equity to the project, which will reduce the actual dollar amount to be paid to a contractor to $8000.

Fourth, the grantee must establish and implement adequate procedures to ensure that: (a) owners submit proper documentation for the rehabilitation costs, (b) in those cases where invoices are used to support the owner investors cost, the invoices are from the actual materials, suppliers and/or contractors/subcontractors and not merely an invoice from the pre-rehab cost estimate, (c) invoices submitted are for work items actually performed and included in the work write-up, and are within the limits established by the pre-rehab cost estimate and (d) where unpaid invoices serve as the basis for payment to the owner investor, the owner investor subsequently submits, within a reasonable time from project completion, copies of the paid invoices or release of liens from the suppliers to the grantee. These paid invoices will serve to document that the CDBG funds paid to the owner investor were, in turn, paid out by the owner to suppliers and/or contractors.

Task #9 Determine Applicant Selection Process

Procedures

Structures containing units with substandard conditions that are occupied by very-low income families before rehab and units that can be made readily accessible to the handicapped should be given priority. Also, priority should be given to selecting properties in which after-rehab street rents, including utilities are affordable to households at or below 80% of the median household income.

Task #10 Develop Complaint Procedures

Procedures

Grantees should develop appeal or grievances procedures for those applicants that have been rejected. An example of an appeal procedure is an applicant's request, in writing for reconsideration and the reason for the request. A committee (created for this purpose) could then respond to this request. If this committee still determines the applicant to be ineligible, then the local government can hear the appeal and make the final decision.

Task #11 Fair Housing Activities

Procedures

In response to Fair Housing laws, grantees should require rental property owners to implement an Affirmative Marketing Plan until such time the public assistance has been retired.

An Affirmative Marketing Plan should include (1) an adoption of a fair housing policy which states that the owner investor will adhere to all laws which prohibit discrimination in housing and, in an affirmative manner, will market and rent to all individuals regardless of race, color, religion, sex, age, handicap or national origin, (2) the use of the Equal Housing Opportunity logo, slogan or statement when advertising the availability of vacant units in all classified advertising of six column inches or larger and in all other advertising where its inclusion does not significantly increase the cost of advertising. Alternatively, inclusion of the logo in any

classified advertisement where the "Publisher's Notice" appears in the lead of the Classified Advertising Section will not be necessary, (3) notice of availability of vacant units to such agencies that serve minorities and women, (4) maintenance of a nondiscriminatory hiring policy, (5) the displaying of a Fair Housing posting in the city and (6) the displaying of the Equal Opportunity logo where a project sign exists.

Task #12 Utilization of Funds

Procedures

Distribution of Funds

Grantees should implement a loan closing procedure with the applicant. This procedure can consist of reviewing all documents involved in the loan (eg. mortgage and note), receive applicants proof of insurance and explaining the repayment of the loan. Progress payments to contractors for substantial performance may be used.

Reuse of Funds

Grantees should be aware that the reuse of funds is covered in Chapter 9 – Program Income. Program income includes but is not limited to: a) payments of principal and interest on loans made using CDBG funds; b) proceeds from the lease or disposition of real property acquired with CDBG; c) interest earned on CDBG funds held in a revolving loan fund account; and d) interest earned on any program income pending disposition of such income.

All program income earned during the grant period must be expended on the project activities prior to drawing down additional CDBG funds under the grant program.

In keeping with federal regulations and state's program income objective, a grantee must provide the Department with written notification of its intent to propose a use of program income to continue the same activity from which the program income is generated. The same activity, for program income earned under the Housing Development category is any housing activity eligible under Title I of the Community Development Act of 1974 (as amended) that will meet a national CDBG objective. This notice must be made within three months from the date of the Grantee's Notice of Award letter. If the grantee's notice is not submitted to the Department within the three month period, the Department may require the grantee to return all program income to the state.

If the grantee submits its notice within the specified period and elects to use program income to continue the same activity, the grantee will be instructed as to further requirements contained in the state's Housing and Community Development Consolidated Plan which must be met by the grantee in order to retain and use the program income.

Tenant-Occupied Rehabilitation Programs for a Targeted Property

Task #1	Review Laws and Regulations
Task #2	Owner's Responsibilities
Task #3	Determine Eligible Improvements
Task #4	Contracting Requirements
Task #5	Fair Housing Activities
Task #6	Utilization of Funds

Task #1 Review Laws, Regulations and Administrative Requirements

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Refinancing – Loans for refinancing existing indebtedness secured by a property being rehabilitated with CDBG funds, if such refinancing is determined by the grant recipient to be necessary or appropriate to achieve its community development objectives.

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Conservation – Costs required to increase the efficient use of water (for example, water saving faucets and shower heads) and improvements to increase the efficient use of energy in structures through such means as installation of storm windows and doors, insulation, and modification or replacement of heating and cooling equipment.

Barrier removal – Costs to remove material and architural barriers that restrict the mobility and accessibility of elderly and severely disabled persons to buildings and improvements that are eligible for rehabilitation under this category.

Renovation of closed buildings – The conversion of a closed building from one use to another (for example, the renovation of a closed school building to residential use).

Historic preservation – This category also authorizes the costs of preserving or restoring properties of historic significance, whether privately or publicly owned, except that buildings for the general conduct of government may not be restored or preserved with CDBG assistance (see the section on Public Facilities and Improvements concerning this limitation). Historic properties are those sites or structures that are either listed in or eligible to be listed in the National Register of Historic Places, listed in a state or local inventory of historic places, or designated as a state or local landmark or historic district by appropriate law or ordinance.

Lead-based paint hazard evaluation and reduction – The costs of evaluating and treating lead-based paint may be undertaken in the State CDBG program in conjunction with other rehabilitation activities under Section 105(a)(4) of the HCDA or as a separate activity under Section 105(a)(25). In addition to lead hazard abatement work itself, CDBG funds may be used for: testing the blood of children to determine the lead levels, inspecting and testing homes for lead hazards, temporarily relocating families during lead control work, community education and outreach, job training for lead hazard control workers, and collection and analysis of data on lead hazards.

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Conversion: It should be noted that the cost of converting an existing non-residential structure to residential is not generally considered to constitute new construction under the CDBG program and is thus covered under the basic eligibility category of Rehabilitation. However, in some cases, the conversion may involve construction that goes beyond the envelope of the non-residential structure. Where this is the case, the grant recipient should consult with the local HUD field office to ensure that the extent of such construction would not constitute new construction of housing and thus be ineligible for CDBG assistance.

The Department establishes policies on tenant-occupied housing activities via:

- The Housing and Community Development Annual Action Plan
- NAHP Application Guidelines
- CDBG Contracts
- CDBG Administration Manual

Task #2 Owner's Responsibilities

Procedures

Owners must be informed on certain issues. These issues are insurance, taxes, maintenance, historic preservation and various loan conditions. If a property is located within a flood hazard area, the purchase of flood insurance within the loan period is required. If the property is not located in a flood hazard area at the time of the loan closing, the owner should provide satisfactory evidence thereof. Also, adequate hazard insurance covering fire and other hazards must be purchased in at least the amount of the loan provided with acceptable loss payee clauses in favor of the grantee. Owners should provide information of the purchasing of insurance to the grantee. Further, procedures to verify that the owner is paying taxes and insurance should be developed.

Grantees should develop processes that specify upkeep and maintenance of the property. The property should be adequately maintained during the life of the loan. At a minimum, the Department's Rehab Standards should be used as guidelines for such maintenance.

Grantees should be aware of the Section 106 of the 1966 Historic Preservation Act. This law provides that CDBG projects that are involved with expansion, excavation, demolition or housing rehab of existing buildings or excavation of sites shall be reviewed by the Nebraska Historical Society. This is in accordance with Section 106 of the Historic Preservation Act of 1966. The Nebraska Historical Society requires black and white photographs of the existing building which is to be remodeled, as well as photos of property and buildings to be acquired to accommodate the expansion, and general views of the area in which the project is planned. It is also necessary to provide a map that indicates the project site and location of photos, and the legal description of all affected property. If a Grantee will be developing a multi-unit project, it should contact the Nebraska State Historic Preservation Officer (SHPO).

Task #3 Determine Eligible Improvements

Procedures

Grantees should provide guidelines that specify the rehabilitation standards which the project needs to be meet. Grantees must use at a minimum the Department's Rehab Standards. Local housing codes or local occupancy codes (if these local codes exist). One should note that local codes usually consist of higher standards than the Department's. As a result, more money is needed to make improvements on units under local codes. The adoption of these standards is based on local decisions. Nevertheless, these standards must include limitations the elimination of lead-based paint hazards. An example of eligible improvements standards includes limitations of eligible rehab activities. Eligible rehabilitation activities are limited to correcting substandard conditions, making essential improvements necessary to provide access to the physically disabled. The final determination of all rehab activities and the use of program funds can be made by the local lender and administrative inspector. Also, these standards reveal that program funds cannot be used for improvements covered by an existing warranty/guarantee from a contractor, supplier and/or manufacturer. Proposed improvements to correct or replace warranted work, materials or equipment will only be eligible if the applicant can demonstrate and document that no reasonable recourse to remedy defects in the workmanship, materials or equipment is available. All improvements funded by a local multi-unit project must be physically attached to the property and permanent in nature (eg. funding for improvements to mobile homes and trailers is not taxed as real property). In addition, grantee should be aware that multi-unit projects may be subject to zoning laws.

Task #4 Contracting Requirements

Procedures

Grantees should make owners aware of the Davis-Bacon Act. CDBG multi-unit projects with eight or more units will be subject to the Davis-Bacon Act. This act provides that contracts in excess of $2000 to which the United States is party for the construction, alteration, and/or repair, including painting and decorating, of public buildings or public works, which involve the employment of laborers and/or mechanics, shall contain provisions with respect to minimum wages, fringe benefits, payments without deductions or rebates, withholding funds from contractors to ensure compliance with the wage provisions, and termination of the contract or debarment for failure to adhere to the required provisions.

Grantees must provide guidelines specifying contract procedures involved with the construction of multi-unit projects. Specifically, these construction contracting requirements should include information about compliance procedures, wage rates, bid documents, verifying of contractors, pre-construction conferences, notice to proceed, compliance/progress monitoring and progress payments.

Compliance Procedures

Grantees should provide guidelines to developers for the development of procedures for securing contractors and monitoring compliance with various federal Equal Opportunity requirements.

Grantees should include all applicable Equal Opportunity language in bid specification and contract documents as well as obtain required documentation and monitor compliance. These Equal Opportunity provisions include Title VII of the Civil Rights Act of 1984, Section 109 of Title I of the HCDA of 1974, Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act of 1973, and Executive Order 11246. Common deficiencies in developing compliance procedures are contracts that do not contain all applicable Equal Opportunity provisions and incomplete Equal Opportunity Compliance Files.

Bid Documents

Grantees should provide guidelines to developers specifying the preparation of Labor Standards provisions for inclusion in bid documents. See Chapter 10 – Construction & Labor Standards for further guidance.

Verifying Contractor

Prior to award of the contract Grantees should contact the Department to insure the proposed prime contractor is not listed on federal lists of debarred, suspended or ineligible contractors. This contact should be done by telephone or letter, If it is done by telephone, the developer should note the date of the telephone call, the person contacted, and the outcome of the call. Letter or telephone documentation should be placed in the project file.

Task #5 Fair Housing Activities

Procedures

In response to Fair Housing laws, grantees should require developers to implement an Affirmative Marketing Plan until such time the public assistance has been retired. An Affirmative Marketing Plan should include (1) an adoption of a fair housing policy which states that the owner investor will adhere to all laws which prohibit discrimination in housing and, in an affirmative manner, will market and rent to all individuals regardless of race, color, religion, sex, age, handicap or national origin, (2) the use of the Equal Housing Opportunity logo, slogan or statement when advertising the availability of vacant units in all classified advertising of six column inches or larger and in all other advertising where its inclusion does not significantly increase the cost of advertising. Alternatively, inclusion of the logo in any classified advertisement where the "Publisher's Notice" appears in the lead of the Classified Advertising Section will not be necessary, (3) notice of availability of vacant units to such agencies that serve minorities and women, (4) maintenance of a non- discriminatory hiring policy, (5) the displaying of a Fair Housing posting in the city and (6) the displaying of the Equal Opportunity logo where a project sign exists.

Task #6 Utilization of Funds

Procedures

Distribution Of Funds

Grantees should implement a loan closing procedure with the applicant. This procedure can consist of reviewing all documents involved in the loan (eg. mortgage and note), receive applicant's proof of insurance and explaining the repayment of the loan. Progress payments to contractors for substantial performance may be used.

Reuse Of Funds

Grantees should be aware that the reuse of funds is subject to Chapter 9 – Program Income. Program income includes but is not limited to : a) payments of principal and interest on loans made using CDBG funds; b) proceeds from the lease or disposition of real property acquired with CDBG; c) interest earned on CDBG funds held in a revolving loan fund account; and d) interest earned on any program income pending disposition of such income.

All program income earned during the grant period must be expended on the project activities prior to drawing down additional CDBG funds under the grant. Program income earned after the completion of the grant activities is subject to the following requirement.

In keeping with federal regulations and state's program income objective, a grantee must provide the Department with written notification of its intent to propose a use of program income to continue the same activity from which the program income is generated. The same activity, for program income earned under the Housing Development category is any housing activity eligible under Title I of the Community Development Act of 1974 (as amended) that will meet a national CDBG objective. This notice must be made within three months from the date of the Grantee's Notice of Award letter, If the grantee's notice is not submitted to the Department within the three month period, the Department may require the grantee to return all program income to the state.

If the grantee submits its notice within the specified period and elects to use program income to continue the same activity, the grantee will be instructed as to further requirements contained in the state's Housing and Community Development Consolidated Plan which must be met by the grantee in order to retain and use the program income.

Homeownership Programs

Task #1	Review Laws and Regulations
Task #2	Determine Eligible Applicants
Task #3	Determine Eligible Property
Task #4	Homebuyer's Responsibilities

Task #1 Review Laws, Regulations and Administrative Requirements

Caution: following are some applicable laws, regulations and administrative requirements. As related to specific areas the most restrictive applies. *For example, HUD's State Guide to National Objectives and Eligible Activities indicates that closing costs associated with home purchase is an eligible type of assistance, but the NAHP application guidelines may indicate this as an ineligible expense. In this case the NAHP application guidelines would apply.*

- Title IV of the Lead-Based Paint Poisoning Prevention Act and regulations at 24 C.F.R. Part 35.
- Title I of the Housing and Community Development Act of 1974, as amended ("Act")
- 24 C.F.R. Part 570
- HUD's State Guide to National Objectives and Eligible Activities

HUD provides some further guidance on eligible housing activities via interpretation of the Act. The following is from HUD's State Guide to National Objectives and Eligible Activities.

Homeownership Assistance

Section 105 (a)(24) of the Act

Activities assisted under this title may include only -

Provision of direct assistance to facilitate and expand homeownership among persons of low- and moderate-income by using such assistance to –

(A) subsidize interest rates and mortgage principal amounts for low- and moderate-income homebuyers;

(B) finance the acquisition by low- and moderate-income homebuyers of housing that is occupied by the homebuyers;

(D) provide downpayment required from low- and moderate-income homebuyer; or

(E) pay reasonable closing costs (normally associated with the purchase of a home) incurred by low- and moderate-income homebuyers;

Eligible Activities

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

- Subsidize interest rates and mortgage principle amounts, including making a grant to reduce the effective interest rate on the amount needed by the purchaser to an affordable level. (The funds granted would have to be applied towards the purchase price.) Alternatively, the grant recipient/subrecipient could make a subordinate loan for an amount of funds the payments on which, together with that required under the first mortgage, would be affordable to the purchaser.
- Finance the cost of acquiring property already occupied by the household at terms needed to make the purchase affordable.
- Pay all or part of the premium (on behalf of the purchaser) for mortgage insurance required up-front by a private mortgagee. (This would include the cost for private mortgage insurance.)
- Pay any or all of the reasonable closing costs associated with the home purchase on behalf of the purchaser.
- Pay the down payment required by the mortgagee for the purchase on behalf of the purchaser.

Note especially that the use of funds under this category is specifically limited to assisting low- and moderate-income households.

Complying with National Objectives – Homeownership Assistance

Because the use of CDBG funds authorized under this category is limited to assisting low- and moderate-income households, any such use of funds must qualify under the national objective of benefit to low- and moderate-income persons-housing activities; no further consideration needs to be given here.

The Department's policies concerning homeownership assistance activities are described via:

- The Housing and Community Development Annual Action Plan
- NAHP Application Guidelines
- CDBG Contracts
- CDBG Administration Manual

Task #2 Determine Eligible Applicants

Definition
In order to be eligible, an applicant must be income-qualified, credit-worthy and a homebuyer.

Procedures
Grantees and nonprofit organizations must develop guidelines regarding conflict of interest. For example, no member of the local government or nonprofit organization who exercises decision-making functions in the implementation of a homeownership program shall benefit from this program. Also, a statement of disclosure may be required by an applicant.

Applicants receiving assistance under the homeownership program should primarily consist of low-income persons. Low-income persons are defined as multi- or single-person families having incomes equal to or less than the income limits for their resident county. The income limits as published by HUD are determined for each Nebraska county on the higher of either: 80% of the median income of the county, or 80% of the median income of the entire non-metropolitan area of the state. This income is anticipated annual income.

Task #3 Determine Eligible Property

Definition
The property can either be a newly constructed unit or an existing "for sale" property. Existing sales property must meet Section 8 standards. No properly or portion thereof assisted through the local program may be retained for rental purposes. In some cases, CDBG money may be used for repairs of existing property within the homeownership program. However, grantees and nonprofit organizations should insure that this CDBG money is also used in some way to reduce the buyer's mortgage.

Task #4 Homebuyer's Responsibilities

Definition
A homebuyer must understand such issues as insurance, taxes, maintenance and homeowner counseling. If a property is located within a flood hazard area, the purchase of flood insurance within the loan period is required. If the property is not located in a flood hazard area at the time of the loan closing, the owner-occupant should provide satisfactory evidence thereof. Also, adequate hazard insurance covering fire and other hazards will be required for the full replacement value of the house. Local governments and nonprofit organizations should develop procedures to verify that the homeowner is paying taxes and insurance annually. Homeowner counseling for first-time homebuyers is often essential in homeownership programs

Procedures
Guidelines should specify upkeep and maintenance standards of the property expected of the homeowner. The property should be adequately maintained during the life of the loan. At a minimum, Section 8 HUD Housing Quality Standards should be used as guidelines for such maintenance.

Applicant Selection
Applicants can be chosen on a first-come, first-serve basis or a priority system may be developed. Grantees and nonprofit organizations should use their discretion in developing a priority system.

Complaint Procedures
The development of appeal or grievances procedures for those applicants that have been rejected is important in the implementation of homeownership programs. An example of an appeal procedure is an applicant's request, in writing for reconsideration and 'the reason for the request. A committee (created for this purpose) could then respond to this request and obtain more information from the lender or insurance underwriter if the denial is from them.

Fair Housing
The lenders, grantees and other participants in the homeownership program must adhere to laws which prohibit discrimination in housing. An application selection system must not discriminate against individuals or families based on race, color, religion, sex, age, handicap or national origin. A special outreach effort should be implemented to attract minorities and other protected classes in the homebuyer pool to join the homeownership program.

Distribution Of Funds
Generally, the grantee and the first mortgage lender conduct a loan closing with the homebuyer. This procedure consists of reviewing all documents involved in the loan (eg. mortgages or notes). Normally, a local lender will be responsible for scheduling both the permanent and homeownership program loan closings with the borrower, participating agency and appointed attorney. The lender shall facilitate and coordinate the closing process with all participants. The Right of Rescission to the borrower will be forwarded by the lender within a designated time period (eg. 4 days). Once the borrower receives the Notice of Right of Rescission regarding the homeownership program loan, the attorney will prepare and have the homeownership program borrower execute the promissory note and deed of trust. The attorney will then file the deed of trust and promissory note at the Registrar of Deeds Office. During the homeownership program loan close-out, the local lender shall transmit a copy of the borrower's entire application and closing documents, including income to the nonprofit corporation. The nonprofit organization shall maintain and keep all applications, as well as all other required documents, records and other evidence in conformance with CDBG regulations.

Reuse Of Funds
Grantees should be aware that the reuse of funds is subject to requirements stated in Chapter 9 – Program Income. Program income includes but is not limited to a) payments of principal and interest on loans made using CDBG funds; b) proceeds from the lease or disposition of real

property acquired with CDBG; c) interest earned on CDBG funds held in a revolving loan fund account; and d) interest earned on any program income pending disposition of such income.

All program income earned during the grant period must be expended on the project activities prior to drawing down additional CDBG funds under the grant. Program income earned after the completion of the grant activities is subject to the following requirement.

In keeping with federal regulations and state's program income objective, a grantee must provide the Department with written notification of its intent to use program income to continue the same activity from which the program income is generated. The same activity, for program income earned under the Housing Development category is any housing activity eligible under Title I of the Community Development Act of 1974 (as amended) that will meet a national CDBG objective. This notice must be made within three months from the date of the grantee's Notice of Award letter. If the grantee's notice is not submitted to the Department within the three month period, the Department may require the grantee to return all program income to the state.

If the grantee submits its notice within the specified period and elects to use program income to continue the same activity, the grantee will be instructed as to further requirements contained in the state's Consolidated Plan for Housing and Community Development which must be met by the grantee in order to retain and use the program income.

ATTACHMENT 1

MINIMUM STANDARDS FOR REHABILITATION
Nebraska Department of Economic Development

MINIMUM STANDARDS FOR BASIC EQUIPMENT AND FACILITIES

1. KITCHENS - Every dwelling unit shall have a kitchen room or kitchenette equipped with an approved kitchen sink, properly connected to both hot and cold running water lines, under pressure, and maintained in working order.

2. TOILET ROOM REQUIRED - Every dwelling unit, except as otherwise permitted for rooming houses, shall contain a room which is equipped with a flush water closet and a properly installed lavatory. Said lavatory shall be properly connected to both hot and cold running water, under pressure, and shall be maintained in working order.

   Said flush water closet shall be properly connected to the water supply, under pressure, and shall be maintained in working order.

3. SHARED TOILET FACILITIES - Shared toilet rooms shall be equipped with a flush water closet and a lavatory basin and shall be connected and maintained as provided in Section 2 above. In rooming house type structures, at least 1 toilet and 1 lavatory basin, properly connected as set forth above, shall be supplied for each 8 persons or fractions thereof residing within a rooming house, including members of the operator's family whenever they share the use of said facilities, provided that in rooming houses where rooms are let only to males, flush urinals may be substituted for not more than l/2 of the required number of toilets.

4. BATH REQUIRED - Every dwelling unit shall contain a bathtub and/or shower.

   Potable water supply piping, water discharge outlets, backflow prevention devices or similar equipment shall not be so located as to make possible their submergence in any contaminated or polluted liquid or substance.

   Said bathtub and/or shower may be in the same room as the flush water closet and lavatory, or said bathtub and/or shower may be in a separate room. In all cases, these facilities shall be properly connected to both hot and cold running water lines, under pressure, and shall be maintained in working order.

   In rooming house type structures, at least 1 bathtub and/or shower, properly connected as set forth above, shall be supplied for each 8 persons or fraction thereof, residing within a rooming house, including members of the operator's family whenever they share the use of said facilities.

5. PRIVACY IN ROOM CONTAINING TOILET AND BATH - Every toilet and every bath shall be contained in a room or within separate rooms which affords privacy to a person within said room or rooms.

   Toilets and bathrooms shall have doors with a privacy type lock and such doors, locks and hardware shall be maintained in working order.

6. LOCATION OF COMMUNAL TOILETS AND BATHS - Every communal bath required to be provided in accordance with other provisions, shall be located within a room or rooms accessible to the occupants of each dwelling unit sharing such facilities, without going through a dwelling unit of another occupant and without going outside of the dwelling.

In rooming houses, said room or rooms shall be located on the same floor of the dwelling as, or on the floor immediately above or immediately below, the dwelling unit whose occupants share the use of such facilities.

7. HOT AND COLD WATER LINES TO BATH AND KITCHEN - Every dwelling shall have supplied water-heating facilities which are properly installed; are maintained in working condition and free of leaks; are properly connected to hot water lines required, and are capable of heating water to be drawn for every bath as well as general usage.

   Hot water storage associated with water heating facilities shall be not less than the following minimum capacities:

a.	1 dwelling unit	30 gallons
b.	2 dwelling units	40 gallons
c.	3 or more dwelling units and rooming houses	50 gallons or more

   Sizes and/or number of water heaters to be based upon the number of units served. No water heaters shall be allowed in bathrooms or closets. All hot water heaters shall be properly vented and sealed and shall be equipped with a pressure relief valve and drip leg.

   The local rehabilitation division and/or building inspection division may adjust the above-required capacities upward or downward based on the type and recovery time of the hot water system.

8. CONNECTION OF SANITARY FACILITIES TO WATER AND SEWER SYSTEM - Every kitchen sink, toilet, lavatory basin and bath shall be maintained in working condition and be properly connected to an approved water and sewer system.

9. EXITS - Every exit from every dwelling and/or dwelling unit shall comply with the following requirements:

   a. It shall be kept in a state of maintenance and repair;
   b. It shall be unobstructed at all times;
   c. All stairways and steps of 2 or more risers shall have at least 1 handrail, and all stairways and steps which are 5 feet or more in width, or, which are open on both sides shall have a handrail on each side;
   d. Every dwelling unit shall have 2 independent ways of egress;
   e. All handrails shall be not less than 30" vertically above the nose of the stair treads and not less than 36" above the stairway platform;
   f. All balconies and platforms which are 30" or more above grade, shall have protective railing not less than 36" in height above the balcony or platform level;
   g. All multiple dwellings, 1 & 2 family residences exempted, shall have a second exit stairway or approved fire escape available to all occupants from the second floor and above all such structures;
   h. All stairs and steps shall have a riser height of not more than 8" and a tread width of not less than 9". This requirement may be waived on the local level if in an existing structure, it would be impossible or cost prohibitive to meet this requirement. In such cases, new stairs could be put in having the same rise and run as the old;
   i. In basement units where one means of an exit shall be a window, such window shall open directly to the street or yard, shall be at least l2 square feet in area, clear of sash frame and shall be easily openable.

10. SMOKE DETECTORS - All residential structures shall have U.L. approved battery operated smoke detectors properly installed and located adjacent to bedroom areas.

If there are bedrooms on more than one floor of a structure, each floor shall have at least one U.L. approved battery operated smoke detector, properly installed and located adjacent to said bedrooms.

Smoke detectors which are wired directly into the electrical system may be used at local option.

All installed smoke detectors shall be maintained in operating condition.

MINIMUM STANDARDS FOR LIGHT, VENTILATION AND HEATING

1. REQUIRED WINDOW AREA - Every habitable room, provided such rooms are adequately lighted, shall have at least one open air space. The minimum total window area, measured between stops, for every habitable room shall be as follows:

   a. 1/12 of the floor area if two or more separate windows exist, or;
   b. 1/10 of the floor area if only one window exists;
   c. A minimum of 12 square feet of window area is required in habitable rooms other than kitchens;
   d. A kitchen may pass without a window area,' provided there is a mechanical means of ventilation, maintained in working order.

   Whenever the only window in a room is a skylight type window in the top of the room, the total window area of such skylight shall be equal to at least 15% of the total floor area of such room. Skylight type windows, if less than 15% of the total floor area shall be increased to 15% of the total floor area, unless another window is to be installed which will provide adequate light and ventilation.

2. ADEQUATE VENTILATION REQUIRED - Every habitable room shall have at least one window or skylight which can easily be opened, or other such device as will adequately ventilate the room.

3. LIGHT AND VENTILATION REQUIREMENTS FOR BATHROOMS, TOILET ROOMS AND KITCHENS - Every bathroom, toilet room and kitchen shall comply with the light and ventilation requirements for habitable rooms contained above, except that no window shall be required in adequately ventilated bathrooms, toilet rooms or kitchens equipped with a ventilation system which will completely change the air.

4. ELECTRIC OUTLETS AND SERVICE REQUIRED - Where there is suitable electricity available from supply lines which are not more than 300 feet away from a dwelling, including all existing dwellings now supplied with electrical services, every habitable room within such dwelling shall contain, at a minimum, at least two separate and remote wall type electric convenience outlets. Habitable rooms over 120 square feet shall contain, at a minimum, three separate and remote wall type electric convenience outlets. Temporary wiring, extension or zip cords shall not be used as permanent wiring.

   Every habitable room shall have at least one ceiling or wall type electric light fixture, controlled by a wall switch, or a wall type grounded electric convenience outlet controlled by a remote switch.

   Every toilet room, bathroom, laundry, furnace room, and hallway (hallway where applicable) shall contain at least 1 supplied ceiling or wall type electric light fixture, controlled by a wall switch, and at least one wall type grounded electric convenience outlet. Wall type convenience outlets used in bathrooms shall be the GFI type.

   Every kitchen shall be wired to meet the requirements of the N.E.C., based on the size and layout of each individual kitchen.

   All heavy duty appliances, i.e., window air conditioners, freezers, electric stoves, washers, dryers, etc., shall be supplied with its own proper outlets on a separate circuit(s).

   Basement and cellars shall be wired for a minimum of one wall type grounded electric convenience outlet for each 200 square feet or fraction thereof, of area.

Receptacle convenience outlets installed in or on open porches, breezeways, garages or utility rooms shall be of the GFI type.

All wall and/or ceiling type lighting fixtures shall be controlled by a wall switch, except that porcelain type fixtures as used in cellars and/or attics may be controlled with a proper pull chain. All pendant type lighting fixture shall be removed and/or replaced.

All broken and/or missing switch and receptacle plates shall be replaced.

All outlets and fixtures shall be properly installed, shall be maintained in working condition and shall be connected to the source of electric power in a proper manner and in accordance with the electrical code of the city and/or the N.E.C., as applicable.

Minimum electrical service for each dwelling and/or dwelling unit shall be 100 mps, or as adjusted and approved, in writing, by the electrical inspector of the city.

5. HEATING FACILITIES - All heating facilities shall be properly installed, be maintained in working condition and be capable of adequately heating all habitable rooms, and toilet rooms contained therein, or intended for use by the occupants. Every supplied central heating system shall comply with all of the following requirements:

   a. The central heating unit shall be safe and in good working condition;
   b. Every heat duct, steam pipe and hot water pipe shall be free of leaks and shall function so that an adequate amount of heat is delivered where intended;
   c. Every seal between any of the sections of a hot air furnace shall be air-tight so noxious gases and fumes will not escape into the heat ducts;

   d. If there is no existing flue liner, a double-walled metalbestos liner shall be installed. The liner shall meet or exceed the requirements of the local building code and shall be installed according to the same;
   e. Whenever an existing structure has as its source of central heat the old octopus-type conversion furnace, it is highly recommended that the unit be inspected by a qualified furnace inspector to determine if the unit is still safe, free from carbon-monoxide leakage and capable of supplying the required heat as set forth above.
   f. When replacing heating, venting, and air conditioning systems, all supply and return pipes and ducts should be insulated to the following specifications when they run through unconditioned spaces: duct insulation must be R-4 or greater and pipe insulation must be R-2 or greater.

   Every supplied space heater shall comply with all of the following requirements:

   g. No space heater burning solid, liquid or gaseous fuels shall be of a portable type;
   h. Every space heater burning solid, liquid or gaseous fuels shall be properly vented to a chimney or duct leading to outdoor space and shall be so installed as to provide proper draft;
   i. Every fuel burning space heater shall have a fire-resistant panel between it and the floor or floor covering;
   j. Whenever a space heater is located within 2 feet of a wall, said wall shall be protected with insulation sufficient to prevent overheating of the wall;
   k. Every space heater smoke pipe shall be equipped with approved type thimbles or guards, properly constructed of non-flammable material, at the point where the pipe goes through any wall, ceiling or partition.

   Each dwelling and/or dwelling unit shall be supplied with its own heating systems. Local option may provide for one central forced air system to serve no more than two separate dwelling units.

   Any dwelling and/or dwelling unit, having as its only source of heat, space heaters of floor furnaces, shall have such units rep aced with a proper central type heating unit.

6. LIGHTING OF PUBLIC WALLS AND STAIRWAYS
   a. Public halls and stairways in every dwelling containing 2 to 4 dwelling units, shall be provided with convenient wall-mounted light switches controlling an adequate lighting system that will provide at least 2 foot candles of illumination on all parts thereof and which may be turned on when needed. An emergency circuit is not required for this lighting.

   b. Public halls and stairways in every dwelling containing five or more dwelling units shall be lighted at all times with an artificial lighting system. Said system shall provide at least 2 foot candles of illumination on all parts thereof at all times by means of properly located electric light fixtures, provided that such artificial lighting may be omitted from sunrise to sunset where an adequate natural lighting system is provided.

Wherever the occupancy of the building exceeds 100 persons, the artificial lighting system as required herein, shall be on an emergency circuit.

   c. All basements and cellars shall be provided with an adequate lighting system which may be turned on when needed.

   d. The required intensity of illumination shall apply to both natural and artificial lighting.

7. SCREENS REQUIRED - For the protection against flies, mosquitos and other insects, every door opening directly from a dwelling unit or rooming unit, to the outdoor space, shall be supplied with a screen covering at least 50% of the window area of the door, and said door shall be equipped with a self-closing device.

   Every window or other opening to outdoor space used or intended to be used for ventilation, shall likewise be supplied with screens covering all of the window areas required for ventilation. The material used for all such screens shall be not less than 16 mesh per inch, and shall be properly installed, maintained and repaired to prevent the entrance of flies, mosquitos or other insects.

   Half-screens on windows may be allowed, provided they are properly installed and are bug and insect tight.

8. SCREENS FOR BASEMENT AND CELLAR WINDOWS - Every dwelling unit having basement or cellar windows which are openable, shall be screened to prevent the entry of insects and rodents. The screening material shall be a heavy galvanized wire of not larger than l/4 inch mesh, or other device as will effectively prevent their entrance.

9. SUPPLIED HEATING TO DWELLINGS OR PARTS THEREOF - Every owner or operator of any dwelling who rents, leases or lets for human habitation any dwelling unit contained within such dwelling, on terms either expressed or implied, shall supply or furnish heat to the occupants.

   Whenever a dwelling is heated by means of a furnace, boiler or other heating apparatus under the control of the owner or the operator, in the absence of a written contract or agreement to the contrary, said owner and/or operator shall be deemed to have contracted, undertaken, or bound himself to furnish heat in accordance with the provisions of this section to every dwelling unit which contains radiators, furnace heat duct outlets or other heating apparatus outlets, and to every comAluna1 bathroom and communal toilet room located within such dwelling.

SUPPLIED HEATING TO DWELLINGS OR PARTS THEREOF - (Continued)
   a. Every central heating unit, space heater, water heater and cooking appliance shall be located and installed in such a manner as to afford protection against involvement of egress facilities or egress routes in the event of uncontrolled fires in the structure;
   b. Every fuel burning heating unit or water heater shall be effectively vented in a safe manner to a chimney or duct leading to the exterior of the building. The chimney duct and vents shall be of

such a design as to assure proper draft, shall be adequately supported and shall be kept clean and in a state of maintenance and repair;

c. No fuel burning furnace shall be located in any sleeping room or bathroom unless provided with adequate ducting for air supply from the exterior, and the combustion chamber for such heating unit shall be sealed from the room in an airtight manner. Water heaters are prohibited in bathrooms and sleeping rooms.
d. Every steam or hot water boiler and every water heater shall be protected against overheating by appropriate temperature and pressure limit controls;
e. Every gaseous or liquid fuel burning heating unit and water heater shall be equipped with electronic ignition or with a pilot light and an automatic control to interrupt the flow of fuel to the unit in the event of failure of the ignition device. All such heating units with plenum have a limit control to prevent overheating.

10. ENERGY CONSERVATION - For protection against the elements and cold, every door opening directly from a dwelling unit or rooming unit to outdoor space should (not mandatory but highly recommended) be supplied with storm doors with a self-closing device; and every window with openings to outdoor space should (not mandatory but highly recommended) be supplied with storm windows, except where such other device for protection against the elements and cold is provided, such as insulating glass and insulating metal exterior doors.

    Adding insulation or installing storm windows and doors is required when: 1) the structural element where the energy improvement would be made (for example, wall or roof) is replaced or is accessible (or becomes accessible through the rehabilitation, for example, opening wall cavities for drywalling), and 2) the improvement is cost effective.

    Insulation should be added to that portion of the building being rehabilitated. In addition, insulation should be added in ceilings, floors, and walls when it is determined to be cost effective.

    Weatherstripping should be applied to the moving parts of doors and windows.

    Caulking should be applied to all fixed joints to close off openings to the outside to include caulking around:
    - windows and doors where frames meet
    - between window sills and siding
    - between plates and foundation
    - around all holes for pipes, ducts, or electrical conduits through outside walls
    - around all holes through a wall separating heated and unheated spaces such as attached garages, storerooms, or attics
    - between unheated porches and the main body of the house
    - where the chimney or masonry meets the siding
    - around the outside of water faucets

    Standards for Cost Effective Energy Conservation are published in the Federal Register, May 10, 1979.

MINIMUM STANDARDS FOR MAINTENANCE

1. MAINTENANCE OF FOUNDATIONS, EXTERIOR WALLS, ROOFS, SOFFITS AND FASCIA - Every foundation, exterior wall, roof, soffit, and fascia shall be weather-tight, rodent-proof and insect-proof, and shall be kept in a state of maintenance and repair.

    All exterior surface material shall be protected by lead-free paint or other protective coating in accordance with acceptable standards. Exception shall be all types of exterior materials acceptable to weatherizing without deterioration. Siding materials shall be kept in repair.

2. MAINTENANCE OF INTERIOR WALLS, FLOORS, CEILINGS,, DOORS AND, WINDOWS – Every interior partition, wall floor, ceiling, door and window shall be kept in a state of maintenance and repair, and shall be maintained so as to be capable of being kept in a clean and sanitary condition.

   In houses built before 1950, chipping, peeling, flaking, cracking or other defects in previously painted surfaces should be scraped and brushed and new lead-free paint applied.

   Cracked walls should be replastered before new paint is applied.

   All interior doors shall be capable of affording the privacy for which they were intended.

   Basements or cellars shall have hard surfaced floors consisting of masonry or concrete material.

3. RAINWATER DRAINAGE FROM ROOF - All rainwater shall be so drained and conveyed from every roof so as not to cause dampness in the walls, ceilings or floors of any habitable room or of any bathroom or toilet room or any other type of room therein. All rainwater drainage devices such as gutters and downspouts shall be kept in a state of maintenance and repair. Ground areas around buildings shall be sloped away from foundation walls to eliminate low areas where standing water may collect.

   All structures shall have properly installed and maintained gutters and downspouts. When necessary, splash blocks shall be installed or repaired to divert water away from foundations.

4. MAINTENANCE OF WINDOWS, EXTERIOR DOORS AND BASEMENT OR CELLAR HATCHWAYS - Every front, rear, side and basement or cellar door shall 'be not less than 2'4" in width and-not less than 6' 6" in height. In existing structures, if replacement to meet these requirements would be impossible or cost-prohibitive, said requirement may be waived by the local rehabilitation department and/or inspection department.

   Every window, exterior door and basement or cellar hatchway shall be substantially tight and rodent-proof, and kept in a state of maintenance and repair. In addition, the following requirements shall be met:

   a. All exterior doors to the outside or to a common public hall shall be equipped with adequate security locks. All windows accessible from ground level without the aid of mechanical devices, shall have a security device;
   b. Every window sash shall be fully equipped with glass windowpanes which are without cracks or holes, and sail panes shall be secured with an adequate amount of putty. Said putty shall not be cracked, broken or missing;
   c. Every window sash shall be in good condition and shall fit tightly within its frame;
   d. Every window, other than a fixed window, shall be capable of being easily opened and shall be held in position by window hardware;
   e. Every exterior and interior door, door hinge and door latch and/or lock shall be maintained in good working condition;
   f. Every exterior and interior door, when closed, shall fit well within its frame;
   g. Every window, door and frame shall be constructed and maintained in such relation to the adjacent wall construction, so as to exclude rain as completely as possible and to subsequently exclude wind from entering the dwelling or structure;
   h. Every basement or cellar hatchway shall be so constructed and maintained as to prevent the entrance of rodents and rain and surface drainage water into the dwelling or structure.

5. MAINTENANCE OF STAIRWAYS AND PORCHES - Every interior and exterior stairway, every porch and every appurtenance thereto shall be so constructed as to be safe to use and capable of supporting the load that normal use may cause to be placed thereon; and shall be kept in sound condition and in a state of maintenance and repair.

6. MAINTENANCE OF SUPPLIED PLUMBING FIXTURES - Every supplied plumbing fixture and water and waste pipe shall be properly installed in accordance with the plumbing code of the city and maintained in safe, sanitary working condition, free from leaks, defects and obstructions.

7. MAINTENANCE OF BATHROOM, TOILET ROOM, KITCHEN AND UTILITY ROOM FLOORS - Every bathroom, toilet room; kitchen and utility room floor surface shall be constructed and maintained so as to be impervious to water and so as to permit such floors to be easily kept in a clean and sanitary condition.

   Indoor-outdoor type carpeting, when properly installed, shall be allowed in bathrooms, toilet rooms, kitchens and utility rooms.

8. MAINTENANCE OF CHIMNEYS AND SMOKE PIPES - Every chimney and every supplied smoke PIPE shall be adequately supported, clean and kept in a state of maintenance and repair.

9. SAFE AND EFFECTIVE FUNCTIONING OF SUPPLIED FACILITIES - Every supplied facility, piece of equipment or utility which is required under this section, shall be constructed or installed, so it will function properly and shall be maintained in working condition.

MINIMUM SPACE, USE AND LOCATION REQUIREMENTS

1. Wherever possible, no habitable room in a dwelling or dwelling unit shall have a ceiling height of less than 7' 6". At least 1/2 of the floor area of every habitable room located above the first floor shall have a ceiling height of 7' 6", and the floor area of that part of any room where the ceiling height is less than 5' shall be considered as part of the floor area in computing the total floor area of the room for the purpose of determining maximum floor area.

   Ceiling heights of a minimum of at least 7' have been uniformly accepted, and no change is required to increase height because of the cost involved. Where the ceiling height of a habitable room is less than 7', and it would be cost-prohibitive to raise said ceiling, the requirement may be waived by the local board of appeals designated the authority to grant such requests for waivers.

   A ceiling height of a minimum of 7' is acceptable in bathrooms, toilet rooms and hallways.

   All rooms, except kitchens and/or kitchenettes and baths, shall have a minimum width of 7'.

2. MAINTENANCE OF SLEEPING, BATH AND TOILET ROOMS - No dwelling or dwelling unit containing two or more sleeping rooms shall have such room arrangement that access to a bathroom or toilet-roan intended for use by the occupants can be had only by going through another sleeping room or a bathroom or toilet room.

3. CELLAR SPACE NOT HABITABLE - No cellar space shall be converted or rehabilitated as habitable room or dwelling unit.

4. REQUIREMENTS FOR HABITABLE BASEMENT SPACE - No basement space shall be used as a habitable room or dwelling unit unless all of the following requirements are met:

   a. The floors and walls are of waterproof, damp-proof construction;
   b. The total window area in each room is equal to at least the minimum window area sizes as required in previous sections of this document;
   c. Such required minimum window area is located entirely above the grade of ground adjoining such window area, or an adequate window well of sufficient size as to allow escape of inhabitants residing within such basement apartment, has been constructed;
   d. The total openable window area in each room is equal to at least the minimum as required in previous sections of this document;

e. Such basement dwelling unit or rooming unit shall be entirely sealed off from the central heating plant with a one hour fire separation;
f. Such basement dwelling unit or rooming unit provides two means of exit, with at least one means of opening directly to the outside;
g. Such basement dwelling unit or rooming unit has a ceiling height of atleast 7';
h. Such basement dwelling unit or rooming unit has its own bathroom, consisting of a tub and/or shower, lavatory and flush water closet.

5. OCCUPANTS TO RAVE ACCESS TO SANITARY FACILITIES - Every occupant of every dwelling unit shall have unrestricted access to a toil et, to a bath, and to a kitchen sink and lavatory basin located within that dwelling.

6. MINIMUM STORAGE AND COUNTER AREAS - Each dwelling unit shall have at least one closet with a minimum of 6 square feet of floor area and a minimum height of 6 feet, located within the dwelling unit. Dwelling units with two or more bedrooms shall have a storage floor area of at least 4 square feet per bedroom. This storage requirement does not necessarily have to be located in the bedrooms.

MAINTENANCE OF NON-DWELLING STRUCTURES, FENCES AND PREMISES

1. MAINTENANCE OF NON-DWELLING STRUCTURES - Every foundation wall, roof, window, door, hatchway and every other entryway of every non-dwelling structure shall be so maintained as to prevent the structure from becoming a harborage for rodents, vermin and insects and shall be kept in a state of maintenance and repair.

2. PROTECTION OF EXTERIOR WOOD SURFACES - All exterior wood surfaces of all non-dwelling structures shall be properly protected from the elements against decay and rot by lead-free paint or other approved protective coating.

3. MAINTENANCE OF FENCES - Every fence shall be kept in a state of maintenance and repair or shall be removed. Wood materials which are not decay resistant shall be protected against decay by use of lead-free paint or by other preservation material.

   If a fence is to be removed and replaced, said installation shall be in conformance with all local requirements.

4. GRADING AND DRAINAGE OF PREMISES - Every premises shall be graded and maintained so no stagnant water will accumulate or stand on the premises or within or around any buildings shall be sloped away from walls to eliminate low areas where standing water may collect.

5. MAINTENANCE OF RETAINING WALLS, SIDEWALKS, DRIVEWAYS AND PATIOS - All retaining walls shall be kept in a state of maintenance and repair. All sidewalks, service walks, driveways and patios shall be kept in a state of maintenance and repair, free from obstructions, defects and uneven joints.

6. MAINTENANCE OF PREMISES - All areas and all parts of the premises upon which any dwelling or dwelling units are located and all areas adjacent thereto and a part of the premises shall be maintained and kept in a clean and sanitary condition. This shall include, but not be limited to, the abandoned and junked automobiles; automobile bodies, chassis and parts, trailers; removal of inoperable machines and appliances; lumber piles and building materials not being used in actual construction; tin cans; broken glass, broken furniture, boxes, crates and other debris, rubbish, junk and garbage.

7. WATER SUPPLY - CONNECT TO WATER MAIN - Every owner of a dwelling situated on property which abuts any street or alley in which a water main is laid, shall cause the water service system of his dwelling to be connected to such main.

8. ABANDONED WELLS AND CISTERNS - Every owner of a dwelling which contains an abandoned well or cistern on the premises, shall close and fill them in a proper manner.

CHAPTER 6 – CDBG CONTRACT

This section of the CDBG Manual provides guidance on the steps that must be fulfilled before a funded project is implemented and an overview of the requirements a grantee has as a result of signing a CDBG Contract.

Caution:

1. **Prior to seeking any professional services or contractors, a Grantee must understand and follow the procurement processes required of CDBG funded projects. See Chapter 8 - Procurement.**
2. **Prior to contracting for non-general administrative services, a Grantee must receive a Notice of Release of Funds from the Department.**

Notice of Approval Letter

A letter announcing the award is sent to each successful CDBG program applicant. The letter specifies the amount of the award and the activity or activities funded. The amount of the award may be smaller than the requested amount. An approved applicant is required to designate an employee of the local governmental entity to have principal day-to-day responsibility for the administration of this grant. In addition, a CDBG Certified Grant Administrator must be employed or contracted by the grantee to oversee the administration of the grant. The CDBG Certified Grant Administrator may be the designated employee responsible for day-to-day administration or a contracted professional, in either case the administrator must be recognized by the Department as being a Certified Administrator.

The award letter cautions the grantee about incurring costs. Non-administrative costs incurred prior to receiving a Notice of Release of Funds cannot be reimbursed with CDBG funds unless a special pre-agreement is executed. Only a very limited number of costs may be incurred prior to receiving a Notice of Release of Funds. Only costs associated with the general administration of a grant are allowable such as contracting for administrative services or hiring staff to administer the grant. Administrative costs include those necessary for completing the Special Conditions requirements of the CDBG Contract including the environmental review. Contracts for general administration services must be executed after the Notice of Approval date. All expenses incurred prior to the Notice of Approval cannot be reimbursed by CDBG funds.

A grantee will also find in the Notice of Approval the contact information for the Program Representative. This is the Department staff person who is the principal contact for all matters concerning this grant.

CDBG Contract

The grantee will receive two copies of the CDBG Contract (see Attachment 1 for a sample contract) after receiving the Notice of Approval. This is the contract between the Department and the grantee. The grantee should thoroughly review the terms and conditions of the contract with its attorney.

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

The grantee has one month to sign both copies of the CDBG Contract and send both copies to the following address:

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

Terms

The CDBG Contract contains a project description, time of performance, sources and uses of funds, conditions governing the use of CDBG funds and the special conditions for release of funds. In most cases, the special conditions of the contract must be satisfied within three months and the project completed within two years.

Each grantee is responsible for adhering to all the terms of their CDBG Contract. A substantial number of regulations, acts and statutes apply to the grant. It is a good idea to understand all the requirements of the contract.

Special Conditions for Release of Funds

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

Project costs cannot be obligated or incurred prior to the Department issuing a written Notice of Release of Fund to the Grantee.

Typical Special Conditions for Release of Funds

Grantee Information Sheet

Documentation that the Grantee has completed and returned this form.

Environmental Review

Documentation is required by the Department evidencing the Grantee's completion of its responsibilities for environmental review and decision making pertaining to the project, and its compliance with the National Environmental Policy Act of 1969 (NEPA), and other provisions of Federal law as specified in 24 C.F.R. Part 58, which furthers the purposes of NEPA. (See Chapter 7 – Environmental Review)

Authorization to Request Funds

Documentation that the Grantee has completed and returned this form.

Financial Management

Documentation evidencing completion of all financial management system requirements and execution of the financial management certification form prescribed by the Department.

Procurement Standards and Code of Conduct

Documentation is required evidencing adoption of Procurement Standards and Code of Conduct equivalent to those established in 24 C.F.R. Part 85 and 24 C.F.R. Part 570.

Excessive Force Certification

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

Fair Housing

Documentation that the Grantee has specifically provided a description of the actions it will take during the course of the grant to fulfill the requirements to affirmatively further fair housing. (See later in this chapter for more guidance on fair housing)

Implementation Schedule

Completion and submission to the Department of this form.

Disclaimer: The above list represents a list of typical standard special conditions, however all CDBG Contracts are tailored to a specific project with unique standard conditions. The Special Conditions for Release of Funds in the CDBG Contract must be satisfied before the Notice of Release of Funds will be issued for that project.

Forms and samples to assist in completing special condition requirements are available from the Department's website.

Federal and State Requirements

In PART V: SPECIAL REQUIREMENTS AND ASSURANCES the grantee agrees to comply with: the Administrative Requirements of the program; those applicable items in the current Consolidated Plan; Title I of the Housing and Community Development Act of 1974; and 24 C.F.R. Part 570; as well as other laws and regulations, both federal and state, as they are applicable to the approved Project, including, but not limited to (and then the contract lists a number of items).

The grantee must gain understanding of all the requirements that they are agreeing to comply with. The following is meant as a summary of some of the requirements and not a complete coverage of the responsibilities of CDBG grantees.

CIVIL RIGHTS AND EQUAL OPPORTUNITY PROVISIONS

Title VI of the Civil Rights Act of 1964

Provides that no person shall be excluded from participation in, denied program benefits of, or subject to discrimination based on race, color and/or national origin under any program or activity receiving federal financial assistance.

Section 109 of the Housing and Community Development Act of 1974

Provides that no person shall be excluded from participation in (including employment), defined program benefits of, or subject to discrimination on the basis of race, color, national origin, or sex under any program or activity funded in whole or in part under Title I (Community Development) of the Act.

Age Discrimination Act of 1975

Provides that no person shall be excluded from participation in, denied program benefits of, or subject to discrimination on the basis of age under any program or activity receiving federal funding assistance.

Section 504 of the Rehabilitation Act of 1973

Provides that no otherwise qualified individual shall; solely by reason of his or her handicap, be excluded from participation in (including employment), denied program benefits of, or subjected to discrimination under any program or activity receiving federal funding assistance.

United States Housing and Urban Development (HUD) regulations require that grantees follow specific steps in complying with Section 504 of the Rehabilitation Act of 1973. Attachment 2 provides guidance on those compliance steps.

Americans with Disability Act
Extends civil rights to those with disabilities in the following areas: employment, public accommodations, state and local government services, and telecommunications. Discrimination could occur if facilities are designed or constructed (built for initial occupancy after January 26, 1993) and are not accessible or usable by those with disabilities. The ADA also mandates that structurally-based architectural and communications barriers be removed, provided that the removal be readily achievable, easily accomplished and capable of being accomplished with little difficulty or expense.

Executive Order 11246
Applies to all federally-assisted construction contracts and subcontracts. It provides that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in any phase of employment during the performance of a federal or federally-assisted construction contract in excess of $10,000. Grantees must include the applicable equal opportunity language in the bid specifications and contract documents.

Executive Order 11063, As Amended by Executive Order 12259
Provides that the administration of all federal programs and activities relating to housing and urban development be carried out in a manner to further housing opportunities throughout the United States. Under this executive order, if HUD (or in this case, the state) concludes that any person or entity applying for or participating in, or supervised or regulated under, a program or activity relating to housing and urban development has not complied with this order or any applicable rule, regulations, or procedures issued or adopted pursuant to this order, they shall endeavor to remedy such violation by informal means, including conference, conciliation and persuasion. In the event of failure of such informal means, sanctions may be imposed.

Title VIII of the Civil Rights Act of 1968, As Amended by the Fair Housing Amendments Act of 1988
This law, seeking fair housing practices throughout the United States, prohibits any person from discriminating in activities associated with housing, because of race, color, national origin, religion, sex, handicap, or familial status. The grantee must also administer programs and activities relating to housing and urban development in a manner that affirmatively promotes fair housing and furthers the purposes of Title VIII.

ENVIRONMENTAL STANDARDS AND PROVISIONS

(For more information on environmental requirements see Chapter 7 – Environmental)

Title IV of the Lead-Based Paint Poisoning Prevention Act and regulations at 24 C.F.R. Part 35

National Environmental Policy Act of 1969 and regulations at 24 C.F.R. Part 58
Environmental review procedures, including completing a checklist and determining and publishing a Finding of Significance or of No Significant Impact for a project, are a necessary part of this process. Pursuant to these provisions, the grantee must also submit environmental certifications to the Department when requesting that funds be released for the project.

The grantee must certify that the proposed project will not significantly impact the environment and that the grantee has complied with environmental regulations and fulfilled its obligations to give public notice of the funding request, environmental findings and compliance performance.

EPA List of Violating Facilities.
The grantee will ensure that the facilities under its ownership, lease, or supervision which will be utilized in the accomplishment of the program are not listed on the U.S. Environmental Protection Agency's (EPA) List of Violating Facilities.

Flood Insurance
The grantee will comply with the flood insurance purchase requirement of §102(a) of the Flood Disaster Protection Act of 1973. §102(a) requires, on and after March 2, 1974, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Federal Emergency Management Agency as an area having special flood hazards.

Historic Preservation
The grantee will, in connection with its performance of environmental assessments under the National Environmental Policy Act of 1969, comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. §470), Executive Order 11593, and the Preservation of Archaeological and Historical Data Act of 1966 (16 U.S.C. §469 a-1, et. seq.) by:

a. Consulting with the state Historical Preservation Officer to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 C.F.R. Part 800.0) by the proposed activity; and,

b. Complying with all requirements established by the state to avoid or mitigate adverse effects upon such properties.

LABOR STANDARDS AND PROVISIONS
(For more information on labor standards requirements see Chapter 10 – Construction & Labor Standards)

Davis-Bacon Act

Section 2 of the June 13, 1934 Act Popularly Known as The Copeland Anti-Kickback Act

Contract Work Hours and Safety Standards Act

Section 3 of the Housing and Urban Development Act of 1968

Fair Labor Standards Act of 1938

Affirmatively Furthering Fair Housing

Grantees must certify that they will take affirmative action to further fair housing in the community (Title VIII of the Civil Rights Act of 1968). This requirement dictates some form of new action be undertaken by the grantee, not just passive compliance with existing laws and ordinances. The requirement is not limited to those grantees with a housing activity, but must be undertaken by all grantees.

Fair housing is generally thought of as the ability of persons of similar income levels to have available to them a like range of housing choices regardless of race, color, creed, sex, or national origin. Local governments, because of their influence and power, are in the most effective position to promote fair housing.

Grantees as a Special Conditions requirement must inform the Department of actions they will undertake to further fair housing. Some suggested actions are:

- Adopt a fair housing ordinance with means of enforcement.
- Undertake a review of existing fair housing ordinances, zoning and land use practices for discriminatory policies or practices.
- Support and participate in educational programs coordinated with local realtors, home builders, and mortgage lenders designed to provide information on fair housing rights.
- Provide housing referral and counseling services which assist minorities, women, and the handicapped seeking housing within the grantee's jurisdiction. Encourage local employers to cooperate in efforts to find housing for their employees and to promote equal housing choices within the community.
- Request assistance from the Nebraska Equal Opportunity Commission or other advocacy groups in undertaking fair housing informational or technical assistance seminars in your community or region.
- Use the Equal Housing Opportunity logo on official letterhead and prominently display posters, logo and informational material on fair housing and periodically print a notice in local newspaper that the grantee is an active supporter of fair housing laws. (NOTE: This is considered a standard, minimal action step and by itself will not meet the affirmative action requirements unless the grantee is a village and first time recipient of CDBG funds).
- Host a Fair Housing Month (April) event.

Release of Funds

After receiving a Notice of Release of Funds and incurring eligible costs, the grantee may request CDBG funds from the Department. The grantee must complete and send to the Department a Request for CDBG funds only as funds are needed for the project. CDBG funds will be disbursed electronically to the grantee's bank account generally within two weeks if the request contains no errors. The grantee has only 10 working days to spend CDBG funds following receipt.

The Department recommends to grantees, as a sound financial practice, that CDBG funds be drawn after the grantee has incurred and paid the eligible expense. It is an absolute requirement that expenses are incurred prior to drawing CDBG funds. More information on requesting funds is available in Chapter 13 - Financial.

Amendments/Extensions

Grantees must request approval from the Department for any of the following four changes:

1. Changes to the budget that
   - reallocate 10% or more of the total original grant amount; and/or
   - include a new activity; and/or
   - delete an approved activity; and/or
   - increase the amount budgeted for General Administration and/or Housing Administration
2. Extensions of the contract end date
3. Decreases in proposed accomplishments
4. Amendments to housing program guidelines

Request requirements for the four changes are:

1. Changes to the budget

Original Contract Budget Approved
Proposed Budget After Amendment

Attachment 1: Letter from the Chief Elected Official including:

1. Certification that the local governing body has approved the budget amendment;
2. Identification and reasons for the proposed budget amendment; including
   a. Changes to the nature of the project requiring the amendment
   b. Steps being taken to avoid any future amendment requests for the same reasons
3. If additional local matching funds are required as a result of this amendment, certification that such funds are available.
4. If the amendment includes a new activity, certification that the activity meets the national objective

Attachment 2: Minutes from the public hearing held on the proposed amendment
Attachment 3: If the budget amendment will affect major milestones, a revised implementation schedule showing when major milestones will be completed for each activity
Attachment 4: Certification of re-evaluation of the environmental assessment (this form is included in Chapter 7 – Environmental Review)

2. Extensions of the contract end date

Original Contract End Date
Current Contract End Date including any previously approved extensions
Proposed Contract End Date

Attachment 1: A letter from the Chief Elected Official stating the following

1. Certification that the local governing body has approved the extension;

2. Identification and reasons for the proposed amendment; including
    a. Changes to the nature of the project requiring the amendment;
    b. Steps being taken to avoid any future amendment requests for the same reasons
3. If additional local matching funds are required as a result of this extension, certification that such funds are available.

Attachment 2: A revised implementation schedule showing when major milestones will be completed for each activity

3. Decreases in proposed accomplishments

Original Proposed Accomplishments
Current Proposed Accomplishments

Attachment 1: A letter from the Chief Elected Official stating the following

1. Certification that the local governing body has approved the decrease in proposed accomplishments;
2. Identification and reasons for the proposed amendment; including
    a. Changes to the nature of the project requiring the amendment;
    b. Steps being taken to avoid any future amendment requests for the same reasons
3. If additional local matching funds are required as a result of this decrease, certification that such funds are available.

Attachment 2: A revised implementation schedule showing when major milestones will be completed for each activity

4. Amendments to housing program guidelines

Attachment 1: Letter from the Chief Elected Official stating the following:

1. Certification that the local governing body has approved the amendment to the housing program guidelines;
2. Identification and reasons for the proposed amendment;
3. If additional local matching funds are required as a result of this amendment, certification that such funds are available.

Attachment 2: If the housing program guidelines amendment will affect major milestones, a revised implementation schedule showing when major milestones will be completed for each activity

Attachment 3: A complete copy of the proposed revised housing program guidelines

Grantees must <u>notify</u> the Department if:

1. Changes to the budget involve reallocating less than 10% of total original grant amount and
    - does not include a new activity,
    - does not delete an approved activity, and
    - does not increase the amount budgeted for General Administration or Housing Administration

* A CDBG Contract Amendment Request Form is available at the Department's website.

Attachment 1

SAMPLE

STATE OF NEBRASKA DEPARTMENT OF ECONOMIC DEVELOPMENT
COMMUNITY DEVELOPMENT BLOCK GRANT CONTRACT NO. 00-PW-000
CFDA #14.228

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

RECITALS:

A. The State of Nebraska has received funds from the U.S. Department of Housing and Urban Development ("HUD") under the authority of Title I of the Housing and Community Development Act of 1974, as amended ("Act"), and 24 C.F.R. Part 570 to implement the State of Nebraska Community Development Block Grant ("CDBG") Program.

B. The Department has been designated to administer the CDBG program.

C. The Grantee has submitted, and the Department has approved, their application ("Application") setting forth a project ("Project") which will undertake community development activities authorized under the Act.

AGREEMENT:

Premised on the Recitals above, and in consideration of the mutual promises and understandings of the parties set forth below, the parties agree as follows:

PART I: TERMS AND CONDITIONS.

§1.01 Amount, Use, and Payment.

The total amount of CDBG funds paid by the Department to the Grantee for allowable expenses incurred will not exceed $000. Of that amount, approved administrative and audit expenses will not exceed $000.

The grant will be used to fund the Project as detailed in the Application, which generally involves [description of project], for [name], Nebraska.

The proportion of CDBG funds paid and applied to a specific activity will not exceed the proportion specified in the Sources and Uses of Funds outlined at Part III of this contract.

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

§1.02 Time of Performance.

The period covered under this contract will be 24 months from [date]. The termination date of this contract will be [date]. All of the required activities and services, except for administration and audit, will be completed by or before the termination date.

§1.03 National Objective Compliance.

Failure by the Grantee to fulfill the national objective may result in grant funds being disallowed and required to be returned to the Department.

PART II: SPECIAL CONDITIONS FOR RELEASE OF FUNDS.

Funding of the amount stipulated in §1.01 of this contract will not be released to the Grantee by the Department until the following special conditions for release of funds are met. These special conditions must be satisfactorily completed no later than [date]. The Department reserves the right to cancel the contract if these special conditions are not met within this specified time frame.

§2.01 Grantee Information Sheet.

Submission and completion of the Grantee Information Sheet.

§2.02 Environmental Review.

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

§2.03 Authorization to Request Funds Form.

Completion by the appropriate chief elected official of the Grantee, and submission to the Department, of the Department's Authorization to Request Funds form.

§2.04 Financial Management.

Documentation evidencing completion of all financial management system requirements and execution of the financial management certification form prescribed by the Department.

§2.05 Procurement Standards and Code of Conduct.

Documentation evidencing adoption of Procurement Standards and Code of Conduct equivalent to those established in the Office of Management and Budget (OMB) Circular A-102, Attachment O and 24 C.F.R. Part 570.

§2.06 Excessive Force Certification.

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

§2.07 Fair Housing.

Documentation that the Grantee has specifically provided a description of the actions they will take during the course of the grant to fulfill the requirements to affirmatively further fair housing.

§2.08 Implementation Schedule.

Completion, and submission to the Department, of the Nebraska CDBG Grantee Implementation Schedule form.

§2.09 Other Special Conditions.

None.

PART III: SOURCES AND USES OF FUNDS.

Sources and Uses of Funds for the Project are shown in the table below.

SOURCES→	CDBG	Other	TOTAL
USES (Activities)↓			
0000 [activity]	**$0**	**$0**	**$0**
0000 [activity]	**$0**	**$0**	**$0**
0181 General Administration	**$0**	**$0**	**$0**
TOTAL	**$0**	**$0**	**$0**

PART IV: OTHER CONTRACTUAL CONDITIONS.

§4.01 Program Income.

Program income generally means gross income received by the Grantee, or a subrecipient of the Grantee, directly generated from the use of CDBG funds, with some exceptions which are detailed in 24 C.F.R. §570.500. Program income includes, but is not limited to:

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

Program income received prior to the completion of the approved grant activities must be applied to those activities prior to requesting additional CDBG funds from the Department.

Disposition of real or nonexpendable personal property acquired with CDBG funds must be handled in accordance with OMB Circular A-102, Attachment N. Proceeds from the sale of real or nonexpendable personal property will be handled as prescribed by the Department in accordance with OMB Circular A-102, Attachment N.

§4.02 Local Contribution.

The Grantee agrees to provide matching and other leveraged funds for each approved activity in the proportions as set forth in Part III of this contract. Matching and other leveraged funds must be expended during the grant period as required in the Administrative Requirements of the CDBG program.

Matching and leveraged funds may be cash or in-kind contributions as defined and governed by OMB Circular A-102, A-87 and 24 C.F.R. Part 570 or unless restricted by category guidelines.

Grantees are required to certify on each CDBG Request for Funds form the amount of local matching funds applied to the project. Project costs are to be paid from grant and local matching funds in the proportions set forth in Part III of this contract. If the Grantee is unable to provide local matching funds in the exact proportions stated in Part III, a temporary waiver may be requested. The Grantee will be responsible for financing costs that exceed total project costs as set forth in Part III of this contract.

Grantees may reallocate up to 10% of the total grant amount received among approved activities (except administration) without prior approval. The Department must receive written notification of this reallocation. Even

with this permitted reallocation, the requirement remains that the matching percentages as set forth in Part III of this contract must remain the same.

§4.03 Legal Authority and Acceptance of Environmental Review Responsibility.

By signing this contract, the Grantee certifies that it possesses legal authority to accept grant funds under the program, and to execute the project described in this contract, and that their chief executive official:

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

Is authorized and consents on behalf of the Grantee that they accept the jurisdiction of the Federal courts for the purpose of enforcement of their responsibilities as such responsible Federal official.

§4.04 Designation of Officials to Execute Contract and Amendments.

The Director of the Department or their designee is the official authorized to execute this contract and any amendments to this contract, on behalf of the Department.

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

The Grantee or the Department may request amendments to this contract. Amendments will not take effect until mutually agreed to in writing by both parties.

§4.05 Waivers.

No conditions or provisions of this contract can be waived unless approved by the Department in writing.

§4.06 Assignment of Interest.

The Grantee will not assign or transfer any interest in this contract to any other party without the written consent of the Department.

§4.07 Financial Management and Accounting.

The Grantee will comply with 24 C.F.R. Part 570, and with Office of Management and Budget (OMB) Circulars A-87, A-102, and A-133, or any equivalent procedures and requirements that the Department may prescribe.

§4.08 Record Keeping.

The Grantee agrees to keep such records as the Department may require and as outlined in 24 C.F.R. §570.506, Records to be maintained.

The Grantee agrees to keep such records so the Department can perform a 24 C.F.R. §570.492, State's review and audits. This includes maintaining the accounting system according to Generally Accepted Accounting Principles. This also includes such items as retaining all source documents that support the accounting records and other grant related records.

These records will include information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income. They will also include information pertaining to environmental review, equal opportunity, fair housing, disposition of property and equipment, and other contract requirements.

All records pertinent to this grant and work undertaken as part of the project, will be retained by the Grantee for a period of four years after notification by the Department that the grant has been closed, unless otherwise required by the laws and regulations stipulated under Part V of this contract. If any claim, litigation, or audit is started before expiration of the four-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved.

§4.09 Access to Records.

The Department and duly authorized officials of the state and federal government will have full access and the right to examine, audit, excerpt, and/or transcribe any of the Grantee's records pertaining to all matters covered by this contract.

§4.10 Reports.

The Grantee will submit semiannual reports to the Department in such form as the Department may require pertaining to the activities undertaken, the costs and obligations incurred, and any other matters covered by this contract. The Grantee will also be required to submit a final performance and financial report, in the form prescribed by the Department, within 30 and 60 days, respectively, of grant closeout.

§4.11 Conflict of Interest.

No officer, employee or agent of the Grantee will participate in the selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: the employee, officer or agent; any member of their immediate family; their partner; or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The Grantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements during office tenure or for one year after the closeout of the grant. This stipulation must be included in all other contracts and subcontracts to this grant.

Upon written request by the Grantee, exceptions may be granted by the Department upon a case-by-case basis when it is determined that such an exception will serve to further the purposes of the Act.

§4.12 Political Activity.

No portion of these funds provided will be used for any partisan political activity, to further the election or defeat of any candidate for public office or influence the approval or defeat of any ballot issue.

§4.13 Prohibition Against Payment of Bonus or Commissions.

The assistance provided under this contract will not be used for payment of any bonus or commission for the purpose of obtaining State approval of the application for such assistance or State approval of applications for additional assistance. However, reasonable fees for consultant, managerial, or other such services are eligible as project costs.

§4.14 Applicability to Subrecipients and Contractors.

The provisions of the contract will be made binding on any subrecipient or contractor of the Grantee, and the Grantee will remain fully obligated under the provisions of this contract.

§4.15 Waiver of Rights.

The Department's failure to insist upon the strict performance of any provision of this contract or to exercise any right based upon breach will not constitute a waiver of any rights under this contract.

§4.16 Severability.

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

§4.17 Entire Agreement, Binding Effect, and Counterparts.

This instrument, along with any attachments, the approved grant Application, and those items incorporated by reference, contain the entire agreement between the parties. Any statements, inducements, or promises not contained therein will not be binding upon the parties.

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

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

§4.18 Acquisition and Disposition of Property and Equipment.

The Grantee agrees to comply with the requirements of Attachment O of the Federal Office of Management and Budget Circular A-102, "Procurement Standards." and 24 C.F.R. Part 570. The Grantee will also account for any tangible personal property acquired with funds provided under this contract in accordance with Attachment N of the Federal Office of Management and Budget Circular A-102, "Property Management Standards" and 24 C.F.R. Part 570.

§4.19 Audits.

Audits of this grant will be conducted in accordance with the Single Audit Act of 1984, as amended; and OMB Circular A-133. Generally Accepted Government Auditing Standards (GAGAS) must be followed. If the Grantee meets the requirements for a Program-specific audit as defined in OMB Circular A-133, Department approval for such a Program-specific audit is required and audit procedures established by the Department will be followed.

Audit costs are an allowable general administration cost subject to limitations established by the Act and the Department.

§4.20 Termination by Mutual Agreement.

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

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

§4.21 Termination for Cause.

In the event of a default or violation of the terms of this contract by the Grantee or failure to use the grant for only those purposes set forth, the Department may take the following actions:

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

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

§4.22 Termination Due to Loss of Funds.

This contract will terminate in full or in part, at the discretion of the Department, in the event the Department suffers a loss of funding or termination of the federal funds which permits it to fund this grant. In the event the Department suffers such a loss of funding, the Department will give the Grantee written notice which will set forth the effective date of full or partial termination, or if a change in funding is required, setting forth the change in funding and the changes in approved budget.

§4.23 State of Nebraska Non-Liability/Hold Harmless.

The Grantee will hold the State of Nebraska and the Department harmless from any and all claims, demands, and actions based upon or arising out of any services performed by the Grantee or by its associates, contractors, or employees under this contract.

§4.24 Governing Law.

This agreement shall be governed by; construed according to the laws and regulations of; and subject to the jurisdiction of; the State of Nebraska.

PART V: SPECIAL REQUIREMENTS AND ASSURANCES.

The Grantee agrees to comply with: the Administrative Requirements of the program; those applicable items in the current Consolidated Plan; Title I of the Housing and Community Development Act of 1974; and 24 C.F.R. Part 570; as well as other laws and regulations, both federal and state, as they are applicable to the approved Project, including, but not limited to, the following:

CIVIL RIGHTS AND EQUAL OPPORTUNITY PROVISIONS.

- **Title VI of the Civil Rights Act of 1964.**
- **Section 109 of the Housing and Community Development Act of 1974.**
- **Age Discrimination Act of 1975.**
- **Section 504 of the Rehabilitation Act of 1973.**
- **Americans with Disability Act.**
- **Executive Order 11246.**
- **Executive Order 11063, As Amended by Executive Order 12259.**
- **Title VIII of the Civil Rights Act of 1968, As Amended by the Fair Housing Amendments Act of 1988.**
  This law, seeking fair housing practices throughout the United States, prohibits any person from discriminating in activities associated with housing, because of race, color, national origin, religion, sex, handicap, or familial status. The Grantee must also administer programs and activities relating to housing and urban development in a manner that affirmatively promotes fair housing and furthers the purposes of Title VIII.

ENVIRONMENTAL STANDARDS AND PROVISIONS.

- **Title IV of the Lead-Based Paint Poisoning Prevention Act and regulations at 24 C.F.R. Part 35.**

- **National Environmental Policy Act of 1969 and regulations at 24 C.F.R. Part 58.**
  Environmental review procedures, including completing a checklist and determining and publishing a Finding of Significance or of No Significant Impact for a project, are a necessary part of this process. Pursuant to these provisions, the Grantee must also submit environmental certifications to the Department when requesting that funds be released for the project.

  The Grantee must certify that the proposed project will not significantly impact the environment and that the Grantee has complied with environmental regulations and fulfilled its obligations to give public notice of the funding request, environmental findings and compliance performance.

- **EPA List of Violating Facilities.**
  The Grantee will ensure that the facilities under its ownership, lease, or supervision which will be utilized in the accomplishment of the program are not listed on the U.S. Environmental Protection Agency's (EPA) List of Violating Facilities.

- **Flood Insurance.**
  The Grantee will comply with the flood insurance purchase requirement of §102(a) of the Flood Disaster Protection Act of 1973. §102(a) requires, on and after March 2, 1974, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Federal Emergency Management Agency as an area having special flood hazards.

- **Historic Preservation.**
  The Grantee will, in connection with its performance of environmental assessments under the National Environmental Policy Act of 1969, comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. §470), Executive Order 11593, and the Preservation of Archaeological and Historical Data Act of 1966 (16 U.S.C. §469 a-1, et. seq.) by:

  (a) Consulting with the state Historical Preservation Officer to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 C.F.R.

Part 800.0) by the proposed activity; and,

(b) Complying with all requirements established by the state to avoid or mitigate adverse effects upon such properties.

LABOR STANDARDS AND PROVISIONS.

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

ACCEPTANCE PROVISIONS.

The parties acknowledge they have read and understand this contract and agree to its provisions, and that it will be effective on the date when both parties have signed.

NEBRASKA DEPARTMENT OF ECONOMIC DEVELOPMENT	GRANTEE [Village City County] of [name], Nebraska
By:_____ **(Director or Designee)**	**By:**_____ **(Elected Official)**
_____ **(Typed or Printed Name/Title)**	_____ **(Typed or Printed Name/Title)**
_____ **(Date)**	_____ **(Date)**
	_____ **(Federal Identification Number)**

Attachment 2

SECTION 504

Responsibilities At The Local Level

The passage of the Rehabilitation Act of 1973 marked the first time in U.S. history that the civil rights of persons with disabilities were specifically protected.

The intent of the Rehabilitation Act was to end discrimination based on disability when federal funding was involved. This represented a national commitment to equal opportunity.

This law reflects an awareness that accessibility extends beyond building and buses to attitudinal prejudices. Inaccessibility in any form will lead to the limitation of full economic and social participation of citizens in any community and will limit a community's potential.

Section 504 of the rehabilitation Act of 1973, as amended, applies to all Grantees of federal funds.

The Department of Housing and Urban Development issued its procedures and policies on June 2,1988, 15 years after Congress passed the Rehabilitation Act. These regulations require that any applicant for, or recipient of federal funds will not discriminate on the basis of handicap in employment or in programs for qualified handicapped persons.

"Handicap person" is defined as an individual who has a physical or mental impairment substantially limiting one or more major life activities, has a record of this type of impairment and is regarded as having such an impairment.

Grantees must ensure that contracts, subcontracts or agreements contain nondiscrimination clauses.

The Civil Rights Restoration Act of 1988, requires that your entire community comply with Section 504 in all operations.

Self-Evaluation

The first step determining whether a municipality meets Section 504 requirements is a self-evaluation. The assessment must include an examination of all functions of the Grantees distributing or receiving funds. Handicapped persons and or representative organizations, as well as, any interested persons must be included in the process. The self evaluation must include careful inspection of:

- employment and personnel policies and practices,
- the extent to which programs and activities are readily accessible usable by individuals with disabilities,
- the extent to which benefits and service delivery is free from discriminatory effects,
- the intent to which contractual arrangements are free from subjecting handicapped persons to discrimination,

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

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

Transition Plan

When and if structural barriers have been identified during the self-evaluation process and cannot be removed with nonstructural solution, a transition plan must be completed and be made available for public inspection. The transition plan must involve disabled persons and or representative organizations. The plan must:

- identify physical obstacles in the facilities that limit program accessibility,
- describe in detail the method that will be used to make facilities accessible,
- specify a schedule to achieve full program compliance and if the plan is longer than one year identify steps to be taken during each year,
- indicate the person responsible for implementing the plan,
- identify the person or groups with whose assistance the plan was prepared.

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

Grantees are not necessarily required to make each existing facility or every part of an existing facility accessible, although in some cases that will be the only way to achieve accessibility.

Specifics About Communication

Communication is also an important component of accessibility. Disabilities may include a wide variety of impairments - hearing, visual, speech or mobility. Varied approaches may be required to assure effective information dissemination such as using audio and visual materials. Members of the community who have disabilities must likewise be able to communicate with the town. Auxiliary aids, such as sign language interpreter, may be required.

Grantees must ensure effective communication with persons with all types of disabilities in all activities. Where the Grantee communicates with applicants and beneficiaries by phone, a TDD is required or an equally equivalent system must be available.

Specifics About Nondiscrimination In Employment

Any federally assisted Grantee cannot legally limit, segregate or classify applicant or employees in any way that negatively affects their status or opportunities because of handicap. In pre-employment and employment activities discrimination based on a handicap must not occur and reasonable accommodations must be made to the physical or mental limitations of otherwise qualified individuals unless it creates undue hardship for the Grantee.

It is important to remember that the essence of Section 504 provides for equal opportunity not necessarily identical results or level of achievements. Section 504 does not require the hiring or promotion of someone simply because they have a disability.

Reasonable accommodation in employment is determined on a case by case basis. It means reasonable modifications on the job or the work place to enable a handicapped person to perform the job for which they are qualified.

HUD's regulations specify that an employer is prohibited from discriminating in:

- recruiting, advertising and processing of applications,
- hiring, upgrading, promoting, tenure, demotion, transfer, layoffs, termination right or return from layoffs, illness and rehiring,
- rates of pay and any other forms of compensation,
- job assignments, classifications and description, organizations structure, lines, progression and seniority lists.

A Grantee must examine its employment policies and practices as part of the detailed self-evaluation. This assessment scrutinizes employment tests and other procedures of selection to make sure that they do not screen out handicapped persons. Selection procedures must be job related and measure a person's ability not an impairment.

Specifics About Program Accessibility

Under HUD's regulations program accessibility is divided into two broad categories: non-housing and housing. The technical standards used by HUD for determining physical access in both categories is the Uniform Federal Accessibility Standards. (UFAS)

"Facility" is defined under Section 504 as any portion of a building, equipment, roads, walkways, parking lot or other real property. "Accessible" for non-housing purposes means that a facility or portion of a facility can be approached, entered and used by individuals with physical handicaps. For housing purpose, accessible means in addition that a dwelling is on an accessible route and adaptable inside.

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

Methods of improving program access in existing facilities can include:

- relocating programs to accessible facilities or accessible portions facilities.
- acquiring or building new facilities,
- selectively altering facilities,
- changing operating policies and procedures,
- assigning aides to assist beneficiaries,
- adding or redesigning equipment or furnishings,
- conducting home visits.

All newly constructed multi-family, federally assisted housing project under Section 504 must have:

- a minimum of 5% of total dwelling units accessible for individuals with mobility impairments,
- an additional 2% of units accessible for persons with hearing or vision impairments,
- all units made adaptable that are on the ground level or can be reached by an elevator.

The Fair Housing Amendment Act (Title VII) passed in 1988, extended federal housing anti-discrimination protection to families and people with disabilities. Section 504 is often more exacting in its requirements than Title VII. The primary difference between the two is the Fair Housing Amendment requires that a landlord must allow a tenant to make reasonable modifications to a unit, paid for by the tenant. Section 504 provides that the landlord is responsible for making, and paying for reasonable accommodations.

Compliance And Complaints

HUD's Office of Fair Housing and Equal Opportunity is responsible for seeking cooperation from and providing assistance to recipients regarding compliance. FHEO may perform periodic reviews of Grantees or require reports or other information to measure your compliance, including records of program participation by individuals with handicaps.

A complaint can be made by any individual or authorized representative of that individual who believes they have been the subject of discrimination based on a disability. This complaint would be filed with FHEO. The complainant's identity will be held in confidence unless written authorization is given.

The time period for filing complaints is within 180 days of the alleged act. The Grantee will be notified by FHEO within 10 calendar days of receiving the complaint. Within 20 calendar days of this acknowledgement the complaint will be accepted, rejected or referred to the appropriate federal agency.

Rather than having to exhaust administrative appeals a person who believes their rights have been violated under Section 504 may file in federal court. The remedy through court action may include the award of damages, back

pay, seniority and as with any equal opportunity action, attorney fees, or injunction against the noncomplying project.

It is HUD's policy to encourage informal resolutions to matters, solicit voluntary compliance and corrective action. Noncompliance with requirements of Section 504 may ultimately result in the termination of or refusal to grant federal assistance.

Special Requirements For Grantees With 15+ Employees

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

Grantees must keep a list of interested person or groups consulted in the self evaluation process, a description of the areas examined and problems identified and a description of the modifications made and remedies taken to eliminate discriminatory policies and practices. This should remain available for public review for at least 3 years after completion.

A least one person must be designated to coordinate compliance efforts and most often it is the City Manager.

A grievance procedure must be adopted for larger municipalities incorporating due process standards and allowing for prompt local resolution of any complaints of discrimination based on disability. Existing grievance procedures can often be adapted to satisfy this requirement.

Initial and continuing notices must be given to the public, job applicants and employees of their rights under Section 504 and the municipality's policy against discrimination, including that reasonable accommodation will be made. Similar notice needs to be included in any municipal recruitment or information material.

The notice must include: See Attachment 3

- a statement that your municipality does not discriminate on the basis of handicap status in the provision of its programs, services or personnel practices.
- the name of the program coordinator who is the responsible employee designated to coordinate the implementation of the handicapped discrimination requirements.
- methods of notification which ensure that visually impaired and hearing impaired persons will have access to the information.

CHAPTER 7 – ENVIRONMENTAL REVIEW

A. Introduction
B. Identifying Environmental Review Responsibilities
C. Establishing an Environmental Review Record
D. Developing a Project Description Aggregating All Project Activities
E. Conducting the Review
F. Common Deficiencies
G. Completing the Statutory Checklist
H. Completing the Assessment Checklist
I. Changes to the Original Project
J. Attachments 1 - 12

A. Introduction

All Community Development Block Grant (CDBG) and HOME projects are subject to the provisions of the National Environmental Policy Act of 1969 (NEPA), which establishes national policy and procedures for protecting, restoring and enhancing environmental quality. CDBG and HOME are also subject to other statutes, Executive Orders and regulations dealing with a number of specific concerns, such as historic preservation, floodplain management, wetland protection, noise control, manmade hazards and others. **The Responsible Entity must complete and document an environmental review of all activities related to the project, and receive a Notice of Release of Funds from the Department, before any HUD or non-HUD funds can be obligated or expended by any participant (24 CFR 58.22).** This includes real property acquisition, leasing, demolition, rehabilitation, construction and site improvements. The environmental review process should be initiated as soon as possible in the planning process to avoid conflicts, delays, and expenses and allow actions to minimize adverse effects on the environment. Depending on the level of review, recipients should allow from 30 to 120 days to complete the review process.

The flowchart in Attachment 1 is a general guide of the review process. The Environmental Review Procedures for State and local governments (24 CFR Part 58) provides more detail and is found in Attachment 2. Additional environmental subjects, rules and regulations can be found at www.hud.gov/offices/cpd/energyenviron/environment/index.cfm

The review process consists essentially of the following steps:

1. Identifying environmental review responsibilities;
2. Establishing an Environmental Review Record that includes all narratives, checklists, agency contacts and responses, maps and photographs for all activities;
3. Developing a project description aggregating all project activities;
4. Conducting the review using qualified data sources;
5. Providing for public notice, comment, and response;
6. Submitting findings and certifications to the Department; and
7. Obtaining Department clearance and release of funds.

The information contained in this chapter summarizes a number of state and federal statutes and regulations and is solely intended to give an overview of the obligations in the environmental review process. The grantee (in general) and the Environmental Certifying Officer (in particular) are responsible for referring to and complying with specific citations listed.

B. Identifying Environmental Review Responsibilities

Entities receiving CDBG or HOME funds can be the State or a local government recipient, or a non-profit or for-profit business sub-recipient. However, only government entities can assume the role of Responsible Entity (RE) with respect to environmental reviews.

As part of the assurances and CDBG contract agreement signed by the local government, the chief elected official (CEO) agrees to assume the role of environmental "certifying officer" and accepts full responsibility for the completeness and accuracy of the reviews. The chief elected official must sign all certifications and findings. This environmental duty may not be delegated, although local staff, consultants, and/or State resources may provide technical assistance to support local efforts.

For HOME awards to local governments, the chief elected official assumes the role of environmental "certifying officer"; however, for HOME awards to non-profits and CHDO's, the State must assume the role of environmental "certifying officer". Non-governmental entities can, however, assist the State by supplying all relevant information needed to perform an environmental review and carrying out all mitigating measures required.

C. Establishing an Environmental Review Record

The Responsible Entity (RE) is required to establish and maintain a written record of the environmental review undertaken for each project, according to criteria at 58.38. The purpose of the Environmental Review Record (ERR) is to document the environmental review process and all actions taken during the course of the environmental review.

It must contain a description of the project and each of the activities comprising the project, regardless of the individual activity funding source, as well as all relevant documents, maps, public notices, written determinations and public comments received. Public comments and concerns, as well as their appropriate resolution by the Grantee, are extremely important and must be kept in the ERR. The files must be made available for public review and inspection in the general offices of the recipient upon request. Attachment 3 includes a checklist of minimum information that is required to be maintained in the ERR.

When another state or federal agency has funds in the project, it frequently conducts its own environmental review process. The RE is free to use that agency's review to compile its own record. In fact, it makes sense to avoid unnecessary duplication of effort; however, the RE is reminded that utilization of another agency's documentation does not avoid or minimize its own responsibilities for either the content of the review or conduct of the public comment requirements. Before making a finding based on another agency's review, the RE should carefully check the review against the requirements referenced in this chapter to ensure the contents are sufficiently inclusive to allow the RE to meet its responsibilities. If the review falls short in certain areas it must be supplemented by the RE to meet requirements. **Grantees may use source documentation of environmental assessments by other agencies to conduct the Department's environmental review, however all requirements are still in force including HUD publication and dissemination requirements and Request for Release of Funds/Certification.**

D. Developing A Project Description

The RE needs to collect information regarding the project and the project site. Who is involved? What are the project activities? Where will the project be located? What does the project environment look like? How will the project be implemented?

The RE should seek information that may have already been collected by the recipient to reduce the amount of unnecessary or duplicative work. If a Phase I site assessment has been done it should include: site historical records and owner questionnaires, visual site inspections of the property, written report identifying areas for further investigation. Additional information will need to be gathered on: the type of activity (acquisition, demolition, rehabilitation, construction, etc.), site location, current use of site, age and condition of existing structures, intended use of site, and anticipated duration of activity.

The description should include the project dollar amount, identifying the items for which CDBG or HOME funds will be expended, and the items for which other Federal/State or private funds will be expended.

E. Conducting the Review

In order to conduct the review, it is essential that the RE determine the full scope of the project and include all activities in the review which are related either on a geographical or functional basis, or are logical parts of a composite of contemplated actions, regardless of who is funding the activities (58.32). As a general rule of thumb, any activity in a "project" which could not occur absent HUD-funded activities is subject to the environmental review requirements of this chapter.

The nature and extent of all project activities will determine the level of review that will be required. There are four levels of review: Exempt, Categorically Excluded, Environmental Assessment, and Environmental Impact Statement. RE's should begin to determine the classification of their project by looking first at the Exempt classification, and then progress to Categorically Excluded. If the activity is not Exempt nor Categorically Excluded, it falls under the classification of Other which necessitates the preparation of an Environmental Assessment. If it is evident at the outset that a project may potentially have a significant impact on the environment, the RE should proceed directly to an Environmental Impact Statement. Regardless of the number of activities associated with a project, it is only necessary to complete one environmental review. However, if the activities have separate classifications, the RE must follow the review steps listed under the most stringent classification.

1. Exempt Activities 58.34

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 NEPA or other laws except those cited at 58.6. They include:

- (a)(1) Environmental and other studies, resource identification and development of plans and strategies;
- (a)(2) Information and financial services;
- (a)(3) Administrative and management activities;
- (a)(4) Public service activities that will not have a physical impact or result in any physical changes;
- (a)(5) Inspections and testing of properties for hazards or defects;
- (a)(6) Purchase of insurance;
- (a)(7) Purchase of tools;
- (a)(8) Engineering or design costs;
- (a)(9) Technical assistance and training;
- (a)(10) Temporary or permanent improvements that do not alter environmental conditions and are limited to protection or repair activity necessary only to control or arrest the effects of disasters, imminent threats or physical deterioration;
- (a)(11) Payment of principal and interest on loans made or guaranteed by HUD;
- (a)(12) Categorical exclusions listed in 58.35(a) provided no circumstances require compliance with laws and authorities cited in 58.5.

If an activity or project meets the standards for an exempt determination, the RE must make a Finding of Exemption (Attachment 5) and place it in the ERR. If the recipient wishes to begin drawing funds for these exempt activities, it must submit a copy of the Finding of Exemption to the Department. After review and approval, the Department will notify the recipient. The RE does not have to submit the Request for Release of Funds and Certification form; however, all other contract conditions must be cleared prior to release of funds.

Activities that are determined to be exempt are not required to undergo an environmental assessment, public notice or comment period.

2. Categorically Excluded Activities 58.35 (a) or (b)

Categorically excluded activities normally would not alter any conditions that would require an environmental assessment or impact statement except in extraordinary circumstances (see 58.2(a)(3) for extraordinary circumstances). Categorical exclusions are of two types:

a. Categorically Excluded Activities under 58.35(a)
These activities, by their nature, are not likely to have a significant impact on the environment, but, also by their nature, may require review, approval, or compliance with other state or federal requirements as stated in 24 CFR 58.5 and 58.6. Put another way, these activities may not be subject to all NEPA procedural requirements, but they may be subject to review by other agencies. Such activities include:

- (a)(1) Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size or capacity of more than 20 percent (e.g. replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets);

- (a)(2) Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons;

- (a)(3) Rehabilitation of buildings and improvements when the following conditions are met: in the case of multi-family residential buildings, unit density is not changed more than 20 percent, the project does not involve changes in land use from residential to non-residential, the estimated cost of rehabilitation is less than 75 percent of the total estimated costs of replacement after rehabilitation; in the case of 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, such as from non-residential to residential, commercial to industrial, or from one industrial use to another;

- (a)(4) An individual action on a one- to four-family dwelling or an individual action on a project of five or more units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four units on any one site;

- (a)(5) Acquisition (including leasing) or disposition of, or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use;

- (a)(6) Combinations of the above activities.

Activities determined to be categorically excluded from NEPA under 58.35(a) require compliance with other related laws at 58.5 and regulations at 58.6. Under this classification, the RE will:

- First determine if any project activities occur in a floodplain or wetland. If within a floodplain or wetland, you must complete the 8-step process outlined in the Floodplain Management (Section G) below. This review will determine if the project can still be classified as categorically excluded or is elevated to a full assessment.

- Complete the ERR Part I Statutory Checklist (Attachment 3). For each environmental law in the Checklist determined to be applicable or potentially applicable to the project, consult with the appropriate agency(ies) having responsibility in that area and include documentation of consultation or review with the appropriate agencies (see Attachment 4 for potential contacts and sample letter), the procedures followed, actions taken and the permits or other forms of approval obtained. Completion of the Checklist will determine which of the next steps are in order:

(a) If the activities are determined not to trigger compliance and all appropriate agencies notify the recipient that the activity(ies) will have no effect on the protected resource, without necessary mitigation and no formal consultation, permit or agreement is required, prepare a Finding of Exempt Form (Attachment 5). If the recipient wishes to begin drawing funds for this activity(ies), it submits a copy of the Finding and the ERR Part I to the Department. After review and approval, the Department will notify the recipient. The RE does not have to submit the Request for Release of Funds and Certification form; however, all other contract conditions must be cleared prior to release of funds.

(b) If compliance is triggered by one or more of the laws and regulations, secure and document evidence of compliance on the Statutory Checklist, then:

1. Prepare a Finding of Categorical Exclusion/Subject to 58.5 (Attachment 5).
2. Prepare and send copies of a Notice of Intent to Request Release of Funds (NOI/RROF) Attachment 7, on or before the date published, to contacts for all applicable environmental laws, and to other interested groups or individuals.
3. Publish the NOI/RROF in a newspaper of general circulation or post the NOI/RROF in the community or project area.
4. Wait for seven days (if published) or ten days (if posted) to receive public comments. This review period begins on the first day after the NOI/RROF is published/posted.
5. If there are any comments, prepare a response to them, and include this in the ERR.

6. No sooner than the day after the end of the advertised public comment period, submit the Finding of Categorical Exclusion, ERR Part I, and Request For Release Of Funds and Certification (Attachment 9) to the Department. Include the proof of publication or certificate of posting of the Notice of Intent to Request Funds, and copies of any comments as well as responses to those comments.

Upon receiving the RROF and Certification, the Department will commence a 15-day review and comment period. During this time, any person or agency may provide written comment or objection to the Department. Assuming that there are no valid objections, and all other special contract conditions have been removed, on the day after the comment period expires, the Department may release funds.

b. Categorically Excluded Activities under 58.35(b)
Activities determined to be categorically excluded under 58.35(b) require compliance with regulations at 58.6 only and are considered exempt from NEPA and other related laws. Such activities include:

- (b)(1) Tenant-based rental assistance;
- (b)(2) Supportive services including, but not limited to, health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, State, and Federal government benefits and services;
- (b)(3) Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs;
- (b)(4) Economic development activities including but not limited to, equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or expansion of existing operations;
- (b)(5) Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction (foundation poured prior to application and not in anticipation of application), including closing costs and down payment, interest buy downs and similar activities that result in the transfer of title;
- (b)(6) Affordable housing predevelopment costs including legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitment, zoning approvals, and other related activities which do not have a physical impact;
- (b)(7) Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under this part, if the approval is made by the same responsible entity that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under Sec. 58.47.

Under this classification, the RE prepares: 1) a Finding of Categorically Excluded/Not Subject to 24 CFR 58.5 (Attachment 5), and 2) ERR Part I Statutory Checklist (Attachment 3). An environmental assessment, public notice and comment period are not required. If the recipient wishes to begin drawing funds for these activities, it submits a copy of the Finding and the ERR Part I to the Department. After review and approval, the Department will notify the recipient. The RE does not have to submit the Request for Release of Funds and Certification form; however, all other contract conditions must be cleared prior to release of funds.

3. Environmental Assessment

If a project is neither Exempt nor Categorically Excluded, a full Environmental Assessment is required (58.36). In preparing an assessment, the Responsible Entity must:

Determine if the project is within a floodplain or wetland area, and if so, complete the 8-step process outlined in the Floodplain Management (Section G) below.

Complete the ERR Part I Statutory Checklist (Attachment 3). For each environmental law in the Checklist determined to be applicable or potentially applicable to the project, consult with the appropriate agency(ies) having responsibility in that area and include documentation of consultation or review with the appropriate agencies (see Attachment 4 for potential contacts and sample letter), the procedures followed, actions taken and the permits or other forms of approval obtained.

Complete the ERR Part II Assessment Checklist and perform an analysis of issues identified and recommendations for safeguards or mitigation measures. Make and document either a Finding Of No Significant Impact (FONSI) or Finding Of Significant Impact (FOSI).

If the Environmental Assessment indicates that the project will have no significant effect on the quality of the environment, prepare Attachment 8 a combined Finding Of No Significant Impact and Notice of Intent to Request Release of Funds (FONSI & NOI/RROF). Or if you prefer separate notices, prepare Attachment 6 a notice of Finding of No Significant Impact (FONSI), to be followed at a later date by Attachment 7 a Notice Of Intent to Request Release of Funds (NOI/RROF).

Send copies of the FONSI & NOI/RROF, on or before the date(s) published, to the contacts for all applicable environmental laws as well as other interested groups and individuals.

Provide for public comment by publishing the FONSI/NOI/RROF in a newspaper of general circulation or posting the notice(s) in the community and/or project area. The public must be given 15 days (30 days if controversial) to comment to the RE on the combined notice if published or 18 days (30 if controversial) if posted.

If there are any comments, the RE prepares a response to them, and include this in the ERR.

No sooner than the day after the advertised public comment period, submit the Finding of No Significant Impact, the ERR Parts I and II Statutory and Assessment Checklists, and Request For Release of Funds and Certification to the Department. Include the proof of publication or certificate of posting of the FONSI/NOI/RROF, and any comments, as well as responses to them.

On the day after the RROF/Certification is received, a 15-day review and comment period commences for DED. During this period, any person or agency may provide written comment or objections to the Department. After the comment period expires and all other special contract conditions have been removed, the Department will send a notification to the recipient. Subsequent to the date of this notification, the recipient may be allowed to obligate and expend funds on project activities.

4. Environmental Impact Statement

An Environmental Impact Statement is required (58.37) when a project is determined to have a potentially significant impact on the human environment, and/or for the following:

- Provide a site or sites for, or result in the construction of, hospitals or nursing homes containing a total of 2,500 or more beds;

- Removal, demolition, conversion, or substantial rehabilitation of 2,500 or more existing residential units, or the provision of sites for or construction of 2,500 or more new housing units; or,

- Increase water or wastewater system capacity, sufficient to serve 2,500 or more additional housing units.

If the Environmental Assessment indicates that the project may have a significant effect on the quality of the environment, such that an Environmental Impact Statement (EIS) will be required, the grantee must notify the Department before taking any further action. The EIS review is substantially more complex than any other level of review and is therefore, not covered in this chapter.

F. Common Deficiencies

- Incurring costs before environmental certification is approved by the Department.
- Inadequate project description, not including project activities funded by non-CDBG sources.
- Assessment activities classified as categorically excluded activities.
- Inadequate consultation or source data to document compliance with applicable laws and authorities.
- Failure to complete 8-step Floodplain/Wetland review process prior to Finding No Significant Impact.
- FONSI and/or NOI/RROF notices published prior to consultation with appropriate environmental authorities.

- FONSI and/or NOI/RROF notices not sent to federal and state agencies and other interested parties.
- Public notices did not contain all required information, or comment periods were inadequate.
- Not responding to comments received from environmental authorities or during public notice period.

G. Completing the Statutory Checklist

The Responsible Entity must document that CDBG or HOME project activities meet environmental requirements contained in laws other than NEPA. By completing the Statutory Checklist (ERR Part I), the RE considers the effect of the project on a variety of potential environmental concerns as well as the effect of the environment on the project (such as noise, thermal hazards or traffic, etc.).

The RE must retain all documentation (letters, maps, notes on comments of authorities contacted, etc.) to support determinations. Situations may require consultation with appropriate federal or state agencies. The consultation can result in no need to further address the requirements, the placement of conditions on the recipient prior to release of funds, or may halt the project until mitigating measures are identified and steps taken to achieve compliance.

If permits are required, a listing of the specific permits needed and the procedures by which they will be obtained should be attached to the Checklist. If mitigating actions are required, the RE should fully describe the actions the recipient will take to assure compliance.

For Categorically Excluded housing programs in target areas, where specific sites are not known, it may be necessary to complete an initial generic review followed by a site-specific review. This is necessary because until sites are known, certain areas of compliance (historic preservation, floodplain management, noise abatement, thermal explosive and airport hazards) possibly cannot be addressed. These compliance areas must be addressed as the specific sites are chosen with documentation filed identifying review/permit/mitigation actions taken for each specific site.

Procedures to comply with related laws at 24 CFR 58.6

The following three regulations must be reviewed for applicability, regardless of review classification. Determination of applicability should be shown on the appropriate section of the Statutory Checklist.

1. Floodplain Management [Flood Disaster Protection Act of 1973, as amended]

Regulations at 58.6 prohibit use of HUD funds for acquisition or construction purposes (including rehabilitation) in Federal Emergency Management Agency (FEMA) designated Special Flood Hazard Areas (SFHA) in communities which do not participate in the National Flood Insurance Program (NFIP). These regulations also require that for any purchase assistance or rehabilitation in a SFHA, flood insurance must be obtained and maintained. However, 58.6(a)(3) excludes these requirements for "Federal formula grants made to a State". Therefore, in the Nebraska CDBG Program, there is no prohibition on use of CDBG funds in communities that do not participate in the NFIP, and flood insurance is not required for purchase or minor rehabilitation assistance. On the other hand, if proposed purchase or rehabilitation sites are located in a SFHA, the Department strongly encourages recipients to consider other sites outside the 100-year floodplain, or if a site within the SFHA is chosen, to require flood insurance be purchased and maintained, where available, as a program requirement. The cost of the first year of flood insurance is an eligible expense.

If under no circumstances will any project activities affect the SFHA, check "Compliance" on the Statutory Checklist and attach documentation to verify this determination. If the program includes or may include activities in the SFHA as identified above, check "Review Required" on the Statutory Checklist, and briefly describe the procedures that will be implemented to review individual project sites to address the above considerations.

2. Coastal Zone Management [Coastal Barriers Resources Act of 1990]

There are no coastal barrier resources in Nebraska, check "Compliance" on the Statutory Checklist.

3. Airport Hazards [Airport Runway Clear Zones and Clear Zone Notification]

If the proposed program includes any assistance for purchase or sale of properties located in a Runway Clear Zone or Clear Zone (areas beyond the ends of a runway of a civil airport or military airfield), the Responsible Entity must advise the buyer of the implications of choosing this location, including safety risks, and the potential that the property may be acquired by the airport operator at a later date. The buyer must sign a statement acknowledging receipt of this information.

If the proposed project includes such property, check "Determination of Consistency" on the Statutory Checklist and describe the procedures to identify such property.

Procedures to comply with related laws at 24 CFR 58.5

In addition to compliance with regulatory requirements identified above, projects classified as categorically excluded and those that require environmental assessments, must also consider related laws and authorities under this section.

1. Historic Properties

Section 106 of the National Historic Preservation Act requires a recipient of federal funds to take into account the affects of the project on properties included or eligible for inclusion in the National Register of Historic Places. Historic properties may be districts, buildings, structures, objects or archeological sites.

In addition to contacting the Nebraska State Historic Preservation Office (SHPO), recipients must also consult with local historical groups, Indian Tribes and other appropriate organizations and individuals in order to help gather information about properties that may be affected by their project.

Depending on the location of the project activities, it may be determined that an archaeological survey should be conducted if it is highly probable that the area contains significant resources. The staff of the SHPO will have a list of professional archeological contractors to complete the survey. For properties so identified, the survey must be completed and submitted to SHPO for an affect determination prior to any ground disturbing activity.

To obtain SHPO assistance in project review, recipients must provide them:

- A description of the proposed project,
- Name of all funding, permitting or licensing agencies in the project (state and federal),
- A clearly legible map of project location, including project site plan, if applicable,
- Two clear and current photos of all standing structures within project area. Photocopies and faxes are not acceptable. It is helpful if the photographs are keyed to the site plan,
- Project addresses; and
- Project plans and specifications, if applicable.

Upon receipt of sufficient information to make a determination, SHPO will respond within 30 days with a determination of National Register eligibility. If no historic properties are found in the project area, a "No Affect" determination allows the project to proceed as proposed. If historic properties are found but the undertaking will not adversely affect them, a "No Adverse Affect" determination is made, the project may proceed with conditions incorporated into the scope of work. If the project has a potential for "Adverse Affect" of historic properties, the SHPO, the Department, and the grantee must begin consultation to avoid or mitigate the adverse affect, which may allow the project to proceed.

If SHPO and recipient agree that there are NO historic properties affected, check "Compliance" on the Statutory Checklist. If the review process reaches a finding of no adverse affect or a conditional adverse affect, check "Conditions or Mitigation Required" and describe the actions necessary to allow a FONSI (should artifacts be discovered during excavation either SHPO or an approved archaeologist will be afforded an opportunity to examine the site to determine significance of any resources, SHPO approval of final plans and specifications, SHPO approval and recording of historic covenant on deed, etc.). For generic reviews, such as where specific housing sites are not yet known, check "Review Required" and indicate that procedures will be implemented to review individual project sites prior to obligation of funds.

2. Floodplain Management (24 CFR Part 55 & E.O. 11988)

24 CFR Part 55 requires an eight-step procedure for agency review, public notification, identification of alternatives, assessment and mitigation of impacts (including special construction methods), before commencement of any action which involves new construction, substantial improvement of 1-4 family structures, or rehabilitation of structures in a Special Flood Hazard Area (SFHA). Recipients must also comply with any local regulations adopted to participate in the National Flood Insurance Program.

Proposed construction, located or to be located within a SFHA, is discouraged regardless of whether or not the property is, or will be, covered by flood insurance unless appropriate mitigation measures are adopted. New construction and substantial improvements in the SFHA must be built according to design requirements established by FEMA and state regulations. State regulations require a finished floor elevation of at least one foot above the 100-year flood plain, or base flood elevation (BFE).

If the project does not involve property acquisition, land management, construction or improvement within a SFHA, check "Compliance" on the Statutory Checklist, citing the number and effective date of the FIRM (Flood Insurance Rate Map) map used to make the determination, and communication with the local enforcement officer. If no such maps have been published, the same finding is necessary by the recipients engineer or local flood control office using best available data. If the program may include new construction or rehabilitation on sites in a SFHA, check the appropriate "Review Required", "Permit Required" or "Mitigation Required" on the Statutory Checklist and (except for minor rehab of 1-4 family structures) document each of the following steps:

a. Determine if the project is located in a 100-year floodplain (500-year floodplain for critical actions) by locating your project on a floodplain map. Record the results and date of this examination in your ERR.
b. Involve the public in the decision making process by publishing an Early Public Review Notice (Attachment 10) in a local newspaper, and sending copies to federal, state, regional and local agencies and other interested parties to make the public aware of your intent. This notice requires a fifteen (15) day comment period (**to expire before a finding of no significant impact can be made**).

c. Determine if there is a practical alternative to locating the project in a floodplain through: alternative siting, an alternative action which performs the intended function but would minimize damage to or within the floodplain, or no action.
d. Identify adverse impacts on the base flood plain, whether it will directly or indirectly support floodplain development, whether the impact is concentrated or dispersed, and short or long lived.
e. Identify steps to mitigate impact(s), preserve or restore floodplain.
f. Re-evaluate alternatives identified in step C, taking into account identified impacts and minimization measures. Is it possible to modify or relocate the project to eliminate or reduce these effects, or should no action be taken? If a practicable alternative exists, the project may not occur in the floodplain or wetland area.
g. If the re-evaluation results in a determination that there is no practicable alternative to locating the proposed activity in the floodplain/wetland, announce and explain decision to the public by publishing a Notice of Explanation (Attachment 11) in a local newspaper and sending copies to federal, state, regional and local agencies and other interested parties. This notice requires seven (7) day comment.
h. Implement the project with appropriate mitigation. There will be a continuing responsibility to ensure that mitigating measures identified are accomplished.

Projects involving "critical actions" are afforded a higher level of protection and are discouraged within the 500-year floodplain. Critical actions include, but are not limited to, facilities which produce, use, or store volatile, flammable, explosive, toxic or water-reactive materials and structures used for hospitals, nursing homes and handicapped housing (24 CFR Part 55.2).

3. Wetlands Protection (24 CFR 55, E.O. 11990)

Executive Order 11990 requires all Federal Executive agencies to refrain from supporting construction in wetlands wherever there is a practical alternative. For any new construction or rehabilitation activity which involves site excavation, fill or grading, U.S. Fish and Wildlife Service (FWS) wetland maps must be reviewed (http://wetlandsfws.er.usgs.gov/wtlnds/viewer.htm). If questions exist as to wetland presence in smaller areas not mapped by FWS, supplement with local information or wetland delineation by the USDA Natural Resource Conservation Service or the U.S. Army Corps of Engineers. Wetlands are defined as areas that are inundated by surface or groundwater with a frequency to support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction.

If the program will not involve new construction or filling within or adjacent to a wetland area, check "Compliance" on the Statutory Checklist, citing the FWS map or dates of written correspondence used to make the determination. If the program may potentially include new construction or rehabilitation in a wetland, check the appropriate "Review Required" or "Mitigation Required" on the Statutory Checklist and document each of the eight steps outlined above for floodplain management.

If the project is located in a wetland, you may be required to obtain a Section 404 permit from the U.S. Army Corps of Engineers prior to construction. Check the appropriate "Permit Obtained" or "Permit Required" on the Statutory Checklist. You must obtain the permit and include it as part of the ERR.

4. Noise Control (24 CFR 51 Subpart B)

The HUD Noise Regulation establishes standards, requirements and guidelines on noise abatement and control to protect citizens against excessive noise levels in their communities and places of residence. A goal of interior noise level not exceeding 45 decibels is set forth. Noise attenuation (through the construction of barriers which also reduce outside noise, or architectural features) requirements are geared toward achieving that goal.

Projects that include only moderate rehabilitation (generally considered under $25,000 per unit) do not need to document compliance with Part 51. Check "Compliance" on the checklist, and note in the compliance section that the project is "Moderate Rehabilitation".

For substantial rehabilitation, new construction for residential or other noise sensitive uses, a noise assessment must be prepared according to procedures described in the Noise Guidebook, HUD-953-CPD, if the site is located within 1,000 feet of a major highway or busy road, 3,000 feet of an active railroad line, five (5) miles of a civil airport, or fifteen (15) miles of a military airfield, or 1,000 feet from any other noise generating source such as an industrial plant. HUD regulations state that noise attenuation measures shall be "strongly encouraged" in substantial rehabilitation projects where the average ambient day-night noise level exceeds 65 decibels.

For new construction of residential or other noise sensitive use projects, construction techniques must provide sufficient noise attenuation in any building to reduce the exterior noise level of 65 decibels or less to an interior noise level of 45 decibels or less. Additional window-wall attenuation or other mitigation action is required to reduce exterior DNL from the 65 to 75 dB zone to interior level of 45 dB. Check "Mitigation Required" and describe appropriate noise attenuation measures (for a noise level of 72 DNL a typical condition would be that the architect shall provide calculations and certify that the building envelope provides attenuation of 27 STC). Areas in which exterior noise levels exceed DNL 75 are considered unacceptable.

For programs completing a tiered review, which may include substantial rehabilitation or new construction of residential units, check "Review Required" on the checklist and describe the review procedures.

5. Air Quality (Clear Air Act sections 176 (c) & (d), and 40 CFR 6, 51, 93)

The Clean Air Act Amendments of 1990, Titles I, III and V contain guidance for air quality issues.
They cover the provisions for attainment and maintenance of ambient air quality standards, the reduction of hazardous-air-pollutant emissions and new operating permits for all major sources of these emissions.

Generally, recipients must refrain from projects that either increase air pollution or expose residents to excessive levels of air pollution. Projects that involve installation of large fuel burning equipment, demolition, sandblasting or paint removal, spray painting, etc. must be evaluated to determine applicable requirements and compliance methods.

In addition, at the Federal and State level, a wide variety of asbestos regulations and guidelines have been established that require training and licensing of contractors and inspectors, and abatement actions. Contact the Department of Environmental Quality, Small Business & Public Assistance Coordinator to determine compliance with Nebraska Air Quality Standards.

If the project may affect air quality, check "Review Required" or "Permit Required" and describe the review procedures or status of permit application. Permits must be obtained as appropriate.

6. Explosive and Flammable Operations (24 CFR 51C)

For projects with residential, institutional, recreational, commercial or industrial use an Acceptable Separation Distance (ASD) must be determined for properties that are near above ground storage facilities containing explosive materials. A project may be located near an area exposed to thermal/explosive hazards where conventional (e.g. petroleum) or hazardous gases (e.g. propane), or chemical (e.g. benzene or hexane) of flammable nature are stored, if the activity is located beyond the Acceptable Separation Distance (ASD) from the hazard under HUD safety standards or when proper mitigating measures are taken as set forth in 24 CFR 51 Subpart C.

The local fire department or fire prevention agencies are excellent sources of information. Most will regularly inspect facilities and/or properties which store, process or transport hazardous products. Another primary source of information is the industrial facility of concern. They can provide data on the types and quantities of stored contents and capacities of vessels for chemicals and petrochemical materials present.

In general, project sites within one-quarter mile of such above ground storage sites, particularly when there are no intervening topography, existing structures or barriers, are unsuitable for new development or substantial rehab projects.

For programs that do not include activities requiring compliance with Part 51 C, check "Compliance" on the checklist. For programs that may include new construction, conversion of non-residential properties to residential use, or rehabilitation of vacant structures or rehabilitation which increases unit density near such facilities, check "Review Required" on the checklist to indicate that the ASD will be determined and appropriate decisions made according to regulatory requirements. For project sites within the ASD of such hazardous facilities, check "Mitigation Required" on the checklist and cite appropriate mitigation measures being taken.

7. Airport Hazards (Clear Zones and Accident Potential Zones, 24 CFR 51D)

Runway Clear Zone (civil airports) Clear Zone or Accident Potential Zone (military) – HUD funds may not be used for assistance, subsidy or insurance for construction, land development, community development or redevelopment designed to make land available for construction, or rehabilitation that significantly prolongs the life of existing facilities, in designated Runway Clear Zones at civil airports or Clear Zones at military airports identified in 24 CFR Part 51 Subpart D, except where written assurance is made that the project proposed for development will not be frequently used by people, and where written assurances are provided by the airport operator that no plans exist to purchase the property as part of a Runway Clear Zone or Clear Zone acquisition program.

If the NAHP project proposes development in proximity to these areas, check "Determination of Consistency" on the checklist and indicate that the program will comply with requirements referenced above.

8. Water Quality (Safe Drinking Water Act of 1974, Sole Source Aquifers 40 CFR 149)

Projects having withdrawals and/or effluent discharges shall be examined for conformance with the Safe Drinking Water Act and the Clean Water Act. For activities that result in the withdrawal of ground water consult with Nebraska Health and Human Services, Department of Regulation and Licensure. For activities that result in effluent discharges consult with Nebraska Department of Environmental Quality.

If the program includes the above activities, check "Review Required" on the checklist to indicate that the project will be reviewed and briefly describe the review procedures to be taken.

9. Coastal Zone Management

There are no Coastal Areas in Nebraska. Check "Compliance" on the checklist.

10. Endangered Species

Whether the project is located in a developed or a less developed area where land is still mostly in a natural state, endangered species or their habitats may be encountered. Generally, this applies to assisted activities that propose new construction, conversion of land use, major rehabilitation of existing buildings and the acquisition of undeveloped land. Contact the U. S. Fish and Wildlife Service and the Nebraska Game and Parks Commission to determine if the project area is known to contain state or federal listed rare, threatened or endangered species. If none are identified, check "Compliance" on the checklist.

The Endangered Species Act of 1973, as amended, requires that each federal agency will confer with the Service on any action which is likely to jeopardize the continued existence of any protected species or result in the destruction or adverse modification of critical habitat. Where such species or habitat does exist, check the appropriate "Consultation", "Conditions" or "Mitigating" Action Required and document appropriate measures.

11. Wild and Scenic Rivers

Projects must be examined for conformance to the Wild and Scenic Rivers Act of 1968. A determination of whether the proposal would invade the river area or unreasonably diminish the scenic, recreational, and fish and wildlife values present in the area is required. Consultation shall be initiated when the project: a) would be in close proximity of the river, b) involves withdrawing water from the river or discharging water to the river via a point source, or c) would be visible from the river.

Wild and scenic rivers in Nebraska include, but may not be limited to, northern portions of the Missouri River, Niobrara River and Verdigre Creek. Contact the National Park Service if your project is within one mile of a protected river area, or is under consideration for inclusion in the system, to determine potential effects, approval of actions or recommend measures to eliminate adverse effect, if any.

12. Farmland Protection

The Farmlands Protection Policy Act was enacted to minimize the extent to which federally assisted projects convert farmland to nonagricultural uses. If your project may be located on prime or unique farmland, or other farmland of statewide or local importance, contact the USDA Natural Resource and Conservation Service to determine whether the proposed site meets the Act's definition. If so, complete the Farmland Conversion Impact Rating form to initiate the impact rating process.

13. Environmental Justice

Executive Order 12898 requires local identification and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations. Generally, this Order applies to low-income or minority neighborhoods where HUD assisted projects propose the acquisition of existing housing, the acquisition of land for development and new construction. At minimum, the ERR should include a statement that the program will be consistent, as far as practicable, with the principles of the executive order.

If site suitability is a concern or the proposal adversely affects environmental conditions impacting low income or minority populations, check "Mitigation Required" and describe actions being taken.

14. Contamination and Toxic Substances

The Resource Conservation and Recovery Act of 1976 (RCRA) regulates the generation, transportation, treatment, storage, and disposal of hazardous waste, and also sets forth a framework for the management of non-hazardous wastes. Hazardous waste is defined by RCRA as materials which are toxic, corrosive, ignitable or reactive. Materials suspected to be hazardous, such as stored chemicals, soil or building materials contaminated by chemicals or asbestos-containing materials, must be tested to determine if they meet criteria for classification as hazardous waste. Materials determined to be hazardous waste must be handled, transported and disposed according to RCRA requirements.

Amendments to RCRA address environmental problems that could result from underground tanks storing petroleum and other hazardous substances. State regulations establish requirements for registration, installation, removal and disposal of underground tanks.

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), establishes prohibitions and requirements concerning closed and abandoned hazardous waste sites and provides for liability of persons responsible for releases of hazardous waste at these sites. Under this law, purchasers of property may be included as potentially responsible parties, liable to contribute to the cost of remediation, with certain exceptions, one of which is if the purchaser can demonstrate that, based upon a due diligence environmental investigation, the buyer has no knowledge of site contamination at the time of purchase. This provision has led to the common practice of performing Phase I Environmental Site Assessments for property prior to property transfer. The American Society for Testing and Materials, a private organization which develops various technical standards, has developed a standard protocol for conducting a Phase I. For Multi-Family (5 + units) and non-residential proposals an evaluation of previous uses and other evidence of contamination on or near the site shall be conducted. For proposals which may involve purchase of commercial or industrial property, a Phase I ESA is encouraged. Concerns raised in the Phase I report should be properly resolved prior to property transfer.

Site assessment documentation (Phase I/Phase II) may indicate the presence of contamination or Underground Storage Tanks. You may make a determination to accept the site if it appears feasible to clean up the site to applicable standards. In such instances you will condition the approval (environmental clearance) so that clean up work takes place prior to or in conjunction with construction and with the appropriate agency granting approval of the clean up work. Be aware that this process is usually lengthy, and in some cases more costly than planned for. Most conditions of this nature mandate an escrow be set aside (generally 150% of the estimate). You generally do not want to go with a conditional approval if it is too difficult to estimate clean up costs, or it is unclear if the project budget can support the clean up (and no one is stepping forth to guarantee completion), and/or if the ability to meet the cleanup standard is questionable (e.g. off-site source). Sample conditions might be: subject to obtaining a "no further remediation" letter, or suitable alternative, from DEQ or EPA prior to (construction start or occupancy).

If any program activities may potentially encounter hazardous materials, demolition of buildings or building components, or purchase of commercial or industrial property, check "Determination of Consistency" on the Statutory Checklist to indicate the project will comply with the applicable procedures described above, and documentation of compliance will be maintained in the ERR.

If no program activities will result in the handling or disposal of hazardous waste, check "Compliance" on the checklist.

H. Completing the Environmental Assessment Checklist

For all CDBG and HOME projects subject to NEPA procedures, the Environmental Assessment Checklist is a valuable step in that analysis. Completion of this Checklist constitutes a quick yet well-documented review of environmental issues surrounding a specific project or group of projects and a decision as to how to proceed in further analysis.

The major purpose of the Checklist is to allow a more detailed analysis to focus on those categories of potentially significant impact. This can avoid a lot of wasted energy in data collection, analysis and report writing for categories which have no potential for significant impacts and require no mitigation efforts or ones for which the analyst has already done the work on previous projects. Assuming there is a file of solid environmental information about the community, the Checklist is intended to be filled out in a few hours----no more than a day even for projects with many potential effects. More time may be needed later for thorough analysis where the Checklist review indicates either potential impacts or where insufficient data is readily available. Judgments at this stage should be based upon available data with perhaps the addition of a few well-placed phone calls or a site visit if the area is unfamiliar to the analyst.

For each impact category the local environmental analyst is asked to enter the appropriate code relating to potential impacts, needed study, and mitigation or modification. In many cases more than one box could or should be checked. In each case a source should be cited which may be a report, phone contact, previous ERR field observation or general knowledge of the area. The determinations to be made for each impact category include:

- No Impact Anticipated- A checkmark here indicates no more analysis or mitigation effort is needed. Clear and specific documentation is essential, referencing the factual conditions or specific circumstances that support the finding. Mere conclusions are not sufficient.

- Potentially Beneficial-Beneficial impacts should be indicated here. Notations supporting that finding can be attached. A more detail analysis is not necessary.

- Potentially Adverse/Requires Documentation Only- In some cases, this quick review may be all that is needed to evaluate impacts. They may be so small as to require no more study; they may be construction effects only for which standard mitigation procedures have been established; or they may have been analyzed for previous assessments in a fully comparable situation. Documentation here is particularly important and will require attached notes outlining sources explaining the factual basis of the impact finding and describing any mitigation efforts.

- Potentially Adverse/Requires More Study--If this is checked, the impact category in question will be subject to further review (site visits, detailed review of data, consultation with experts, etc.) The points to remember are (1) only those categories with a check in this box need be subject to a detailed assessment and (2) this is not a decision about EIS preparation but a decision to investigate further.

- Needs Mitigation-This column should be used in combination with the third and fourth columns indicating some type of potential adverse impact. In some cases specific measures to reduce adverse effects on a community cannot be discussed in full detail right away. Instead, such measures are subject to review and development and implementation responsibility as part of a more detailed analysis which follows. In other cases, mitigation measures may be known and recorded. Mitigation measures or safeguards should be listed for easy reference on the last page of the Checklist.

- Requires Project Modification --Early project review, affords a special opportunity to identify needed changes to the project itself before final applications are made or programs finalized. Often such changes can eliminate the need for further analysis by eliminating the source of the problem. It is also possible that changes (such as moving a project to a different site outside a high noise zone, or combining it with a new project to provide needed sewer or water lines) could be identified at this time.

In addition to these decisions as to potential impact or mitigation needs, the Checklist calls for sources or contacts to be identified which have contributed to the decision in a specific impact category. This may be done in the space provided, or more likely by reference to attached notes, which indicate sources or contacts and describe considerations made. On the final pages of the Checklist, the analyst is asked to look back over the individual decisions made and draw some conclusions for further action. This includes a listing of project modifications, impact categories requiring more study and mitigation efforts needed.

1. Land Development

Describe the results of having compared the project to applicable standards and plans. The description should be sufficient to indicate: a) any actual violations of law; b) whether or not the project is incompatible with an established plan, or fails to meet an established standard. Where incompatibility exists, an analysis and determination of whether or not to proceed with the project should be recorded and a decision to proceed should be explained.

Is the site subject to unusual terrain features such as steep slopes, abutting rock formations, or other conditions affecting construction, drainage, or livability? Does the proposed project appear to take advantage of the natural features of the site and area?

Are there unusual risks from natural hazards such as geologic faults, flash floods, volcanic activity, mudslides or fires, or from the presence of ponds, or hazardous terrain features?

Is the site subject to nuisances from odors, vibrations, unsightly areas, nearby landfills, traffic conflicts, hazardous industrial operations, other inconveniences or nuisances?

Are community energy supplies adequate to accommodate the energy consumption in the project? Are there indications that the project will promote inefficient energy utilization?

Contacts would include local Planning/Zoning Administrator or Department, architect/engineer or local building department, local fire department or health department.

2. Special Factors

Special factors that must be addressed are listed on the form, but there may be others. Any factor which, because of its unique or specialized character, might have the potential of pointing up serious environmental concerns, should be addressed.

Given the existing noise and estimated future noise levels at the site, is the site appropriate for the proposed activities? Will the project be exposed to noise levels which exceed HUD's noise standards?

Does the project require a construction permit or operating permit under Department of Environmental Quality rules? If the project or potential users would be particularly sensitive to existing air pollution levels, or those expected 10 and 20 years hence, has the project been designed to mitigate possible adverse effects? Will the proposal establish a trend which, if continued, may lead to violation of air quality standards in the future?

Will the project adversely affect the aesthetic image of the surrounding area? Will there be demonstrable destruction or physical alteration of the natural or man-made environment (clearance of trees or buildings, substantial regarding, etc.) Will the project block views or degrade them? Will there be intrusion of elements out of character or scale or is the proposed design integrated with the area in which it is located?

3. Socioeconomic

Will the project substantially change the income, racial, ethnic or age distribution of the neighborhood or community, or the institutions serving those population groups?

Will the project destroy or relocate existing jobs, facilities, services or business enterprises, or create or attract any of the same; so as to indirectly result in the immigration or emigration of individuals and families?

Will the project force the displacement of individuals and families?

Persons to contact include local planners, advocacy groups or organizations.

4. Community Facilities and Services

Describe the results of having examined the project with reference to the effect upon it of each of the factors listed on the form. Both existing services and programmed services (i.e. those scheduled to commence at or about a date certain in the future) should be taken into account. Services should be rated both in terms of access to the service and adequacy of the service.

Does the project location provide for adequate and safe access to school for elementary, junior and high school age children? Are the quality and capacity of such schools adequate?

Is there adequate access to employment opportunities for proposed occupants? Is there an adequate supply of employment opportunities considering the skill and income requirement of potential proposed occupants?

Is there adequate and convenient access to shopping?

Will the water supply and sanitary sewer systems be adequate to serve the proposed project and its occupants?

Will they meet fire flow, State health and any special treatment requirements?

Does the project location allow for adequate access for police and fire protection services?

Are police and fire protection services available to the project adequate to meet project needs?

Are parks, playgrounds and open space facilities in the project and surrounding area adequate to meet the needs of proposed occupants?

Are roads and off-street parking facilities adequate for private transportation?

5. Natural Features

Will the project make the area substantially more susceptible to erosion because of grading, increased runoff, or inadequate vegetative cover during or after construction, inadequate drainage plain or other causes?

Will the project impede natural drainage patterns, which cannot be corrected, cause alterations in stream channel form, or otherwise affect groundwater movement?

Will construction over recharge areas substantially affect aquifer yields or water quality?

Will erosion or increased weathering rate of bedrock result in groundwater contamination?

Will erosion, increased runoff, or wastes from the project contaminate open streams and lakes? Will disruptions of water flow affect the characteristics of open streams and lakes?

Are there unique species of plant or animal life particularly susceptible to adverse impact from construction and human habitation?

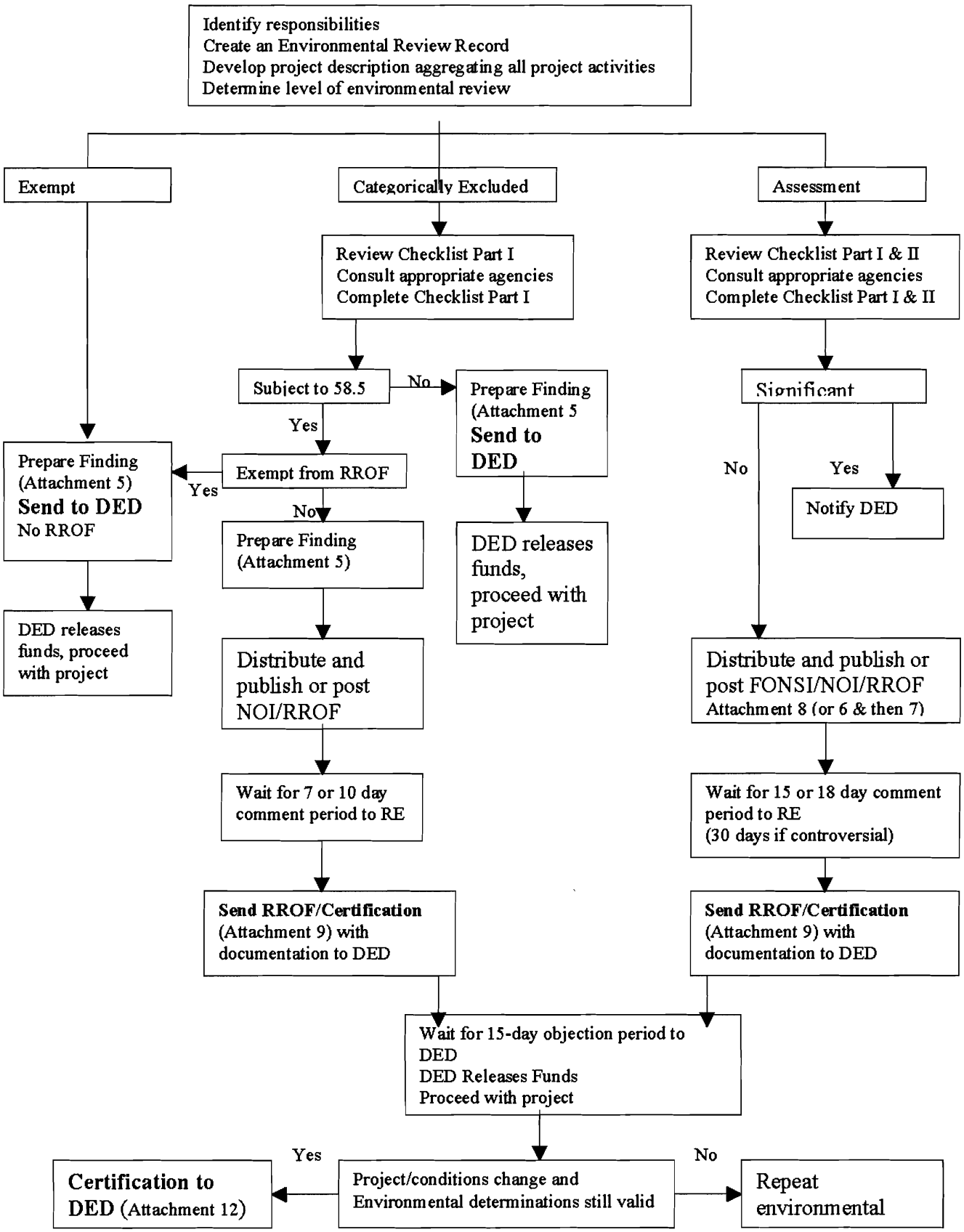
Is there vegetation present, the loss of which would deny habitat to unique wildlife species, or to a substantial number of different animals? Will such vegetation be preserved?

I. Changes to the Original Project/Re-evaluation of Assessment Findings (24 CFR 58.47)

The RE must re-evaluate its environmental findings when the recipient proposes substantial changes in the nature, magnitude or extent of the project, including adding new activities not anticipated in the original scope of the project; or, there are new circumstances and environmental conditions that may affect the project or the environment, such as concealed or unexpected conditions discovered during implementation.

The purpose of the re-evaluation is to determine if the new circumstances still justify and support the environmental finding originally issued. If the original finding is still valid, the RE must affirm the original findings and update it's ERR. Under these circumstances, if a FONSI notice has already been published, no further publication of a FONSI notice is required. However, if the re-evaluation is the result of a change in the scope of work, requiring an amendment to the contract, the RE must submit a Certification of Continued Environmental Status with its request to the Department for amendment approval.

If the RE determines that the original finding is no longer valid, it must re-initiate the appropriate EA or EIS process if its evaluation indicates potentially significant impacts.


Identify responsibilities
Create an Environmental Review Record
Develop project description aggregating all project activities
Determine level of environmental review
Exempt
Categorically Excluded
Assessment
Review Checklist Part I
Consult appropriate agencies
Complete Checklist Part I
Review Checklist Part I & II
Consult appropriate agencies
Complete Checklist Part I & II
Subject to 58.5
No
Prepare Finding (Attachment 5 Send to DED
Significant
Yes
Prepare Finding (Attachment 5) Send to DED No RROF
Exempt from RROF
Yes
No
Yes
Notify DED
No
Prepare Finding (Attachment 5)
DED releases funds, proceed with project
DED releases funds, proceed with project
Distribute and publish or post NOI/RROF
Distribute and publish or post FONSI/NOI/RROF Attachment 8 (or 6 & then 7)
Wait for 7 or 10 day comment period to RE
Wait for 15 or 18 day comment period to RE (30 days if controversial)
Send RROF/Certification (Attachment 9) with documentation to DED
Send RROF/Certification (Attachment 9) with documentation to DED
Wait for 15-day objection period to DED
DED Releases Funds
Proceed with project
Yes
No
Certification to DED (Attachment 12)
Project/conditions change and Environmental determinations still valid
Repeat environmental

[Code of Federal Regulations]
[Title 24, Volume 1]
[Revised as of October 29, 2003]
[CITE: 24CFR58.1]

TITLE 24--HOUSING AND URBAN DEVELOPMENT
PART 58--ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES--Table of Contents

Sec. 58.1 Purpose and applicability.

a. Purpose. This part provides instructions and guidance to recipients of HUD assistance and other responsible entities for conducting an environmental review for a particular project or activity and for obtaining approval of a Request for Release of Funds.

b. Applicability. This part applies to activities and projects where specific statutory authority exists for recipients or other responsible entities to assume environmental responsibilities. Programs and activities subject to this part include:

1. Community Development Block Grant programs authorized by Title I of the Housing and Community Development Act of 1974, in accordance with section 104(g) (42 U.S.C. 5304(g));

2. [Reserved]

3.

i. Grants to states and units of general local government under the Emergency Shelter Grant Program, Supportive Housing Program (and its predecessors, the Supportive Housing Demonstration Program (both Transitional Housing and Permanent Housing for Homeless Persons with Disabilities) and Supplemental Assistance for Facilities to Assist the Homeless), Shelter Plus Care Program, Safe Havens for Homeless Individuals Demonstration Program, and Rural Homeless Housing Assistance, authorized by Title IV of the McKinney-Vento Homeless Assistance Act, in accordance with section 443 (42 U.S.C. 11402);

ii. Grants beginning with Fiscal Year 2001 to private non-profit organizations and housing agencies under the Supportive Housing Program and Shelter Plus Care Program authorized by Title IV of the McKinney-Vento Homeless Assistance Act, in accordance with section 443 (42 U.S.C. 11402);

4. The HOME Investment Partnerships Program authorized by Title II of the Cranston-Gonzalez National Affordable Housing Act (NAHA), in accordance with section 288 (42 U.S.C. 12838);

5. Grants to States and units of general local government for abatement of lead-based paint and lead dust hazards pursuant to Title II of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1992, and grants for lead-based paint hazard reduction under section 1011 of the Housing and Community Development Act of 1992, in accordance with section 1011(o) (42 U.S.C. 4852(o));

6.

i. Public Housing Programs under Title I of the United States Housing Act of 1937, including HOPE VI grants authorized under section 24 of the Act for Fiscal Year 2000 and later, in accordance with section 26 (42 U.S.C. 1437x);

ii. Grants for the revitalization of severely distressed public housing (HOPE VI) for Fiscal Year 1999 and prior years, in accordance with Title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105-276, approved October 21, 1998); and

iii. Assistance administered by a public housing agency under section 8 of the United States Housing Act of 1937, except for assistance provided under part 886 of this title, in accordance with section 26 (42 U.S.C. 1437x);

7. Special Projects appropriated under an appropriation act for HUD, such as special projects under the heading ``Annual Contributions for Assisted Housing'' in Title II of various Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Acts, in accordance with section 305(c) of the Multifamily Housing Property Disposition Reform Act of 1994 (42 U.S.C. 3547);

8. The FHA Multifamily Housing Finance Agency Program under section 542(c) of the Housing and Community Development Act of 1992, in accordance with section 542(c)(9)(12 U.S.C. 1707 note); and

9. The Self-Help Homeownership Opportunity Program under section 11 of the Housing Opportunity Program Extension Act of 1996 (Pub. L. 104-120, 110 Stat. 834), in accordance with section 11(m)).

10. Assistance provided under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), in accordance with:

    i. Section 105 for Indian Housing Block Grants and Federal Guarantees or Financing for Tribal Housing Authorities (25 U.S.C. 4115 and 4226); and

    ii. Section 806 for Native Hawaiian Housing Block Grants (25 U.S.C. 4226);

11. Indian Housing Loan Guarantees authorized by section 184 of the Housing and Community Development Act of 1992, in accordance with section 184(k) (12 U.S.C. 1715z-13a(k)); and

12. Grants for Housing Opportunities for Persons with AIDS (HOPWA) under the AIDS Housing Opportunity Act, as follows: competitive grants beginning with Fiscal Year 2001 and all formula grants, in accordance with section 856(h) (42 U.S.C. 12905(h)); all grants for Fiscal Year 1999 and prior years, in accordance with section 207(c) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105-276, approved October 21, 1998).

c. When HUD assistance is used to help fund a revolving loan fund that is administered by a recipient or another party, the activities initially receiving assistance from the fund are subject to the requirements in this part. Future activities receiving assistance from the revolving loan fund, after the fund has received loan repayments, are subject to the environmental review requirements if the rules of the HUD program that initially provided assistance to the fund continue to treat the activities as subject to the Federal requirements. If the HUD program treats the activities as not being subject to any Federal requirements, then the activities cease to become Federally-funded activities and the provisions of this part do not apply.

d. To the extent permitted by applicable laws and the applicable regulations of the Council on Environmental Quality, the Assistant Secretary for Community Planning and Development may, for good cause and with appropriate conditions, approve waivers and exceptions or establish criteria for exceptions from the requirements of this part.

Sec. 58.2 Terms, abbreviations and definitions.

a. For the purposes of this part, the following definitions supplement the uniform terminology provided in 40 CFR part 1508:

    1. Activity means an action that a grantee or recipient puts forth as part of an assisted project, regardless of whether its cost is to be borne by the HUD assistance or is an eligible expense under the HUD assistance program.

    2. Certifying Officer means the official who is authorized to execute the Request for Release of Funds and Certification and has the legal capacity to carry out the responsibilities of Sec. 58.13.

    3. Extraordinary Circumstances means a situation in which an environmental assessment (EA) or environmental impact statement (EIS) is not normally required, but due to unusual conditions, an EA or EIS is appropriate. Indicators of unusual conditions are:

        i. Actions that are unique or without precedent;

        ii. Actions that are substantially similar to those that normally require an EIS;

        iii. Actions that are likely to alter existing HUD policy or HUD mandates; or

        iv. Actions that, due to unusual physical conditions on the site or in the vicinity, have the potential for a significant impact on the environment or in which the environment could have a significant impact on users of the facility.

    4. Project means an activity, or a group of integrally related activities, designed by the recipient to accomplish, in whole or in part, a specific objective.

    5. Recipient means any of the following entities, when they are eligible recipients or grantees under a program listed in Sec. 58.1(b):

i. A State that does not distribute HUD assistance under the program to a unit of general local government;

ii. Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, and Palau;

iii. A unit of general local government;

iv. An Indian tribe;

v. With respect to Public Housing Programs under Sec. 58.1(b)(6)(i), fiscal year 1999 and prior HOPE VI grants under Sec. 58.1(b)(6)(ii) or Section 8 assistance under Sec. 58.1(b)(6)(iii), a public housing agency;

vi. Any direct grantee of HUD for a special project under Sec. 58.1(b)(7);

vii. With respect to the FHA Multifamily Housing Finance Agency Program under 58.1(b)(8), a qualified housing finance agency;

viii. With respect to the Self-Help Homeownership Opportunity Program under Sec. 58.1(b)(9), any direct grantee of HUD.

ix.

A. With respect to NAHASDA assistance under Sec. 58.1(b)(10), the Indian tribe or the Department of Hawaiian Home Lands; and

B. With respect to the Section 184 Indian Housing Loan Guarantee program under Sec. 58.1(b)(11), the Indian tribe.

x. With respect to the Shelter Plus Care and Supportive Housing Programs under Sec. 58.1(b)(3)(ii), nonprofit organizations and other entities.

6. Release of funds. In the case of the FHA Multifamily Housing Finance Agency Program under Sec. 58.1(b)(8), Release of Funds, as used in this part, refers to HUD issuance of a firm approval letter, and Request for Release of Funds refers to a recipient's request for a firm approval letter. In the case of the Section 184 Indian Housing Loan Guarantee program under Sec. 58.1(b)(11), Release of Funds refers to HUD's issuance of a commitment to guarantee a loan, or if there is no commitment, HUD's issuance of a certificate of guarantee.

7. Responsible Entity. Responsible Entity means:

i. With respect to environmental responsibilities under programs listed in Sec. 58.1(b)(1), (2), (3)(i), (4), and (5), a recipient under the program.

ii. With respect to environmental responsibilities under the programs listed in Sec. 58.1(b)(3)(ii) and (6) through (12), a state, unit of general local government, Indian tribe or Alaska Native Village, or the Department of Hawaiian Home Lands, when it is the recipient under the program. Under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.) listed in Sec. 58.1(b)(10)(i), the Indian tribe is the responsible entity whether or not a Tribally Designated Housing Entity is authorized to receive grant amounts on behalf of the tribe. The Indian tribe is also the responsible entity under the Section 184 Indian Housing Loan Guarantee program listed in Sec. 58.1(b)(11). Regional Corporations in Alaska are considered Indian tribes in this part. Non-recipient responsible entities are designated as follows:

A. For qualified housing finance agencies, the State or a unit of general local government, Indian tribe or Alaska native village whose jurisdiction contains the project site;

B. For public housing agencies, the unit of general local government within which the project is located that exercises land use responsibility, or if HUD determines this infeasible, the county, or if HUD determines this infeasible, the State;

C. For non-profit organizations and other entities, the unit of general local government, Indian tribe or Alaska native village within which the project is located that exercises land use responsibility, or if HUD determines this infeasible, the county, or if HUD determines this infeasible, the State;

D. For Indian housing authorities (outside of Alaska), the Indian tribe in whose jurisdiction the project is located, or if the project is located outside of a reservation, the Indian tribe that established the authority; and

E. For Indian housing authorities in Alaska, the Alaska native village in whose community the project is located, or if HUD determines this infeasible, a unit of general local government or the State, as designated by HUD.

8. Unit Density refers to a change in the number of dwelling units. Where a threshold is identified as a percentage change in density that triggers review requirements, no distinction is made between an increase or a decrease in density.

9. Tiering means the evaluation of an action or an activity at various points in the development process as a proposal or event becomes ripe for an Environment Assessment or Review.

10. Vacant Building means a habitable structure that has been vacant for more than one year.

b. The following abbreviations are used throughout this part:

1. CDBG--Community Development Block Grant;

2. CEQ--Council on Environmental Quality;

3. EA--Environmental Assessment;

4. EIS--Environmental Impact Statement;

5. EPA--Environmental Protection Agency;

6. ERR--Environmental Review Record;

7. FONSI--Finding of No Significant Impact;

8. HUD--Department of Housing and Urban Development;

9. NAHA--Cranston-Gonzalez National Affordable Housing Act of 1990;

10. NEPA--National Environmental Policy Act of 1969, as amended;

11. NOI/EIS--Notice of Intent to Prepare an EIS;

12. NOI/RROF--Notice of Intent to Request Release of Funds;

13. ROD--Record of Decision;

14. ROF--Release of Funds; and

15. RROF--Request for Release of Funds.

Sec. 58.4 Assumption authority.

a. Assumption authority for responsible entities: General. Responsible entities shall assume the responsibility for environmental review, decision-making, and action that would otherwise apply to HUD under NEPA and other provisions of law that further the purposes of NEPA, as specified in Sec. 58.5. Responsible entities that receive assistance directly from HUD assume these responsibilities by execution of a grant agreement with HUD and/or a legally binding document such as the certification contained on HUD Form 7015.15, certifying to the assumption of environmental responsibilities. When a State distributes funds to a responsible entity, the State must provide for appropriate procedures by which these responsible entities will evidence their assumption of environmental responsibilities.

b. Particular responsibilities of the States.

1. States are recipients for purposes of directly undertaking a State project and must assume the environmental review responsibilities for the State's activities and those of any non-governmental entity that may participate in the project. In this case, the State must submit the certification and RROF to HUD for approval.

2. States must exercise HUD's responsibilities in accordance with Sec. 58.18, with respect to approval of a unit of local government's environmental certification and RROF for a HUD assisted project funded through the state. Approval by the state of a unit of local government's certification and RROF satisfies the Secretary's responsibilities under NEPA and the related laws cited in Sec. 58.5.

c. Particular responsibilities of Indian tribes. An Indian tribe may, but is not required to, assume responsibilities for environmental review, decision-making and action for programs authorized by the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.)

(other than title VIII) or section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z-13a). The tribe must make a separate decision regarding assumption of responsibilities for each of these Acts and communicate that decision in writing to HUD. If the tribe assumes these responsibilities, the requirements of this part shall apply. If a tribe formally declines assumption of these responsibilities, they are retained by HUD and the provisions of part 50 of this title apply.

Sec. 58.5 Related Federal laws and authorities.

In accordance with the provisions of law cited in Sec. 58.1(b), the responsible entity must assume responsibilities for environmental review, decision-making and action that would apply to HUD under the following specified laws and authorities. The responsible entity must certify that it has complied with the requirements that would apply to HUD under these laws and authorities and must consider the criteria, standards, policies and regulations of these laws and authorities.

a. Historic properties.

   1. The National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.), particularly sections 106 and 110 (16 U.S.C. 470 and 470h-2).

   2. Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921), 3 CFR 1971-1975 Comp., p. 559, particularly section 2(c).

   3. Federal historic preservation regulations as follows:

      i. 36 CFR part 800 with respect to HUD programs other than Urban Development Action Grants (UDAG); and

      ii. 36 CFR part 801 with respect to UDAG.

   4. The Reservoir Salvage Act of 1960 as amended by the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 et seq.), particularly section 3 (16 U.S.C. 469a-1).

b. Floodplain management and wetland protection.

   1. Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951), 3 CFR, 1977 Comp., p. 117, as interpreted in HUD regulations at 24 CFR part 55, particularly section 2(a) of the order (For an explanation of the relationship between the decision-making process in 24 CFR part 55 and this part, see Sec. 55.10 of this subtitle A.)

   2. Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961), 3 CFR, 1977 Comp., p. 121, particularly sections 2 and 5.

c. Coastal Zone Management. The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), as amended, particularly section 307(c) and (d) (16 U.S.C. 1456(c) and (d)).

d. Sole source aquifers.

   1. The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) et seq., and 21 U.S.C. 349) as amended; particularly section 1424(e)(42 U.S.C. 300h-3(e)).

   2. Sole Source Aquifers (Environmental Protection Agency--40 CFR part 149).

e. Endangered species. The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) as amended, particularly section 7 (16 U.S.C. 1536).

f. Wild and scenic rivers. The Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) as amended, particularly section 7(b) and (c) (16 U.S.C. 1278(b) and (c)).

g. Air quality.

   1. The Clean Air Act (42 U.S.C. 7401 et. seq.) as amended; particularly section 176(c) and (d) (42 U.S.C. 7506(c) and (d)).

   2. Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency-- 40 CFR parts 6, 51, and 93).

h. Farmlands protection.

   1. Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 et seq.) particularly sections 1540(b) and 1541 (7 U.S.C. 4201(b) and 4202).

   2. Farmland Protection Policy (Department of Agriculture--7 CFR part 658).

i. HUD environmental standards.

1. Applicable criteria and standards specified in part 51 of this title, other than the runway clear zone notification requirement in Sec. 51.303(a)(3).

2.

i. Also, it is HUD policy that all properties that are being proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property.

ii. The environmental review of multifamily housing with five or more dwelling units (including leasing), or non-residential property, must include the evaluation of previous uses of the site or other evidence of contamination on or near the site, to ensure that the occupants of proposed sites are not adversely affected by any of the hazards listed in paragraph (i)(2)(i) of this section.

iii. Particular attention should be given to any proposed site on or in the general proximity of such areas as dumps, landfills, industrial sites, or other locations that contain, or may have contained, hazardous wastes.

iv. The responsible entity shall use current techniques by qualified professionals to undertake investigations determined necessary.

j. Environmental justice. Executive Order 12898--Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994 (59 FR 7629), 3 CFR, 1994 Comp. p. 859.

Sec. 58.6 Other requirements.

In addition to the duties under the laws and authorities specified in Sec. 58.5 for assumption by the responsible entity under the laws cited in Sec. 58.1(b), the responsible entity must comply with the following requirements. Applicability of the following requirements does not trigger the certification and release of funds procedure under this part or preclude exemption of an activity under Sec. 58.34(a)(12) and/or the applicability of Sec. 58.35(b). However, the responsible entity remains responsible for addressing the following requirements in its ERR and meeting these requirements, where applicable, regardless of whether the activity is exempt under Sec. 58.34 or categorically excluded under Sec. 58.35(a) or (b).

a.

1. Under the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4128), Federal financial assistance for acquisition and construction purposes (including rehabilitation) may not be used in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

i. The community in which the area is situated is participating in the National Flood Insurance Program (see 44 CFR parts 59 through 79), or less than one year has passed since the FEMA notification regarding such hazards; and

ii. Where the community is participating in the National Flood Insurance Program, flood insurance protection is to be obtained as a condition of the approval of financial assistance to the property owner.

2. Where the community is participating in the National Flood Insurance Program and the recipient provides financial assistance for acquisition or construction purposes (including rehabilitation) for property located in an area identified by FEMA as having special flood hazards, the responsible entity is responsible for assuring that flood insurance under the National Flood Insurance Program is obtained and maintained.

3. Paragraph (a) of this section does not apply to Federal formula grants made to a State.

b. Under section 582 of the National Flood Insurance Reform Act of 1994, 42 U.S.C. 5154a, HUD disaster assistance that is made available in a special flood hazard area may not be used to make a payment (including any loan assistance payment) to a person for repair, replacement or restoration for flood damage to any personal, residential or commercial property if:

1. The person had previously received Federal flood disaster assistance conditioned on obtaining and maintaining flood insurance; and

2. The person failed to obtain and maintain flood insurance.

c. Pursuant to the Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3501), HUD assistance may not be used for most activities proposed in the Coastal Barrier Resources System.

d. In all cases involving HUD assistance, subsidy, or insurance for the purchase or sale of an existing property in a Runway Clear Zone or Clear Zone, as defined in 24 CFR part 51, the responsible entity shall advise the buyer that the property is in a runway clear zone or clear zone, what the implications of such a location are, and that there is a possibility that the property may, at a later date, be acquired by the airport operator. The buyer must sign a statement acknowledging receipt of this information.

[61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15271, Mar. 30, 1998]

Sec. 58.10 Basic environmental responsibility.

In accordance with the provisions of law cited in Sec. 58.1(b), except as otherwise provided in Sec. 58.4(c), the responsible entity must assume the environmental responsibilities for projects under programs cited in Sec. 58.1(b). In doing so, the responsible entity must comply with the provisions of NEPA and the CEQ regulations contained in 40 CFR parts 1500 through 1508, including the requirements set forth in this part.

[63 FR 15271, Mar. 30, 1998]

Sec. 58.11 Legal capacity and performance.

a. A responsible entity which believes that it does not have the legal capacity to carry out the environmental responsibilities required by this part must contact the appropriate local HUD Office or the State for further instructions. Determinations of legal capacity will be made on a case-by-case basis.

b. If a public housing, special project, HOPWA, Supportive Housing, Shelter Plus Care, or Self-Help Homeownership Opportunity recipient that is not a responsible entity objects to the non-recipient responsible entity conducting the environmental review on the basis of performance, timing, or compatibility of objectives, HUD will review the facts to determine who will perform the environmental review.

c. At any time, HUD may reject the use of a responsible entity to conduct the environmental review in a particular case on the basis of performance, timing or compatibility of objectives, or in accordance with Sec. 58.77(d)(1).

d. If a responsible entity, other than a recipient, objects to performing an environmental review, or if HUD determines that the responsible entity should not perform the environmental review, HUD may designate another responsible entity to conduct the review in accordance with this part or may itself conduct the environmental review in accordance with the provisions of 24 CFR part 50.

Sec. 58.12 Technical and administrative capacity.

The responsible entity must develop the technical and administrative capability necessary to comply with 40 CFR parts 1500 through 1508 and the requirements of this part.

Sec. 58.13 Responsibilities of the certifying officer.

Under the terms of the certification required by Sec. 58.71, a responsible entity's certifying officer is the "responsible Federal official" as that term is used in section 102 of NEPA and in statutory provisions cited in Sec. 58.1(b). The Certifying Officer is therefore responsible for all the requirements of section 102 of NEPA and the related provisions in 40 CFR parts 1500 through 1508, and 24 CFR part 58, including the related Federal authorities listed in Sec. 58.5. The Certifying Officer must also:

a. Represent the responsible entity and be subject to the jurisdiction of the Federal courts. The Certifying Officer will not be represented by the Department of Justice in court; and

b. Ensure that the responsible entity reviews and comments on all EISs prepared for Federal projects that may have an impact on the recipient's program.

Sec. 58.14 Interaction with State, Federal and non-Federal entities.

A responsible entity shall consult with appropriate environmental agencies, State, Federal and non-Federal entities and the public in the preparation of an EIS, EA or other environmental reviews undertaken under the related laws and authorities cited in Sec. 58.5 and Sec. 58.6. The responsible entity must also cooperate with other agencies to reduce duplication between NEPA and comparable environmental review requirements of the State (see 40 CFR 1506.2 (b) and (c)). The responsible entity must prepare its EAs and EISs so that they comply with the environmental review requirements of both Federal and State laws unless otherwise specified or provided by law. State, Federal and local agencies may participate or act in a

joint lead or cooperating agency capacity in the preparation of joint EISs or joint environmental assessments (see 40 CFR 1501.5(b) and 1501.6). A single EIS or EA may be prepared and adopted by multiple users to the extent that the review addresses the relevant environmental issues and there is a written agreement between the cooperating agencies which sets forth the coordinated and overall responsibilities.

[63 FR 15271, Mar 30, 1998]

Sec. 58.15 Tiering.

Responsible entities may tier their environmental reviews and assessments to eliminate repetitive discussions of the same issues at subsequent levels of review. Tiering is appropriate when there is a requirement to evaluate a policy or proposal in the early stages of development or when site-specific analysis or mitigation is not currently feasible and a more narrow or focused analysis is better done at a later date. The site specific review need only reference or summarize the issues addressed in the broader review. The broader review should identify and evaluate those issues ripe for decision and exclude those issues not relevant to the policy, program or project under consideration. The broader review should also establish
the policy, standard or process to be followed in the site specific review. The Finding of No Significant Impact (FONSI) with respect to the broader assessment shall include a summary of the assessment and identify the significant issues to be considered in site specific reviews. Subsequent site-specific reviews will not require notices or a Request for Release of Funds unless the Certifying Officer determines that there are unanticipated impacts or impacts not adequately addressed in the prior review. A tiering approach can be used for meeting environmental review requirements in areas designated for special focus in local Consolidated Plans. Local and State Governments are encouraged to use the Consolidated Plan process to facilitate environmental reviews.

Sec. 58.17 [Reserved]

Sec. 58.18 Environmental responsibilities of States assuming HUD responsibilities.

States that elect to administer a HUD program shall ensure that the program complies with the provisions of this part. The state must:

a. Designate the state agency or agencies that will be responsible for carrying out the requirements and administrative responsibilities set forth in subpart H of this part and which will:

    1. Develop a monitoring and enforcement program for post-review actions on environmental reviews and monitor compliance with any environmental conditions included in the award.

    2. Receive public notices, RROFs, and certifications from recipients pursuant to Sec. 58.70 and Sec. 58.71; accept objections from the public and from other agencies (Sec. 58.73); and perform other related responsibilities regarding releases of funds.

b. Fulfill the state role in subpart H relative to the time period set for the receipt and disposition of comments, objections and appeals (if any) on particular projects.

Sec. 58.21 Time periods.

All time periods in this part shall be counted in calendar days. The first day of a time period begins at 12:01 a.m. local time on the day following the publication or the mailing and posting date of the notice which initiates the time period.

Sec. 58.22 Limitations on activities pending clearance.

a. Neither a recipient nor any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance under a program listed in Sec. 58.1(b) on an activity or project until HUD or the state has approved the recipient's RROF and the related certification from the responsible entity. In addition, until the RROF and the related certification have been approved, neither a recipient nor any participant in the development process may commit non-HUD funds on or undertake an activity or project under a program listed in Sec. 58.1(b) if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives.

b. If a project or activity is exempt under Sec. 58.34, or is categorically excluded (except in extraordinary circumstances) under Sec. 58.35(b), no RROF is required and the recipient may undertake the activity immediately after the responsible entity has documented its determination as required in Sec. 58.34(b) and Sec. 58.35(d), but the recipient must comply with applicable requirements under Sec. 58.6.

c. If a recipient is considering an application from a prospective subrecipient or beneficiary and is aware that the prospective subrecipient or beneficiary is about to take an action within the jurisdiction of the recipient that is prohibited by paragraph (a) of this section, then the recipient will take appropriate action to ensure that the objectives and procedures of NEPA are achieved.

d. An option agreement on a proposed site or property is allowable prior to the completion of the environmental review if the option agreement is subject to a determination by the recipient on the desirability of the property for the project as a result of the completion of the environmental review in accordance with this part and the cost of the option is a nominal portion of the purchase price. There is no constraint on the purchase of an option by third parties that have not been selected for HUD funding, have no responsibility for the environmental review and have no say in the approval or disapproval of the project.

e. Self-Help Homeownership Opportunity Program (SHOP). In accordance with section 11(d)(2)(A) of the Housing Opportunity Program Extension Act of 1996 (42 U.S.C. 12805 note), an organization, consortium, or affiliate receiving assistance under the SHOP program may advance nongrant funds to acquire land prior to completion of an environmental review and approval of a Request for Release of Funds (RROF) and certification, notwithstanding paragraph (a) of this section. Any advances to acquire land prior to approval of the RROF and certification are made at the risk of the organization, consortium, or affiliate and reimbursement for such advances may depend on the result of the environmental review. This authorization is limited to the SHOP program only and all other forms of HUD assistance are subject to the limitations in paragraph (a) of this section.

f. Relocation. Funds may be committed for relocation assistance before the approval of the RROF and related certification for the project provided that the relocation assistance is required by 24 CFR part 42.

Sec. 58.23 Financial assistance for environmental review.

The costs of environmental reviews, including costs incurred in complying with any of the related laws and authorities cited in Sec. 58.5 and Sec. 58.6, are eligible costs to the extent allowable under the HUD assistance program regulations

Sec. 58.30 Environmental review process.

a. The environmental review process consists of all the actions that a responsible entity must take to determine compliance with this part. The environmental review process includes all the compliance actions needed for other activities and projects that are not assisted by HUD but are aggregated by the responsible entity in accordance with Sec. 58.32.

b. The environmental review process should begin as soon as a recipient determines the projected use of HUD assistance.

Sec. 58.32 Project aggregation.

a. A responsible entity must group together and evaluate as a single project all individual activities which are related either on a geographical or functional basis, or are logical parts of a composite of contemplated actions.

b. In deciding the most appropriate basis for aggregation when evaluating activities under more than one program, the responsible entity may choose: functional aggregation when a specific type of activity (e.g., water improvements) is to take place in several separate locales or jurisdictions; geographic aggregation when a mix of dissimilar but related activities is to be concentrated in a fairly specific project area (e.g., a combination of water, sewer and street improvements and economic development activities); or a combination of aggregation approaches, which, for various project locations, considers the impacts arising from each functional activity and its interrelationship with other activities.

c. The purpose of project aggregation is to group together related activities so that the responsible entity can:

    1. Address adequately and analyze, in a single environmental review, the separate and combined impacts of activities that are similar, connected and closely related, or that are dependent upon other activities and actions. (See 40 CFR 1508.25(a)).

    2. Consider reasonable alternative courses of action.

    3. Schedule the activities to resolve conflicts or mitigate the individual, combined and/or cumulative effects.

4. Prescribe mitigation measures and safeguards including project alternatives and modifications to individual activities.

d. Multi-year project aggregation--

1. Release of funds. When a recipient's planning and program development provide for activities to be implemented over two or more years, the responsible entity's environmental review should consider the relationship among all component activities of the multi-year project regardless of the source of funds and address and evaluate their cumulative environmental effects. The estimated range of the aggregated activities and the estimated cost of the total project must be listed and described by the responsible entity in the environmental review and included in the RROF. The release of funds will cover the entire project period.

2. When one or more of the conditions described in Sec. 58.47 exists, the recipient or other responsible entity must re-evaluate the environmental review.

Sec. 58.33 Emergencies.

a. In the cases of emergency, disaster or imminent threat to health and safety which warrant the taking of an action with significant environmental impact, the provisions of 40 CFR 1506.11 shall apply.

b. If funds are needed on an emergency basis and adherence to separate comment periods would prevent the giving of assistance during a Presidentially declared disaster, or during a local emergency that has been declared by the chief elected official of the responsible entity who has proclaimed that there is an immediate need for public action to protect the public safety, the combined Notice of FONSI and Notice of Intent to Request Release of Funds (NOI/RROF) may be disseminated and/or published simultaneously with the submission of the RROF. The combined Notice of FONSI and NOI/RROF shall state that the funds are needed on an emergency basis due to a declared disaster and that the comment periods have been combined. The Notice shall also invite commenters to submit their comments to both HUD and the responsible entity issuing the notice to ensure that these comments will receive full consideration.

Sec. 58.34 Exempt activities.

a. Except for the applicable requirements of Sec. 58.6, the responsible entity does not have to comply with the requirements of this part or undertake any environmental review, consultation or other action under NEPA and the other provisions of law or authorities cited in Sec. 58.5 for the activities exempt by this section or projects consisting solely of the following exempt activities:

1. Environmental and other studies, resource identification and the development of plans and strategies;

2. Information and financial services;

3. Administrative and management activities;

4. Public services that will not have a physical impact or result in any physical changes, including but not limited to services concerned with employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation and welfare or recreational needs;

5. Inspections and testing of properties for hazards or defects;

6. Purchase of insurance;

7. Purchase of tools;

8. Engineering or design costs;

9. Technical assistance and training;

10. Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration;

11. Payment of principal and interest on loans made or obligations guaranteed by HUD;

12. Any of the categorical exclusions listed in Sec. 58.35(a) provided that there are no circumstances which require compliance with any other Federal laws and authorities cited in Sec. 58.5.

b. A recipient does not have to submit an RROF and certification, and no further approval from HUD or the State will be needed by the recipient for the drawdown of funds to carry out exempt activities and projects. However, the responsible entity must document in writing its determination that each activity or project is exempt and meets the conditions specified for such exemption under this section.

[61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15271, Mar. 30, 1998]

Sec. 58.35 Categorical exclusions.

Categorical exclusion refers to a category of activities for which no environmental impact statement or environmental assessment and finding of no significant impact under NEPA is required, except in extraordinary circumstances (see Sec. 58.2(a)(3)) in which a normally excluded activity may have a significant impact. Compliance with the other applicable Federal environmental laws and authorities listed in Sec. 58.5 is required for any categorical exclusion listed in paragraph (a) of this section.

a. Categorical exclusions subject to Sec. 58.5. The following activities are categorically excluded under NEPA, but may be subject to review under authorities listed in Sec. 58.5:

1. Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size or capacity of more than 20 percent (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets).

2. Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons.

3. Rehabilitation of buildings and improvements when the following conditions are met:

i. In the case of a building for residential use (with one to four units), the density is not increased beyond four units, the land use is not changed, and the footprint of the building is not increased in a floodplain or in a wetland;

ii. In the case of multifamily residential buildings:

A. Unit density is not changed more than 20 percent;

B. The project does not involve changes in land use from residential to non-residential; and

C. The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.

iii. In the case of non-residential structures, including commercial, industrial, and public buildings:

A. The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and

B. The activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another.

4.

i. An individual action on up to four dwelling units where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between; or

ii. An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site.

iii. Paragraphs (a)(4)(i) and (ii) of this section do not apply to rehabilitation of a building for residential use (with one to four units) (see paragraph (a)(3)(i) of this section).

5. Acquisition (including leasing) or disposition of, or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use.

6. Combinations of the above activities.

b. Categorical exclusions not subject to Sec. 58.5. The Department has determined that the following categorically excluded activities would not alter any conditions that would require a review or compliance determination under the Federal laws and authorities cited in Sec. 58.5. When the following kinds of activities are undertaken, the responsible entity does not have to publish a NOI/RROF or execute a certification and the recipient does not have to submit a RROF to HUD (or the State) except in the circumstances described in paragraph (c) of this section. Following the award of the assistance, no further approval from HUD or the State will be needed with respect to environmental requirements, except where paragraph (c) of this section applies. The recipient remains responsible for carrying out any applicable requirements under Sec. 58.6.

1. Tenant-based rental assistance;

2. Supportive services including, but not limited to, health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, State, and Federal government benefits and services;

3. Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs;

4. Economic development activities, including but not limited to, equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or expansion of existing operations;

5. Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction, including closing costs and down payment assistance, interest buydowns, and similar activities that result in the transfer of title.

6. Affordable housing pre-development costs including legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact.

7. Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under this part, if the approval is made by the same responsible entity that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under Sec. 58.47.

c. Circumstances requiring NEPA review. If a responsible entity determines that an activity or project identified in paragraph (a) or (b) of this section, because of extraordinary circumstances and conditions at or affecting the location of the activity or project, may have a significant environmental effect, it shall comply with all the requirements of this part.

d. The Environmental Review Record (ERR) must contain a well organized written record of the process and determinations made under this section.

[61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15272, Mar. 30, 1998]

Sec. 58.36 Environmental assessments.

If a project is not exempt or categorically excluded under Secs. 58.34 and 58.35, the responsible entity must prepare an EA in accordance with subpart E of this part. If it is evident without preparing an EA that an EIS is required under Sec. 58.37, the responsible entity should proceed directly to an EIS.

Sec. 58.37 Environmental impact statement determinations.

a. An EIS is required when the project is determined to have a potentially significant impact on the human environment.

b. An EIS is required under any of the following circumstances, except as provided in paragraph (c) of this section:

1. The project would provide a site or sites for, or result in the construction of, hospitals or nursing homes containing a total of 2,500 or more beds.

2. The project would remove, demolish, convert or substantially rehabilitate 2,500 or more existing housing units (but not including rehabilitation projects categorically excluded under Sec. 58.35), or would result in the construction or installation of 2,500 or more housing units, or would provide sites for 2,500 or more housing units.

3. The project would provide enough additional water and sewer capacity to support 2,500 or more additional housing units. The project does not have to be specifically intended for residential use nor does it have to be totally new construction. If the project is designed to provide upgraded service to existing development as well as to serve new development, only that portion of the increased capacity which is intended to serve new development should be counted.

c. If, on the basis of an EA, a responsible entity determines that the thresholds in paragraph (b) of this section are the sole reason for the EIS, the responsible entity may prepare a FONSI pursuant to 40 CFR 1501.4. In such cases, the FONSI must be made available for public review for at least 30 days before the responsible entity makes the final determination whether to prepare an EIS.

d. Notwithstanding paragraphs (a) through (c) of this section, an EIS is not required where Sec. 58.53 is applicable.

e. Recommended EIS Format. The responsible entity must use the EIS format recommended by the CEQ regulations (40 CFR 1502.10) unless a determination is made on a particular project that there is a compelling reason to do otherwise. In such a case, the EIS format must meet the minimum requirements prescribed in 40 CFR 1502.10.

Sec. 58.38 Environmental review record.

The responsible entity must maintain a written record of the environmental review undertaken under this part for each project. This document will be designated the "Environmental Review Record" (ERR), and shall be available for public review. The responsible entity must use the current HUD-recommended formats or develop equivalent formats.

a. ERR Documents. The ERR shall contain all the environmental review documents, public notices and written determinations or environmental findings required by this part as evidence of review, decision making and actions pertaining to a particular project of a recipient. The document shall:

1. Describe the project and the activities that the recipient has determined to be part of the project;

2. Evaluate the effects of the project or the activities on the human environment;

3. Document compliance with applicable statutes and authorities, in particular those cited in Sec. 58.5 and 58.6; and

4. Record the written determinations and other review findings required by this part (e.g., exempt and categorically excluded projects determinations, findings of no significant impact).

b. Other documents and information. The ERR shall also contain verifiable source documents and relevant base data used or cited in EAs, EISs or other project review documents. These documents may be incorporated by reference into the ERR provided that each source document is identified and available for inspection by interested parties. Proprietary material and special studies prepared for the recipient that are not otherwise generally available for public review shall not be incorporated by reference but shall be included in the ERR.

Sec. 58.40 Preparing the environmental assessment.

The responsible entity may prepare the EA using the HUD recommended format. In preparing an EA for a particular project, the responsible entity must:

a. Determine existing conditions and describe the character, features and resources of the project area and its surroundings; identify the trends that are likely to continue in the absence of the project.

b. Identify all potential environmental impacts, whether beneficial or adverse, and the conditions that would change as a result of the project.

c. Identify, analyze and evaluate all impacts to determine the significance of their effects on the human environment and whether the project will require further compliance under related laws and authorities cited in Sec. 58.5 and Sec. 58.6.

d. Examine and recommend feasible ways in which the project or external factors relating to the project could be modified in order to eliminate or minimize adverse environmental impacts.

e. Examine alternatives to the project itself, if appropriate, including the alternative of no action.

f. Complete all environmental review requirements necessary for the project's compliance with applicable authorities cited in Secs. 58.5 and 58.6.

g. Based on steps set forth in paragraph (a) through (f) of this section, make one of the following findings:

   1. A Finding of No Significant Impact (FONSI), in which the responsible entity determines that the project is not an action that will result in a significant impact on the quality of the human environment. The responsible entity may then proceed to Sec. 58.43.

   2. A finding of significant impact, in which the project is deemed to be an action which may significantly affect the quality of the human environment. The responsible entity must then proceed with its environmental review under subpart F or G of this part.

Sec. 58.43 Dissemination and/or publication of the findings of no significant impact.

a. If the responsible entity makes a finding of no significant impact, it must prepare a FONSI notice, using the current HUD-recommended format or an equivalent format. As a minimum, the responsible entity must send the FONSI notice to individuals and groups known to be interested in the activities, to the local news media, to the appropriate tribal, local, State and Federal agencies; to the Regional Offices of the Environmental Protection Agency having jurisdiction and to the HUD Field Office (or the State where applicable). The responsible entity may also publish the FONSI notice in a newspaper of general circulation in the affected community. If the notice is not published, it must also be prominently displayed in public buildings, such as the local Post Office and within the project area or in accordance with procedures established as part of the citizen participation process.

b. The responsible entity may disseminate or publish a FONSI notice at the same time it disseminates or publishes the NOI/RROF required by Sec. 58.70. If the notices are released as a combined notice, the combined notice shall:

   1. Clearly indicate that it is intended to meet two separate procedural requirements; and

   2. Advise the public to specify in their comments which "notice" their comments address.

c. The responsible entity must consider the comments and make modifications, if appropriate, in response to the comments, before it completes its environmental certification and before the recipient submits its RROF. If funds will be used in Presidentially declared disaster areas, modifications resulting from public comment, if appropriate, must be made before proceeding with the expenditure of funds.

Sec. 58.45 Public comment periods.

Required notices must afford the public the following minimum comment periods, counted in accordance with Sec. 58.21:

a. Notice of Finding of No Significant Impact (FONSI): 15 days when published or, if no publication, 18 days when mailing and posting

b. Notice of Intent to Request Release of Funds (NOI-RROF): 7 days when published or, if no publication, 10 days when mailing and posting

c. Concurrent or combined notices: 15 days when published or, if no publication, 18 days when mailing and posting

Sec. 58.46 Time delays for exceptional circumstances.

The responsible entity must make the FONSI available for public comments for 30 days before the recipient files the RROF when:

a. There is a considerable interest or controversy concerning the project;

b. The proposed project is similar to other projects that normally require the preparation of an EIS; or

c. The project is unique and without precedent.

Sec. 58.47 Re-evaluation of environmental assessments and other environmental findings.

a. A responsible entity must re-evaluate its environmental findings to determine if the original findings are still valid, when:

   1. The recipient proposes substantial changes in the nature, magnitude or extent of the project, including adding new activities not anticipated in the original scope of the project;

2. There are new circumstances and environmental conditions which may affect the project or have a bearing on its impact, such as concealed or unexpected conditions discovered during the implementation of the project or activity which is proposed to be continued; or

3. The recipient proposes the selection of an alternative not in the original finding.

b.

1. If the original findings are still valid but the data or conditions upon which they were based have changed, the responsible entity must affirm the original findings and update its ERR by including this re-evaluation and its determination based on its findings. Under these circumstances, if a FONSI notice has already been published, no further publication of a FONSI notice is required.

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

3. Where the recipient is not the responsible entity, the recipient must inform the responsible entity promptly of any proposed substantial changes under paragraph (a)(1) of this section, new circumstances or environmental conditions under paragraph (a)(2) of this section, or any proposals to select a different alternative under paragraph (a)(3) of this section, and must then permit the responsible entity to re-evaluate the findings before proceeding.

[61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15272, Mar. 30, 1998]

Sec. 58.52 Adoption of other agencies' EISs.

The responsible entity may adopt a draft or final EIS prepared by another agency provided that the EIS was prepared in accordance with 40 CFR parts 1500 through 1508. If the responsible entity adopts an EIS prepared by another agency, the procedure in 40 CFR 1506.3 shall be followed. An adopted EIS may have to be revised and modified to adapt it to the particular environmental conditions and circumstances of the project if these are different from the project reviewed in the EIS. In such cases the responsible entity must prepare, circulate, and file a
supplemental draft EIS in the manner prescribed in Sec. 58.60(d) and otherwise comply with the clearance and time requirements of the EIS process, except that scoping requirements under 40 CFR 1501.7 shall not apply. The agency that prepared the original EIS should be informed that the responsible entity intends to amend and adopt the EIS. The responsible entity may adopt an EIS when it acts as a cooperating agency in its preparation under 40 CFR 1506.3. The responsible entity is not required to re-circulate or file the EIS, but must complete the clearance process for the RROF. The decision to adopt an EIS shall be made a part of the project ERR.

Sec. 58.53 Use of prior environmental impact statements.

Where any final EIS has been listed in the Federal Register for a project pursuant to this part, or where an areawide or similar broad scale final EIS has been issued and the EIS anticipated a subsequent project requiring an environmental clearance, then no new EIS is required for the subsequent project if all the following conditions are met:

a. The ERR contains a decision based on a finding pursuant to Sec. 58.40 that the proposed project is not a new major Federal action significantly affecting the quality of the human environment. The decision shall include:

1. References to the prior EIS and its evaluation of the environmental factors affecting the proposed subsequent action subject to NEPA;

2. An evaluation of any environmental factors which may not have been previously assessed, or which may have significantly changed;

3. An analysis showing that the proposed project is consistent with the location, use, and density assumptions for the site and with the timing and capacity of the circulation, utility, and other supporting infrastructure assumptions in the prior EIS;

4. Documentation showing that where the previous EIS called for mitigating measures or other corrective action, these are completed to the extent reasonable given the current state of development.

b. The prior final EIS has been filed within five (5) years, and updated as follows:

1. The EIS has been updated to reflect any significant revisions made to the assumptions under which the original EIS was prepared;

2. The EIS has been updated to reflect new environmental issues and data or legislation and implementing regulations which may have significant environmental impact on the project area covered by the prior EIS.

c. There is no litigation pending in connection with the prior EIS, and no final judicial finding of inadequacy of the prior EIS has been made.

Sec. 58.55 Notice of intent to prepare an EIS.

As soon as practicable after the responsible entity decides to prepare an EIS, it must publish a NOI/EIS, using the HUD recommended format and disseminate it in the same manner as required by 40 CFR parts 1500 through 1508.

Sec. 58.56 Scoping process.

The determination on whether or not to hold a scoping meeting will depend on the same circumstances and factors as for the holding of public hearings under Sec. 58.59. The responsible entity must wait at least 15 days after disseminating or publishing the NOI/EIS before holding a scoping meeting.

Sec. 58.57 Lead agency designation.

If there are several agencies ready to assume the lead role, the responsible entity must make its decision based on the criteria in 40 CFR 1501.5(c). If the responsible entity and a Federal agency are unable to reach agreement, then the responsible entity must notify HUD (or the State, where applicable). HUD (or the State) will assist in obtaining a determination based on the procedure set forth in 40 CFR 1501.5(e).

Sec. 58.59 Public hearings and meetings.

a. Factors to consider. In determining whether or not to hold public hearings in accordance with 40 CFR 1506.6, the responsible entity must consider the following factors:

   1. The magnitude of the project in terms of economic costs, the geographic area involved, and the uniqueness or size of commitment of resources involved.

   2. The degree of interest in or controversy concerning the project.

   3. The complexity of the issues and the likelihood that information will be presented at the hearing which will be of assistance to the responsible entity.

   4. The extent to which public involvement has been achieved through other means.

b. Procedure. All public hearings must be preceded by a notice of public hearing, which must be published in the local news media 15 days before the hearing date. The Notice must:

   1. State the date, time, place, and purpose of the hearing or meeting.

   2. Describe the project, its estimated costs, and the project area.

   3. State that persons desiring to be heard on environmental issues will be afforded the opportunity to be heard.

   4. State the responsible entity's name and address and the name and address of its Certifying Officer.

   5. State what documents are available, where they can be obtained, and any charges that may apply.

Sec. 58.60 Preparation and filing of environmental impact statements.

a. The responsible entity must prepare the draft environmental impact statement (DEIS) and the final environmental impact statements (FEIS) using the current HUD recommended format or its equivalent.

b. The responsible entity must file and distribute the (DEIS) and the (FEIS) in the following manner:

   1. Five copies to EPA Headquarters;

   2. Five copies to EPA Regional Office;

   3. Copies made available in the responsible entity's and the recipient's office;

   4. Copies or summaries made available to persons who request them; and

   5. FEIS only--one copy to State, HUD Field Office, and HUD Headquarters library.

c. The responsible entity may request waivers from the time requirements specified for the draft and final EIS as prescribed in 40 CFR 1506.6.

d. When substantial changes are proposed in a project or when significant new circumstances or information becomes available during an environmental review, the recipient may prepare a supplemental EIS as prescribed in 40 CFR 1502.9.

e. The responsible entity must prepare a Record of Decision (ROD) as prescribed in 40 CFR 1505.2.

[61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15272, Mar. 30, 1998]

Sec. 58.70 Notice of intent to request release of funds.

The NOI/RROF must be disseminated and/or published in the manner prescribed by Sec. 58.43 and Sec. 58.45 before the certification is signed by the responsible entity.

Sec. 58.71 Request for release of funds and certification.

a. The RROF and certification shall be sent to the appropriate HUD Field Office (or the State, if applicable), except as provided in paragraph (b) of this section. This request shall be executed by the Certifying Officer. The request shall describe the specific project and activities covered by the request and contain the certification required under the applicable statute cited in Sec. 58.1(b). The RROF and certification must be in a form specified by HUD.

b. When the responsible entity is conducting an environmental review on behalf of a recipient, as provided for in Sec. 58.10, the recipient must provide the responsible entity with all available project and environmental information and refrain from undertaking any physical activities or choice limiting actions until HUD (or the State, if applicable) has approved its request for release of funds. The certification form executed by the responsible entity's certifying officer shall be sent to the recipient that is to receive the assistance along with a description of any special environmental conditions that must be adhered to in carrying out the project. The recipient is to submit the RROF and the certification of the responsible entity to HUD (or the State, if applicable) requesting the release of funds. The recipient must agree to abide by the special conditions, procedures and requirements of the environmental review, and to advise the responsible entity of any proposed change in the scope of the project or any change in environmental conditions.

c. If the responsible entity determines that some of the activities are exempt under applicable provisions of this part, the responsible entity shall advise the recipient that it may commit funds for these activities as soon as programmatic authorization is received. This finding shall be documented in the ERR maintained by the responsible entity and in the recipient's project files.

Sec. 58.72 HUD or State actions on RROFs and certifications.

The actions which HUD (or a State) may take with respect to a recipient's environmental certification and RROF are as follows:

a. In the absence of any receipt of objection to the contrary, except as provided in paragraph (b) of this section, HUD (or the State) will assume the validity of the certification and RROF and will approve these documents after expiration of the 15-day period prescribed by statute.

b. HUD (or the state) may disapprove a certification and RROF if it has knowledge that the responsible entity or other participants in the development process have not complied with the items in Sec. 58.75, or that the RROF and certification are inaccurate.

c. In cases in which HUD has approved a certification and RROF but subsequently learns (e.g., through monitoring) that the recipient violated Sec. 58.22 or the recipient or responsible entity otherwise failed to comply with a clearly applicable environmental authority, HUD shall impose appropriate remedies and sanctions in accord with the law and regulations for the program under which the violation was found.

Sec. 58.73 Objections to release of funds.

HUD (or the State) will not approve the ROF for any project before 15 calendar days have elapsed from the time of receipt of the RROF and the certification or from the time specified in the notice published pursuant to Sec. 58.70, whichever is later. Any person or agency may object to a recipient's RROF and the related certification. However, the objections must meet the conditions and procedures set forth in subpart H of this part. HUD (or the State) can refuse the RROF and certification on any grounds set forth in Sec. 58.75. All decisions by HUD (or the State) regarding the RROF and the certification shall be final.

Sec. 58.74 Time for objecting.

All objections must be received by HUD (or the State) within 15 days from the time HUD (or the State) receives the recipient's RROF and the related certification, or within the time period specified in the notice, whichever is later.

Sec. 58.75 Permissible bases for objections.

HUD (or the State), will consider objections claiming a responsible entity's noncompliance with this part based only on any of the following grounds:

a. The certification was not in fact executed by the responsible entity's Certifying Officer.

b. The responsible entity has failed to make one of the two findings pursuant to Sec. 58.40 or to make the written determination required by Secs. 58.35, 58.47 or 58.53 for the project, as applicable.

c. The responsible entity has omitted one or more of the steps set forth at subpart E of this part for the preparation, publication and completion of an EA.

d. The responsible entity has omitted one or more of the steps set forth at subparts F and G of this part for the conduct, preparation, publication and completion of an EIS.

e. The recipient or other participants in the development process have committed funds, incurred costs or undertaken activities not authorized by this part before release of funds and approval of the environmental certification by HUD (or the state).

f. Another Federal agency acting pursuant to 40 CFR part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality.

Sec. 58.76 Procedure for objections.

A person or agency objecting to a responsible entity's RROF and certification shall submit objections in writing to HUD (or the State). The objections shall:

a. Include the name, address and telephone number of the person or agency submitting the objection, and be signed by the person or authorized official of an agency.

b. Be dated when signed.

c. Describe the basis for objection and the facts or legal authority supporting the objection.

d. State when a copy of the objection was mailed or delivered to the responsible entity's Certifying Officer.

Sec. 58.77 Effect of approval of certification.

a. Responsibilities of HUD and States. HUD's (or, where applicable, the State's) approval of the certification shall be deemed to satisfy the responsibilities of the Secretary under NEPA and related provisions of law cited at Sec. 58.5 insofar as those responsibilities relate to the release of funds as authorized by the applicable provisions of law cited in Sec. 58.1(b).

b. Public and agency redress. Persons and agencies seeking redress in relation to environmental reviews covered by an approved certification shall deal with the responsible entity and not with HUD. It is HUD's policy to refer all inquiries and complaints to the responsible entity and its Certifying Officer. Similarly, the State (where applicable) may direct persons and agencies seeking redress in relation to environmental reviews covered by an approved certification to deal with the responsible entity, and not the State, and may refer inquiries and complaints to the responsible entity and its Certifying Officer. Remedies for noncompliance are set forth in program regulations.

c. Implementation of environmental review decisions. Projects of a recipient will require post-review monitoring and other inspection and enforcement actions by the recipient and the State or HUD (using procedures provided for in program regulations) to assure that decisions adopted through the environmental review process are carried out during project development and implementation.

d. Responsibility for monitoring and training.

    1. At least once every three years, HUD intends to conduct in-depth monitoring and exercise quality control (through training and consultation) over the environmental activities performed by responsible entities under this part. Limited monitoring of these environmental activities will be conducted during each program monitoring site visit. If through limited or in-depth monitoring of these environmental activities or by other means, HUD becomes aware of any environmental deficiencies, HUD may take one or more of the following actions:

        i. In the case of problems found during limited monitoring, HUD may schedule in-depth monitoring at an earlier date or may schedule in-depth monitoring more frequently;

        ii. HUD may require attendance by staff of the responsible entity at HUD-sponsored or approved training, which will be provided periodically at various locations around the country;

iii. HUD may refuse to accept the certifications of environmental compliance on subsequent grants;

iv. HUD may suspend or terminate the responsible entity's assumption of the environmental review responsibility;

v. HUD may initiate sanctions, corrective actions, or other remedies specified in program regulations or agreements or contracts with the recipient.

HUD's responsibilities and action under paragraph (d)(1) of this section shall not be construed to limit or reduce any responsibility assumed by a responsible entity with respect to any particular release of funds under this part. Whether or not HUD takes action under paragraph (d)(1) of this section, the Certifying Officer remains the responsible Federal official under Sec. 58.13 with respect to projects and activities for which the Certifying Officer has submitted a certification under this part.

ENVIRONMENTAL REVIEW RECORD

GRANT NUMBER:_____

PROJECT NAME:_____

ENVIRONMENTAL REVIEW RECORD CHECKLIST

COMPONENTS	YES	NO	N/A	COMMENTS
1. Brief Project Description				
2. Finding of Exemption or Categorical Exclusion Determinations				
3. Statutory Checklist: Environmental Requirements Other Than NEPA. (For all Cat. Excl. Projects, including Cat. Excl. Projects determined to be exempt pursuant to 58.34(a)12, and projects requiring EA or EIS)				
4. Environmental Assessment Checklist				
5. Notice of Finding of No Significant Impact as published				
6. Notice of Intent to Request a Release of Funds as published				
7. Combined FONSI/RROF as posted/published				
8. a. Distribution List of FONSI b. Distribution List of RROF c. Distribution List of FONSI/RROF				
9. Any comments received and recipient responses				
10. Request for Release of Funds/Certification submitted				
11. Notice of Removal of Grant Condition/Release of Funds				
12. Post-Review Revisions and Changes, Written Decisions, Amendments, and Supplements				
13. Continued Compliance(58.47) Determination				
1. EIS documentation required by 58.55-60				

PART I

PROJECT ABSTRACT

Grant Number:_____

Month/Year From: _____ *To:* _____ *Original*

Revisions/Amendments:_____

Name of Responsible Entity:
Typed Name and Title of Certifying Officer:
Typed Name, Title, Agency of Preparer:

Project Name:
Locations of Physical Development(s):

Recipient:	
Address:	
Project Representative:	**Telephone:**
Address:	
Project Information:	**Telephone:**
Address:	

Project Name and Identification No._____

PROJECT AND AREA DESCRIPTION (Include all contemplated actions which logically are either geographically or functionally a composite part of the project, i.e. acquisition, demolition, rehabilitation, construction, etc., regardless of the source of funding. Describe the type of project/business, precise locations, time factors, current use and other pertinent descriptive material to enable the reader to envisage the general nature, magnitude and extent of the project. Attach maps showing the locations of the project and distance to major landmarks, highways, central business district, etc. as appropriate):

EXISTING CONDITIONS AND TRENDS (Generally describe the environment of the project site and the surrounding area as it exists without the project –i.e. presently. Identify pertinent physical factors, such as land uses, soil, climate, noise, air, water, vegetation, etc. Indicate the nature and extent, or absence of service delivery systems and facilities, the social and economic character, population density, etc.):

STATUTORY CHECKLIST

Project Name and Identification No._____

A. Are all activities of this project **Exempt** from NEPA procedures? ___ Yes___ No If "Yes" attach Finding with citations to applicable subsection of 58.34(a)(1)-(11). Sign and date below and keep this form in the project ERR Do not initiate RROF procedures. If "No" proceed to question B.

B. 1. Is this a **Categorically Excluded** [58.35(b)] project **not subject** to 58.5? ___ Yes ___ No. If "Yes" attach Finding with citations to applicable subsections of 58.35(b). Fill out the checklist, sign and date below and keep this form in the ERR. Do not initiate RROF procedures. If "No" then go to question B2.

2. Is this a **Categorically Excluded** project [58.35(a)] **subject** to 58.5? ____Yes ___ No. If "Yes" respond to question B3. If "No" then go to question C

3. Does project trigger compliance measures with 58.5? __Yes __No. If "Yes" attach Finding with citations to applicable subsection 58.35(a) and perform all actions as per relevant compliance requirements. Fill out the checklist, sign and date below and keep this form in the ERR. Initiate RROF procedures. If "No", attach Finding of Exemption with citation to subsection 58.34(a)(12) Fill out the checklist, sign and date below and keep this form in the ERR Do not initiate RROF procedures.

C. Does this project require an **Environmental Assessment** (EA)?__Yes_No. If "Yes" fill out the Statutory and Assessment Checklists, sign and date checklists, make them part of the project ERR. After the EA has been completed, and all determinations and compliance processes have been completed, RROF procedures can be initiated.

For each compliance area listed below, record the determination(s) made: 1 Compliance (record either WHY the project does not implicate the authority or the supporting information documenting HOW compliance has been achieved; 2 Consultation/ Review Required; 3 Permit Required; 4 Determination of Consistency, Approval & Permit Obtained; 5 Conditions or Mitigation Required. Note reviews and consultations completed as well as any applicable permits or approvals obtained. Attach evidence that all required actions have been taken. Record any conditions or mitigation measures required.

AREA OF STATUTORY OR REGULATORY COMPLIANCE	Code	References to notes providing documentation, sources and explanation of determinations made. Attach additional information as necessary.
Historic Properties		
Floodplain Management*		
Wetland Protection		
Noise Control		
Air Quality		
Explosive and Flammable Operations		
Airport Hazards*		
Water Quality (Sole Source Aquifers)		
Coastal Zone Management	1	No Coastal resources in Nebraska
Endangered Species		
Wild & Scenic Rivers		
Farmlands Protection		
Environmental Justice		
Contamination & Toxic Substances		

***The RE must additionally document and ensure compliance with 24 CFR 58.6 (Flood Insurance requirements of the Flood Disaster Protection Act and the Buyer Disclosure requirements of the HUD Airport Runway Clear Zone/Clear Zone regulation at 24 CFR 51B).**

Preparer-Signature:_____ **Title:**_____ **Date:**_____

Certifying Officer-Signature:_____ **Title:**_____ **Date:** _____

PART II

ENVIRONMENTAL ASSESSMENT CHECKLIST

Project Name and Identification No._____

Evaluate the significance of the effects of the proposal on the character, features and resources of the project area. Enter relevant base data and verifiable source documentation to support the finding. Then enter the appropriate impact code from the following list to make a finding of impact: 1 – No impact anticipated, 2 – Potentially beneficial, 3 – Potentially adverse, 4 – Requires mitigation, 5 – Requires project modification. Note names, dates of contact, telephone numbers and page references. Attach additional materials as needed.

Impact Categories	CODE(S)	NOTE CONDITIONS AND/OR SOURCE DOCUMENTATION THAT SUPPORTS FINDING REFERENCE NOTES
Land Development		
Conformance with Comprehensive Plans and Zoning		
Compatibility and Urban Impact		
Slope		
Erosion		
Soil Suitability		
Hazards and Nuisances Including Site Safety		
Energy Consumption		
Special Factors		
Effects of Ambient Noise on Project and Contribution to Community Noise Levels		
Effects of Ambient Air Quality on Project and Contribution to Community Pollution Levels		
Visual Quality– Coherence, Diversity, Compatible Use And Scale		
Socioeconomic		
Demographic Character Changes		
Displacement		
Employment and Income Patterns		

ENVIRONMENTAL ASSESSMENT CHECKLIST

Project Name and Identification No._____

Impact Categories		CODE(S)	NOTE CONDITIONS AND/OR SOURCE DOCUMENTATION THAT SUPPORTS FINDING REFERENCE NOTES
Community Facilities and Services			
Educational Facilities			
Commercial Facilities			
Health Care			
Social Services			
Solid Waste			
Waste Water			
Storm Water			
Water Supply			
Public Safety	Police		
	Fire		
	Emergency Medical		
Open Space and Recreation	Open Space		
	Recreation		
	Cultural Facilities		
Transportation			
Natural Features			
Water Resources			
Surface Water			
Unique Natural Features and Agricultural Lands			
Vegetation and Wildlife			

ENVIRONMENTAL ASSESSMENT CHECKLIST

Project Name and Identification No._____

SUMMARY OF FINDINGS AND CONCLUSIONS. Identify and describe each alteration of existing environmental conditions, adverse or beneficial, which will be caused or induced, in whole or in part, directly or indirectly, by the proposed project.

ALTERNATIVE AND PROJECT MODIFICATIONS CONSIDERED. Identify other reasonable courses of action that were considered and not selected, such as other sites, design modifications, or other uses of the subject site. Describe the benefits and adverse impacts to the human environment of each alternative and the reasons for rejecting it.

NO ACTION ALTERNATIVE. Discuss the benefits and adverse impacts to the human environment of not implementing the preferred alternative.

ADDITIONAL STUDIES PERFORMED (Attach Study or Summary)

ENVIRONMENTAL ASSESSMENT CHECKLIST

Project Name and Identification No._____

MITIGATION MEASURES NEEDED. Determine and describe all conditions or safeguards which should be implemented in order to protect or enhance environmental quality, or minimize or eliminate adverse impacts if the project is undertaken.

1. Is project in compliance with applicable laws and regulations? ____ Yes ____ No

2. A Finding of Significant Impact is made. The project may significantly affect the quality of the human environments and an EIS is required? ____ Yes ____ No

3. A Finding of No Significant Impact (FONSI) can be made. Project will not significantly affect the quality of the human environment. ____ Yes ____ No

Preparer-Signature: _____ Date: _____

Title/Agency: _____

Certifying Officer-Signature: _____ Date: _____

Title/Agency: _____

Potential Agency Contact and Distribution List

Regulatory Agencies	Potential Assistance
Nebraska Department of Aeronautics Planning & Engineering Division P. O. Box 82088 Lincoln, NE 68501-2088	Airport Hazards
Nebraska Department of Environmental Quality Small Business & Public Assistance Coordinator P O Box 98922 Lincoln, NE 68509-8922	Air Quality, Hazardous Sites, Solid and Hazardous Waste, Water Quality (Surface Water, Ground Water & Effluent Discharge)
Nebraska Game and Parks Commission Realty & Environmental Services Division P. O. Box 30370 Lincoln, NE 68503-0370	State Parks & Recreation Areas, Fisheries & Wildlife Management Areas
Nebraska Game and Parks Commission Heritage Division P. O. Box 30370 Lincoln, NE 68503-0370	Threatened & Endangered Species
Nebraska Health and Human Services System Regulation and Licensure P O Box 95007 Lincoln, NE 68509-5007	Water Quality
Nebraska State Fire Marshall 246 South 14th Street Lincoln, NE 68508	Thermal/Explosive Hazards, Storage Tanks
Nebraska State Historical Society State Historic Preservation Officer P. O. Box 82554 Lincoln, NE 68501-2554	Historic Preservation
Nebraska Department of Natural Resources P O Box 94676 Lincoln, NE 68509-4676	Livestock Waste Lagoons, New Well Construction, Ground Water Transfers, Floodplain Management
U. S. Fish and Wildlife Service Ecological Service Office 203 West Second Street Grand Island, NE 68801-5907	Endangered & Migrant Species, Fish & Wildlife

National Park Service Midwest Regional Office 1709 Jackson Street Omaha, NE 68102 Or 510 W. Wisconsin Ave., Room 100E Milwaukee, WI 53205 Or www.nps.gov/rivers/wildriverslist.html	Wild & Scenic Rivers, National Landmarks
Natural Resources Conservation Service State Conservationist Federal Building Room 152 100 Centennial Mall North Lincoln, NE 68508-3866	Prime Farmlands, Forests, Rangeland, Wetlands Identification
U. S. Army Corps of Engineers 8901 South 154th Street Omaha, NE 68138-3621 www.now.usace.army.mil/html/op-r/district.htm	Wetlands Identification, Wetland Construction Permit
Native American Consultation Database www.cast.uark.edu/other/nps/nacd	Tribal Government Contacts
Environmental Protection Agency Environmental Review Coordination Section 901 N 5th Street Kansas City, KS 66101	FONSI and NOI/RROF notices

SAMPLE

(Date)

(FirstName) (LastName)
(JobTitle)
(Agency)
(Address)
(City,State,Zip)

RE: Project

Dear

The City/Village of _____, Nebraska is planning the development of a project to be funded by Community Development Block Grant (and _____) funds. The purpose of this letter is to request your review and response regarding any environmental impacts that your agency may identify for this proposed project pursuant to the National Environmental Policy Act.

The proposed project consists of (insert a description of the project). The project is being proposed to (insert a project need or justification statement). Enclosed is a map (U.S. Geological Survey map) that depicts the proposed project's area of potential effect for all construction activities. (Pictures of buildings that will be demolished with the project, if any, should also be included).

We request that you advise us of any comments that you may have regarding this project within 30 days, so the City/Village can proceed with completion of the environmental assessment and finalizing the funding for this project.

If you have any questions concerning this proposed project or if you need any further information, please contact me at

Sincerely,

(Please Note: Letters to State Historic Preservation Office may need additional photographic information. Please see Section G. Historic Preservation)

[Municipal/County letterhead]

DETERMINATION OF LEVEL OF REVIEW

Grant/Contract Number: _____

Project Location(s):_____

Description of project (include all contemplated activities which are logically part of the project, regardless of funding source):

The subject project has been reviewed pursuant to HUD regulations 24 CFR Part 58, "Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities", and the following determination with respect to the project is made (please check mark proper level of review and enter appropriate citation):

_____ **Exempt** from NEPA requirements per 24 CFR 58.34(a)(_____)

_____ **Categorically Excluded NOT Subject to 58.5** authorities per 24 CFR 58.35(b)(_____)
(A Statutory Checklist for the 58.6 authorities has been completed and is on file)

_____ **Categorically Excluded SUBJECT to 58.5** authorities per 24 CFR 58.35(a)(_____)
(A Statutory Checklist for the 58.5 and 58.6 authorities has been completed and is on file)

_____ An **Environmental Assessment** is required to be performed. (An environmental assessment performed in accordance with subpart E of 24 CFR Part 58 has been completed and is on file)

_____ An **Environmental Impact Statement** is required to be performed.

The Environmental Review Record contains all environmental review documents, public notices and written determinations or environmental findings required by Part 58 as evidence of review, decision making and actions pertaining to the project. Included are checklists, studies, analysis and documentation as appropriate.

_____ _____
(Preparer--Signature) (Date)

_____ _____
(Environmental Certifying Officer--Signature) (Date)

SAMPLE FONSI

The language below is HUD's recommended wording of the Finding Of No Significant Impact. This Notice is used if you prefer separate notices, Finding of No Significant Impact (FONSI) to be followed at a later date by a Notice Of Intent to Request Release of Funds (NOI/RROF). Words in **bold type** are required language. Words in *italics* are to be replaced by language appropriate to the particular project and Responsible Entity.

NOTICE OF FINDING OF NO SIGNIFICANT IMPACT

Date of Notice:
Name of Responsible Entity (RE):
Address:
City, State, Zip Code:
Contact: (Name and Phone Number)

To All Interested Agencies, Groups and Persons:

The above-named entity is proposing to submit a request to the Nebraska Department of Economic Development (DED) for the release of *Community Development Block Grant funds under Title I of the Housing and Community Development Act of 1974, as amended, or HOME Investment Partnership funds under Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990* **for the purpose of** *nature/scope of project, estimated funding (include non-HUD funding sources if applicable) and project location, if applicable.*

The *name of RE* **has determined that the project will have no significant impact on the human environment. Therefore, an Environmental Impact Statement under the National Environmental Policy Act of 1969 (P.L. 91-190) is not required. Additional project information is contained in the Environmental Review Record (ERR) on file at** *name and address of RE office where ERR can be examined and name and address of other locations where the record is available for review* **and may be examined or copied weekdays ( ) A.M. to ( ) P.M.**

(if applicable) No further environmental review of such project is proposed to be conducted, prior to request for release of Federal funds.

Any individual, group, or agency may submit written comments on the ERR to the *RE designated office responsible for receiving and responding to comments.* **All comments received by** *if notice is published: publication date plus fifteen days; if notice is posted: mailing and posting date plus eighteen days* **will be considered by the** *name of RE* **prior to submission of a request for release of funds.**

Typed Name and Title of Environmental Certifying Officer

Schedule for Published Notice		Schedule for Posted Notice	
Day 1	Publication Date	Day 1	Mail and Posting Date
Day 2-16	15-day Comment Period Publish NOI/RROF	Day 2-19	18-day Comment Period Publish NOI/RROF

SAMPLE NOI/RROF

The language below is HUD's recommended wording of the Notice of Intent to Request a Release of Funds. This Notice is used to request the environmental release of funds for Categorically Excluded projects (24 CFR Part 58, Section 58.35(a) or for projects for which a Notice of Finding of No Significant Impact was previously issued. Words in **bold type** are required language. Words in *italics* are to be replaced by language appropriate to the particular project and Responsible Entity.

NOTICE OF INTENT TO REQUEST RELEASE OF FUNDS

Date of Notice:
Name of Responsible Entity (RE): (municipality, county or DED)
Address:
City, State, Zip Code:
Contact: (Name and Phone Number)

To All Interested Agencies, Groups and Persons:

On or about *at least one day after the end of the public comment period* **the above-named entity will submit a request to the** *Nebraska Department of Economic Development (DED) or Department of Housing and Urban Development (HUD)* **for the release of** *Community Development Block Grant funds under Title I of the Housing and Community Development Act of 1974, as amended, or HOME Investment Partnership funds under Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990* **for the purpose of** *nature/scope of project, estimated funding (include non-HUD funding sources if applicable) and project location, if applicable.*

The activities proposed *alternative #1: are categorically excluded under HUD regulations at 24 CFR Part 58 from National Environmental Policy Act requirements -or- alternative #2: comprise a project for which a Finding Of No Significant Impact on the environment was (published/posted) on (date of Finding publication/posting).* **An Environmental Review Record (ERR) that documents the environmental determinations for this project is on file at** *name and address of RE office where ERR can be examined and name and address of other locations where the record is available for review* **and may be examined or copied weekdays ( ) A.M. ( ) P.M.**

PUBLIC COMMENTS

Any individual, group, or agency may submit written comments on the ERR to the *RE designated office responsible for receiving and responding to comments.* **All comments received by** *if notice is published: notice date plus seven days; if notice is mailed and posted: posting date plus ten days* **will be considered by the** *name of RE* **prior to submission of a request for release of funds.**

RELEASE OF FUNDS

The *name of RE* **certifies to** *DED or HUD* **that** *name of Certifying Officer*, **serving in** *his/her* **capacity of** *Chief Elected Official or CRD Director*, **consents to accept the jurisdiction of the Federal court in relation to environmental reviews, decision-making and action; and that these responsibilities have been satisfied. The legal effect of this certification is that upon its approval,** *name of RE* **may use** *CDBG or HOME* **funds, and** *DED or HUD* **will have satisfied its responsibility under the National Environmental Policy Act of 1969 and related laws and authorities.**

OBJECTIONS TO RELEASE OF FUNDS

***DED or HUD* will accept objections to its approval of the release of funds and the *RE's* certification for a period of fifteen days following the anticipated submission date or its actual receipt of the request (whichever is later) only if it is on one of the following basis: (a) the certification was not executed by the Certifying Officer of the *name of the RE*; or (b) the *RE* has omitted a step or failed to make a decision or finding required by HUD regulations at 24 CFR Part 58; or (c) the grant recipient has committed funds or incurred costs not authorized by 24 CFR Part 58 before approval of a release of funds by *DED or HUD*; or (d) another Federal agency acting pursuant to 40 CFR Part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality. Objections must be prepared and submitted in accordance with the required procedure (24 CFR Part 58, Section 58.76). Such written comments should be addressed to:**

Nebraska Department of Economic Development
Community and Rural Development Division
P.O. Box 94666
Lincoln, NE 68509-4666
or
Department of Housing and Urban Development
Community Planning & Development Division
Executive Tower Centre, 10909 Mill Valley Road
Omaha, NE 68154-3955

_____
Typed Name and Title of Environmental Certifying Officer

Schedule for Published Notice		Schedule for Posted Notice	
Day 1	Publication Date	Day 1	Mail and Posting Date
Day 2-8	7-day Comment Period	Day 2-11	10-day Comment Period
Day 9	Submit RROF/Certification	Day 12	Submit RROF/Certification
Days 10-24	15-day Objection period	Day 13-27	15-day Objection Period
Day 25	Earliest Approval	Day 28	Earliest Approval

NOTE: The seven or ten-day comment periods are the minimum time periods required by regulation prior to submission of a Request for Release of funds and Certification (form HUD-7015.15) to DED/HUD. The fifteen -day objection period is a statutory requirement. The objection period follows the submission date specified in the Notice or the actual date of receipt by DED/HUD; whichever is later.

If the earliest submission date to DED/HUD falls on a Saturday, Sunday, or Holiday, the next business day is the first possible submission date, and the Statutory Objection Period begins on the day following the submission date.

Receipt of a FAX starts the Statutory Objection Period clock, but the original signed document must be received by DED/HUD before a Release of Funds will be issued.

NOI/RROF Notice Timing – 7 day comment

S	M	T	W	T	F	S
1	2 Publish	3	4	5	6	7
8	9 Comment Period Ends	10 Submit ROF/Cert	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25 Objection Period Ends	26 Earliest Approval	27	28
29	30	31				

NOI/RROF Notice Timing – 10 day comment

S	M	T	W	T	F	S
1	2 Mail and Post	3	4	5	6	7
8	9	10	11	12 Comment Period Ends	13 Submit ROF/Cert	14
15	16	17	18	19	20	21
22	23	24	25 End Objection	26	27	28
29	30 Objection Period Ends	31 Earliest Approval				

SAMPLE COMBINED FONSI & NOI/RROF

The language below is HUD's recommended wording of the combined Notice of Finding of No Significant Impact and Notice of Intent to Request a Release of Funds. This Notice is used for projects requiring an Environmental Assessment (24 CFR Part 58, Section 58.36). Words in **bold type** are required language. Words in *italics* are to be replaced by language appropriate to the particular project and Responsible Entity.

COMBINED NOTICE OF FINDING OF NO SIGNIFICANT IMPACT AND NOTICE OF INTENT TO REQUEST RELEASE OF FUNDS

Date of Notice:
Name of Responsible Entity (RE): (municipality, county or DED)
Address:
City, State, Zip Code:
Contact: (Name and Phone Number)

To All Interested Agencies, Groups and Persons:

These notices shall satisfy two separate but related procedural requirements for activities to be undertaken by the *name of RE or grant recipient.*

REQUEST FOR RELEASE OF FUNDS

On or about *at least one day after the end of the public comment period* **the above-named entity will submit a request to the** *Nebraska Department of Economic Development (DED) or Department of Housing and Urban Development (HUD)* **for the release of** *Community Development Block Grant funds under Title I of the Housing and Community Development Act of 1974, as amended, or HOME Investment Partnership funds under Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990* **for the purpose of** *nature/scope of project, estimated funding (include non-HUD funding sources if applicable) and project location, if applicable.*

FINDING OF NO SIGNIFICANT IMPACT

The *name of RE* **has determined that the project will have no significant impact on the human environment. Therefore, an Environmental Impact Statement under the National Environmental Policy Act of 1969 (P.L. 91-190) is not required. Additional project information is contained in the Environmental Review Record (ERR) on file at** *name and address of RE office where ERR can be examined and name and address of other locations where the record is available for review* **and may be examined or copied weekdays ( ) A.M. to ( ) P.M.**

PUBLIC COMMENTS

Any individual, group, or agency may submit written comments on the ERR to the *RE designated office responsible for receiving and responding to comments.* **All comments received by** *if notice is published: publication date plus fifteen days; if notice is posted: mailing and posting date plus eighteen days* **will be considered by the** *name of RE* **prior to submission of a request for release of funds. Comments should specify which Notice they are addressing.**

RELEASE OF FUNDS

The *name of RE* certifs to *DED or HUD* that *name of Certifying Officer*, serving in *her/his* **capacity as** *Chief Elected Official or CRD Director*, **consents to accept the jurisdiction of the federal courts if an action is brought to enforce responsibilities in relation to environmental reviews, decision-making and action, and that these responsibilities have been satisfied.** *DED's or HUD's* **approval of the certification satisfies its responsibilities under NEPA and related laws and authorities and allows the** *name of grant recipient* **to use Program funds.**

OBJECTIONS TO RELEASE OF FUNDS

DED or HUD **will accept objections to its approval of the release of funds and the** *RE's* **certification for a period of fifteen days following the anticipated submission date or its actual receipt of the request (whichever is later) only if it is on one of the following basis: (a) the certification was not executed by the Certifying Officer of the** *name of the RE*; **or (b) the** *RE* **has omitted a step or failed to make a decision or finding required by HUD regulations at 24 CFR Part 58; or (c) the grant recipient has committed funds or incurred costs not authorized by 24 CFR Part 58 before approval of a release of funds by the** *DED or HUD*; **or (d) another Federal agency acting pursuant to 40 CFR Part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality. Objections must be prepared and submitted in accordance with the required procedure (24 CFR Part 58, Sec. 58.76). Such written comments should be received at the following address:**

Nebraska Department of Economic Development
Community and Rural Development Division
P.O. Box 94666
Lincoln, NE 68509-4666
or
Department of Housing and Urban Development
Community Planning & Development Division
Executive Tower Centre, 10909 Mill Valley Road
Omaha, NE 68154-3955

Typed Name and Title of Environmental Certifying Officer

Schedule for Published Notice		Schedule for Posted Notice	
Day 1	Publication Date	Day 1	Mail and Posting Date
Day 2-16	15-day Comment Period	Day 2-19	18-day Comment Period
Day 17	Submit RROF/Certification	Day 20	Submit RROF/Certification
Days 18-32	15-day Objection period	Day 21-35	15-day Objection Period
Day 33	Earliest Approval	Day 36	Earliest Approval

NOTE: The fifteen or eighteen-day comment periods are the minimum time periods required by regulation prior to submission of a Request for Release of funds and Certification (form HUD-7015.15) to DED/HUD. 24 CFR Part 58.46 requires a 30-day comment period for controversial or exceptional circumstances. The fifteen - day objection period is a statutory requirement. The objection period follows the submission date specified in the Notice or the actual date of receipt by DED/HUD; whichever is later.

If the earliest submission date to DED/HUD falls on a Saturday, Sunday, or Holiday, the next business day is the first possible submission date, and the Statutory Objection Period begins on the day following the submission date.

Receipt of a FAX starts the Statutory Objection Period clock, but the original signed document must be received by DED/HUD before a Release of Funds will be issued.

Combined FONSI and NOI/RROF Notice Timing – 15 day comment period

S	M	T	W	T	F	S
1	2 Publish	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17 Comment Period Ends	18 Submit ROF/Cert	19	20	21
22	23	24	25	26	27	28
29	30	31	1	2 Objection Period Ends	3 Earliest Approval	

Combined FONSI and NOI/RROF Notice Timing – 18 day comment period

S	M	T	W	T	F	S
1	2 Mail and Post	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20 Comment Period Ends	21
22	23 Submit ROF/Cert	24	25	26	27	28
29	30	31	1	2	3	4
5	6	7 Objection Period Ends	8 Earliest Approval	9	10	11

Request for Release of Funds and Certification

U.S. Department of Housing
and Urban Development
Office of Community Planning
and Development

OMB No. 2506-0087
(exp. 6/30/2001)

This form is to be used by Responsible Entities and Recipients (as defined in 24 CFR 58.2) when requesting the release of funds, and requesting the authority to use such funds, for HUD programs identified by statutes that provide for the assumption of the environmental review responsibility by units of general local government and States. Public reporting burden for this collection of information is estimated to average 36 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

Part 1. Program Description and Request for Release of Funds (to be completed by Responsible Entity)

1 Program Title(s)	2. HUD/State Identification Number	3. Recipient Identification Number (optional)
4 OMB Catalog Number(s)	5. Name and address of responsible entity	
6 For information about this request, contact (name & phone number)		
8. HUD or State Agency and office unit to receive request	7. Name and address of recipient (if different than responsible entity)	

The recipient(s) of assistance under the program(s) listed above requests the release of funds and removal of environmental grant conditions governing the use of the assistance for the following

9. Program Activity(ies)/Project Name(s)	10. Location (Street address, city, county, State)

11 Program Activity/Project Description

Part 2. Environmental Certification (to be completed by responsible entity)

With reference to the above Program Activity(ies)/Project(s), I, the undersigned officer of the responsible entity, certify that:

1. The responsible entity has fully carried out its responsibilities for environmental review, decision-making and action pertaining to the project(s) named above.
2. The responsible entity has assumed responsibility for and complied with and will continue to comply with, the National Environmental Policy Act of 1969, as amended, and the environmental procedures, permit requirements and statutory obligations of the laws cited in 24 CFR 58.5; and also agrees to comply with the authorities in 24 CFR 58.6 and applicable State and local laws.
3. After considering the type and degree of environmental effects identified by the environmental review completed for the proposed project described in Part 1 of this request, I have found that the proposal did ☐ did not ☐ require the preparation and dissemination of an environmental impact statement.
4. The responsible entity has disseminated and/or published in the manner prescribed by 24 CFR 58.43 and 58.55 a notice to the public in accordance with 24 CFR 58.70 and as evidenced by the attached copy (copies) or evidence of posting and mailing procedure.
5. The dates for all statutory and regulatory time periods for review, comment or other action are in compliance with procedures and requirements of 24 CFR Part 58.
6. In accordance with 24 CFR 58.71(b), the responsible entity will advise the recipient (if different from the responsible entity) of any special environmental conditions that must be adhered to in carrying out the project.

As the duly designated certifying official of the responsible entity, I also certify that:

7. I am authorized to and do consent to assume the status of Federal official under the National Environmental Policy Act of 1969 and each provision of law designated in the 24 CFR 58.5 list of NEPA-related authorities insofar as the provisions of these laws apply to the HUD responsibilities for environmental review, decision-making and action that have been assumed by the responsible entity.
8. I am authorized to and do accept, on behalf of the recipient personally, the jurisdiction of the Federal courts for the enforcement of all these responsibilities, in my capacity as certifying officer of the responsible entity.

Signature of Certifying Officer of the Responsible Entity	Title of Certifying Officer
X	Date signed

Address of Certifying Officer

Part 3. To be completed when the Recipient is not the Responsible Entity

The recipient requests the release of funds for the programs and activities identified in Part 1 and agrees to abide by the special conditions, procedures and requirements of the environmental review and to advise the responsible entity of any proposed change in the scope of the project or any change in environmental conditions in accordance with 24 CFR 58.71(b).

Signature of Authorized Officer of the Recipient	Title of Authorized Officer
X	Date signed

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Instructions for completing *Form HUD 7015.15 (1/99)* Request for Release of Funds and Certification

1. Program Title: enter either State CDBG Program or HOME Program

2. HUD/State Identification Number: enter the letters/numbers assigned to your program/project – e.g. CDBG 02-PW-002, or HOME 02-CH02401, etc.

3. Recipient Identification Number: no response is necessary for this box. If you have an internal system for tracking projects you may enter an identifier here.

4. OMB Catalog Number: for CDBG enter CFDA 14.228, for HOME enter CFDA 14.239.

5. Name and address of Responsible Entity: enter name and address of local governmental jurisdiction environmentally responsible for the project, or if applicable for awards to nonprofits, the Department of Economic Development.

6. For Information about this request: enter the name and telephone number of the person to contact concerning this form HUD-7015.15 and the environmental review(s) for the activities/project listed on this form if further information or clarification is needed.

7. Name and Address of Recipient (if different than responsible entity): enter the name of the private, public, quasi-governmental, profit or non-profit organization which received the grant but lacks the legal capacity to assume the environmental review responsibility for the activity/project.

8. HUD or State Agency to receive request: For awards to local governments, enter the Nebraska Department of Economic Development, P O Box 94666, Lincoln, NE 68509. For awards to non-governmental entities, enter the Department of Housing and Urban Development, Community Planning and Development Director, 10909 Mill Valley Road, Omaha, NE 68154-3955.

9. Program Activity/Project Name: enter the activity(ies)/project name(s) for which this form is submitted.

10. Location: enter the location(s) of the activity/project.

11. Program Activity/Project Description: enter a description of the activity(ies)/project for which this form pertains in narrative form.

Part 2. Environmental Certification: check either the first or second box of item 3.

Signature of Certifying Officer: The Certifying Officer signs his/her name, title and date. The Certifying Officer is usually the chief elected official for the responsible entity/jurisdiction in which the project is located.

Part 3. To be completed when the recipient is not the Responsibility: The Authorized Officer of the recipient signs his/her name, title and date. The recipient then submits the completed form along with a copy of the posted or published public notice(s) to the Department of Economic Development (DED will sign and forward to HUD).

SAMPLE

Notice for Early Public Review of a Proposal to Support Activity in the (100-Year Floodplain or Wetland)

(Name of Grantee) is proposing to expend federal funds in an area that is subject to flooding as identified by the Federal Emergency Management Administration (or wetland, if applicable). The subject funds are i.e. Community Development Block Grant or HOME Investment Partnership administered by the Nebraska Department of Economic Development (mention other federal funds involved, if applicable).

This notice is required by Section 2(a)(4) of Executive Order 11988 for Floodplain Management, and by Section 2(b) of Executive Order 11990 for the Protection of Wetlands, and is implemented by HUD Regulations found at 24 CFR 55.20(b) for the HUD action that is within and/or affects a floodplain or wetland.

The (name of the Grantee) is proposing to undertake the following activities in the area.

Describe the project, being specific as to location of proposed activities, and total number of acres of floodplain/wetland involved.

The purpose of this notice is to give an early opportunity for interested agencies, persons or groups to comment on the proposed action(s). The (name of Grantee) will consider any feasible alternatives or adjustments to the anticipated project which might minimize any potential adverse effects upon the floodplain/wetland as a result of the project.

The (name of Grantee) has additional information concerning this project available for public review and copying, upon request, at (location). Any comments relative to this proposed expenditure of federal funds in an area identified as a flood hazard/wetland area should be submitted in writing to (name and address) on or before (allow minimum of 15 calendar days after publication date, not counting day of publication).

SAMPLE

Notice of Explanation of Project Located In a Floodplain/Wetland

This is to give notice that the (name of Grantee) has conducted an evaluation as required by Executive Order (11988 or 11990) in accordance with HUD regulations at 24 CFR 55.20 to determine the potential affect that its activity in the (floodplain or wetland) will have on the environment. The (name of Grantee) has determined that there is not a practicable alternative other than locating the proposed (Community Development Block Grant or HOME Investment Partnership) project described below in a (floodplain/wetland).

Description of project and project activities.

The improvements must be located in the floodplain because (*state reason why the project must be located in the floodplain; including other alternatives that were considered and mitigation measures to be taken to minimize adverse effects).*

By publication of this notice, (name of Grantee) is inviting any final written comments prior to undertaking the proposed action. All comments should be addressed to (name and address), not later than (allow minimum of seven calendar days after publication date, not counting day of publication).

SAMPLE

CERTIFICATION OF CONTINUED ENVIRONMENTAL COMPLIANCE

Nebraska Department of Economic Development
Community Development Block Grant Program
Or
HOME Investment Partnerships

Grantee Name:_____ Grant Number: _____

Original Level of Finding: _____

Date of Determination: _____

Date Notice of Intent Published: _____

Date Request to Release Funds Submitted to DED:_____

Date Cleared by DED: _____

It is the finding of the Environmental Certifying Officer of the above referenced Grantee that revisions to the scope of work of the above referenced grant project have not caused a revised determination of original environmental status. The basis of this finding, for each revised activity, is described as follows (attach additional sheets as necessary).

I certify that the above statements accurately reflect the revisions to the project scope of work and that such revisions do not alter the basis under which the project received its original environmental status determination.

Signature of Environmental Certifying Officer: _____

Title:_____

Date:_____

Address:

_____

_____

_____

CHAPTER 8 - PROCUREMENT

Introduction

The purpose of this chapter is to provide information about the federal requirements for procurement of supplies, equipment, and services. Additional information on procurement associated with construction projects is located in Chapter 10 – Construction & Labor Standards.

Grantee Responsibilities

The Department requires all grantees to adopt written Procurement Procedures and a written Code of Conduct prior to obtaining Release of Funds for a CDBG grant. A grantee must use procurement procedures that are in conformance with State and local laws and regulations, Federal law and the standards identified in 24 CFR Part 85 Chapter 36.

Warning: The grantee must not execute any contract for goods or services prior to the Department issuing the grantee a written Notice of Release of Funds with the exception of contracts for general administration services. The Department may issue pre-agreement letters that allow for the obligation of non-administrative costs prior to Release of Funds.

24 CFR Part 85 Chapter 36

This chapter focuses on 24 CFR Part 85 Chapter 36 which sets forth the standards that are applicable to procurement for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments. Rules governing the contents of bid specifications, especially the required federal provisions, are included. It also addresses the methods of procurement and all the rules governing the utilization of the methods. The remaining information under this regulation pertains to the bonding requirements and general contract provisions.

General Provisions

The standards and procedures for procurement are intended to ensure that supplies, equipment, construction, and other services are:

- obtained as efficiently and economically as possible; and,
- procured in a manner that provides, to the maximum extent practical, open and free competition.

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

- placing unreasonable qualifying requirements on firms;
- requiring unnecessary experience and excessive bonding;
- specifying only "brand name" products instead of allowing "an equal" product;

- non-competitive pricing practices between firms or affiliated companies; and
- non-competitive awards to consultants on retainer contracts.

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

Summary of Federal Requirements

1. Records and files. According to 24 CFR 85.36(b)(9), the grantee must maintain records to detail the significant history of a procurement. The grantee must maintain files on the rationale for selecting the methods of procurement used, selection of contract type, the contractor selection/rejection process, and the basis for the cost or price of a contract.

2. Pre-qualified lists of vendors/contractors. If such lists are used, they must be current, developed through open solicitation, include adequate numbers of qualified sources, and must allow entry of other firms to qualify at any time during the solicitation period (24 CFR 85.36(c)(4)).

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

4. Debarred/ineligible contractors. The grantee must ensure that awards are not made to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension " (24 CFR 85.35).

5. Written procedures for contractor selection. The grantee must have written selection procedures for procurement transactions, adequate to ensure that:

    a. The purchase of unnecessary or duplicate items is avoided. Where appropriate, an analysis should be made of lease vs. purchase alternatives (24 CFR 85.36(b)(4);

    b. Whenever possible, use of federal excess and surplus property, or of intergovernmental agreements for procurement or use of common goods and services should be considered as a way to foster greater economy and efficiency (24 CFR 85.36(b)(5) and (6));

c. All purchase orders (and contracts) are signed by the grantee's authorized official(s);

d. Items delivered and paid for are consistent with the purchase order and/or contract for the goods or services;

e. Timely payment to vendors occurs once the order is delivered, inspected, accepted, and payment authorized;

f. A cost or price analysis is performed for every procurement action, including contract modifications, and documentation to that effect is maintained in the grantee's files. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the grantee must make independent estimates before receiving bids or proposals (24 CFR 85.36(f)); and,

g. Profit or fee is negotiated separately from price where competition is lacking or a cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of past performance, and industry rates for the area (24 CFR 85.36(f)(2)).

6. Contract pricing. The grantee must not use "cost plus a percentage of cost" pricing for contracts (24 CFR 85.36(f)(4)); in addition, the grantee should use "time and material" type contracts only after a determination is made that no other contract is suitable and the contract includes a ceiling price that the contractor exceeds at its own risk (24 CFR 85.36(b)(10)).

7. Protest procedures. The grantee must have protest procedures in place to handle and resolve disputes relating to procurement (24 CFR 85.36(b)(12)).

8. Documenting contractor performance. The grantee must have a documented system of contract administration for determining the adequacy of contractor performance (24 CFR 85.36(b)(2)).

9. Code of conduct. The grantee must have a written code of conduct governing employees, officers, or agents engaged in the award or administration of contracts (24 CFR 85.36(b)(3)).

Bonding and Insurance

For construction or facility improvement contracts or subcontracts exceeding $100,000, the grantee must ensure that its procurement meets the minimum federal requirements (24 CFR 85.36(h)) for bid guarantees, performance bonds, and payment bonds. These include:

1. A bid guarantee from each bidder equivalent to 5% of the bid price. The bid guarantee must be a firm commitment in the form of a bid bond, certified check or other negotiable instrument as assurance that the bidder is prepared to execute a contract within the time specified for the bid amount;

2. A performance bond from the contractor for 100% of the contract price to secure the contractor's fulfillment of all obligations under the contract; and,

3. A payment bond from the contractor for 100% of the contract price, to assure payment of all persons supplying labor and material under the contract.

Use of Local, Small, Minority and/or Women-Owned Businesses

1. Federal regulations make it very clear that grantees should make every effort to use local business firms and contract with small, minority-owned, and women-owned businesses in the procurement process. Specifically, the grantee must take affirmative steps to use small firms, minority-owned firms, women-owned firms, or labor surplus area firms (24 CFR 85.36(e)). For example, the grantee should:

    a. Incorporate such businesses in solicitation lists whenever they are potential sources;

    b. Ensure that such businesses are solicited when identified as potential sources;

    c. Divide procurement requirements, when economically feasible, to permit maximum participation of such businesses; and,

    d. Require prime contractors, when subcontracts are let, to take affirmative steps to select such firms.

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

Note, however, that the desire to award contracts to local firms is not a legitimate excuse for avoiding an open and competitive procurement process.

Contract Language

Contracts for construction – See the bid package and contract requirements in Chapter 10 – Construction and Labor Standards.

Professional service contracts must include the following provisions:

General Administrative Provisions

- Effective date of the contract.
- Names and addresses of the firm and the grantee.
- Citation of the authority of the grantee under which the contract is entered into and the source of the funds.
- Conditions and terms under which the contract may be terminated by either party and remedies for violation/breach of contract.
- Procedures for amending or revising the contract.

Scope of Services

- Detailed description of the extent and character of the work to be performed.
- Time for performance and completion of contract services, including project milestones, if any.
- Specification of materials or other services to be provided (i.e. maps, reports, etc.)

Method of Compensation

- Provisions for compensation for services including fee and or payment schedules and specification of maximum amount payable under the contract.

Federal Standard Provisions

- Compliance with Executive Order 11246, as amended (Required for service contractors only if the contractor has 50 or more employees and the contract is for more than $50,000)
- Title VI of the Civil Rights Act of 1964 clause
- Section 109 of the Housing and Community Development Act of 1974 clause
- Section 3 compliance clause (Required only if the contract exceeds $100,000)
- Access to Records/Maintenance of Records clause

Procurement Options

Initial decision: Will the grantee select a third party to perform all or part of the grant-funded activity, using some method of procurement?

- ☐ If no, and all of the work will be done in-house, then the grantee will not have to meet any federal procurement requirements.
- ☐ If yes, the federal procurement requirements will apply.

Depending on the scarcity of the item or service desired and the size of the purchase, different methods of procurement are available under the federal regulations.

Starting the work:

In-House: If the grantee will use only its own staff to work on the grant, work may begin after the state contract is fully executed and the Department has provided a written Notice of Release of Funds. The only costs incurred prior to Release of Funds that are eligible for reimbursement from CDBG funds are general administration activity costs, unless a special pre-agreement is issued to the grantee.

Officials of the grantee who are acting in their official capacity are considered "in-house" and are eligible to be compensated for CDBG-related duties if certain conditions are met. For example, if a city council has officially designated an attorney as City Attorney or an engineer as City Engineer, the individual so designated becomes an official of the city. As an official of the city performing CDBG related duties, his/her legal or engineering service charges are eligible program costs to the extent that they are: (1) reasonable for the services provided; (2) follow an appointment made in accordance with state and local laws; and, (3) the amount of compensation charged to the program will be based on payrolls documented and provided in accordance with generally accepted practices of state and local governments.

The Department will disallow costs for grantee's that abuse the "in-house" provisions. For instance, appointments of "City Engineers" must not be made for the purpose of selecting an engineer to work on an anticipated CDBG project. The grantee must show evidence that they have a history of appointment, unrelated to any current or anticipated CDBG project.

Contracted: If the grantee wants to contract out for services, the grantee must go through a procurement process. The grantee must select the proper procurement method that meets all Federal, State and local laws for the type of good or service sought and the amount of the contract. The only contract the grantee may execute prior to the Department's issuance of a Notice of Release of Funds is for general administration services, unless a special pre-agreement is issued to the grantee. Contracts for general administration must be executed after Notice of Award.

If the work is hired out: Options for procuring a contractor. The grantee has several options:

1. Small purchase
2. Competitive sealed bid
3. Competitive proposals
4. Non-competitive proposals/sole source

No loss leader arrangements: The intent of federal regulations is to require maximum open and free competition. "Loss-leader" arrangements, where a consultant offers to prepare a grant application or preliminary engineering estimates at cut rates or at no cost in return for a future contract if the application is funded, are prohibited by federal regulations. Some firms may suggest this approach because costs incurred by a city or county prior to the award of a CDBG, such as preparation of the application or preliminary engineering studies, are not eligible for reimbursement with CDBG funds. However, loss-leader arrangements violate federal regulations which require "maximum open and free competition." Professional organizations also consider this practice unethical because it deprives the client of the benefits that can result from competition among competent, professional firms.

Selection of Engineers, Planners, or Administrative Consultants Prior to Grant Award -- Generally, the use of multi-services procurement and contracting is prohibited except for: i) when local officials decide to procure the services of an engineer to assist them with both preparation of preliminary engineering plans (which is not grant application preparation) and project engineering, in the event their community is selected for grant award; ii) when a community wants to conduct one procurement process to cover both grant preparation and grant administration; and, iii) when a community wants to conduct one procurement process to cover both planning grant application preparation and planning grant implementation.

Any agreement between the community and the engineer or consultant that includes preliminary and project engineering or grant writing and administration services would have to be contingent upon the award of CDBG funds. Local officials would have to follow the procedures for Competitive Proposals.

Note about the procurement methods: Among the procurement approaches described below, the competitive sealed bid resulting in a firm, fixed price contract is the preferred procurement approach when there are numerous available and qualified providers, when the requirements and specifications are thoroughly detailed and are unlikely to change, and where the grantee has the opportunity to make the provider assume a large share of the risk for non-performance.

1. **Small Purchase** [24 CFR 85.36 (d)(1)]

   The Department considers procurement by small purchase procedures best suited to obtaining small quantities of supplies. Grantees may follow either their local small purchase procurement policy or the federal policy. If the local policy is used, it must be at least as stringent as the federal policy, described below.

   The small purchase method may be used for procurement of $100,000 or less in the aggregate, per 24 CFR 85.36(d)(1). A procurement of more than $100,000 may not be inappropriately broken up into smaller components solely to qualify for the small purchase approach.

   Competition is sought through oral or written price quotations. The grantee must document the receipt of an adequate number (usually at lease three) of price or rate quotations from qualified vendors.

   1. Identify in writing the item to be procured.
   2. Solicit in writing, written quotes from at least three qualified bidders. Verbal quotes, documented by the grantee in writing, are acceptable for purchases of less than $500.
   3. Identify the lowest responsible bidder.

4. Notify each bidder in writing as to whether or not they are the apparent low bidder.
5. Execute a contract to the lowest responsible bidder.

2. Competitive Sealed Bid [24 CFR 85.36 (d)(2)]

The Department considers this method of procurement best suited to obtaining contractors for construction projects and for large quantities of goods or materials (See Chapter 10 – Construction and Labor Standards for more on construction contracting). This method must lend itself to a firm, fixed price contract (lump sum or unit price) where the selection can be made principally on the basis of price.

a.. The grantee must advertise the invitation for bids in publications of general circulation, solicit bids from an adequate number of known suppliers, providing them sufficient time to respond prior to bid opening;

b. The invitation for bids must include complete and accurate specifications and pertinent attachments, and clearly define items or services needed, in sufficient detail for the bidders to properly respond;

c. Bids must be opened publicly at the time and place stated in the invitation for bids;

d. The grantee must receive at least two or more responsible bids for each procurement transaction; and,

e. If awarded, a firm fixed-price contract award must be made in writing to the lowest responsive and responsible bidder. The grantee can, however, decide not to make the award to any of the bidders.

3. Competitive Proposals [24 CFR 85.36(d)(3)]

The Department considers this procurement method best suited to obtaining professional services. This is normally conducted with more than one source submitting an offer, and either a fixed-price or not-to-exceed type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. This method has two sub-parts—the Request for Proposal and the Request for Qualifications.

Request for Proposals

a. The Request for Proposals (RFP) must clearly and accurately state the technical requirements for the goods and services required;

b. The grantee must publicize the RFP, and to the maximum extent practicable, honor reasonable requests by parties to have an opportunity to compete;

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

d. The grantee must conduct a technical evaluation of the submitted proposals to identify the responsible offerors;

e. As necessary, the grantee must conduct negotiations with those offerors who are deemed responsive and responsible and fall within a competitive price range, based on the grantee's evaluation of the bidders' pricing and technical proposals. After negotiations, these bidders may be given the opportunity to submit a "best and final" offer; and

f. The grantee must award the contract to the most responsive and responsible offeror after price and other factors are considered through scoring the proposals or "best and final" offers according to predetermined evaluation criteria. The successful proposal/offeror must clearly be the most advantageous source of the goods and services.

Request for Qualifications

For procurement involving architecture or engineering services, the grantee may use the Request for Qualifications (RFQ) competitive proposal procedure whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. In these instances, price is not used as a selection factor.

Once the most-qualified firm is identified, only that firm is asked for a price proposal, which is subject to negotiation of a fair and reasonable price. If negotiations with the selected firm are unsuccessful, this process is repeated with the next highest-ranked firm, until a fair and reasonably priced contract can be awarded.

The grantee must take care to document the basis for its determination of the most qualified competitor and the reasonableness of the contract price. This qualifications-based approach to the competitive proposals method may not be used to purchase other than architectural and engineering services (24 CFR 85.36(d)(3)(v)).

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

> "Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort."

This means that:

- Qualifications-based procurement can be used only for A/E services.
- A Request for Qualifications may be issued.
- The competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.
- An RFQ cannot be used to purchase other types of services, even though A/E firms are potential sources to perform other types of services.

In addition, the federal procurement regulations generally discourage the use of local geographical preferences in the evaluation of bids or proposals except where mandated by federal statutes, due to the restrictions on open competition, which result. However, in procuring architectural and engineering services, geographic location is permitted as a selection criteria provided this criterion leaves an appropriate number of qualified firms (24 CFR 85.36(c)(2)).

4. **Non-Competitive Proposals/Sole Source** [24 CFR Part 85.36 (d)(4)]

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

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

a. the item or service was only available from a single source;

b. a public emergency or condition requiring urgency existed which did not permit the use of competitive procurement; or

c. competition was determined to be inadequate after solicitation of proposals from a number of sources.

Designating Grant Administration to Another Governmental Entity

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

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

Development regions, and subsequently formed development districts based on those regions, are recognized and statutorily authorized in Sections 13-1901 to 13-1907, Nebraska Revised Statutes (Reissue 1997). Development districts formed pursuant to, and meeting the requirements of, those development district statutes are considered to be an extension of the grantee (assuming the grantee is a member of the development district), and grant administration may be delegated to such districts without a procurement process.

The Interlocal Cooperation Act, Sections 13-801 to 13-827, Nebraska Revised Statutes, (Reissue 1997 and Cumulative Supplement 2002) allows local governmental entities to enter into agreements for their mutual benefit. If such an interlocal agreement were entered into by a grantee and other governmental entities (whether one or more), and such agreement addressed the issue of CDBG grant administration, and authorized one of the agreeing governmental entities to do such grant administration work on behalf of other agreeing governmental entities, this arrangement would be recognized by the Department as not requiring a procurement process. Similarly, the Joint Public Agency Act, Sections 13-2501 to 13-2550, Nebraska Revised Statutes (Cumulative Supplement 2002) is another authorizing vehicle for interlocal agreements which would be recognized by the Department.

Subrecipients

A subrecipient is a public or private non-profit agency or organization receiving CDBG funds from a grantee or another subrecipient to undertake eligible activities. Another way to say this is that subrecipients are organizations that are **provided** CDBG funds by a grantee **for their use** in carrying out agreed-upon, eligible activities.

Warning: before a grantee enters into an agreement with a subrecipient they must consult with the Department

References

- 24 CFR 85, referred to as the "HUD common rule," establishes administrative requirements for grants to local government. 24 CFR 85.36 specifically addresses procurement. This chapter is largely based on the language contained in 24 CFR 85.36.

- 24 CFR 570.502(a)(12) invokes the "HUD common rule" for the State CDBG program.

- Federal Circular OMB A-87 establishes principles and standards for determining costs applicable to grants, contracts, and other agreements with State and local governments.

- Section 3 of the Housing and Urban Development Act of 1968, as amended, provides that to the greatest extent feasible, opportunities for training and employment that arise through State CDBG-financed projects shall be given to lower-income residents of a project area, and that contracts awarded in connection with such projects be awarded to businesses located in the project area or businesses owned, in substantial part, by residents of the project area.

- Section 109 of the Housing and Community Development Act of 1974, as amended, provides that no person shall be excluded from participation or employment, or be denied benefits, or be subjected to discrimination on the basis of race, color, national origin, or sex under any program or activity funded in whole or in part by the CDBG Program.

- Title VII, Civil Rights Act of 1964, provides that no person shall be excluded from participation, denied program benefits, or subjected to discrimination based on race, color, or national origin under any program or activity receiving federal financial assistance.

- Executive Order 11246, as amended, provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in any phase of employment during the performance of federal or federally-assisted construction contracts.

Chapter 9 – PROGRAM INCOME

Task #1	Review Federal and State Requirements for Program Income
Task #2	Submit a Notice of Intent and a Reuse Plan
Task #3	Submit First Reuse Project to the Department
Task #4	Maintain Records for Program Income
Task #5	Reporting on Program Income

Task #1 Review Federal and State Requirements for Program Income

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

The Department of Economic Development also has policies that govern the use of program income. **These policies are effective July 1, 2003 and cover CDBG grants awarded from the 2003 Program Year and later.** Grantees that have received or are receiving program income from projects awarded before the 2003 Program Year are to follow policies that were in place at the time of the grant award.

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

- payments of principal and interest on loans made using CDBG funds
- proceeds from the disposition (by sale or long-term lease) of real property purchased or improved with CDBG funds
- proceeds from the disposition of equipment purchased with CDBG funds
- interest earned on program income pending its disposition
- interest earned on CDBG funds held in an interest-bearing account

The state CDBG objective for program income is to provide financing for local development to ensure Nebraska's economic prosperity and to use resources in a timely manner. Additionally, the state is seeking to provide a policy for use of program income that coordinates local and state resources. The state is responsible for ensuring that program income at the state and local levels is used in accordance with applicable federal laws and regulations. All program income is and remains subject to all requirements of the HCDA and CDBG regulations.

Grantees that have program income **must use it first** before requesting or drawing down new CDBG funds if the program income was generated from the same category as the new CDBG funds are being requested. The Department requires communities to use their program income

from the Economic Development (ED) category on ED projects. The Department requires communities to use their program income from the Housing category on housing projects.

The Department allows grantees to use their program income generated from the **Economic Development Category** on eligible CDBG activities that create or retain jobs by providing financial assistance to businesses, or by financing public improvements that are necessary to accommodate businesses.

The Department allows grantees to use their program income generated from the **Housing Category** on eligible CDBG activities that rehabilitate, or support housing.

If a grantee earns program income from a category other than Economic Development or Housing, they can use the program income on eligible CDBG activities.

In some instances the Department will allow grantees to use program income generated from one category on projects in another category, or for a different type of activity. The grantee must first receive permission from the Department, by providing a demonstration of need and justification for using the funds for a different type of activity.

All uses of program income for any type of project **must meet a National Objective** of: primarily benefiting low- and -moderate-income persons; or aiding in the prevention or elimination of slums or blight; or meeting urgent development needs that pose a serious and immediate threat to the health or welfare of the community, and other resources are not available.

Task #2 Submit a Notice of Intent and a Reuse Plan

Grantees must provide the Department with a **written notice of intent**. If a community intends to keep program income to carry out CDBG activities in the future, the community must notify the Department of this intent within three months of the date of the Notice of Approval. If the Grantee's notice is not submitted to the Department within the three-month period, the Department will require that all program income be returned to the state. If the Grantee submits its notice within the specified period, the Grantee will have two options for administering the program income, local or regional.

Local Administration – (Within Grantee's corporate limits or zoning jurisdiction)

If the notice of intent is submitted within the specified period and the grantee intends to retain program income at the local level, the grantee will have six months from the date of the Notice of Approval to submit to the Department a "Reuse Plan" for the administration of the program income. If the plan is not submitted by the six-month deadline, program income will be required to be returned to the Department.

The plan must include either: (a) a detailed description of the organization, administration, and priorities of the program income projects to be approved by the grantee; or (b) a detailed description of the organization and administration plans,

together with an incorporation of the Department's CDBG objectives, including an agreement to incorporate all future changes made by the Department.

If the grantee timely submits a plan, and if the plan is accepted by the Department, the grantee then must, within 24 months from the date of their initial receipt of any program income, obligate program income to another project, and seek and obtain the Department's approval for such new project.

During this 24-month period, program income must be placed in an interest-bearing account controlled by the grantee (which account must be deposit insured/secured as required by state law). If no new project is approved within this 24-month period, program income will be required to be returned to the Department.

Regional Administration – (Grantee executes agreements with other municipalities and defines the region)

If the notice of intent is submitted within the specified period and the grantee intends to retain program income at the regional level, the grantee will have six months from the date of the Notice of Approval to submit to the Department a "Regional Reuse Plan" for the administration of the program income, with documentation of: (a) the grantee having entered into an agreement with other local governments which newly establishes a regional plan for the administration of the program income; or, (b) having entered into an agreement with an existing regional plan for administration of the program income. If the regional plan is not submitted by the six-month deadline, program income will be required to be returned to the Department.

The regional plan must include either: (a) a detailed description of the organization, administration, and priorities of the program income projects to be approved under the authority of the regional plan; or (b) a detailed description of the organization and administration plans, together with an incorporation of the Department's CDBG objectives, including an agreement to incorporate all future changes made by the Department.

If a newly established regional plan is timely submitted, and if the plan is accepted by the Department, the regional administrator of the plan then must, within 36 months from the date of their initial receipt of any program income, obligate program income to another project, and seek and obtain the Department's approval for such new project.

During this 36-month period, program income must be placed in an interest-bearing account controlled by the regional administrator (which account must be deposit insured/secured). If no new project is approved within this 36-month period, program income will be required to be returned to the Department.

Grantees need to have a public hearing on the Reuse Plan and approve it before submitting it to the Department. If Grantees amend their Reuse Plan, they need to have a public hearing to identify the changes in the Reuse Plan and allow for citizen participation before submitting it to the Department.

SUPPORTING MATERIALS:

- Sample Reuse Plan (Attachment 1)

Task #3 Submit First Reuse Project to the Department

Grantees preparing projects for the **first use** of program income will need to submit the following information to the Department for review and approval:

1. The complete application for the project and any other documents the grantee has.
2. A copy of the public hearing notice informing the public of the use of the funds.
3. A copy of the review and determination for approval by the local government. This is to include the official action by the local government to approve the project.

Task #4 Maintain Records for Program Income

Grantees need to have, or develop a financial management system for program income. Requirements for accounting for program income at the local level include:

1. **Loan Register** - an account should be established by each local government for each recipient of CDBG program income. The following information must be included for each loan:
    a. Name of borrower
    b. Date loan made
    c. Amount of loan
    d. Terms of the loan (interest rate, maturity date and frequency of payments)
    e. Payments and current balance

2. **Loan Servicing** - the local government should continually monitor the status of each loan and take immediate and appropriate action when a loan becomes delinquent.

4. **Servicing Standards** – the local government should establish standards for when a loan is delinquent, when it is in default, and what actions should be taken to resolve the problem.

4. **National Objective Compliance** – each loan shall be made in full compliance with all requirements of the CDBG program. The local government needs to document that each project funded meets a National Objective.

Task #5 Reporting on Program Income

Local governments are required to report on program income earned from all CDBG projects on a semi-annual basis. The reports are due July 15th for the preceding period January 1 through June 30, and January 15th for the preceding period July 1 through December 31.

There are two categories of Program Income, Economic Development and Non-Economic Development. Program Income received from projects funded from the Economic Development Category is reported on the Economic Development Report, and Program Income received from other categories (i.e. Housing or Public Works) is reported on the Non-Economic Development Report. Mail the original report to:

Department of Economic Development
Division for Community and Rural Development
P.O. Box 94666
Lincoln, NE 68509.

Grantees must keep a copy of the reports in their file.

SUPPORTING MATERIALS

- Economic Development Program Income Report (Attachment 2).
- Non-Economic Development Program Income Report (Attachment 3).

ATTACHMENT 1

NAME OF COMMUNITY
CDBG PROGRAM INCOME
REUSE PLAN FOR ECONOMIC DEVELOPMENT

List grant #(s) which contribute(s) program income

PART I: Type of Plan (Geographic area where funds can be used)

A. Local: Projects are located within community's limits or zoning jurisdiction.

B. Regional: List the communities or boundaries where projects can be assisted.

PART II: Goals and Objectives of the Plan

A. National Objective
51% of the jobs created or retained must be held by or available to low-moderate income persons

B. Local Objectives (examples)

1. To provide financing for start-up and existing businesses that cannot obtain conventional financing or to attract new businesses to the community/region.
2. To create and retain jobs principally for low-moderate income persons.
3. To diversify the local/regional economy by assisting businesses which are not presently in the community/region
4. To encourage the redevelopment of vacant or blighted buildings and land.
5. To promote entrepreneurship and new business development.
6. To stop "leakage" of dollars from leaving the community/region.
7. To provide necessary public infrastructure to businesses.
8. To assist businesses with job training cost for new employees or to upgrade skills of existing employees.

PART III: Elements of the Plan.

A. Eligible Businesses (examples)

Industrial, manufacturing, food processing, agricultural processing, commercial, service, telecommunication, transportation, retail, tourism, etc.

B. Eligible Activities (examples)

Acquisition of real estate, land and buildings, fixed assets, machinery and equipment, renovations, remodeling, site preparation, working capital, public infrastructure, streets, roads, water wells, storage and distribution systems, storm sewers, sanitary sewer and treatment systems, and job training costs, etc.

C. Types of Assistance (examples)

Direct loans, deferred loans, performance based loans, loan guarantees, grants for public infrastructure, grants for job training.

D. Guidelines for Assistance (examples)

1. Minimum or maximum dollar amounts
2. What percentage of total project cost will community finance?
3. What percentage of equity injections is required from owners or business?
4. Interest rate of loans
5. Loan terms (must not exceed useful life of assets financed) working capital 1-3 years, machinery and equipment 3-7 years, land and buildings up to 15 years.

PART IV: Administration of the Plan (Describe operating procedures)

A. Application Process

1. Where can businesses get an application?

2. Who is on the application review committee?

3. Who makes the final determination on an application?
(the Review Committee, the village or county board, the city council)

B. Loan Closing & Project Monitoring

1. Who prepares the legal document and security instruments? (loan agreements, promissory notes, guarantees, contracts, deed of trust, mortgage, financing statement, U.C.C. form, etc.)

2. How are funds disbursed to the business?

3. Who is responsible for loan servicing and monitoring job creation/retention requirements?

4. Who is responsible for CDBG compliance such as the environmental review for each project and Davis Bacon compliance if applicable?

C. Amending the Plan (Describe the process for making amendments to the plan.)

PART V: Reporting to DED

A. First Reuse Approval (The first reuse of program income from each grant must be submitted to and approved by DED within the required timeframe depending on the type of plan developed. Twenty-four months for a local plan and thirty-six months for a regional plan.)

B. PROGRAM INCOME REPORTS

Who is responsible for submitting Semi-Annual Program Income Reports to DED by July 15 and January 15?

ATTACHMENT 2

NEBRASKA DEPARTMENT OF ECONOMIC DEVELOPMENT
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

INSTRUCTIONS

PROGRAM INCOME REPORT
For Economic Development Revolving Loan Funds

The Program income Report for Economic Development Revolving Loan Funds is used to report the repayments of principle and interest on economic development loans made from the proceeds of CDBG grants or program income; the interest earned on the deposit of loan payments; the status of any delinquent loans; and the obligation of funds acquired from payments and accumulated interest.

Local governments must report on every economic development loan for which payments have been received or are due. In addition, the local governments must continue to report on each loan until all payments have been received.

Each economic development loan is to be shown on a different report. For cities with more than one loan, Section V on the Revolving Loan Fund needs to be completed, on each program income report, with the totals from all of the loans.

Reports are due each July 15th for the preceding period January 1 through June 30 and each January 15th for the preceding period July 1 through December 31. Check the appropriate box and complete the date for the reporting period. Mail the original copy of the report to the Department of Economic Development Grantees must also keep a copy of the report on file.

SECTION I – GENERAL INFORMATION (For Loans made with proceeds from a CDBG grant).

1) Enter the name of the CDBG economic development grant recipient.

2) Enter the grant number from which an economic development loan has been made.

3) Enter the name of the business to which the loan was made.

4) Enter the loan amount: interest rate; and loan term.

SECTION II – LOAN REPAYMENTS (For Loans made with proceeds from a CDBG grant).

1) Enter the total balance of previous loan repayments.

2) Enter each loan repayment individually. For the Payment # enter the number of the payment corresponding to that in the amortization schedule.

3) Total all loan repayments made during this period.

4) Total line 1 and line 3.

SECTION III – LOAN STATUS

1) Check "Yes" or "No" in answer to the question on loan repayments. Answer "No" if any payment due as of the end of the reporting period had not been received.

2) If the answer is "No", explain the amount and extent of the delinquency and what actions have been taken by the grantee to see that the business returns the loan to a current status.

SECTION IV – GRANTEE CONTRACT PERSON

1) Enter the name of the person that can best answer questions concerning this report.

2) Enter the address of the contact person.

3) Enter the phone number of the contact person.

SECTION V – REVOLVING LOAN FUND
(Cumulative total for all loans made with proceeds from a CDBG grant or program income).

1) Enter the ending Revolving Loan Fund Balance from the previous period.

2) a) Enter the total loan repayments made for all economic development loans during this period.

b) Enter the amount of interest earned on the deposit of loan repayments, during the reporting period.

c) Enter any additional income received such as late payment charges and provide a brief explanation as to the source in the space provided.

d) Total a, b, and c.

3) Total line 1 and line 2d.

4) a) Enter the amount of any eligible revolving loan fund administration costs used from the loan revenues received.

b) Enter the total amount of any loans made during the reporting period. (Show all funds that have been obligated to a project even if the actual loan has not yet been made.)

c) Total a and b.

5) Subtract line 4c from line 3.

SECTION VI - FINANCIAL INSTITUTION

1) Enter the name of the financial institution where the revolving loan fund is maintained.

2) Enter the address of the financial institution.

3) Enter the account number of the revolving loan fund.

SECTION VII – CERTIFICATION

1) Enter the typed name and title of the grantee's Chief Elected Official.

2) Have the Chief Elected Official review, sign and date the report certifying its accuracy.

SECTION VIII - PORTFOLIO OF REVOLVING LOAN FUND
(For loans made with proceeds from program income)

Enter the requested information for all loans made with program income.

NEBRASKA DEPARTMENT OF ECONOMIC DEVELOPMENT
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

PROGRAM INCOME REPORT

For Economic Development Revolving Loan Funds

For The Period Ending: ☐ June 30, ___ ☐ December 31, ___

DED USE ONLY
Date Received: _____
Reviewed By: _____
Date: _____

I. GENERAL INFORMATION

1) Grantee_____
2) Grant #_____
3) Business_____
4) Loan Amount $_____ Interest Rate___% Loan Term_____

II. LOAN REPAYMENTS

1) Balance of Loan Repayments Brought Forward $_____

2) Loan Repayments This Reporting Period:

Payment #	Date Due	Date Rec'd	Amount
_____	_____	_____	$_____
_____	_____	_____	$_____
_____	_____	_____	$_____
_____	_____	_____	$_____
_____	_____	_____	$_____
_____	_____	_____	$_____

3) Total This Period $_____

4) Total Loan Repayment to Date $_____

III. LOAN STATUS

Are all loan repayments current? Yes ☐ No ☐

If "NO", attach explanation which identifies the number of days delinquent or if the business has defaulted on the loan.

IV. GRANTEE CONTACT PERSON

Name _____
Address_____
_____
Phone (____)_____

V. REVOLVING LOAN FUND

1) Beginning Balance $_____

2) Receipts This Period:
   a) Loan Repayments $_____
   b) Interest Earned $_____
   c) Other Explanation: $_____
   d) Total Receipts $_____

3) Balance Available $_____

4) Obligations This Period: $_____
   a) Administration $_____
   b) Loans $_____
   c) Total Obligations $_____

5) Ending Balance $_____

VI. FINANCIAL INSTITUTION

Name_____
Address_____
_____
Account No._____

VII. Certification

I certify that to the best of my knowledge and belief the information contained in this report is true and correct.

_____
Signature of Chief Elected Official

_____
Typed Name

_____
Title

_____
Date

July 2003

VIII. Portfolio of Revolving Loan Fund									
	Business	**Loan Amount**	**Interest Rate**	**Loan Term**	**Date Loan Made**	**Receipts this Period**	**Total Payments Received to Date**	**Total Future Payments Due**	**Status of Loan**
1.									
2.									
3.									
4.									
5.									
6.									
7.									
8.									
9.									
10.									

ATTACHMENT 3

NEBRASKA DEPARTMENT OF ECONOMIC DEVELOPMENT
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

INSTRUCTIONS

PROGRAM INCOME REPORT

for Non-Economic Development Funds

Local governments that have or receive program income from Non-Economic Development (i.e. Housing, Community Development, or Comprehensive Revitalization). CDBG grants need to submit this report every six months. Program Income is defined as: a) payments of principal and interest on loans made using CDBG funds; b) proceeds from the lease or disposition of real property acquired with CDBG funds c) interest earned on CDBG funds held in a revolving fund account; and, d) interest earned on any-program income pending disposition of such income. Reports are due each July 15th for the preceding period of January 1 through June 30, and each January 15th for the preceding period of July 1 through December 31.

Submit the report to:

Department of Economic Development
Community and Rural Development Division
P.O. Box 94666
Lincoln, NE 68509-4666

1. Check the appropriate box and complete the date for the reporting period.
2. Identify city, village or county name.
3. Identify CDBG number(s) that are a source of the program income.
4. Enter the beginning balance of your program income fund.
5. Enter all program income received this six-month period.
6. Enter all interest earned from the account this six-month period.
7. Enter the sum of lines 4, 5 and 6.
8. Enter all expenditures made from the program income account this six-month period.
9. Enter line 7 minus line 8. (This is your beginning balance for the next reporting period.)
10. Identify your financial institution where funds are held.
11. Identify the account number at the financial institution.
12. Identify the person most knowledgeable about this report.
13. Obtain signature of chief elected official and complete information.

NEBRASKA DEPARTMENT OF ECONOMIC DEVELOPMENT
COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

DED USE ONLY
Date Received _____
Date Entered _____

NON-ECONOMIC DEVELOPMENT PROGRAM INCOME REPORT

1. Period Ending: ☐ June 30, _____ ☐ December 31, _____

2. Grantee: _____

3. Grant Number(s) Contributing: _____
_____
_____

4. Beginning Balance: $ _____
5. Receipts This Period: $ _____
6. Interest Earned: $ _____
7. Total: $ _____

8. Expenditures: $ (_____)
9. Ending Balance: $ _____

10. Financial institution _____
11. Account Number _____

12. Contact Person

Name: _____

Address: _____
_____
_____

Phone: (____)_____

13. Certification

I certify that to the best of my knowledge and belief the information contained in this report is true and correct.

_____
Signature of Chief Elected Official

_____
Typed Name

_____
Title

_____
Date

SUPPLEMENTAL QUESTIONNAIRE FOR THE PROGRAM INCOME REPORT

1) What is the make-up of the amount shown as the ending fund balance in question 9? Please identify the sources of the funds that are included in this balance.

2) Are there any non-CDBG funds which provide income to the City/Village/County that are usually deposited and/or expended as part of the CDBG program income fund?

3) Identify the amount of the ending fund balance in question 9 that is from non-housing revenues.

4) Who is responsible for administering the Non-Economic Development Program Income Fund? Do you contract with an outside organization for administration?

5) What guidelines are used to approve expenditures from the fund? Are these guidelines written? If so, please enclose one copy of the guidelines.

CHAPTER 10 – PROCUREMENT, CONSTRUCTION AND LABOR STANDARDS

TASK #1 SELECT AN ARCHITECT/ENGINEER OR CONSULTANT AND NEGOTIATE A CONTRACT

TASK #2 REVIEW LABOR LAWS AND ESTABLISH FILES FOR CONSTRUCTION CONTRACTS

TASK #3 BID PACKAGE PROCEDURES, PROVISIONS AND CONTRACT PROVISIONS

TASK #4 WHEN BIDS ARE HIGHER THAN COST ESTIMATES

TASK #5 AWARD CONTRACT, INFORM CONTRACTOR OF RESPONSIBILITIES AND NOTICE TO PROCEED

TASK #6 COMPLIANCE/PROGRESS MONITORING AND PAYMENTS

TASK #1: SELECT AN ARCHITECT/ENGINEER OR CONSULTANT AND NEGOTIATE A CONTRACT

DEFINITION

Insure procurement practices and/or contracts for professional services are consistent with federal regulations as well as good business practices. Secure professional services contracts including, those with architects, engineers, planning consultants and auditors.

CITATION

- Code of Federal Regulations 24 CFR 85.36 (Procurement) except for paragraph (a).

PROCUREMENT PROCEDURES

The first step in the process is to define the nature and extent of services required. If, for example, the grantee anticipates having an engineer/architect also contract to do inspections, that should be identified as a specific task. The specification of services required should be as detailed and explicit as possible. This will serve as the basis for the scope of work included in the proposal or contract.

Procurement procedures do not apply, however, to officials of the grantee who are acting in their official capacity. Consequently, if a city council has officially designated an attorney as city attorney or an engineer as city engineer, the individual so designated becomes an official of the city. As an official of the city performing Community Development Block Grant (CDBG) related duties, his/her legal or engineering service charges are eligible program costs to the extent that they are: (1) reasonable for the services provided; (2) follow an appointment made in accordance with state and local laws; and, (3) the amount of compensation charged to the program will be based on payrolls documented and provided in accordance with generally accepted practices of state and local governments.

To comply with federal procurement practices, the grantee must insure "maximum open and free competition" (Refer to Code of Federal Regulations 24 CFR 85.36, paragraph (c) Competition). It may either solicit qualification statements, or issue a Request for Proposal (RFP). If statements of qualification are used, the Grantee should review and rank every statement received, and either contact the first two or three choices to request a proposal covering the scope of services and estimated costs, or select the top firm and begin negotiations.

If an RFP is issued, it should specify the scope of services and the type of contract to be provided; cost reimbursement (also know as cost plus fixed fee); fixed price; or per diem contract. Cost plus a percentage of cost contracts are unacceptable to the department and must not be used (refer to Code of Federal Regulations 24 CFR 85.36, paragraph (f) contract cost and price).

The RFP also should specify the cost and pricing data required to support the proposed cost, anticipated start and completion dates, and evaluation criteria to be used in ranking proposals. The Grantee should make available pertinent materials such as reports, maps and site plans to assist the bidders in preparing proposals. For complicated projects, the grantee may wish to conduct a pre-bid conference to discuss the project, describe available materials, and explain relevant CDBG contract regulations.

The review process for both statements of qualification and proposals in response to an RFP should be thorough, uniform, and well documented. The department prefers that this review be conducted by a committee or board which, to the extent possible, includes persons with technical skills. Reviewers should have no potential conflicts of interest with the firms or individuals under review, such as family relationships, close friendships, or business partnerships. (Refer to Code of Federal Regulations 24 CFR 85.36, paragraph (b) Procurement Standards, which in part states: "Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.")

EVALUATION CRITERIA

- Specialized experience or technical expertise of the firm and its personnel in connection with the type of services to be provided and the complexity of the project.
- Past record of performance on contracts with the municipality and other clients, including quality of work, timeliness and cost control.
- Capacity of firm to perform the work within time limitations, taking into consideration the current and planned workload of the firm.
- Familiarity of the firm with the type of problems applicable to the project.
- The relative importance of these criteria can be indicated by assigning weights to each.

CONTRACT PROVISIONS

The grantee then prepares a contract with the successful individual or firm that must include all of the following provisions:

General Administrative Provisions

- Effective date of contract.
- Names and addresses of municipality and firm.
- Names of representatives of municipality and firm who will act as liaison for administration of the contract.
- Citation of the authority of the grantee under which the contract is entered into and source of funds.
- Conditions and terms under which contract may be terminated by either party, and remedies for violation/breach of contract.
- A clause prohibiting a transfer of any interest in the contract by the consultant.
- Provisions requiring the consultant to maintain records and furnish reports.

Scope of Services

- Detailed description of extent and type of work to be performed.
- Time for performance and completion of contract services, including project milestones, if any.
- Specification of materials or other services to be provided by both parties, e.g., maps, reports, printing, etc.

Method of Compensation

- Provisions for compensation for services including fee and/or payment schedules and specification of maximum amount payable under contract.

Federal Standards Provisions

- E.O. 11246 clause (7 paragraphs if above $10,000 or 3-paragraph Equal Opportunity provisions if $10,000 or under)

- Title VI clause from the Civil Rights Act of 1964
- Access to Records
- Conflict of Interest
- Section 3 (written plan if $10,000+) from the Housing and Urban Development (HUD) Act of 1968, as amended
- Section 109 from Title I of the Housing and Community Development Act (HCDA) of 1974, as amended
- Age Discrimination Act of 1975, as amended
- Section 504 of the Rehabilitation Act of 1973, as amended

After negotiating the contract, it should be submitted to the governing body for action according to standard procedure, and then executed by both the grantee and the successful bidder. Unsuccessful bidders should be promptly notified.

CONTRACT FILE

The Grantee must establish a contract file and monitor the contract to assure that the contract is completed in a satisfactory and timely manner. The contract file must contain:

- Description of method used to select consultants;
- Qualification statements, RFP and proposal(s) received;
- Negotiation methods;
- Cost and pricing data;
- Contract for services;
- Records of partial payments and supporting documentation (in financial management files); and
- Contract amendments, if any, and rationale for amendment.

COMMON PROCUREMENT DEFICIENCIES

- Failure to comply with federal procurement regulations.
- Absence of necessary documentation.
- Vague or inadequate scope of services.
- Contract missing one or more required conditions.

TASK #2: REVIEW LABOR LAWS AND ESTABLISH FILES FOR CONSTRUCTION CONTRACTS

STATUTORY PROVISIONS

Section 110, Chapter 69, Title 42, Housing and Community Development Act of 1974 (42 U.S.C. 5310) provides that, "All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under this chapter shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a-5): Provided, That this section shall apply to the rehabilitation of residential property only if such property contains not less than 8 units."

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

Contract Work Hours and Safety Standards Act (40 U.S.C. 327 - 333). This Act (CWHSSA) applies to both direct Federal contracts and indirect Federally-assisted contracts except where the assistance is solely in the nature of a loan guarantee or insurance. CWHSSA also applies to maintenance laborers and mechanics employed by public housing authorities. CWHSSA provides that work in excess of 40 hours per week shall be compensated for at rates not less than one and one-half times the basic rate of pay.

Copeland Act (Anti-Kickback Act) (40 U.S.C. 276c). The Copeland Act makes it a criminal offense for any person to induce, by any manner whatsoever, any person employed in the construction, prosecution, completion, or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment.

Fair Labor Standards Act of 1938, as Amended, (29 U.S.C. 102, et. seq.). This Act provides for minimum wages for construction workers, overtime pay (forty-hour week), recordkeeping and child labor standards.

PROJECT COMPLIANCE

The following examples require compliance with Davis-Bacon:

- CDBG funds that are used to fund "in whole or in part" construction contracts of more than $2,000.
- Demolition activities to be followed by on-site construction.
- Installation of equipment and it is considered more than an incidental amount of the overall project cost.

The following examples do not require Davis-Bacon:

- CDBG funds that are used to fund non-construction "soft costs" (land and building acquisition, equipment, engineering services, etc.)
- CDBG-funded demolition with no construction on-site contemplated.

When prevailing rates apply, in general all the above statutory provisions apply except to the rehabilitation of residential property only if such property contains not less than 8 units. If you have questions, please contact your program representative before proceeding.

LABOR STANDARDS PROCEDURES OVERVIEW

Grantees must develop a compliance and an enforcement program that ensures all applicable labor standards requirements are met. In many instances the grantee, the grant administrator and the engineer may work together to ensure compliance with Davis-Bacon and Related Acts. The grantee must designate someone as the labor standards compliance officer with the overall responsibility to coordinate and ensure compliance with all appropriate labor standards regulations and that an accurate filing system is maintained. The final responsibility for compliance rests with the grantee.

The grantee must secure applicable general wage determination(s); include all applicable wage rate and labor standards provisions in the bid specifications and contract documents, and monitor contractor compliance. Major activities are summarized in Tasks 3 through 6 in the most typical sequence of occurrence.

To properly organize construction and labor standards documents, the following list contains major steps that the Grantee should establish a filing system, which contain the following, as they become available.

1. Preliminary design and cost estimates.
2. Final design and cost estimates.
3. Evidence that all necessary land or easement acquisition has been completed prior to advertising for bids.
4. Wage determination(s) for project.
5. Construction bid package.
6. Approval of bid documents by authorities having jurisdiction over the project.
7. Proof of publication advertising bids. This file also may include any letters utilized to specifically solicit for minority/women contractor participation.

8. Bid opening minutes, bid tabulations.
9. Wage determination verification **10 days prior** to bid opening.
10. Verification of contractor eligibility.
11. Written recommendation for award of contract.
12. Executed construction contract(s).
13. Pre-construction conference minutes or evidence of meeting with contractor.
14. Notification to the department of contract award.
15. Contractor/subcontractor weekly payrolls and evidence of review, (a copy of the first two (2) payrolls must be submitted to the department).
16. Employee interview forms and evidence of review.
17. Verification of job site posting.
18. Other related correspondence.

COMMON DEFICIENCIES

- Failure to establish compliance responsibility.
- Construction/Labor Standards files not established or incomplete.

TASK #3: BID PACKAGE PROCEDURES, PROVISIONS AND CONTRACT PROVISIONS

DEFINITION

Prepare bid specifications and packages. Advertise and open bids. Incorporate Labor Standards, Equal Opportunity and all other related CDBG and local terms, conditions, and procedures into bid packages and contracts.

CITATION

- HUD CPD 570.502 Retention and access requirements for records.
- Code of Federal Regulations 24 CFR 85.36 Procurement except paragraph (a).
- OMB Circular A-87 (Allowable Costs).

ACQUISITION REQUIREMENTS

The grantee must have obtained all lands, right-of-ways and easements necessary for carrying out the project prior to bid advertising (see Property Acquisition Chapter). The Grantee or architect/engineer must also notify all public utility, gas, water, electrical, sewer or drainage services that might have any underground installations within the project area. A copy of any such plat/diagram received must be included in the bid and contract document.

BID PACKAGE PROCEDURES

The architect or engineer will normally prepare the technical bid specifications. These specifications must provide a clear and accurate description of the technical requirements for materials, products and/or services to be provided and under which the work is to be performed. The plans and specifications must be stamped by an architect or engineer registered by the State and in accordance with Nebraska statutes.

COST ESTIMATE FORMAT

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

SECURE WAGE DETERMINATION FROM THE DEPARTMENT

Project Wage Determination

Individual project wage determinations, required for most water well construction projects, are requested from the department on form SF-308. The department forwards the request to the U.S. Department of Labor (DOL) for a wage determination and notifies the grantee on its receipt. At least 30 days should be anticipated for the processing by DOL. The individual project wage determinations are effective for 180 calendar days from issuance. If the determination is not used in the period of effectiveness, it is void.

If the project is a water well and more then 20% of the project is in the activity of "Water Source," then the grantee must work with the department to secure a worker classification and wage rate for a well driller.

"Project wage determinations are issued at the specific request of a contracting agency [DED]; each is applicable to the named project only; and expires 180 calendar days from the date of issuance unless an extension of the expiration date is requested by the agency and approved by the Wage and Hour Division [DOL]. If such a determination is not used in the period of its effectiveness, it is void. Project determinations are issued in response to contracting agencies [DED] submitting to the Wage and Hour Division [DOL] a Standard Form 308 requesting a wage determination."

General Wage Determination

The grantee should check with the department at least 30 days prior to advertising for bids to determine if the project requires a general wage determination or project wage determination in the bid package. A general wage determination generally applies to heavy construction (such as public facilities projects), highway construction, building construction and residential construction. The project wage determination is usually for a water well construction project.

General wage determinations are requested directly from the department before binding the bid documents. The Request for Wage Determination Form LSE 1 is to be submitted for heavy, highway, building and residential construction projects. The general wage determination is issued to the grantee within 10 days of receipt. Please verify the wage determination a minimum of 10 days before going to bid to verify you have the current wage determination.

SECURE GENERAL WAGE DETERMINATION BY THE GRANTEE

If the Davis-Bacon wage determination is a general wage determination, the Grantee can check online for a wage determination at http://www.gpo.gov/davisbacon/. The website will show what determination(s) will be changed, so be sure to check 10 days prior to Bid Opening date. When you visit the previously mentioned web site you will need to click on "Search All Determinations" or "Browse All Determinations By State." If you "Search All Determinations," you will need to select the State of Nebraska, select the Construction Type, either Building, Residential, Highway, or Heavy, and in the Box next to "Refine your Search" type the county in which the work is being performed. For a description of the construction types, please visit HUD's website at http://www.hud.gov/offices/olr/memo130.cfm. If you choose to "Browse All Determinations By State," click on Nebraska, and then scroll down to the county in which the work is being performed. Choose and then click the appropriate Construction type. Print the wage determination and include it in the bid document.

The grantee may download the "Construction Compliance Packet – Bid Documents" from http://crd.neded.org/publications/cdbg_forms.htm to include in the Bid Document. The following items will be include in the Construction Compliance Packet – Bid Documents Packet: Attachment 1- Bonding and Insurance Requirements, Attachment 3 – Civil Rights and Equal Opportunity Provisions, Attachment 3a – Certification of Bidder Regarding Section 3 and Segregated Facilities, Attachment 3b – Contractor Affirmative Action Steps Utilization Of The Lowest Income Residents/Businesses, Attachment 4 – Special Equal Opportunity Provisions, Attachment 5 – Access to and Maintenance of Records, Attachment 6 – Clear Air and Water Acts, Attachment 12 – Federal Labor Clauses, and HUD-4010 – Federal Labor Standards Provisions (this form will need to be downloaded from HUD's website).

The Construction Compliance Packet – "After Award" includes the following forms that have links to be downloaded from HUD's and DOL's websites on page 10-16: "Contractors Guide to Davis-Bacon Wage Requirements and Certified Payroll Reports," Contract Work Hours and Safety Act (CWHSSA), Payroll Form (WH-347), Employee Interview Form (HUD-11), three posters (Notice To All Employees, Equal Employment Opportunity is the Law, and You Have a Right to a Safe and Healthful Workplace) that must be displayed

with the wage determination for the duration of the project in a conspicuous place accessible to all the workers, and LSE-7 – Notice of Contract Award.

The grantee will need to check weekly through the bid opening date to verify the general wage determination is current. If modifications are published prior to bid opening and/or award, the grantee must secure modifications and send them as an addendum to all contractors who received the original bid package. If the grantee chooses to secure the Davis-Bacon general wage determination, they do not need to submit LSE1 to the department and they do not need to include the LSE2 in the Bid document.

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

FEDERAL PROVISIONS FOR BID PACKAGE

The grantee must develop procedures for securing contractors and monitoring compliance with various federal equal opportunity requirements. The Grantee must include all applicable Equal Opportunity language, other related CDBG and local terms, conditions, and procedures in the bid specifications and contract documents, obtain required documentation, and monitor compliance. These activities are to be incorporated into the contracting flow summarized below. These conditions must be incorporated into the bid package and awarded contract.

Bonding and Insurance Requirements Clause: Federal bonding requirements apply to contracts in excess of $100,000. Smaller contracts must comply only with local bonding requirements.

- Flood Insurance, if applicable.
- Bonding and Insurance (Attachment 1).
- Title VI of the Civil Rights Act of 1964 Clause (Attachment 3).
- Section 109 of Title I of the HCDA of 1974, as Amended Clause (Attachment 3).
- Age Discrimination Act of 1975, as Amended Clause (Attachment 3).
- Section 504 of the Rehabilitation Act of 1973, as Amended Clause (Attachment 3).
- Section 3 of the HUD Act of 1968, as amended Clause (Attachment 3).
- Federal Executive Order 11246 (Attachment 4).
- Clean Air/Water Clause (Attachment 6).
- Access to and Maintenance of Records Clause (Attachment 5).
- Conflict of Interest Clause (Attachment 5).
- Applicable Wage Determination(s).
- Federal Labor Clauses (Attachment 12).
- Federal Labor Standards Provisions (HUD-4010) (Attachment).

ATTORNEY REVIEW

The department recommends that the bid package be reviewed in its entirety by the grantee's attomey to insure compliance with applicable state and local law. If the project falls under the jurisdiction of a state or other outside agency (e.g., State Fire Marshal, Health Department or the like), the bid package also should be reviewed by the cognizant agency.

BIDS ADVERTISED

Once bid documents are prepared and current wage determination(s) secured, the grantee must advertise. Bids must be solicited by public advertising. Bid advertisements must conform to state law and local ordinance with respect to schedule and number of times advertised. The grantee also may solicit bids from firms if it maintains a list of bidders.

VERIFICATION OF WAGE DETERMINATION

Ten days prior to bid opening date, the grantee must contact the department or check online at http://www.gpo.gov/davisbacon/ to determine if there have been any modifications or replacement of the general wage determination previously issued. If the grantee checks online the Grantee must make a note in the file to include the wage determination number, modification number, the date of the determination, date checked, and person checking determination. If the wage determination has changed, print out the new wage determination, include the new wage determination in the bid packet, and file the current wage determination. **This is important because if in fact the wage determination has changed, and the grantee has not checked with the department, the grantee is liable for any difference in increased wages for the project.**

BID AMENDMENTS

If bid documents are amended during the advertisement period, addenda must be sent to all bidders who have received bid documents. The Grantee must include the wage determination in the bid document. If modifications are published prior to bid opening, the Grantee must secure modifications and send them as an addendum to all contractors who received the original bid package.

BID OPENING AND EVALUATION

All bids received must remain sealed and in a safe place until the bid opening. All bids received should be logged in with the time/date of receipt, name of offeror and procurement number.

The public bid opening should be conducted in a businesslike manner. The bids should be read aloud during the bid-opening meeting. The apparent low bidder will be determined during the bid opening. However, the bids also must be reviewed for both technical and legal responsiveness of bids. In addition, the bidders must be evaluated as having the capacity to furnish products and/or services required. Minutes of the bid opening, along with a tabulation of the bids, should be placed in the contract file.

COMMON DEFICIENCIES

- Contracts do not contain all applicable equal opportunity provisions.
- Applicable wage determinations and Transmittal not included.
- Federal Labor Standards Provisions (HUD-4010) not included.
- Use of incorrect or expired wage determinations.
- Failure to include labor standards provisions in bid specifications/contracts.
- Bid specifications lack one or more required federal provisions.
- Advertisements do not contain all required information.
- Advertisements are not timely.
- Bids are not logged in, seals broken.

TASK #4: WHEN BIDS ARE HIGHER THAN COST ESTIMATES

DEFINITION

Receive bids in excess of amount allocated for contract.

NEGOTIATION PROCEDURES

When the lowest bid exceeds the amount allocated for the project, the grantee may negotiate with the low bidder in accordance with Nebraska statutes so as to bring the contract within the available funds. The Grantee can reject all bids or provide needed funds from other sources or through reallocation of CDBG funds. If the Grantee has reason to believe available funds are likely to be inadequate for the full scope of work proposed, the Grantee should request deductible alternatives in the bid document so that the project can proceed in a timely fashion and not require a second solicitation.

DEDUCTIBLE ALTERNATIVES

If deductible alternatives are requested, the bid document must specify the method and order in which alternatives will be applied in determining the low bid. Drawings also must clearly show the alternative. For example, if the project was for 1,500 linear feet of street construction, sidewalks, street lighting, and replacement of sanitary sewer lines, 300 l. f. of sidewalks might be a deductible alternative. The desirability of using this method when cost estimates are very close to the amount of available funds (or if cost estimates are based on roughly comparable projects) cannot be overestimated. Failure to do so may require modification of bid packages and a repetition of the entire process with delays in project implementation.

If this method is not used and the bid exceeds the amount allocated, the grantee can provide the additional funds from other sources.

COMMON DEFICIENCIES

- Failure to use deductible alternative method when appropriate.

TASK #5: AWARD CONTRACT, INFORM CONTRACTOR OF RESPONSIBILITIES AND NOTICE TO PROCEED

DEFINITION

Award the contract, instruct the contractor on labor standards responsibilities, and issue the notice to proceed.

CITATION

- Code of Federal Regulations 24 CFR 85.36 Procurement, 24 CFR 85.36, paragraph (h) (bonding requirements)
- Code of Federal Regulations 24CFR85.42 (retention and access requirements for records)
- HUD CPD 570.502 (paragraph a. 16.) (retention of records).
- Labor Standards Regulations (TASK 2).
- Equal Opportunity Regulations (TASK 3).

VERIFYING CONTRACTOR

Prior to award of the contract, the grantee must check to make sure the proposed prime contractor is not on federal lists of debarred, suspended or ineligible contractors. The grantee may check with the department or may go to http://epls.arnet.gov/ to verify that contractor is not debarred, suspended or ineligible. If the grantee goes to the previous website, the grantee must print the result of the search and retain the printout in the grantees files. If the grantee contacts the department, this can be done by telephone or letter (Form LSE 4). If it is done by telephone, the grantee should note the date of the telephone call, the person contacted, and the outcome of the call. Letter or telephone documentation should be placed in the project file. If confirmation of eligibility is from the department, this information should be secured and noted in the file.

CONTRACT AWARD PROCEDURES

The contract must be awarded to the lowest responsive bidder. If the contract is awarded to other than the low bidder, the grantee must prepare a written statement explaining why each lower bidder was deemed nonresponsible or nonresponsive. To be responsive, the bidder must have submitted a written Section 3 plan if the contract equals or exceeds $10,000.

Following award of the contract, the contract documents and applicable bonding and insurance must be completed and executed. Contract documents include all the items contained in the bid package, as well as the executed contract, bid proposal, contractor certifications, and bond and insurance forms.

The Notice of Contract Award (Form LSE 7) must be sent to the department within 10 days of award. The Notice of Contract Award includes the project name and location, the number of the applicable wage determination, the name of the business awarded the contract, the contract amount, and the name of the

person identified by the municipality as responsible for labor standards compliance. If there are multiple contracts with the grantee, a separate LSE 7 should be submitted for each contractor.

MEET WITH CONTRACTOR

Prior to the start of construction, the grantee must meet with the principal contractor and all available subcontractors to instruct them on their responsibilities under the Labor Standards provisions (including submission of weekly payrolls) as well as the grantee's role in monitoring compliance (including employee interviews); obtain any outstanding documentation; provide the contractor with posters for the site including the Notice to Employees (WH 1321), Job Safety and Health Protection (OSHA 3165), and Equal Opportunity Employment, and a copy of the wage determination for posting. This meeting can take place at a pre-construction conference or at any other convenient time. Pertinent information as to the items discussed and attendees should be documented and kept in the grantee files. Attachment 10 is an example of the items to be discussed at this meeting.

ADDITIONAL WORKER DETERMINATION CLASSIFICATIONS AND WAGE RATES

The pre-construction conference or similar meeting is a time to review the wage determination to see if any additional classifications and wage rates will be required. If any class of laborer or mechanic, which is not listed in the wage determination, is to be employed, you must submit an additional request to the department after contract award that such laborer or mechanic be conformed to the wage determination. Your request must include: (1) a letter from the awarded contractor stating what is paid hourly (wages and itemized bona-fide fringe benefits) to the employees in the needed classifications (this work cannot be performed in any classification in the wage determination); (2) a description of the work to be performed for each wage classification; (3) a statement on whether employees are union or non-union; and (4) documentation that the interested parties, including employees or authorized representatives, and the contractors, agree on the proposed classification and wage rate. This request cannot involve wage rates for apprentices or trainees. Refer to attachment 11 for an example of the information that should be sent to the department. Another form that can be used is Standard Form 1444 (SF-1444), the link to this form is found on page listed as "Index to Hyperlinks." If you use SF-1444, please submit only the page with "Department of Labor" on the bottom of the page.

Once the department receives the letter from the awarded contractor, the department will issue a temporary wage. The department will forward the information to HUD, who will then forward it to the DOL. Once the department receives confirmation from the DOL on the wage rate, the department will contact the grantee with DOL's determination.

WAGE RATE EXCEPTIONS

Apprentices and trainees may work at less than prevailing wage rates only if they are registered in a bona-fide apprenticeship program that has been approved by the DOL. If you have Apprentice(s) listed on the payroll you are reviewing, please review pages 2-5 and 2-6 in *Making Davis-Bacon Work: A Contractor's Guide to Prevailing Wage Requirements for Federally Assisted Construction Projects*. Useful websites to verify apprenticeship programs includes http://bat.doleta.gov/ (this site allows you to search by state and county for registered apprenticeship programs) and http://www.workforce.state.ne.us/bat/default.htm (this site has a contact person for the DOL in Omaha on apprenticeship programs).

NOTICE TO PROCEED

Following execution of the contract documents and completion of the preconstruction conference, the Grantee will issue a Notice to Proceed to each prime contractor to begin the work. The Notice to Proceed must establish the construction start date, the scheduled completion date, and provide the basis for assessing liquidated damages. The construction period and basis for assessing liquidated damages must be consistent with these sections of the contract documents.

COMMON DEFICIENCIES

- Bonding requirements not met.
- Section 3 certification/plan not submitted.
- Notice of contract award not sent to the department.

- Minutes of pre-construction conference or similar meeting with contractor not in files.
- Project construction file inadequate.

TASK #6: COMPLIANCE/PROGRESS MONITORING AND PAYMENTS

DEFINITION

Monitor construction contracts to insure compliance with technical specifications and federal standards. Maintain adequate cost and budget controls and process necessary contract changes to bring the contract to completion.

CITATION

- Code of Federal Regulations 24CFR85.40 "Monitoring and reporting program performance," except paragraphs (b) through (d) and paragraph (f).
- OMB Circular A-87 (allowable costs)
- Labor Standards Regulations (HUD-4010)
- Contract Work Hours and Safety Standards Act
- Davis-Bacon Act

PROGRESS PROCEDURES

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

PAYROLL VERIFICATION

Once construction is underway, the grantee must obtain copies of all general contractor and subcontractor weekly payrolls, accompanied by the statement of compliance (form WH-348), and check them against the wage determination. The contractor should submit these within seven working days of the end date on the payroll form. The payrolls should be examined upon receipt so that any necessary corrective action can be initiated. Payrolls should be initialed for verification of review. Items for review include the correct classification of workers; a comparison between the classification and the wage rate 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 construction firm.

PAYROLL VERIFICATION SUBMITTED TO DED

The grantee must submit a copy of the first 2 (two) payrolls, from each contractor to the department. Any discrepancies must be reported to the contractor and the department along with steps taken or being taken to resolve discrepancies.

ON-SITE VISIT/INTERVIEWS

Site visits should be made to confirm that posters and the correct wage determination are posted at the construction site in clear view of all employees throughout the duration of the construction project. The "Notice to Employees," "Job Safety and Health Protection," and "Equal Employment Opportunity" posters can either be downloaded or the grantee can request them from the department.

The grantee also must conduct on-site interviews of construction workers using form HUD-11, Record of Employee Interview (the link to this form is located in the appendix). "We strongly encourage [the Grantees] to target on-site interviews to projects, contracts, employers where violations are suspected and the interview data can be most useful. Targeting may mean that no interviews are conducted on certain contracts where remote monitoring (such a payroll reviews) indicates full compliance so that more interviews may be

conducted where problems are indicated." For more information about record of employee interview please view the information at http://www.hud.gov/offices/olr/streamline.cfm.

All information received from the on-site interviews must be compared to the information contained in the applicable contractor's payrolls and correction of any discrepancies undertaken immediately. The reviewer must sign and date the interview form for proper verification of review. At completion of the project, the grantee must also prepare and submit to the department a Final Wage Compliance Report (Form LSE 9).

CONSTRUCTION MANAGEMENT

During construction, the grantee also is responsible for construction management. This may be done by the architect/engineer, and if so, should be included in the scope of services identified in the professional services contract. Construction management must include inspection and general supervision of construction to check the contractor's work for compliance with the drawings and specifications and quantity and quality control. Written inspection reports must accompany the contractor's requests for partial payment.

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

PAYMENT PROCEDURES

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

On receipt of Certificates for Partial Payment and necessary documentation, the grantee must check Equal Opportunity and Labor Standards compliance files to insure that all payrolls have been received and checked and any necessary restitution paid and that employee interviews (form HUD-11) have been conducted and all discrepancies corrected. The Grantee may then pay the contractor the amount requested, or up to 90% of the amount requested, depending on contract (the 10% would be retained until final completion and acceptance of the work).

CHANGE ORDERS

The construction inspector and/or architect/engineer must prepare change orders. Change orders are generally permissible under state law. The cumulative cost of all such orders should not exceed 25 percent of the original contract price and these changes are not to constitute a major alteration of the original scope of work. Each change order must be accompanied by a supporting statement that describes why the change is necessary, cost estimates, and any needed plans and specifications. The grantee must approve and authorize change orders before they are given to the contractor. Change orders should be kept to an absolute minimum.

ACCEPTANCE OF WORK

Before final payment approval, the contractor must complete the conditions in the bid contracts. The contractor may request an acceptance of work from the grantee that indicates the work has been completed

according to contract. The grantee must place the acceptance of work form in the contract file. Change orders and receipts for project payment must be filed. The files must be reviewed by the grantee for completeness before the acceptance of work form is approved. The contractor must file an as-built plan with the grantee to receive project approval. The grantee can then issue an acceptance of work and final payment less any funds retained after the contractor has completed the project and files are complete.

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

COMMON DEFICIENCIES

- Weekly payrolls and Statement of Compliance (WH 348) not obtained.
- Weekly payrolls not checked.
- Submittal of first two weekly payrolls to the department from each contractor.
- On-site interviews not conducted.
- On-site interviews not checked against payroll.
- Failure to verify proper job site posting.
- No construction monitoring responsibility assigned.
- Contractor's failure to submit cost breakdown.
- Schedule of payments not established.
- Construction inspection is inadequate.
- Delays in processing requests for progress payments.
- Change orders in excess of 25 percent, or other state maximum percentage of contract amount.
- Failure to provide Final Wage Compliance Report.
- Failure to perform final inspection

Index

Contract Documents	Attachment Number
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Federal Labor Standards Provisions	HUD-4010
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Labor Standards Enforcement Forms	LSE Number
Request for Wage Determination and Response to Request	1
Wage Determination Transmittal	2
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DOL/HUD Forms	Number
Payroll Form	WH-347
Record of Employee Interview	HUD-11
Statement of Compliance	WH-348

DOL/HUD Documentation

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

Posters:

Notice to All Employees WH-1321
Instructions for "Notice to All Employees" Poster

Job Safety and Health Protection OSHA 3165 (English) (Spanish)
Instruction for Posting "Job Safety and Health Protection Poster (English) (Spanish)

Equal Employment Opportunity (English) (Spanish)
Instructions for "Equal Opportunity" Poster (English) (Spanish)

Index of Hyperlinks

Contract Documents	Link
HUD-4010	http://www.hudclips.org/sub_nonhud/html/pdfforms/4010.pdf

Labor Standards Enforcement Forms	Link
SF-308	http://contacts.gsa.gov/webforms.nsf/0/BAF07725410AE22785256A2C005FA11F/$file/Sf308.pdf

DOL/HUD Forms	Link
HUD-11	http://www.hudclips.org/sub_nonhud/html/pdfforms/11.pdf
SF-1444	http://contacts.gsa.gov/webforms.nsf/0/BD4C92A05177FD9C85256A2600553378/$file/sf1444.pdf
WH-347 (Auto Calculating)	http://www.dol.gov/esa/forms/whd/WH347.pdf
WH-347 (Printable Only)	http://www.dol.gov/esa/forms/whd/WH347print.pdf
WH-347 (Instructions)	http://www.dol.gov/esa/forms/whd/wh347instr.htm
WH-348	http://www.dola.state.co.us/LGS/FA/CDBG/Documents/Labor-Exhibit-T.pdf
DOL Apprentice Form	http://www.doleta.gov/atels_bat/ETA_671_MIJ.pdf

DOL/HUD Documentation	Link
Making Davis-Bacon Work	http://www.hud.gov/offices/olr/wagereq.pdf
Verification of Apprenticeship Program DOL contact	http://www.workforce.state.ne.us/bat/default.htm
Verification of Apprenticeship Program search	http://bat.doleta.gov/

Posters	Link
Equal Employment Opportunity (English)	http://www.dol.gov/esa/regs/compliance/posters/pdf/7975epos.pdf
EEO (Instructions)	http://www.dol.gov/esa/regs/compliance/posters/eeo.htm
Equal Employment Opportunity (Spanish)	http://www.dol.gov/esa/regs/compliance/posters/pdf/eeosp.pdf
EEO (Spanish instructions)	http://www.dol.gov/esa/regs/compliance/posters/eeospan.htm
OSHA 3165 (English)	http://www.osha-slc.gov/Publications/osha3165.pdf
OSHA 3165 (Instructions)	http://www.osha.gov/Publications/poster.html
OSHA 3165 (Spanish)	http://www.osha.gov/Publications/osha3167.pdf
OSHA 3165 (Spanish instructions)	http://www.osha.gov/Publications/poster2.html
WH-1321	http://www.dol.gov/esa/regs/compliance/posters/pdf/fedprojc.pdf
WH-1321 (Instructions)	http://www.dol.gov/esa/regs/compliance/posters/davis.htm

Community Development Block Grant Regulations
BONDING AND INSURANCE REQUIREMENTS
CODE OF FEDERAL REGULATIONS 24CFR85.36

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

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A ``performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A ``payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

*fixed at 41 U.S.C. 403(11) (currently set at $100,000)

CIVIL RIGHTS AND EQUAL OPPORTUNITY PROVISIONS

Public Law 88-352, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d), et. seq.) (24 CFR part 1).

The law provides that, "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

Section 109 of the Housing and Community Development Act of 1974, As Amended.

The law requires that, "[n]o person in the United States shall on the ground of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this chapter. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.] or with respect to an otherwise qualified handicapped individual as provided in section 794 of Title 29 also shall apply to any such program or activity."

Age Discrimination Act of 1975, As Amended (42 U.S.C. 6101, Et, seq.).

The law provides that, "no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance."

Section 504 of the Rehabilitation Act of 1973, As Amended (29 U.S.C. 794).

"Section 504 provides that no otherwise qualified individual with a disability shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

Section 3 of the Housing and Urban Development Act of 1968, As Amended (12 U.S.C. 170lu).

The law provides that, "to the greatest extent feasible, recipients of HUD funds (and their contractors and subcontractors) provide jobs and other economic opportunities to low-income persons, particularly public housing residents. Section 3 helps create employment for low-income persons and contracting opportunities for businesses that are owned by low-income people or that provide employment to low-income people."

CERTIFICATION OF BIDDER REGARDING SECTION 3 AND SEGREGATED FACILITIES

_____	_____
Name of Prime Contractor	**Project Name and Number**

The undersigned herby certifies that:

(a) Section 3 provisions are included in the contract.

(b) A written Section 3 plan was prepared and submitted as part of the bidding proceedings (if bid equals or exceeds $10,000).

(c) No segregated facilities will be maintained.

_____

Name & Title of Signer (Print or Type)

_____	_____
Signature	***Date***

CONTRACTOR

Section 3 Plan

_____ agrees to implement the following specific affirmative action steps directed at increasing the utilization of lowest income residents and businesses within the Village/City/County of _____

A. To ascertain from the locality's CDBG program official the exact boundaries of the Section 3 covered project area and where advantageous, seek the assistance of local officials in preparing and implementing the affirmative action plan.

B. To attempt to recruit from within the city the necessary number of lower income residents through local advertising media; signs placed at the proposed site for the project; and community organizations and public or private institutions operating within or serving the project area, such as Service Employment and Redevelopment (SER), Opportunities Industrialization Center (OIC), Urban League, Concentrated Employment Program, Hometown Plan, or the U.S. Employment Service.

C. To maintain a list of all lower income residents who have applied either on their own or on referral from any source, and to employ such persons, if otherwise eligible and if a vacancy exists.

D. *To insert this Section 3 plan in all bid documents, and to require all bidders and subcontracts to submit a Section 3 affirmative action plan that includes utilization goals and the specific steps planned to accomplish these goals.

E. *To insure that subcontracts (typically let on a negotiated rather than bid basis in areas other than Section 3 covered project areas), also are let on a negotiated basis, where feasible, when let in a Section 3 covered project area.

F. To formally contact unions, subcontractors and trade associations to secure their cooperation for this program.

G. To insure that all appropriated project area business concerns are notified of pending subcontractual opportunities.

H. To maintain records, including copies of correspondence, memoranda, etc., that document all above affirmative action steps have been taken.

I. To appoint or recruit an executive official of the company or agency as Equal Opportunity Officer to coordinate the implementation of the Section 3 plan.

**Loans, grants, contracts and subsidies for less than $10,000 will be exempt.*

ATTACHMENT 4

SPECIAL EQUAL OPPORTUNITY PROVISIONS

A. Activities and Contracts Not Subject to Executive Order 11246, As Amended

(Applicable to Federally assisted construction contracts and related subcontracts $10,000 and under)

During the performance of this contract.

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, or national origin. Such action shall include, but not be limited to: employment upgrade, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay, or other forms of compensation; and selection for training, including apprenticeship.

(2) The contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by contracting officer setting forth the provisions of the nondiscrimination clause. The contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) Contractors shall incorporate foregoing requirements in all subcontracts.

B. Executive Order 11246 (contract/subcontracts above $10,000)

1. SEC. 202. Except in contracts exempted in accordance with Section 204 of this order, all Government contracting agencies shall include in every government contract hereafter entered into the following:

During the performance of this contract:

(1) The contractor will not discriminate against any employee a applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to: employment upgrade, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay, or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.

(2) The contractor will, in all solicitations or advancements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the [Contract Compliance Officer], advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and the rules, regulations, and relevant orders of the U.S. Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to their books, records, and accounts by the [Department] and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract, or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor *will* take such action with respect to any subcontract or purchase order as may be directed by the [Department and the] Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction [by the Department], the contractor may request the United States to enter into such litigation to protect the interests of the United States [italics added]."

ATTACHMENT 5

ACCESS TO AND MAINTENANCE OF RECORDS

The Consultant/Contractor agrees to maintain such records and follow such procedures as may be required under HUD Community Planning and Development (CPD) subpart J, 570.502 (paragraph a. 16.) and 24CFR85.42 (paragraphs (b) and (c)) and any such procedures that the department may prescribe. In general such records will include information pertaining to the contract, obligations and unobligated balances, assets and liabilities, outlays, equal opportunity, labor standards (as appropriate), and performance.

All such records and all other records pertinent to this contract and work undertaken under this contract shall be retained by the Consultant/Contractor or grantee for a period of three years after the final audit of the grantee's CDBG project, unless a longer period is required to resolve audit findings or litigation. In such cases, the grantee shall request a longer period for record retention.

The grantee, the department and duly authorized officials of the state and federal government shall have full access and the right to examine any pertinent documents, papers, records and books of the Consultant/Contractor involving transactions to this local program and contract.

Conflict of Interest

From 24CFR85.36, no officer, employee or agent of the grantee who will participate in the selection, the award, or the administration of this grant, may obtain a personal or financial interest or benefit from the activity or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. It is further required that this stipulation be included in all subcontracts to this contract. Upon written request, exceptions may be granted on a case-by-case basis when it is determined that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the recipient's program or project. These exceptions are granted by the Department.

ATTACHMENT 6

CLEAN AIR AND WATER ACTS – REQUIRED CLAUSES

This clause is required in all third-party contracts involving projects subject to the Clean Air Act (42 U.S.C. s/s 7401 et seq. (1970)), the Federal Water Pollution Control Act (33 U.S.C. 1251 et. seq.), and the regulation of the Environmental Protection Agency with respect to 40 CFR32 as amended. It also should be mentioned in the bid document.

During the performance of this contract:

(1) The CONTRACTOR will certify that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the List of Violating Facilities issued by the Environmental Protection Agency pursuant to 48 CFR 9.40 and 40CFR32.20.

(2) The CONTRACTOR agrees to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. 7414) and Section 308 of the Clean Water Act, as amended (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.

(3) The CONTRACTOR agrees that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, and Environmental Protection Agency, indicating that a facility utilized, or to be utilized for the contract is under consideration to be listed on the Environmental Protection Agency List of Violating Facilities.

(4) The CONTRACTOR agrees that it will include or cause to be included the criteria and requirements in Paragraphs (1) through (4) of this section in every nonexempt subcontract and require every subcontractor to take such action as the government may direct as a means of enforcing such provisions.

Preconstruction Conference

Labor Standards Regulations Information

Project Name: _____

Project Location: _____

CDBG Grant Number: _____

Date: _____

The following Labor Standards requirements were discussed and reviewed with _____ representing _____ who will undertake this project.

- Prevailing wages as set forth in the Davis-Bacon Act must be paid on this project. Required wage rates are contained in Wage Determination _____ Mod# _____ Date _____ .
- Overtime provisions as listed in the Contract Work Hours and Safety Standards Act must be followed. Time and a half must be paid to any worker employed in excess of 40 hours in one week.
- The Wage Determination and Wage Poster must be prominently displayed on the job site for the duration of the construction.
- Employees must be paid on a weekly basis.
- Payrolls covering all workers on the project must be submitted to _____ on a weekly basis, from the time the work begins until it is completed, and no later than seven days following completion of the workweek. No payroll is needed if no work is performed, but payrolls must be numbered with the last one marked "Final".
- To ensure cooperation, employees are to be informed that onsite interviews will be conducted by the Labor Standards Compliance Officer, _____.
- Proper certification from the U.S. Department of Labor, Bureau of Apprenticeship and Training, will be required whenever apprentices are employed.
- Withholding of payments may occur if all applicable provisions are not followed.
- Underpaid workers must be paid proper wages through restitution.
- Liquidated damages $10/day may be assessed for each violation of the Contract Work Hours and Safety Standards Act.
- Federal Labor Standards provisions apply to the general contractor and to all subcontractors on the project. The prime contractor is responsible for payment of employees of the subcontractors in compliance with labor standards provisions.
- Wage restitution may be due to employees for failure to observe the proper ratio of journeymen to apprentices, or for allowing apprentices to work alone.
- A listing of contractors to be utilized on this project must be provided to _____. Any debarred, suspended or ineligible contractors may not be used.

- The Labor Standards Compliance Officer must be informed of the construction start and end dates on the project.
- Only trades indicated in the General Wage Determination can be utilized on the project. Additional classifications will be needed for any non-listed trades.
- Davis-Bacon language (HUD form 4010) must be included in all project contracts including lower tier contracts.
- The Labor Standards Compliance Officer needs to review the prime contract for inclusion of Labor Standards Provisions.

The following material was provided to the Developer/General Contractor on this project

☐ Wage Determination # NE _____, Mod# _____ , Dated _____ .

☐ The 3 Posters to be Posted at the Job Site.

☐ Payroll Form

☐ Federal Labor Standards Provisions HUD Form 4010

☐ Sample Payrolls

It is acknowledged that the above mentioned Labor Standards Regulations information was discussed and the related documents were transmitted to _____ of _____.

_____ _____

Pre-Award Official

Developer/Contractor

Title _____

Request Additional Wage Classification Example

Information to include

CDBG Project No.	Name of Grantee (Village/City/County)	Location of Project (City, County and State)

Contract Award Date	Wage Determination No.	Wage Modification No.	Wage Determination Date

Contractor Name	Contractor Address	Contractor City, State, Zip

Parts (1) through (3) of information requested.

_____ am currently paying _____ per hour to _____
(Name of Contractor) (Wage Rate) (Employee(s) Name)

in the following _____ In addition I am paying _____ in bona-fide
(Wage Classification) (Amount)

fringe benefits (per hour). These fringe benefits include _____
(Amount/Fringe Per Hour), (Amount/Fringe Per Hour), etc.

_____ does _____ This employee is a(n)
(Employee Name) (Description Of Work Performed)

_____ member.
(Non/Union)

Contractor Name (Printed)	Contractor Title (Printed)

Contractor Signature	Contractor Title	Date Signed

Part (4) of requested information.

I, _____ agree to the above written information stating my wage classification to be
(Employee Name)

_____ at the wage rate of _____ to include
(Wage Classification) (Wage Rate)

the following bona fide benefits per hour _____
(Amount/Fringe Per Hour), (Amount/Fringe Per Hour), etc.

Employee Signature	Date	Contractor Signature	Date

Instructions for Department of Labor's Standard Form 1444 – Request for Authorization of Additional Classification and Rate(s)

First Page Instructions (has "Department of Labor" at bottom of page)

- Check the appropriate box for either Service Contract or Construction Contract
- Box #2 – The department's Address
  Nebraska Department of Economic Development
  Community and Rural Development Division
  301 Centennial Mall South
  PO Box 94666
  Lincoln, NE 68509-4666
- Box #3 – Contractor Name and Address
- Box #4 – Date Requested
- Box #5 – Contract Number – with the Grantee
- Box #6 – Bid Opening Date
- Box #7 – Date of Contract Award
- Box #8 – Date Work Started
- Box #10 – Subcontractor Name and Address (if applicable)
- Box #11 – Brief Description of the Project
- Box #12 – Location of the Project to include the City, County and State
- Box #13 – General Wage Determination Number and General Wage Determination Date
  - Box #13a. – Proposed Classification Title and Description of Additional Classification Duties
  - Box #13b. – Proposed Wage Rate
  - Box #13c. – Proposed Fringe Benefits, (can be broken down by Year, Month, Day, Hourly)
- Box #14 – If this is for a Subcontractor Their Representative's Signature and Title (Please Print Name and Title)
- Box #15 – The Prime Contractor's Representative Signature and Title (Please Print Name and Title)
- Box #16 – Signature of Employee Who's Wage Classification(s) is Being Added to the Wage Determination (Print Name Also)
  Printed Title
  Mark the appropriate box whether they agree or disagree with the classification information from above

Once the above information is filled out, retain a copy for yourself and send the original to the department.

FEDERAL LABOR CLAUSES

The Davis-Bacon Act (DBA)

The Davis-Bacon Act requires the payment of prevailing wage rates (determined by the U.S. Department of Labor) to all laborers and mechanics on federal government and District of Columbia construction projects exceeding $2,000. Construction includes alteration and/or repair (including painting and decorating) of public buildings or public infrstructure. Section 109 of the Housing and Community Development Act of 1974, As Amended.

The Contract Work Hours and Safety Standards Act (CWHSSA)

CWHSSA requires time and one-half pay for overtime (O/T) hours (more than 40 in any work week) worked on the covered project. The CWHSSA applies to both direct federal contracts and to indirect federally-assisted contracts except where the assistance is solely in the nature of a loan guarantee or insurance. CWHSSA violations carry a liquidated damages penalty ($10/day per violation). Intentional violations of CWHSSA standards can be considered for federal criminal prosecution.

The Copeland Act (Anti-Kickback Act)

The Copeland Act makes it a federal crime for anyone to require any laborer or mechanic (employed on a federal or federally-assisted project) to kickback (i.e., give up or pay back) any part of their wages. The Copeland Act requires every employer (contractors and subcontractors) to submit weekly certified payroll reports (CPRs) and regulates permissible payroll deductions.

The Fair Labor Standards Act (FLSA)

The FLSA contains Federal minimum wage rates, overtime (O/T), and child labor requirements. These requirements generally apply to any labor performed. The DOL has the authority to administer and enforce FLSA. HUD will refer any possible FLSA violations that are found on HUD projects to the DOL.

LSE1

NEBRASKA REQUEST FOR WAGE DETERMINATION

Community Development Block Grant Program

Department of Economic Development

(Davis-Bacon Act as Amended, and Related Statutes)

DATE:	CDBG GRANT:	
REQUESTER:	NAME:	
	FIRM:	
	ADDRESS:	
	CITY:	STATE: NE ZIP:
	TELEPHONE:	( )
REQUESTED FOR:	CITY:	
	COUNTY:	, NEBRASKA

Description of Work (Be specific and list work items separately by contracts to be bid.)

ESTIMATED BID ADVERTISING DATE:	
ESTIMATED BID OPENING DATE:	
ESTIMATED CONTRACT AWARD DATE:	
ANTICIPATED START OF CONSTRUCTION DATE:	
ESTIMATED CONTRACT AMOUNT:	

RESPONSE TO REQUEST

Wage Determination Issued By Nebraska Department of Economic Development

After receiving the above Request for Wage Determination, the department assigns the applicable Wage Determination, as noted below:

Issued by:
JASON SEAMANN,
Labor Standards Specialist
Community and Rural Development Division
Nebraska Department of Economic Development
PO Box 94666,
Lincoln Nebraska 68509-4666
Telephone (402) 471-3761
or (800) 426-6505
Fax (402) 471-3778
email: jseamann@neded.org

DATE ISSUED: _____
WAGE DETERMINATION #: _____
MODIFICATION #: _____
DATE PUBLISHED: _____

DED 12/03

Individuals who are hearing and/or speech impaired and have a TDD, may contact the department through the Statewide Relay System by calling 711 (in-state), (800) 833-7352 (TDD), or (800) 833-0902 (voice). The relay operator should be asked to call DED at (800) 426-6505, or (402) 471-3111.

WAGE DETERMINATION TRANSMITTAL

(Davis-Bacon Act as Amended, and Related Statutes)

Wage Determination Under the Davis-Bacon and Related Acts (This Determination is effective from the date of publication in the General Wage Determinations issued under the Davis-Bacon and Related Acts, Volume II, ESA Regions 5-7, published by the U.S. Department of Labor.)

NOTE: This Determination should not be used for this project without contacting the Nebraska Department of Economic Development and requesting any current modifications or supersedeas determinations.

Grantee Name:	**CDBG Number:**	**Name and Address of Official Requesting Wage Determination:**
County:	**State:**	
General Wage Determination Issued: **Volume:** _____ **Modification #:** _____ **Date:** _____	**Type of Work:** ____ **Heavy** ____ **Highway** ____ **Building** ____ **Residential**	
Description of Work:		**Wage Determination Issued By:** JASON SEAMANN, Labor Standards Specialist Nebraska Department of Economic Development Community and Rural Development Division P.O. Box 94666 Lincoln, Nebraska 68509-4666 Telephone (402) 471-3761 or (800) 426-6505 Fax (402)471-3778 Statewide Relay (800) 833-0902 (voice) email: jseamann@neded.org Date Replied: _____
Estimated Advertising Date: _____ **Estimated Bid Opening Date:** _____ **Estimated Contract Award Date:** _____ **Estimated Construction Start Date:** _____		

Instructions for DOL-308

The boxes that you need to fill out include:

Date of Request, Estimated Advertising Date, Estimated Bid Opening Date, Prior Determination Number (If Any), Estimated $ Value of Contract, Type of Work, Location of Project (City, County, State, Zip Code), Description of Work (Be Specific) (Print or Type), and Check or List Crafts needed.

The following boxes should have the information below:

Requesting Officer (typed name and signature)

This should have "Jason Seamann" typed in

Department, Agency or Bureau

This should have Nebraska Department of Economic Development

Phone Number

This should have (402) 471-3761

Address to which wage determination should be mailed (Print or type):

This should be the following:
Jason Seamann
Nebraska Department of Economic Development
PO Box 94666
Lincoln, NE 68509-4666

LSE4

VERIFICATION OF CONTRACTOR ELIGIBILITY

BY TELEPHONE

PHONE CALL: _____
DEPARTMENT OF ECONOMIC DEVELOPMENT

This is to inform you that _____ of _____

Construction, of _____, _____, low bidder on
(town) (state)
the _____ improvements projects. The Department

verbally verified eligibility.

BY LETTER

TO: DEPARTMENT OF ECONOMIC DEVELOPMENT
FROM: LABOR STANDARDS COMPLIANCE OFFICER
SUBJECT: CONTRACTOR ELIGIBILITY

This is to inform you that _____ of _____
(town)
_____ is the low bidder contractor on _____
(state)
improvement project, grant # _____

Sincerely,

BY INTERNET

Refer to instruction on page 10-9.

LSE7

NOTICE OF CONTRACT AWARD

Please submit this completed notice within 10 days after contract award to:

JASON SEAMANN, Labor Standards Specialist
Nebraska Department of Economic Development
Community and Rural Development Division
PO Box 94666
Lincoln, Nebraska 68509-4666

Telephone: (402) 471-3761 or (800) 426-6505
Fax: (402) 471-3778
email: jseamann@neded.org

1.	CDBG Grant No:		
2.	City/Village:	County:	State:
3.	Federal Wage Determination Number:	Mod#:	
4.	Date of Federal Wage Determination:		
5.	Bid Opening Date:		
6.	Contract Award Date:		
7.	Estimated Construction Start Date:		
8.	Contract Amount:		
9.	Name, Address, City, State, and Zip of General Contractor:		
10.	Description of Work:		

11. Labor Standards Designee	TELEPHONE NUMBER: ( )
ADDRESS:	
(SIGNATURE)	DATE:

Individuals who are hearing and/or speech impaired and have a TDD, may contact the department through the Statewide Relay System by calling 711 (in-state), (800) 833-7352 (TDD), or (800) 833-0902 (voice). The relay operator should be asked to call DED at (800) 426-6505, or (402) 471-3111.

LSE9

FINAL WAGE COMPLIANCE REPORT

Community Development Block Grant (CDBG)
Nebraska Department of Economic Development

Grantee: _____	Project Completion Date: _____
CDBG Grant: _____	U.S. DOL Wage Rate Determination No: _____
Program Rep: _____	

1 While you or your representative were reviewing the contractor's weekly payrolls, were any laborers or mechanics paid less than the minimum wage rate plus fringe benefits as specified in the Secretary of Labor's Wage Determination No. _____ that applied to this project? ___ No ___ Yes

2 If yes, provide the following information:

a. Total Amount of Restitution Paid (difference between what was first paid and what was required to be paid): $ _____

b. Method of Restitution: _____ Paid by Contractor
_____ Paid by City with Funds Withheld From Payment to Contractor

c. Contractor or Subcontractor Name	Name of Affected Employees	Amount of Restitution Paid to Employee	Nature of Violation Leading to Restitution

Signed	Title	Date

CHAPTER 11 – PROPERTY ACQUISITION

Task #1	Review laws, regulations and process flow chart
Task #2	Determine what properties will be acquired
Task #3	Determine ownership of properties to be acquired
Task #4	Establish a file for each property to be acquired
Task #5	Notify owner of interest in acquiring the real property
Task #6	Obtain appraisal(s) for each property
Task #7	Establish and offer just compensation
Task #8	Complete acquisition, condemn property or decide not to acquire
Task #9	Special procedures for donation and voluntary acquisitions

Task #1 Review Laws, Regulations and Process Flow Chart

The Department strongly recommends that applicants should before contemplating CDBG funding for a project become thoroughly familiar with the acquisition process under the URA.

Laws and Regulations

- Uniform Relocation and Real Property Acquisition Policies Act (URA) of 1970, as amended (42 USC 4601 et seq.)
- Title 49 of the Code of Federal Regulations Part 24, as amended (www.fhwa.dot.gov/hep/49cfr24.htm)
- Section 104(d) of the Housing and Community Development Act
- Relocation Assistance Act (LB254, March 27, 1989), RRS of Nebraska

The URA and the government-wide rule implementing the URA (49 CFR Part 24) applies to all federally assisted activities that involve the acquisition of real property or the displacement of persons, including displacement caused by rehabilitation and demolition activities. If CDBG assistance is used in any part of the project, the URA would govern the grantee's acquisition of real property for the activity and any resulting displacement, even if local funds were used to pay the acquisition costs. Even a private person, corporation or business that acquires property or displaces persons for a CDBG assisted project is subject to the URA.

Under the URA all persons, defined as families, individuals, businesses, nonprofit organizations and farms, displaced (forced to move permanently) as a direct result of rehabilitation, demolition or acquisition for a CDBG-assisted project are entitled to relocation payments and other assistance under the URA. CDBG grantees have the responsibility to minimize displacement that results from CDBG funded projects.

The objectives of the URA are (1) to ensure owners of real properly to be acquired for a CDBG-assisted project are treated fairly and consistently; and (2) to ensure that persons displaced from their homes or places of business as a result of CDBG-assisted activities are treated consistently

and equitably so that they do not suffer disproportionate injury as the result of a project designed for the benefit of the public as a whole.

The enactment of the Relocation Assistance Act on March 27, 1989 brought Nebraska law into compliance with the federal government-wide rule. This chapter does not address this statute because it essentially mirrors the federal law and the interpretation of state law is considered to be a local matter.

Procedures

The URA and its implementing regulations at 49 CFR Part 24 apply to any acquisition of real property assisted with federal funds. As part of the contract with the Department, the grantee has agreed to comply with the requirements of the URA. Before undertaking any CDBG project which involves or which might involve the acquisition of real property including permanent easements, it is in the grantee's best interest to understand what those requirements are. The Acquisition File Checklist and the Process Flow Chart are included as Attachments 1 and 2.

Common Deficiencies

- Unfamiliarity with acquisition procedures and requirements under the URA

Task #2 Determine What Properties Will Be Acquired

Identify those activities supported, in whole or in part, with CDBG funds which involve the acquisition of real property through any means, including donation.

Procedures

Under most circumstances, all property acquired for an activity assisted under the CDBG Program is subject to the URA. The types of permanent ownership covered are: full title, permanent easements, long-term leases (including leases with options for extensions) of 50 years or more, or rights of way. Acquisitions that are not subject to the URA are temporary easements, acquisitions by an agency or person without the power of eminent domain or voluntary transactions that meet the conditions described at 49 CFR Part 24.101(a).

The timing of an acquisition can also make it subject to the URA. Any acquisition which takes place on or after the date of submission of a CDBG application to fund an activity on that property is subject, unless the Grantee shows that the acquisition was unrelated to the proposed activity. Also, even an acquisition that took place before the date of submission of the application can be subject to the URA if the Department determines that the acquisition was intended to support a subsequent CDBG activity.

The grantee, with its engineer, or attorney as appropriate, should review every proposed activity to determine property acquisition needs and identify the particular properties to be obtained. Activities such as street widening, water and sewer improvements, or sidewalk construction do not have an obvious property acquisition requirement, but there is often a need to acquire easements or rights-of-way.

Common Deficiencies

- Acquisition of property (regardless of the type of interest acquired) without following acquisition procedures

Task #3 Determine Ownership Of Properties To Be Acquired

Conduct title search as the first step in determining ownership of properties to be acquired.

Procedures
In the case of public improvement activities, be sure to verify that the property to be improved is in the public domain. Sometimes rights-of-way are privately owned.

Common Deficiencies

- Undertaking public improvements without properly acquiring necessary easements or rights-of-way

Task #4 Establish A File For Each Property To Be Acquired

Maintain documentation that acquisitions are being carried out in conformance with the URA.

Procedures
The grantee must establish and maintain a file for each property to be acquired and include copies of all acquisition documents. Files must be kept for at least five years after program closeout. The Acquisition File Checklist (Attachment 1) identifies the required file elements.

Common Deficiencies

- Separate files not established
- Documentation incomplete

Supporting Materials

- Acquisition File Checklist (Attachment 1)

Task #5 Notify Owner Of Interest In Acquiring The Real Property

Inform owner of grantee's interest in acquiring their property, the applicable laws and the procedures to be followed.

Procedures
As soon as feasible, notify the owner of the grantee's interest in acquiring the real property and the basic protections provided to the owner by law, including the obligation to secure an appraisal. This notice and any applicable HUD relocation notice should be sent by certified or registered mail with return receipt requested (see Attachment 3). If it is hand delivered, receipt

should be signed and dated by the property owner. A copy of this notice must also be sent to any tenants in residence. The notice should contain information about the grantee's land acquisition policies. If the recipient does not read or understand English, the grantee must provide translations and assistance. Each notice must indicate the name and telephone number of a person who may be contacted for further information.

Common Deficiencies

- Waiting too long in the acquisition process before notifying owners of the grantee's interest
- Absence of HUD informational brochure or written statement of land acquisition procedures

Supporting Materials

- Sample Preliminary Acquisition Notice (Attachment 3)
- General Information Brochure (For owners – Attachment 4)
  (For Tenants – request from Department)

Task #6 Obtain Appraisal(s) For Each Property

Obtain an unbiased and independent appraisal of the value of the property and review the appraisal.

Procedures

If the acquisition is covered by the URA and the property is worth more than $2,500, an appraisal is required to establish the fair market value which must be offered as just compensation for the property. An appraisal can be waived by the owner if they are donating the property. If the valuation problem is uncomplicated and the value is $2,500 or less, an appraisal is not required.

The property owner must have the opportunity to accompany the appraiser and is to be given a summary statement listing all the pertinent facts and considerations included in the appraisal. The appraiser should have no interest in the property or be related to or in business with anyone having an interest in the property to be acquired. The appraiser should be reputable and professional. The grantee should adhere to adopted procurement procedures, request statements of qualifications from a number of appraisers, review those qualifications, and employ only qualified appraisers. A minimum of one appraisal is required; however, if the project is potentially controversial (as with an unwilling seller or a conflict of interest involving a public official) or where property values are high, it is recommended that two independent appraisals be conducted.

Appraiser Contract

The grantee will then execute a professional services contract with an independent appraiser (See Attachment 12 and Chapter 8 - Procurement). The contract requires the appraiser to invite the property owner to accompany the appraiser during the property inspection and not to consider

race, color, religion or ethnic characteristics of a neighborhood in estimating the value of residential real property. The contract must specify the content requirements for the appraisal.

Before the appraisal is undertaken, the grantee or the appraiser selected must formally invite the property owner to accompany the appraiser during inspection of the property (Attachment 5). This notice must be in writing and a copy placed in the property acquisition file.

Once the appraisal has been prepared and submitted to the grantee, it must be reviewed. The review must be done by a qualified staff appraiser or an independent fee review appraiser. The review must be written and should focus on determining the adequacy of the appraiser's supporting data, and the soundness of the appraiser's opinion of fair market value. The review appraiser should be required to visit appraised property. The reviewer must set forth in written form a recommendation as to the fair market value of the property (Attachment 6). If the review appraiser disagrees with the fair market value of the original appraisal, the grantee can use the review appraiser's recommended fair market value if the review appraiser prepares an appraisal report to support the recommended fair market value or the grantee may secure an additional appraisal and review.

Common Deficiencies

- Failure to use a competitive process to select the appraiser
- Failure to execute a professional service contract in compliance with CDBG regulations
- Failure to secure an independent appraisal
- Failure to invite property owner to accompany appraiser during property inspection
- Failure to review appraisals

Supporting Materials

- Sample Invitation to Accompany an Appraiser (Attachment 5)
- Sample Review of Appraisal (Attachment 6)
- HUD Handbook No. 1378 Tenant Assistance, Relocation and Real Property Acquisition (request from the Department)

Task #7 Establish and Offer Just Compensation

Determine fair market value (just compensation) of property to be acquired and offer the amount to owner.

Procedures

Before the initiation of negotiations, the amount which is believed to be just compensation must be established. This amount cannot be less than the approved appraisal of the fair market value taking into account the value of allowable damages or benefits to any remaining property. The grantee must prepare a written Statement of the Basis for the Offer of Just Compensation (Attachment 7), to be conveyed to the property owner at the time the written offer to purchase is tendered (Attachment 8).

The written Statement of the Basis for Just Compensation must include:

- A legal description of and location identification of the property
- Interest to be acquired (e.g., fee simple, easement, etc.)
- An inventory identifying the building, structures, fixtures, etc., which are considered to be a part of the real property
- The amount of the offer and a statement to the effect that this is the full amount believed by the grantee to be just compensation, is not less than the fair market value of the property, disregards any increase or decrease in the fair market value attributable to the project for which the property was acquired, and does not include any consideration or allowance for relocation costs
- In the case of tenant-owned improvements, indication that such interest is not covered by the offer
- If only a part of the parcel is to be acquired, a statement apportioning the just compensation between the actual piece to be acquired and the compensation for damages, if any, to the remaining portion

A copy of the written Statement of the Basis for Just Compensation should be placed in the property acquisition file.

Procedures For Written Offer To Purchase

Promptly after establishing just compensation, the grantee issues to the owner a Written Offer to Purchase (Attachment 8) along with the written Statement of the Basis of the Offer of Just Compensation (Attachment 7). In addition to the amount of just compensation, the offer must specify the date on which negotiation for the sale of the property will begin, which may or may not be the same date as the written offer. As with all notices, its receipt must be documented. If the property is occupied, the grantee must issue a general information notice to the tenants describing the grantee's general relocation policies. For more detail on relocation procedures, see Chapter 12 - Relocation.

Sale Negotiation

The grantee then negotiates the sale. The owner must be provided a reasonable opportunity to consider the offer and present information which they believe is relevant to determining the value of the property and to suggest modifications in terms and conditions. The grantee can consider the offer and either accept it (i.e., if the cost of condemnation proceedings or delays in program implementation would be greater than the increment in price being requested), institute condemnation proceedings, or decide not to acquire the property. Documentation of negotiation proceedings should be placed in the project acquisition file.

Common Deficiencies

- Failure to notify owners on a return receipt requested basis or to secure documentation of receipt if hand-delivered
- Inadequate documentation

Supporting Materials

- Sample Written Offer to Purchase (Attachment 8)
- Sample Statement of the Basis for the Offer of Just Compensation (Attachment 7)

Task #8 Complete Acquisition, Condemn Property Or Decide Not To Acquire

Prepare and execute contract of sale, transfer documents, and reimburse owner's incidental expenses. If sale cannot be negotiated, initiate condemnation proceedings or decide not to acquire. Review the project acquisition file.

Procedures
Depending upon whether the grantee and the property owner can reach an agreement on an acquisition price, the grantee will either complete the acquisition process, initiate condemnation proceedings, or decide not to acquire the property.

Willing Seller
Following successful negotiations, a contract of sale must be prepared and executed and transfer documents secured. If the grantee pays in excess of fair market value, the acquisition file must include a written justification of the excess costs. This is called an administrative settlement. Unjustified payments in excess of fair market value may be disallowed. The grantee must reimburse the owner to the extent it deems "fair and reasonable" for incidental costs associated with transfer of title (i.e., recording fees, transfer taxes, penalty cost or other charges for prepayment of any preexisting recorded mortgages and the like).

Settlement Costs
At the conclusion of the settlement, the grantee must provide the owner with a Statement of Settlement Costs that identifies all settlement costs regardless of whether they are paid at, before, or after closing, and must clearly separate charges paid by the owner. The Statement of Settlement Costs must be dated and certified as true and correct by the closing attorney or other person handling the transaction. A receipt for purchase price must be secured by the grantee. Whenever feasible these costs should be paid directly by the grantee rather than as a reimbursement to the owner.

Condemnation Proceedings
Condemnation is the legal process by which a fee simple title to property is acquired through the process of eminent domain. The initial steps involved in condemnation are the same as those in purchases except instead of arriving at a voluntary purchase, the entity must acquire the property by filing condemnation against the property owner because a mutually agreed upon price cannot be determined.

The following steps are required to acquire property through eminent domain:

1. Formally terminate negotiations in writing
2. File condemnation suit with appropriate court in accordance with State law

3. Deposit, as directed by the court, the amount of court-determined just compensation in an escrow account
4. Proceed with payment to the property owner in accordance with court instruction

Not To Acquire
If the grantee decides not to acquire the property at any time after informing the property owner of their interest, the grantee must notify the owner and all tenants in residence in writing of its intention not to acquire the property. Any person moving from the property thereafter will not be eligible for relocation payments and assistance. This notice should be sent within 10 days of the grantee's determination not to acquire (Attachment 9).

File Review
At the close of the acquisition, the grantee should review the project acquisition file to ensure that it contains all required documentation.

Common Deficiencies

- Failure to provide a written statement of settlement costs
- Failure to provide a written Notice of Intent Not to Acquire

Supporting Materials

- Sample Notice of Intent Not to Acquire (Attachment 9)

Task #9 Special Procedures For Donation And Voluntary Acquisitions

Follow procedures for special cases: accepting full or partial donations of property to the grantee; and obtaining property through voluntary acquisition pursuant to a public solicitation.

Procedures
The grantee must adhere to the acquisition rules that apply in the particular special case.

Donations
The procedure to be followed for donations is somewhat different from the normal acquisition process. If a property is to be donated, the grantee should send a General Information Notice. The grantee should secure an appraisal, review the appraisal, and document the review in a written appraiser's report. The grantee must then prepare a Statement of the Basis for the Offer of Just Compensation (Attachment 7) that clearly states the amount established as just compensation and a waiver of rights and benefits (Attachments 10 or 11) that clearly states that the owner understands they cannot be required to donate the property or sell it to the grantee at less than the amount determined to be just compensation and they voluntarily agree to do so. The owner may also, in writing, release the grantee from the appraisal requirement. For partial donations, you must complete each step in the regular acquisition process and secure a waiver for that portion of the purchase price being donated.

If donations are being made by the elderly, very poor, functionally illiterate or non-English speaking persons, the grantee should take special care to document the efforts made to insure the

owner-occupant understood their rights in order to demonstrate the owner was not persuaded or coerced into the decision.

Voluntary Acquisition

A voluntary acquisition occurs when the grantee acquires real property from an owner who has submitted a voluntary proposal to the grantee for purchase of their property in response to a public invitation or solicitation of offers. The grantee might undertake a voluntary acquisition when it needs a site within a general area that can be satisfied by a variety of properties. Rather than single out a specific site initially, the grantee may wish to advertise to see if any owners are interested in selling their properties to the grantee, thereby saving time and administrative burden. For example, the grantee might be interested in acquiring some vacant, substandard structures for demolition, clearance, and resale for development. The grantee would then advertise to see if any owners were interested in selling their properties to the grantee for this purpose.

The real property acquisition regulations of the URA do not apply to voluntary acquisitions. However, properties that are part of a site previously designated or planned for public acquisition that would take place in the foreseeable future if the voluntary offer were not made are not exempt from the acquisition regulations.

The public invitation or solicitation must indicate that if mutually satisfactory agreement cannot be reached, the grantee will not acquire the property. If the grantee intends to require owner-occupants to waive relocation assistance as a condition of voluntary acquisition, this condition and other pertinent information should be included in the public solicitation and the waiver form should be attached to the purchase offer. In the case of tenant-occupied properties the waiver of relocation benefits does not apply. If displacement of tenants occurs because of a voluntary acquisition program the URA is applicable, and relocation benefits must be paid.

Common Deficiencies

- Failure to secure Waiver of Acquisition Compensation for donation
- Failure to list all conditions of acquisition in a voluntary acquisition public solicitation
- Failure to identify tenant-occupied property and properly notify tenants of their benefits as required by the URA

Supporting Materials

- Sample Waiver of Rights and Benefits of The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Attachment 10 & 11)

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ATTACHMENT 1

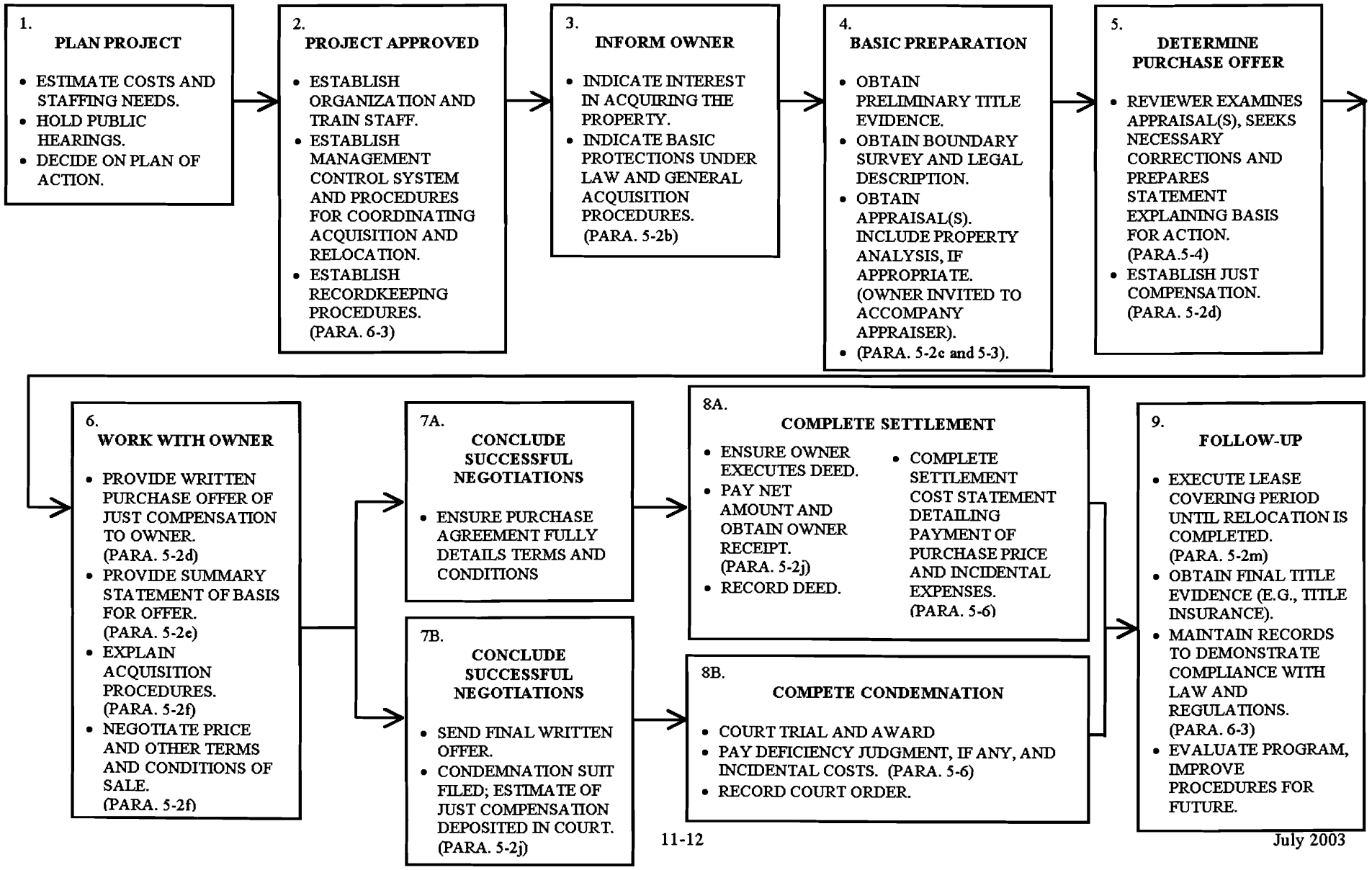
ACQUISITION FILE CHECKLIST

DOCUMENTS TO BE MAINTAINED IN ACQUISITION FILES. A SEPARATE FILE SHOULD BE ESTABLISHED FOR EACH PROPERTY ACQUIRED.

- o 1. Title Search/Clearance of Title
- o 2. General Notice of Interest in Acquiring Real Property
- o 3. Evidence of Invitation to Accompany Appraiser
- o 4. Appraisal Report, Including Donations Unless Released by Owner
- o 5. Review Appraisal Report (required for all acquisitions)
- o 6. Written Statement of Just Compensation and
- o 7. Written Offer to Purchase and Evidence of Receipt
- o 8. Contract of Sale
- o 9. Statement of Incidental Costs
- o 10. Receipt for Purchase Price and Copies of Cancelled Checks
- o 11. If Donation, Waiver of Relocation Benefits, Not Applicable to Tenants
- o 12. If Acquisition Terminated, Notice of Intent Not to Acquire
- o 13. If Condemnation, Evidence of Court Deposit of Fair Market Value
- o 14. If Condemnation, Court Resolution

Acquisition Process Under the URA*

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



ATTACHMENT 3

SAMPLE

GENERAL INFORMATION NOTICE/HUD BROCHURE

Date

Name
Address

Dear_____.

This is to inform you that the City of _____ is considering the acquisition of your property on Main Street (Lot 1, Block 1, 1st Addition) to be used for the construction of a water tower adjacent to the City Park.

A brochure describing your rights and the City's procedures for acquiring property is enclosed fro your information. If you have any questions, please call_____ at City Hall at _____.

The City will be hiring an independent Appraiser to appraise you property. You have the right to accompany him on his inspection of the property if you wish to do so. A letter inviting you to accompany him will be sent by the Appraiser at least five days prior to his visit. This notice is not a notice to vacate and does not establish eligibility for relocation payments or other relocation assistance.

Sincerely,

Name
Title

Enclosure: When a Public Agency Requires Your Property

(Have this letter reviewed by you r legal counsel prior to sending to insure it is appropriate)

U. S. Department of Housing and Urban Development

WHEN A PUBLIC AGENCY ACQUIRES YOUR PROPERTY

Introduction

This booklet describes important features of the **Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970**, as amended (URA) and provides general information about public acquisition of real property (real estate) that should be useful to you.

Most acquisitions of real property by a public agency for a Federal project or a project in which Federal funds are used are covered by the URA. If you are notified that your property will be acquired for such a project, it is important that you learn your rights under this important law.

This booklet may not answer all of your questions. If you have more questions about the acquisition of your property, contact the Agency responsible for the project. (Check the back of this booklet for the name of the person to contact at the Agency.) Ask your questions before you sell your property. Afterwards, it may be too late.

General Questions

What Right Has Any Public Agency To Acquire My Property?

The Federal Government and every State government have certain powers which are necessary for them to operate effectively. For example, they have the power to levy taxes and the power to maintain order. Another government power is the power to acquire private property for public purposes. This is known as the power of eminent domain.

The rights of each of us are protected, however, by the Fifth and Fourteenth Amendments of the U.S. Constitution and by State constitutions and eminent domain laws which guarantee that if a public agency takes private property it must pay "just compensation" to the owner. The URA provides additional protections, as explained in this booklet.

Who Made The Decision To Buy My Property?

The decision to acquire a property for a public project usually involves many persons and many determinations. The final determination to proceed with the project is made only after a thorough review which may include public hearings to obtain the views of interested citizens.

If you have any questions about the project or the selection of your property for acquisition, you should ask a representative of the Agency which is responsible for the project.

How Will The Agency Determine How Much To Offer Me For My Property?

Before making you an offer, the Agency will obtain at least one appraisal of your property by a competent real property appraiser who is familiar with local property values. The appraiser will inspect your property and prepare a report that includes his or her professional opinion of its current fair market value. After the appraiser has completed his work, a review appraiser will examine the appraisal report to assure that the estimate is fair and the work conforms to professional appraisal standards.

The Agency must offer you "just compensation" for your property. This amount cannot be less than the appraised fair market value of the property. "Just compensation" for your property does not take into account your relocation needs. If you are eligible for relocation assistance, it will be additional.

What Is Fair Market Value?

Fair market value is sometimes defined as that amount of money which would probably be paid for a property in a sale between a willing seller, who does not have to sell, and a willing buyer, who does not have to buy. In some areas a different term or definition may be used.

The fair market value of a property is generally considered to be "just compensation." Fair market value does not take into account intangible elements such as sentimental value, good will, business profits, or any special value that your property may have for you or for the Agency.

How Does An Appraiser Determine The Fair Market Value Of My Property?

Each parcel of real property is different and therefore no single formula can be devised to appraise all properties. Among the factors an appraiser typically considers in estimating the value of real property are:

- How it compares with similar properties in the area that have been sold recently.
- How much rental income it could produce.
- How much it would cost to reproduce the buildings and other structures, less any depreciation.

Will I Have A Chance To Talk To The Appraiser?

Yes. You will be contacted and given the opportunity to accompany the appraiser on his or her inspection of your property. You may then inform the appraiser of any special features which you believe may add to the value of your property. It is in your best interest to provide the appraiser with all the useful information you can in order to insure that nothing of allowable value will be overlooked. If you are unable to meet with the appraiser, you may wish to have a person who is familiar with your property represent you.

How Soon Will I Receive A Written Purchase Offer?

Generally, this will depend on the amount of work required to appraise your property. In the case of a typical single-family house, it is usually possible to make a written purchase offer within 45 to 60 days of the date an appraiser is selected to appraise the property.

Promptly after the appraisal has been reviewed (and any necessary corrections obtained), the Agency will determine just compensation and give you a written purchase offer in that amount along with a "summary statement," explaining the basis for the offer. No negotiations are to take place before you receive the written purchase offer and summary statement.

What Is In The Summary Statement Of The Basis For The Offer Of Just Compensation?

The summary statement of the basis for the offer of just compensation will include:

- An accurate description of the property and the interest in the property to be acquired.
- A statement of the amount offered as just compensation. (If only part of the property is to be acquired, the compensation for the part to be acquired and the compensation for damages, if any, to the remaining part will be separately stated.)
- A list of the buildings and other improvements covered by the offer. (If there is a separately held interest in the property not owned by you and not covered by the offer (e.g., a tenant-owned improvement), it will be so identified.)

Must I Accept The Agency's Offer?

No. You are entitled to present your evidence as to the amount you believe is the fair market value of your property and to make suggestions for changing the terms and conditions of the offer. The Agency will consider your evidence and suggestions. When

fully justified by the available evidence of value, the offer price will be increased.

May Someone Represent Me During Negotiations?

Yes. If you would like an attorney or anyone else to represent you during negotiations, please inform the Agency. However, the URA does not require the Agency to pay the costs of such representation.

If I Reach Agreement With The Agency, How Soon Will I Be Paid?

If you reach a satisfactory agreement to sell your property and your ownership (title to the property) is clear, payment will be made at a mutually acceptable time. Generally, this should be possible within 30 to 60 days after you sign a purchase contract. If the title evidence obtained by the Agency indicates that further action is necessary to show that your ownership is clear, you may be able to hasten the payment by helping the Agency obtain the necessary proof. (Title evidence is basically a legal record of the ownership of the property. It identifies the owners of record and lists the restrictive deed covenants and recorded mortgages, liens, and other instruments affecting your ownership of the property.)

What Happens If I Don't Agree To The Agency's Purchase Offer?

If you are unable to reach an agreement through negotiations, the Agency may file a suit in court to acquire your property through an eminent domain proceeding. Eminent domain proceedings are often called condemnations. If your property is to be acquired by condemnation, the Agency will file the condemnation suit without unreasonable delay.

What Happens After The Agency Condemns My Property?

You will be notified of the action. Condemnation procedures vary, and the Agency will explain the procedures which apply in your case.

Generally, when an Agency files a condemnation suit, it must deposit with the court (or in an escrow account) an amount not less than its appraisal of the fair market value of the property. You should be able to withdraw this amount, less any amounts necessary to pay off any mortgage or other liens on the property and to resolve any special ownership problems. Withdrawal of your share of the money will not affect your right to seek additional compensation for your property.

During the condemnation proceeding, you will be provided an opportunity to introduce your evidence as to the value of your property. Of course, the Agency will have the same right. After hearing the evidence of all parties, the court will determine the amount of just compensation. If that amount exceeds the amount deposited by the Agency, you will be paid the difference, plus any interest that may be provided by law.

To help you in presenting your case in a condemnation proceeding, you may wish to employ an attorney and an appraiser. However, in most cases the costs of these professional services and other costs which an owner incurs in presenting his or her case to the court must be paid by the owner.

What Can I Do If I Am Not Satisfied With The Court's Determination?

If you are not satisfied with the court judgment, you may file an appeal with the appropriate appellate court for the area in which your property is located. If you are considering an appeal, you should check on the applicable time limit for filing the appeal and consult with your attorney on whether you have a basis for the appeal. The Agency may also file an appeal if it believes the amount of the judgment is too high.

Will I Have To Pay Any Closing Costs?

You will be responsible for the payment of the balance on any mortgage and other liens on your property. Also, if your ownership is not clear, you may have to pay the cost of clearing it. But the Agency is responsible for all reasonable and necessary costs for:

- Typical legal and other services required to complete the sale, recording fees, revenue stamps, transfer taxes and any similar expenses which are incidental to transferring ownership to the Agency.

- Penalty costs and other charges related to prepayment of any recorded mortgage on the property that was entered into in good faith.

- Real property taxes covering the period beginning on the date the Agency acquires your property.

Whenever possible, the Agency will make arrangements to pay these costs directly. If you must incur any of these expenses yourself, you will be repaid--usually at the time of closing. If you later discover other costs for which you should be repaid, you should request repayment from the Agency immediately. The Agency will assist you in filing a claim. Finally, if you believe that you were not properly repaid, you may appeal the decision to the Agency.

May I Keep Any Of The Buildings Or Other Improvements On My Property?

Very often, many or all of the improvements on the property are not required by the Agency. This might include such items as a fireplace mantel, your favorite shrubbery, or even an entire house. If you wish to keep any improvements, please let the Agency know as soon as possible.

If you do arrange to keep any improvement, the Agency will deduct only its salvage value from the purchase price you would otherwise receive. (The salvage value of an item is its probable selling price if offered for sale on the condition that the buyer will remove it at his or her own expense.) Of course, if you arrange to keep any real property improvement, you will not be eligible to receive a relocation payment for the cost of moving it to a new location.

Can The Agency Take Only A Part Of My Property?

Yes. But if the purchase of only a part of your property reduces the value of the remaining part(s), you will be paid for the loss in value. Also, if any remaining part would have little or no utility or value to you, the Agency will offer to buy that remaining part from you.

Occasionally, a public project will increase the value of the part which is not acquired by the Agency. Under some eminent domain laws, the amount of such increase in value is deducted from the purchase payment the owner would otherwise receive.

Will I Have To Pay Rent To The Agency After My Property Is Acquired?

If you remain on the property after the acquisition, you may be required to pay a fair rent to the Agency. Such rent will not exceed that charged for the use of comparable properties in the area.

How Soon Must I Move?

If possible, a mutually agreeable date for the move will be worked out. Unless there is an urgent need for your property (e.g., your occupancy would present a health or safety emergency), you will not be required to move without at least 90 days advance written notice.

If you reach a voluntary agreement to sell your property, you will not be required to move before you receive the agreed purchase price. If the property is acquired by condemnation, you cannot be required to move before the estimated fair market value of the property has been deposited with the court so that you can withdraw your share.

If you are being displaced from your home, you will not be required to move before a comparable replacement home is available to you.

Will I Receive Relocation Assistance?

Title II of the URA requires that certain relocation payments and other assistance must be provided to families, individuals, businesses, farms, and nonprofit organizations when they are displaced or their personal property must be moved as a result of a project that is covered by the URA.

The Agency will furnish you a full explanation of any relocation assistance to which you may be entitled. If you have any questions about such assistance, please contact the Agency. In order for the Agency to fulfill its relocation obligations to you, you must keep the Agency informed of your plans.

My Property Is Worth More Now. Must I Pay Capital Gains Tax On The Increase?

When a public agency acquires real property for public purposes, the property owner usually may postpone the payment of Federal capital gains taxes on any profit from the sale if he or she reinvests the profit in similar property within a certain replacement period. To take advantage of this right, you should file the details in a statement with your Federal income tax return for the tax year in which you realize the gain.

Internal Revenue Service (IRS) Publication 544 explains how the Federal income tax would apply to a gain or loss resulting from the condemnation of real property, or its sale under the threat of condemnation, for public purposes. If you have any questions about the IRS rules, you should discuss your particular circumstances with your personal tax advisor or your local IRS office.

I'm A Veteran. How About My VA Loan?

After your VA home mortgage loan has been repaid, you will be permitted to obtain another VA loan to purchase another property. Check on such arrangements with your nearest Veterans Administration Office.

Is It Possible To Donate Property?

Yes. You may donate your property or sell it to the Agency for less than its fair market value. The Agency must obtain an appraisal of the property and offer just compensation for it, unless you release the Agency from these obligations.

Additional Information

If you have any questions after reading this booklet, contact the Agency and discuss your concerns with the Agency representative.

Agency

Address

Office Hours _____ Telephone Number

Person to Contact

January 2003
HUD-1041-CPD

Previous Edition Obsolete)

ATTACHMENT 5

SAMPLE

INVITATION TO ACCOMPANY APPRAISER

Date

Name
Address

Dear_____.

I have been requested by the City of _____ to prepare an appraisal of your property on _____. I will visit the property _____. If you wish to accompany me, please phone me at _____ to arrange a mutually convenient time.

Sincerely,

Name
Title

cc: City of _____

ATTACHMENT 6

SAMPLE

REVIEW OF APPRAISAL

After reviewing the appraiser's supporting data and documentation, it is my recommendation that the $32,500.00 established as a fair market value for the purchase of Lot 8, Square 6, Palmer Extension is sound and accurate. The appraiser's report is complete and the methods utilized conform to recognized appraisal practices.

The appraisal report documents the determination of fair market value through:

A. Cost Approach

The appraiser estimated the value of the land through the search for vacant land sales. S/he compared land sales with six recent land sales, then adjusted for time and points of difference. In addition, replacement costs for a new living area based on the actual square footage of the area were estimated at a standard rate. Deprecation based on age and observed conditions were subtracted from this total. All mathematical computations are accurate and were reached using sound judgment.

B. Market Data Approach

The appraiser searched for the sale of sixteen properties of which three were comparable to subject property. The Factual Data report is accurate. The sales were adjusted for points of difference.

The qualifications of the appraiser are excellent. Accurate maps and photographs are included in the report.

_____
DATE

_____
Signature of Review Appraiser

_____
Address

_____

(_____)_____
Telephone Number

ATTACHMENT 7

SAMPLE
STATEMENT OF THE BASIS FOR THE OFFER OF JUST COMPENSATION

Description and Location of Property

The City of _____ proposes to purchase land and improvements on _____ Avenue (Lot_____ Square _____,_____) from owner at _____.

It is a single-family residential unit, which conforms to zoning, present use, surrounding land use, and area trends.

Purpose of Purchase

The City of _____ intends to use the whole parcel for the construction of a library building adjacent to the Eden Park Community Center Library

Improvements

It is a one-story single-family residence of wood frame construction with concrete foundation, stucco siding, a tar and gravel roof and aluminum gutters and downspouts.

It contains a living room, kitchen, center hall, two bedrooms and one bath.

Interior finish is hardwood floors, except linoleum in kitchen and bathroom; sheetrock walls and ceilings.

The kitchen has counters and painted wood cabinets. There are no built-in appliances.

Heat is gas-fired, forced air from Atlas, 120,000 BTU furnace.

The house is 25 years old. The design is good. Maintenance is poor

Declaration of Offer

Based on the two appraisals, the City of _____ hereby makes you an offer in the amount of $_____ for the purchase of your property. This offer is for the fair market value of your property and does not include any considerations of decrease of increase in value attributable to the project for which it is being acquired. It reflects no relocation payments which the owner/tenant may be entitled to receive under the Department of Housing and Urban Development Regulations.

Definition of Fair Market Value

"Fair Market Value is the highest price estimated in terms of money which the property would bring if exposed for sale in the open market, allowing a reasonable time in which to find a purchaser buying with knowledge of all the uses and purposes for which it is adapted and for which it is capable of being used."

Appraisal Techniques

Two major techniques, cost approach and market data approach, were utilized to determine the fair market value of this property.

Cost Approach

Land:
To estimate the value of the land, as if unimproved, the market searched for vacant land sales, which might throw some light on the value of the subject land.

Estimated Replacement Cost:
To estimate the cost of replacing the home minus depreciation based on age and observed condition, 20%

Total by Cost Approach $_____

Market Data

To estimate the value of the property by this approach, the market was searched for sales of properties in the area, which might throw some light on the value of the subject property by comparison. After adjusting these sales, approximately six comparable properties, for time and points of difference, the indicated value of the subject property, by comparison is $_____ - $_____.

_____
Signature of Authorizing official

_____
DATE

ATTACHMENT 8

SAMPLE

WRITTEN OFFER TO PURCHASE

Date

Name
Address

Dear_____.

This will introduce to you_____, who represents the City of _____, in the capacity of Right-of-Way Agent and who will discuss with you the acquisition by the City Government of the property, which our records indicate is owned by_____. This property is required for the construction of the proposed_____.

We have had the property appraised by a competent and unbiased free appraiser and this report has been thoroughly analyzed by a competent review appraisal analyst and found to be well supported. Based on the appraisal and review, the City hereby makes you a firm offer in the amount of $_____ for the purchase of your property. Relocation benefits to which you may be entitled are in addition to the acquisition price of your property.

We feel that the above offer is most equitable and we urge your favorable consideration and acceptance of it. If this meets with our approval, the Department's representative has prepared (conveyance document) and will assist in any way convenient to you in finalizing the acquisition. Negotiations for the purchase of your property begin _____.

Thank you very much for your cooperation and favorable consideration of the offer.

Very truly yours,

_____
Mayor

Enclosure: Statement of Basis for the Offer of Just Compensation

ATTACHMENT 9

SAMPLE

NOTICE OF INTENT NOT TO AQUIRE

Date

Name
Address

Dear _____.

The City of _____ has determined not to acquire your _____
(address)
property. Any person moving from the premises from the date of this notice will not be eligible for relocation payments or benefits.

Sincerely,

_____
Name

_____
Title

cc: (tenant)

ATTACHMENT 10

PRESCRIBED FORMAT FOR WAIVER OF RELOCATION PAYMENTS AND OTHER RELOCATION ASSISTANCE
(Owner-Occupied Only)

Date

Name
Address

RELOCATION RIGHTS OF PROPERTY OWNERS UNDER THE UNIFORM ACT. Under the Uniform Relocation Assistance and Property Acquisition Polices Act of 1970 (Uniform Act) eligible property owners who are displaced by a public project receive:

1. Payment for Moving Expenses. This may be either a fixed payment, including dislocation allowance, based on the number of rooms of furniture, or a payment for the actual reasonable moving costs

2. Replacement Housing Payment. This may be payment up to $22,500 to purchase a home or a payment up to $5,250 to rent a home or make a down payment on a home.

3. Other Relocation Assistance. This includes housing referrals and other assistance to help the owner relocate to a comparable decent, safe, and sanitary dwelling. Under the regulations of the Department of Housing and Urban Development (HUD), the owner cannot be required to move from his home, unless he is given reasonable opportunities to relocate to a comparable decent, safe and sanitary dwelling that he can afford.

I, _____, am the owner and occupant of the property at _____.

I have voluntarily submitted an offer to sell this property to_____.

On _____, I met with a representative of the _____ who discussed with me the relocation payments and other assistance provided under the Uniform Act. He explained to me that I cannot be required to sell this property to the _____, unless I am given these relocation payments and other assistance. He also explained to me that the _____ will not acquire the property from me, unless I voluntarily enter into the agreement of sale and also agree to waive my rights under the Uniform Act.

I understand the basic requirements of the Uniform Act. I know that I cannot be required to sell the property to the _____ unless given the relocation assistance required by the Uniform Act.

However, I VOLUNTARILY WAIVE MY RIGHTS TO ANY RELOCATION PAYMENTS AND OTHER RELOCATION ASSISTANCE ACT for which I may be eligible in connection with such a sale.

This waiver shall expire on _____, unless by that date the _____ has entered in to a written agreement to by the property from me.

SIGNATURE:_____
ADDRESS:_____
_____

WITNESS:_____
ADDRESS:_____
_____

ATTACHMENT 11

SAMPLE

WAIVER OF RIGHTS AND BENEFITS OF THE UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970

I, _____, as owner of title, understand that I am entitled to Just Compensation for my property based on an independent qualified appraisal under the Uniform Act.

I understand that just compensation to be $_____ based on appraisals provided by the City/County for the following property,

Or, I here release the City/County of _____ from any and all obligation, under the Uniform Act, to provide an appraisal of my property described below,

(Describe Property)

I hereby waive all my rights to Just Compensation and donate the property described above. I hereby acknowledge receipt of the HUD brochure When a Public Agency Acquires Your Property.

Date _____ _____

(Property Owner)

Subscribed and sworn to before me this _____day of _____,20__.

(Seal) _____

(Notary)

ATTACHMENT 12

AGREEMENT FOR APPRAISAL SERVICES (ACQUISITION)

THIS AGREEMENT entered into this _____ day of _____, 19____, by and between _____ of the City of _____, State of _____, hereinafter referred to as the "Agency," and _____, hereinafter referred to as the "Appraiser."

WITNESSETH THAT:

WHEREAS, the Agency proposes to acquire certain real property and desires that the Appraiser furnish the Agency certain services with respect to such property, including an appraisal of each parcel of the property, and the Appraiser represents that he or she is fully qualified to perform such services and will furnish such services personally; and

WHEREAS the services to be provided under this Agreement are necessary to achieve the purposes of _____ and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA).

NOW, THEREFORE, the Agency and the Appraiser, for the consideration and under the conditions hereinafter set forth, do agree as follows:

ARTICLE 1. Property To Be Appraised. A description of the real property to be appraised, including an identification of any interests in the real property to be specifically excluded from appraisal, are set forth in the attached Exhibit A. A separate appraisal is to be furnished for each "parcel." (The term "parcel" means any tract or contiguous tracts of land in the same ownership, whether any such tract consists of one or more platted lots or a fractional part of a lot. An easement or other separately held interest in two or more parcels shall be considered to be a separate parcel for appraisal purposes and an exception to the title to the parcels so encumbered. An easement in a parcel that is appurtenant to another parcel to be acquired by the Agency shall be considered to be part of such other parcel and an exception to the title of the parcel encumbered.) Each parcel shall be considered to include all right, title, and interest of the owner in or to any adjacent or abutting streets, alleys, or other public rights of way.

ARTICLE 2. Purpose and Basis or Valuations.

(a) Purpose and Significance of Appraisals. The appraisals to be furnished under this agreement are required by the Agency for its guidance in making fair and impartial determinations of fair market value and the just compensation to be offered to each property owner. The Appraiser shall be guided by those objectives when estimating values. Appraisal reports will be reviewed carefully by the Agency. Accordingly, the text of each appraisal report must cover all matters germane to the required valuation findings and must provide a full explanation of the Appraiser's reasoning and his analyses of the evidences of value, so that a reviewer will be able to follow the Appraiser's analyses and understand how he reached his valuation conclusions.

(b) Appraisal Standards. The appraisals under this agreement shall be based on nationally recognized appraisal standards and techniques to the extent that such principles are consistent with the concepts of value and the rules on the admissibility of evidence of value under the eminent domain law of the State. Factors relating to race, color, religion, sex or national origin, or to racial, religious or ethnic identification of neighborhoods are not relevant to the estimation of value and shall not be considered in connection with appraisals of residential real property.

(c) Date of Valuation. The Appraiser's valuation shall be as of a date concurrent with the preparation of the report unless the Agency has specified some other date of valuation.

(d) Relocation Assistance. The Appraiser's analyses and opinions of property value shall not reflect any allowance for the relocation payments and other assistance provided under the URA.

(e) Influence of Project on Property Value. In forming opinion(s), the Appraiser shall disregard any decrease or increase in the fair market value of the real property to be acquired, prior to the date of valuation, caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for such project, other than that due to physical deterioration within the reasonable control of the owner. (In the case of a partial acquisition, using the before-and-after method of valuation, the Appraiser's opinion of the value of the remaining not-to-be-acquired portion of the property shall reflect any increase or decrease in value attributable to the project.) If the determination of changes in value caused by the project is a problem, the Appraiser's report shall cite the ruling followed and its source and shall explain the effect of the ruling on his opinion of value.

ARTICLE 3. Scope of Appraiser's Services. The Appraiser agrees to perform the following services:

(a) Appraise each parcel and prepare and deliver to the Agency, within _____ calendar days after the date of this agreement, _____ copies of the appraisal report(s) conforming to the provisions of this agreement. The Appraiser shall personally inspect each parcel, including all buildings, structures, fixtures, and other improvements to the property. The Appraiser shall give the owner or his designated representative an opportunity to accompany the Appraiser during his detailed inspection of the property. If the owner of a compensable interest in the property or a representative of such owner does not accompany the Appraiser during the inspection, the Appraiser shall include in his appraisal report a copy of his notification to the owner of the opportunity to accompany the Appraiser and evidence of the owner's receipt of such notification. In the process of inspecting the property, the Appraiser shall, to the extent practicable, ascertain the rights of all parties in possession and note for consideration all factual information and comments furnished by the owner or his representative relevant to the appraisal.

(b) Testify as an expert witness in behalf of the Agency in any judicial proceeding involving any property appraised under this agreement. Such services shall include such reasonable time as may be required for reinspection of the property, updating the Appraiser's valuation, participation in pretrial conferences with counsel for the Agency, and testifying in the judicial proceeding. The compensation for such services shall be determined in accordance with Article 6.

(c) Modify or furnish supplements to any appraisal report furnished under this agreement, without additional cost to the Agency, if (1) applicable principles of law with respect to the valuation of the property require the modification or supplementing of such appraisal, (2) material omissions, inaccuracies, or defects in the appraisal report are discovered after delivery and acceptance of the report by the Agency, or (3) the Appraiser receives or becomes aware of relevant additional appraisal information in existence prior to the date the Appraiser signed the report. If there is a significant delay between the date of valuation and the date of acquisition of any parcel or if the property has been materially altered since the appraisal by a fire, a revised determination of the boundaries of the property to be acquired, or other cause, the Appraiser shall, if requested by the Agency, furnish the Agency a supplementary report updating this valuation and the supporting data and analyses to a current date. The compensation for such updating of an appraisal shall be determined in accordance with Article 6.

(d) Estimate the value of any right or interest proposed to be reserved by the owner in a property appraised by the Appraiser, such as an easement for access to other property of the owner, the right to continue occupancy for an extended period after the Agency acquires the property, or the right to remove any building, structure, fixture, or other improvement. The compensation to be paid to the Appraiser for furnishing any such valuation shall be determined in accordance with Article 6.

(e) Consult with the Agency and its legal counsel regarding services to be performed by the Appraiser, at such time(s) as may be mutually convenient for the parties to this agreement. The Appraiser shall initiate such consultations whenever the Appraiser is in doubt as to whether an element of property is real or personal property or needs legal advice on any aspect of the appraisals to be furnished under this agreement. There shall be no charge by any party for such consultations.

ARTICLE 4. Contents of Appraisal Reports. Each appraisal report to be furnished by the Appraiser under this agreement shall contain certain information and the Appraiser's conclusions and opinions, together with the data and analyses by which they were derived, as set forth below. A separate report shall be submitted for each parcel. However, if more than one parcel is to be appraised, all general data may be included in a separate data volume that is referenced in the separate appraisal reports on the individual parcels. The appraisal report on each parcel shall include the following:

(a) A summary headed "Appraisal Report for _____" that provides the following:

(1) Project name and number.

(2) Date of the report.

(3) Parcel number, address of the property, brief identification of all interests in the property appraised, and the name of the owner(s) including any tenant-owners.

(4) Date(s) of the Appraiser's inspection of the property with the owner or the owner's designated representative. Include the name of each owner or representative of an owner who accompanied the Appraiser during the inspection and the interest held in the property or the representative capacity of each such person.

(5) The Appraiser's estimate of the fair market value of the entire parcel and the fair market value of the same interest in the land, as if vacant.

(6) The limiting conditions of the appraisal, which may include assumptions (i) that the title is good and marketable, (ii) that no responsibility is assumed by the Appraiser for legal matters, especially those affecting the title to the property, (iii) that the legal description of the property and the interest in the property to be appraised, furnished to the Appraiser by the Agency, is correct, and (iv) that no survey of the property has been made. Any other appropriate assumption or limiting condition may be added if it has been specifically approved in writing by the Agency.

(7) The certifications of the Appraiser (i) that the Appraiser personally made a thorough inspection of the property, (ii) that, to the best of the Appraiser's knowledge and belief, everything contained in the report is true and no relevant and important fact has been omitted, (iii) that neither the Appraiser's employment nor compensation is contingent on the valuation reported, and (iv) that the Appraiser has no past, present, or prospective interest (including that of real estate agent or broker) in the property, the parties involved, or any other interest that would conflict in any way with the services performed or the making of an impartial report.

(8) A certification that, in the Appraiser's opinion, the fair market value of the property is [an amount to be stated] as of [the date of valuation].

(9) The signature of the Appraiser.

(b) The name and address of the owner of the property and the name and the address, if known, of any other party known or believed to hold a separate compensable interest in the property.

(c) The street address and an accurate description of each parcel and all interests in the parcel appraised. The property description shall identify all conditions, restrictions, easements, servitudes, and reservations affecting the title. The property description shall specifically exclude and describe any separately held interest in the property that is to be acquired separately or as part of another parcel. The description shall also specifically exclude all separately held interests which are not to be acquired and will not be affected adversely by the Agency's project. If there are any separately held interests in a parcel, which are to be acquired with other interests in the same parcel, such as leaseholds, tenant-owned improvements, life estates, easements, and water, gas, oil, or mineral rights, a description of each such separate interest and the name of its owner shall be furnished.

(d) Off-record title information concerning interests or instruments that affect title, but are not of record, such as leases, options to renew a lease, contracts of sale, and other interests or rights of parties in possession. Such information shall be reported, and if available facts are sufficient, the Appraiser's report shall be based on such additional title information and so noted in the appraisal report. Otherwise, the Appraiser shall refer the matter to the Agency and defer completion of the appraisal until the question is resolved.

(e) Basic property data including pertinent information with respect to such matters as (1) the environment and location of the property, (2) the zoning and any restrictive covenants, conditions, or servitudes affecting the available use or occupancy of the land, (3) the assessed value of the real property and the current annual real estate tax burden, (4) the use and occupancy of the property at time of appraisal, (5) the public improvements, services, and utilities serving and providing access to the property, (6) the character, topography, dimensions, and area of the land, (7) the freedom of the property from special hazards, (8) the current rental and rental history of the property, if rented, (9) the estimated annual costs of ownership and for operation and maintenance of the property, and (10) a description of the buildings, structures, and other improvements, if any, including relevant information as to type of improvement, designed use, construction materials and finish, equipment, dimensions, floor area, age, condition, space or room arrangement, functional utility, and any other characteristics or attributes of the improvements germane to the value of the real property. The appraisal report shall contain a general sketch plat showing the shape and dimensions of the land, the location of the principal improvements on the land, the location of any easements in the land, and the abutting streets, alleys, or other public rights of way. The report shall also include such photographs, each clearly identified, as may be appropriate.

(f) Report of any condition or occupancy of the property in violation of law that may affect the value of the property.

(g) The Appraiser's opinion as to the highest and best use for the property. The appraisal report shall also include the Appraiser's opinions as to any other use(s) for which the property is reasonably suitable or adaptable. If the property is unused vacant land or the highest and best use is not self-evident or is found to differ significantly from the present use, the appraisal report shall contain the analyses by which the Appraiser reached the conclusions as to the highest and best use of the property and as to its suitability or adaptability for any other use(s). The analysis of a potential use shall include consideration of relevant matters, such as the suitability of the location, the environment and the legal and physical attributes of the property for such use, the estimated cost, if any, of converting the property to such use, and the supply, sale price levels, and relative desirability of other properties that would compete for the same kind of use. The analysis of the property for the future use or uses found to be the highest and best use is part of the process of appraising the property and, therefore, may be included in the valuation analysis furnished in accordance with Paragraph 4(h) below.

(h) The opinion of the Appraiser as to the fair market value of the property. The appraisal report shall contain a description of the reasoning process used by the Appraiser in reaching the conclusion as to value and all data and analyses needed to explain and support the valuation. The supporting data and analyses furnished in the appraisal report shall include the following:

(1) An analysis of the property, from the point of view of evaluating the effect of its characteristics and attributes on its value for the available use or uses for which the property is best suited. Particular attention shall be given to the characteristics of the property most relevant to its value, such as, in the case of an investment property, the income potential and the expenses of ownership, maintenance, and operation.

(2) An identification of the most recent sale of each property appraised and any other sales of such property during the last five (5) years preceding the appraisal. Such sale(s) of the property appraised and all recent sales of comparable properties considered by the Appraiser in forming the opinion(s) of fair market value shall be verified insofar as practical. The information furnished with respect to each such sale shall include, among other pertinent facts, the names of the grantor and grantee, the date of the sale, the sale price, any special terms or conditions or circumstances of the sale that affected the transaction, and a description of the property and its condition at time of sale in sufficient detail for use in making the appraisal.

(3) The analyses that constitute the principal basis for the Appraiser's opinion of the fair market value. The appraisal report shall contain the Appraiser's evaluation with respect to previous sales of the property appraised and any recent offer of the owner to sell the property. The appraisal report shall also contain the Appraiser's analysis of each comparable property and its sale in relation to the property appraised. The Appraiser's analysis shall reflect appropriate allowances for the difference in the time of the sale of the

comparable properties and the date of appraisal and the differences in the utility, desirability, and productivity of the properties that are pertinent to their relative value. The appraisal report shall contain a valuation data map showing the location of the property appraised and the comparable properties referred to in the appraisal report.

(4) All other information, analyses, and estimates considered by the appraiser to be relevant to the estimation of the fair market value of the property.

(5) If the property appraised is part of a larger parcel in the same ownership or is less than the entire interest of the owner in the property, the appraisal report shall contain the Appraiser's opinion of just compensation for a taking of such property or interest, using the before-and-after method of valuation as interpreted under State law unless it is obvious that there would be no damages or benefits to the remaining property or interest of the owner. However, if the part or interest to be taken is such a small part of the whole property that the damages for the taking can be more accurately estimated directly, that method may be used if permitted under State law, without estimating the fair market value of the entire property of the owner. The foregoing opinions of the Appraiser shall be supported in the report by the data and analyses by which the Appraiser reached his/her conclusions.

For information purposes, the appraisal report shall also contain the Appraiser's estimates of the fair market value of the to-be-acquired part or interest as part of the whole property and the net damages or benefits to the remaining property of the owner. If in the opinion of the Appraiser, acquisition of the part of, or interest in, the property proposed for acquisition would leave the owner with an uneconomic remnant, the Appraiser shall furnish a separate estimate of the fair market value of a "parcel" comprising both the parcel proposed for acquisition and the uneconomic remnant. (A remainder parcel or interest shall be considered to be an uneconomic remnant if by itself it has little or no utility or value to the owner.)

(6) Such maps, plans, photographs, or other exhibits as are necessary to explain or illustrate the analyses of the Appraiser.

(7) The Appraiser's evaluation of the indications of value deduced from the separate analyses of the various evidences of value and an explanation of how the Appraiser reached his/her final conclusion as to the fair market value of the property.

(i) The opinion of the Appraiser as to the fair market value of the land, as if vacant. The valuation shall be for the same interest in the land as is to be acquired in the real property. The report shall contain information with respect to the available use or uses for which the land would be suitable if vacant, the opinion of the Appraiser as to its highest and best use, and the Appraiser's analysis of the evidences of value and of the use potential by which the Appraiser reached his/her conclusions as to the highest and best use of the land and the land value.

(j) A property analysis if the property is a commercial, industrial, institutional, governmental, or farm property that involves substantial quantities and kinds of fixtures such as machinery and equipment. Any building, structure, fixture, or other improvement, which would be real property if owned by the owner of the land, shall be considered to be real property (even if the improvement is the property of a tenant who has the right to remove it or the obligation to remove it at the expiration of the lease term). The property analysis must be approved by the Agency before the appraisal is completed and, as approved by the Agency, shall be included as an exhibit in the Appraiser's report. The property analysis shall list, identify, and classify as to ownership and type of improvement, all items of physical property considered to be part of the real property. The property analysis shall also identify tangible personal property located on the premises to the extent reasonably necessary to prevent misunderstandings as to what is regarded as being real or personal property. Buildings, structures, fixtures and other improvements, including their accessories and spare parts, shall be identified and classified as to ownership and type of property as follows:

(1) Ownership.

(i) Owner of the land.

(ii) Each tenant in occupancy.

(iii) Each non-occupant owner of any fixtures or other improvements, or personal property on the premises.

(2) Type of property

(i) Building, structure, or fixed improvement.

(ii) Building equipment, removable.

(iii) Fixtures, classified as to whether economically removable for reuse, removable for salvage only, or irremovable.

(iv) Personal property, identified as to types and approximate amounts, or otherwise, as needed to prevent misunderstandings as to the classification of any item.

If any building, structure, fixture or other improvement is not to be acquired, will not be adversely affected by the Agency's project, and will not be required by the Agency to be removed, such as a pipeline in an easement not to be acquired, such improvement shall be identified as excluded from the appraisal.

(k) If machinery and equipment or other fixtures used in a trade or business, farm operation, or institutional or governmental function constitute part of the real property, the appraisal report shall contain a separate schedule which provides separate estimates for each such item, as prescribed below. If there is more than one owner of such items, a separate schedule shall be furnished for each owner. The information and conclusions to be furnished on each item are as follows:

(1) Description of the item, including, as appropriate, the manufacturer, model and serial number, size or capacity, age and condition, and degree of obsolescence. Accessories and spare parts, special foundations, and power wiring and process piping generally shall be listed separately, following the listing of the item(s) to which they apply.

(2) Estimate of the replacement cost installed of the item as listed and identified (excluding any elements listed separately). Separately identify the basis of estimated replacement cost (new or used).

(3) The contributive (enhancement) value of the item to the fair market value of the real property as a whole.

(4) Estimated fair market value of the item for removal from the property at a purchaser's expense. Such value shall be considered to be the probable selling price if the item were offered for sale for removal from the property at the purchaser's expense, allowing a reasonable time to find a purchaser buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including salvage for serviceable components and scrap when it appears that will provide the highest value.

The schedule(s) of estimates shall be consistent with the property analysis approved by the Agency, as provided in Paragraph 4(j). The Appraiser is permitted to use the services of such technical specialists as may be needed to enable the Appraiser to provide valid estimates and sound valuations. The schedule(s) shall be supported by an explanation of the procedures followed in gathering the necessary market information and technical data. The principal purpose of the Appraiser's accompanying narrative, however, must be to explain his analyses and his evaluations of the dollar amount of the overall contribution of the machinery, equipment, and fixtures to the fair market value of the real property as a whole. The report shall contain any layout plans, sketches, or photographs that are reasonably necessary for locating or identifying the facilities or illustrating the Appraiser's analyses.

(l) If there are separately held interests in the real property to be acquired, such as easements, leaseholds, air rights, life estates, and oil, gas, or mineral rights, and the division of ownership is not of such character as to destroy the practical unity of the property, the Appraiser shall apportion his estimate of the fair market value of the property (all interests in the property to be acquired) to each separately held interest. (However, tenant-owned improvements

shall be valued in accordance with Paragraph 4(m) below.) The report shall contain the data, analyses, and reasoning by which the Appraiser made the apportionment. If the "unit rule" is regarded as not applicable because the division of ownership is such as to diminish the fair market value of the property as a whole, the separate interests involved shall be appraised separately.

(m) Tenant-owned improvements. If any building, structure, fixture, or other improvement to the property is identified as being the property of a tenant who has the right or obligation to remove it at the expiration of the lease term, the Appraiser's estimate of the fair market value of the improvement shall be the greatest of (1) the amount which the improvement contributes to the fair market value of the property, (2) the in-place value of the improvement as part of the real property (the depreciated replacement cost of the improvement installed), or (3) the fair market value of the improvement for removal from the property at the purchaser's expense. The appraisal report shall state the basis for the valuation of the improvement and furnish the data and analyses on which the valuation was made.

(n) If the property is a multifamily or mixed-use (residential and nonresidential) property and an owner of a compensable interest in the property also occupies a dwelling in the property, the Appraiser shall furnish an apportionment of the estimate of the fair market value of the whole property to such dwelling and to the remainder of the property. For the purpose of this paragraph, an occupant of a dwelling shall be considered to own a compensable interest in the property if he or she holds fee title, a life estate, a 99-year lease, or a lease with not less than 50 years to run from the date of valuation, or holds an interest in a cooperative housing project which includes the right to occupy the dwelling, or is the contract purchaser of any of the foregoing estates or interests, or has a leasehold interest with option to purchase. The Appraiser's report shall explain how the apportionment was made.

ARTICLE 5. Services To Be Provided by Agency. The Agency agrees to furnish the Appraiser the following:

(a) A map or plat, based on official records, of the property described in Article 1, showing the boundaries and dimensions of the parcels to be appraised. Each parcel shall be designated by a number, and the parcel numbers shown on the Appraiser's reports shall correspond to the parcel numbers shown on the map or plot. However, additional parcel numbers may be assigned by the Appraiser for easements appraised separately or for additional parcels revealed while making the appraisals. The Appraiser shall promptly advise the Agency of any such additions.

(b) An ownership data report for each parcel. That report will show all estates and interests in the parcel as shown of record and consequently shall not be assumed to accurately define the interests to be appraised. The ownership data report on each parcel as shown on the parcel map will include:

(1) The name (and address, if available) of the owner appearing on record;

(2) The legal description of the parcel as shown by the conveyance(s) by which the record owner acquired title;

(3) Identification of the conveyance(s) by which the present owner acquired title, including: the date of the conveyance(s); the date, book and page numbers, and place of recordation; the name (and the address, if available) of the grantor of such conveyance; the stated consideration; the amount of any mortgages or encumbrances placed of record or to which title was subject at time of conveyance (so far as determinable from an examination of the conveyance); and the amount of any State or local transfer taxes that were based on the amount of the consideration;

(4) Outstanding estates and other rights or interests of record, including easements, use restrictions, mineral rights, leases, and any known, but unrecorded, interests of other parties. Sufficient information shall be furnished to disclose the probable effect of such outstanding interests on the title of the record owner;

(5) Outstanding special assessments, if any, for public improvements such as streets, sidewalks, public utilities, and similar public facilities;

(6) The amount of real estate taxes for the current year and the assessed valuation stated separately for land and for improvements.

(c) Legal advice, upon request of the Appraiser, on legal matters affecting the appraisal of any property to be appraised.

ARTICLE 6. Payment. In consideration of the services provided by the Appraiser under this agreement, the Agency agrees to make payments to the Appraiser upon the submission to the Agency of properly certified invoices, as follows:

(a) For appraisal reports accepted by the Agency, and for all other services furnished in accordance with Article 3, except services furnished in connection with judicial proceedings under Paragraph 3(b), the updating of appraisals under Paragraph 3(c), and the valuation of reservations of rights in owners under Paragraph 3(d), the lump sum of _____ dollars, which shall constitute full payment to the Appraiser for all of such services and for all supplies, materials, and equipment used or furnished by the Appraiser and all expenses incurred by the Appraiser in connection with the performance of such services.

(b) For services furnished by the Appraiser in connection with judicial proceedings as provided in Paragraph 3(b) (except services as an expert witness in such a proceeding), the updating of appraisals as provided in Paragraph 3(c), and the valuation of reservations of rights in owners as provided in Paragraph 3(d), _____ dollars per hour or fraction of an hour actually engaged in performing the services, including travel time. All expenses of the Appraiser, including travel expense and subsistence, shall be borne by the Appraiser.

(c) For services as an expert witness for the Agency in judicial proceedings as provided in Paragraph 3(b), the Appraiser and the Agency hereby agree that the fair and reasonable compensation for the Appraiser's services shall be _____ dollars for each day's attendance in court.

ARTICLE 7. Agreements of Appraiser. As an inducement to the execution of this agreement by the Agency and in consideration of the agreements to be performed by the Agency, the Appraiser agrees that:

(a) Qualifications. The Appraiser is qualified to perform the services to be furnished under this agreement and is permitted by law to perform such services, and all personnel engaged in the work shall be qualified and so permitted to do the work they perform. Attached as Exhibit B, is a statement by the Appraiser, certified by the Appraiser to be true and correct, setting forth the Appraiser's technical qualifications, general appraisal experience, specific experience in appraising properties of the type involved in this agreement, the courts in which he or she has testified as an expert witness, and other information pertinent to establishing his or her technical qualifications.

(b) Solicitation of Agreement. The Appraiser has not employed any person to solicit this agreement and has not made and will not make any payment or any agreement for the payment of any commission, percentage, brokerage, contingent fee, or other compensation in connection with the procurement of this agreement.

(c) Interest of Appraiser and Appraiser's Employees. The Appraiser does not have any interest (including that of real estate agent or broker), direct or indirect, present or prospective, in any property described in Article 1 or in its sale, or any other interest, whether or not in connection with the property, which would conflict in any manner or degree with the performance of the services and the submission of impartial reports, and has not employed and will not employ, in connection with the services to be furnished under this agreement, any person having any such interest. Until the property is acquired by the Agency or excluded from its project by resolution of its governing body, the Appraiser and any employees of the Appraiser, so long as they are employed by the Appraiser, will not acquire any such interests and will not, for their own account or for other than the Agency, negotiate for any of the property, perform services in connection with the property, or testify voluntarily as a witness in a condemnation or other proceeding with respect to the property.

(d) Services To Be Confidential. All services, including reports, opinions, and information, to be furnished under this agreement are confidential and shall not be divulged, in whole or in part, to any person, other than to duly authorized representatives of the Agency, without prior written approval of the Agency, except by testimony under oath in a judicial proceeding or as otherwise required by law. The Appraiser shall take all necessary steps to ensure

that no member of the Appraiser's staff or organization divulges any such information except as may be required by law.

(e) Facilities and Personnel. The Appraiser has and will continue to have proper facilities and personnel to perform the services and work agreed to be performed. If the Appraiser proposes to employ any person or persons to make any appraisals of machinery and equipment or other specialized elements or attributes of a property appraised under this agreement, the employment of such person or persons for such purpose shall not place the Agency under any obligation to such employee, nor relieve the Appraiser of full responsibility for the faithful performance of the services to be furnished under this agreement.

(f) Equal Employment Opportunity. During the performance of this agreement:

(1) The Appraiser will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Appraiser will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Appraiser agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Agency setting forth the provisions of this nondiscrimination clause.

(2) The Appraiser will, in all solicitations or advertisements for employees placed by or on behalf of the Appraiser, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(g) Assignment. The Appraiser's rights, obligations, and duties under this agreement shall not be assigned in whole or in part, but this shall not prohibit the assignment of the proceeds due under this agreement to a bank or financial institution. This agreement may be assigned by the Agency to any corporation, agency, or instrumentality having authority to accept the assignment.

(h) Subcontracting. None of the work or services covered by this agreement shall be subcontracted without the prior approval of the Agency.

(i) Records. The Appraiser shall maintain records of all details with respect to the services to be performed under this agreement, including one complete copy of each appraisal report and related notes, for three (3) years after delivering the report or until the property is acquired by the Agency or the acquisition is abandoned, whichever is later.

(j) Affidavits of Compliance. The Appraiser will, if requested by the Agency, furnish the Agency affidavits certifying compliance with the provisions of this Article 7.

ARTICLE 8. Changes. The Agency, by written notice to the Appraiser, may modify the scope or quantity of the services to be furnished under this agreement. If such changes cause an increase or decrease in the amount of services to be provided by the Appraiser or in the time required for their performance, equitable adjustment shall be made in the provisions of this agreement for payments to the Appraiser or for the time for performance of the services or for both, and this agreement shall be modified by agreement of the parties accordingly.

ARTICLE 9. Termination of Agreement for Cause. If, through any cause, the Appraiser shall fail to fulfill in a timely and proper manner his or her obligations under this agreement, or if the Appraiser shall violate any of the provisions of this agreement, the Agency may upon written notice to the Appraiser terminate the right of the Appraiser to proceed under this agreement or with such part or parts of the agreement as to which there has been default, and may hold the Appraiser liable for any damages caused to the Agency by reason of such default and termination. In the event of such termination, any completed reports prepared by the Appraiser under this agreement shall, at the option of the Agency, become its property and the Appraiser shall be entitled to receive equitable compensation for any work completed to the satisfaction of the Agency. The Appraiser, however, shall not thereby

be relieved of liability to the Agency for damages sustained by the Agency by reason of any breach of the agreement by the Appraiser, and the Agency may withhold any payments from the Appraiser for the purpose of setoff until such time as the amount of damages due the Agency from the Appraiser is determined. The Appraiser shall not be held liable for damages under this Article solely for reasons of delay if the delay is due to causes beyond his or her control and without his or her fault or negligence, but this shall not prevent the Agency from terminating this agreement because of such delay.

ARTICLE 10. Interest of Members of Agency. No member of the Agency shall participate in any decision relative to this agreement affecting, directly, or indirectly, his or her personal interests. No such member and no other officer, agent or employee of the Agency having any responsibility or function in connection with this agreement shall have any private interest, direct or indirect, in this agreement or the proceeds of this agreement.

ARTICLE 11. Officials Not To Benefit. No Member of or Delegate to the Congress of the United States of America, and no Resident Commissioner, shall be admitted to any share or part of this agreement or to any benefit to arise from the same.

ARTICLE 12. Notices. Any action by the Agency under this agreement may be taken by _____ _____, or such other person(s) as the Agency may, by written notice to the Appraiser, designate for such purpose. All notices to the Appraiser shall be considered to be properly given if mailed to the address specified below, or delivered personally to the Appraiser. All notices or other papers given to the Agency shall be considered to be sufficiently given if mailed, postage prepaid to _____, at _____ _____or to such other representative or address as the Agency may designate to the Appraiser in writing.

IN WITNESS WHEREOF, the Agency and the Appraiser have executed this agreement on or as of the date first above written.

_____
(Appraiser)

_____
(Street Address)

_____
(City) (State) (Zip code)

_____
(Agency)

By: _____

_____
(Title)

CHAPTER 12 – RELOCATION

Task #1	Review laws and regulations and process flow chart
Task #2	Identify households or businesses to be displaced and establish a file for each
Task #3	Provide notice of relocation eligibility and informational brochure to each displaced household or business
Task #4	Contact displacees to provide information and determine replacement housing, business and social service needs
Task #5	Identify replacement housing and business, social services resources, make referrals
Task #6	Secure replacement housing for displacees that is decent, safe and sanitary
Task #7	Determine moving and related expenses
Task #8	Process claims and make payments

Task #1 Review Laws and Regulations and Process Flow Chart

Laws and Regulations

- Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) of 1970, as amended (42 USC 4601 et. seq.)
- Title 49 of the Code of Federal Regulations Part 24, as amended (www.fhwa.dot.gov/hep/49cfr24.htm)
- Section 104(d) HCD Act of 1974, as amended.
- Relocation Assistance Act (LB 254, March 27,1989) RRS of Nebraska

This Chapter summarizes the tasks associated with carrying out residential or nonresidential relocation that is the result of acquiring real property for a CDBG assisted project. The Relocation File Checklist, which outlines the documents to be maintained in the grantee's relocation files, is Attachment 1. A summary of the changes enacted by the URA is found in Attachment 3.

Definition

Become thoroughly familiar with the relocation process and the benefits and assistance available to displacees under the Uniform Act and Section 104(d) of the HCD Act.

Procedures

The URA implementing regulations stipulate that persons displaced from their residences or businesses as a result of acquiring real property for a federally assisted project or as a result of the demolition or conversion of a residential unit are entitled to relocation and moving costs payments and other assistance such as counseling, housing referrals and referrals to social service agencies.

Section 104(d) regulations apply only to low-to-moderate income (LMI) persons who must move permanently as a direct result of the conversion of a LMI dwelling unit or the demolition of a LMI unit. Conversion occurs when unit is rehabilitated and the rents exceed Fair Market Rents after the rehabilitation or the unit is no longer available for housing.

The regulations define a displaced person as any person who moves from the real property or moves personal property from the real property as a direct result of:

- A written notice of intent to acquire, the initiation of negotiations for, or the acquisition of such real property in whole or in part for a HUD assisted project.
- Rehabilitation or demolition for a HUD assisted project; or
- A written notice of intent to acquire or the acquisition, rehabilitation or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a HUD assisted project.
- Persons not displaced would include, but are not limited to:
    - Persons who move before initiations or negotiations; or,
    - Persons who initially enter into occupancy of the property after the date of its acquisition for the project: or,
    - Persons who agree to move as a result of the acquisition (which meets the definition of voluntary) or the rehabilitation or demolition of the real property which they own and occupy; tenant-occupants displaced as the result of a voluntary acquisition are covered by the URA, or
    - Owner voluntarily applying for rehab assistance.

Supporting Materials

- Relocation Process Flow Chart (Attachment 2)

- HUD Handbook 1378 (request from the Department)

Task #2 Identify Households or Businesses to be Displaced, Establish a File for Each, and Issue a General Information Notice

Definition

Maintain documentation that relocations are being carried out in conformance with the regulations.

Procedures

As early as feasible in the acquisition/relocation process, the grantee should identify individuals or businesses to be relocated. A person scheduled to be displaced is to be furnished with a written general description of the relocation program. The notice must at least inform the individual of the potential of displacement and describe the eligibility and payment procedures. It also must specify that the individual cannot be required to move without a 90-day's advance written notice. Other items should also be included.

The grantee must maintain a separate case file on each displaced family or business for three years after project completion or after receipt of final relocation payment, whichever is later. All documents pertaining to displacement must be retained in the case files. The Relocation File Checklist (Attachment 1) identifies all documents to be maintained.

Common Deficiencies

- Incomplete records.
- Failure to maintain for three years.

Supporting Materials

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

Task #3 Provide Notice of Relocation Eligibility and Informational Brochure to Each Displaced Household

Definition

The grantee must deliver or send a Notice of Relocation Eligibility (Attachments 4 and 4a) to all owner-occupants or tenants in occupancy promptly after the Initiation of Negotiations, defined as the date that the grantee makes an offer to purchase. This notice establishes eligibility for relocation payments and assistance. The notice must: (1) identify the project and inform the person of his eligibility for relocation payments and other assistance and the effective date of that eligibility; (2) generally describe the relocation payment(s) for which he/she may be eligible and indicate the estimated amount or range of such payment(s), the basis of the estimate for any replacement housing payment, the basic conditions of eligibility, and the procedures for obtaining the payment(s); (3) inform him/her that he/she will be given other help (e.g. housing referrals) to facilitate the move; (4) state a specific date as the earliest date the occupant may be required to move or indicate a 30day advance notice of the date to vacate.

Displacement Not a Notice to Vacate

In the Notice of Relocation Eligibility it is important for the grantee to emphasize that the notice is not a notice to vacate. The notice should indicate that no one will be forced to move until and unless they have been referred to at least one decent, safe and sanitary comparable house and that the occupants will have a minimum of 90 days notice to vacate after comparable housing has been located and referred. The notice should also contain a grievance procedure which outlines the appeals process including the grounds for filing an appeal, to whom appeals should be filed in the city, appropriate time limits and the right of appeal to the Department (Attachment 5).

This notice and all other notices to displacees must be written in plain, understandable language. They may be either hand delivered, or sent by certified mail. Notices must also contain the name and phone number of a person who may be contacted for answers to questions or other needed assistance.

Keep in mind that mailed notices are appropriate for recipients able to read and understand. If there is any reason to believe the person is functionally illiterate or senile, hand delivery is far more preferable. If a displacee does not speak or read English, notices must be available in appropriate translations. Copies of all notices and evidence of their delivery should be retained in the relocation case files.

Common Deficiencies

- Inadequate Notice of Relocation Eligibility.
- Grievance procedure not provided to displacees.
- Translations not provided when appropriate.

Supporting Materials

- Sample Notice of Displacement—180-Day Homeowners (Attachment 4).
- Sample Notice of Displacement—Tenants (Attachment 4a).
- Sample Grievance Procedure (Attachment 5).

Task #4 Contact Displacees to Provide Information and Determine Replacement Housing And Social Service Needs

Definition

Determine the housing or business replacement and social services needs of relocatees.

Procedures for Surveys

As soon as the initial notice is delivered or sent out, the grantee must interview each displacee to determine her/his need for assistance. A sample interview format is provided to show the type of information that is required. This survey format generally forms the basis of the Site Occupant Record. The Site Occupant Record includes data identifying the parcel and dwelling; number of individuals and family units; family composition (including age, sex, location of employment, source and amount of income); veterans status of family members; description of current dwelling (number and type of rooms); length of time of occupancy; amount of housing payment or rent; replacement housing preferences regarding type of tenure, location and willingness to increase monthly payments; and other important characteristics (health/disability problems, special needs such as furniture, public assistance, etc.).

The people conducting these surveys and having personal contact with the individuals to be relocated should be very patient, capable of understanding the distress of the relocatees and of dealing with them in a non-threatening, helpful manner.

Some displacees may be elderly with a huge emotional investment in their present home. In the grantee's view, it may be a substandard dwelling unit; to the owner, it is a home which contains a lifetime's memories and mementos. Many will not want to relocate. The counseling and assistance required to serve these people adequately is substantial.

Depending upon the size and experience of the relocation staff, it may be appropriate to provide some counseling and assistance themselves white other social service needs will be best met through referral to public or private agencies. A single family may require a number of social service contacts. Physical and psychological problems may range from alcoholism to nervous breakdown, from unemployment to child abuse. For this reason, the assigned staff must be aware of the kinds of services available. Staff should also develop the ability to distinguish serious problems which require outside professional assistance. Kinds of services and counseling commonly provided during the relocation process include the following:

Counseling Relocation Services

- Mortgage counseling and Fair Housing Laws.
- Help in completing or understanding forms or documents such as a purchase contract.
- Housekeeping and home maintenance practices.
- Budgeting and money management guidance.
- Recommendations concerning packing and moving.
- Family and personal counseling.
- Assistance in obtaining medical care.
- Help in obtaining clothing, food, furniture or appliances.
- Advice concerning social security, food stamps, welfare or veterans benefits.
- Transportation assistance.
- Assistance with child care or school adjustment.
- Employment counseling and job training.
- Senior citizen assistance.
- Family planning.
- Legal aid.
- Financial assistance.

In many cases, especially with regard to the elderly, it may be useful to ask if there are any relatives living in the surrounding area. If permission to contact these relatives can be obtained, these contacts can assist in developing appropriate relocation plans for the person. Some relatives will contribute money to the purchase of a dwelling; others will have special skills (e.g., lawyer, realtor) which can facilitate rehousing transactions. Sometimes, relatives can also encourage cooperation in the disclosure of information necessary to complete claim forms.

At the same time the interviewer is conducting the family survey, he/she should review the relocation process with the relocatees and insure they understand the process. Special attention must be given to: (1) the assistance to be provided by the Grantee; (2) the benefits available; (3) the fact that replacement housing payments cannot be made unless the household relocates into a standard unit; (4) the importance of keeping in touch with the Grantee; and (5) the need to notify the grantee before they move.

Common Deficiencies

- Family surveys not conducted.
- Counseling services not provided.
- Translations/bilingual assistance not provided when appropriate.

Task #5 Identify Replacement Housing and Social Services Resources, Make Referrals

Definition
Inventory available resources and assist relocatees in finding suitable replacement housing, assist self relocatees.

Procedures
The primary purpose of the family survey is to provide the data needed to determine replacement housing needs. All replacement housing must be decent, safe and sanitary. The regulations define this to mean that the replacement unit must meet local housing or occupancy codes. The only times that local housing or occupancy codes do not define decent, safe and sanitary are when such codes do not exist or when the replacement unit is Section 8 assisted. In the latter instance, Section 8 Existing Housing Quality Standards define decent, safe and sanitary. The unit should also be free of lead-based paint hazards and of architectural barriers, if serving a handicapped person.

Comparable Replacement
In addition to being decent, safe and sanitary, the replacement unit must also be "functionally similar" to the acquired unit with respect to the number of rooms and living space unless additional or larger rooms are needed to meet safe, sanitary and decent criteria (i.e., one person per room; age/sex of children sharing bedrooms and the like). This means that a family of six living in a two-bedroom unit may require a four-bedroom replacement unit to meet local codes or Section 8 standards, if applicable. Only in unusual circumstances may a comparable replacement dwelling contain fewer rooms than the displacement dwelling. Such may be the case when a replacement dwelling is "adequate to accommodate" the displaced person and is found to be functionally similar to a larger but very rundown substandard displacement dwelling. They may choose a smaller unit, but the grantee must provide reasonable choices of comparable replacement units.

Further, the referral units must be within the financial means of the displaced persons. This is determined by the "make whole" financial means test, as follows:

180-Day Homeowner. The test is met if a person receives the price differential, increased mortgage interest cost and all reasonable incidental expenses, not to exceed $22,500.

90-Day Tenant and 90-179 Day Homeowner. The test is met if a person receives assistance equal to 42 times the increase in rent and utility costs that he or she is required to pay because of the displacement. For 104(d) the tenant receives up to 60 times the increase.

Last Resort Replacement
If the Grantee finds it cannot identify comparable affordable replacement housing using these standards, and that the inability to relocate site occupants will jeopardize the project, it must use other means of assisting displacees under the "Last Resort Replacement Housing" provisions of the regulations. Such alternatives include rehabilitation of, and/or additions to, an existing

replacement dwelling; a replacement housing payment in excess of normal limits; construction of new units; relocation of a replacement dwelling; and removal of barriers to the handicapped in a replacement dwelling.

Inventory Housing

Having identified the replacement housing needs, the grantee must-begin taking an inventory of available housing resources. In doing this, the grantee must be aware of affirmative action criteria that must be met when relocating low-income and minority persons. The regulations require that the grantee make comparable replacement housing available to low-income or minority relocatees in areas that do not have concentrations of either low-income or minority households if such opportunities are available. This means that if there are vacant, standard, affordable units available in middle/upper income areas or predominantly white areas of your community, low-income or minority relocatees must be given replacement housing choices in those areas before the grantee can give such relocatees a go-day notice to vacate. Furthermore, the regulations require that the grantee make available to low-income and minority families special counseling and related services, e.g., transportation and escort services.

In inventorying available resources, the grantee will be contacting landlords, realtors, and movers. It will read classified ads and tour neighborhoods looking for "For Rent" and "For Sale" signs. Eligible displacees may refuse to apply for public housing, either because they simply do not want to live in it or because they resent the investigation necessary to qualify them (the investigation of their incomes, in particular).

The process of finding suitable housing will involve continuous contact with displacees to solicit information, establish rapport, provide referrals to housing resources, accompany displacees to inspect possible dwellings and the like. Up-to-date information on the availability, prices, and rentals of comparable sales and rental housing must be provided. All units must be inspected and certified as being decent, safe and sanitary before being placed on a referral list.

Relocatees Risk Compensation

Some relocatees will not wait for the grantee to locate suitable units. They will search for their own units and relocate themselves. Occupants who relocate themselves risk not receiving the compensation to which they are entitled.

This can happen because: (1) the occupants do not know they are entitled to it and fail to apply; (2) the grantee is unable to trace them to their new quarters; or (3) the new quarters are substandard (in which case the relocatees still receive moving expenses). Self-relocatees who do not inform the grantee of their plans forego a pre-move inspection of their new quarters.

An inspection after the move is made usually proves to be ineffective with regard to procuring needed repairs.

Replacement Units Meet Standards

If an individual locates or moves into a replacement unit that is not standard, the grantee must make every effort to upgrade the unit to decent, safe and sanitary standards in order to entitle the

relocatee to benefits. This can include making a rehabilitation grant or loan, emergency repairs and the like with CDBG funds or securing comparable assistance from other sources. In the event remedial action to bring the unit to code is not available, the grantee must inform such relocatees that if they remain in or move to a substandard unit they will be eligible only for moving expenses and not for replacement housing payments (Attachment 6). The grantee must also inform them that if they move into standard housing within a year from the date they received payment for their acquired dwelling or from the date they moved from the acquired dwelling, whichever is later, and file a claim within 18 months, they will be eligible for a replacement housing payment.

Common Deficiencies

- Failure to provide assistance in locating suitable housing.
- Failure to provide replacement housing opportunities outside areas of low-income and/or minority concentration.
- Failure to provide counseling and assistance to relocatees moving into substandard units.

Supporting Materials

- Sample Letter to Relocatee in Substandard Unit (Attachment 6).

Task #6 Secure Replacement Housing for Displacees

Definition

Complete displacement and the move into replacement housing.

Procedures

The grantee has made a reasonable choice of suitable replacement housing opportunities available to the relocatee. At this point, the city may issue the 90-Day Notice to Vacate (Attachment 7). This notice should not be issued before reasonable replacement housing has been made available. The notice shall either state the earliest date by which the property must be vacated, or state that a second notice will be issued at least 30 days in advance of the date the property must be vacated. The date on which the property must be vacated cannot be less than 90 days after the grantee has made a comparable replacement unit available.

Prior to and following the 90 day notice, the grantee continues to work with the relocatees – inspecting units, certifying they meet decent, safe and sanitary standards; assisting or preparing mortgage applications, sales agreements, or leases as appropriate; assisting or preparing claim forms; processing and verifying claims; documenting claims and making payments.

Common Deficiencies

- Timing and language of 90-Day Notice incorrect

Supporting Materials

- Sample 90 Day Notice/30 Day Notice (Attachment 7)

Task #7 Determine Moving and Related Expenses

Displacees are eligible for two types of relocation payments: moving costs and replacement housing payments.

Moving Costs (Residential)

Moving Costs: All displaced persons as defined by the regulations, are eligible for moving costs. The displaced person can choose to receive either actual moving and related expenses, supported by bills and other documentation, of costs for:

- Transportation up to 50 miles of displacee, family and personal property;
- Packing and unpacking personal property;
- Disconnecting, dismantling, reassembling and reinstalling relocated household appliances and other personal property;
- Storage;
- Insurance in connection with move and storage; and
- Other costs related to move if approved by Grantee as reasonable;

OR

- A fixed moving expense and dislocation allowance based on the rooms of furniture, where occupant provides furniture; or where occupant does not provide furniture.

MOVING COSTS (Non-Residential)

- Transportation up to 50 miles for personal property;
- Packing and unpacking the personal property;
- Disconnecting, dismantling, removing, reassembly and installing relocated and substitute machinery, equipment and other personal property, including connection to utilities available nearly;
- Storage (not to exceed 12 months) if necessary;
- Insurance in connection with moving and storage;
- License, permit, or certification required by the displacee for re-establishment at the replacement location;
- Professional service charges necessary to planning the move, the moving, and the reinstalling of the personal property;
- Re-lettering signs and replacement stationery if made obsolete by the move;
- Actual direct loss of tangible property;
- Substitute personal property which is used as part of a business, farm operation or nonprofit organization provided that the original property is not moved and that any proceeds from the sale or trade-in of the replaced item is subtracted from the cost of the substitute item;
- Searching for a replacement location (amount not to exceed $1,000);
- Other moving-related expenses if approved by the city as reasonable;

- "No-documented self moves" based on the lowest of two acceptable bids or estimates obtained by the city;

OR

- A fixed moving expense allowance computed on the average net earnings for the two-taxable years prior to the date of displacement The amount is to be not less than $1,000 nor more than $20,000 for a business or farm operation. The payment is to be $2,500 for a nonprofit organization. To qualify for a fixed payment in lieu of actual moving cost it must be determined that a business or a nonprofit organization cannot be relocated without a substantial loss of existing patronage or net income and it is not a part of a commercial enterprise having other establishments engaged in the same or similar activity.

Non-residential moving costs are calculated using the form Claim for Actual Moving Costs and Related Expenses (Attachment 7) or Claim for Fixed Payment in Lieu of Actual Moving and Related Expenses.

Re-Establishment Expenses (Non-Residential)

In addition to moving costs, a business may be eligible to receive a payment, not to exceed $10,000, for expenses actually incurred in relocation and reestablishing at a replacement site. These expenses must be reasonable and necessary and include:

- Improvements made to the new site as required by law;
- Modifications to the new site to accommodate the business;
- Costs for construction of new exterior signage;
- Costs of utilities from right-of-way;
- Redecoration/replacement' of worn services;
- Licenses, fees and permits when not included in moving expenses;
- Estimated increased operation costs for two years;
- Advertisement of new site; and,
- Professional services and feasibility studies relating to the new site

Replacement Housing Payments

These payments are available to owner-occupants and tenants that meet the following criteria:

Owner-Occupants who have:

- Owned and occupied the acquired dwellings for at least 180 days prior to initiation of negotiations;
- Purchased and occupied decent safe and sanitary comparable units within one year of completing acquisition or date of move from property; and
- Filed a claim within 18 months of the time the move is completed.

Tenants and 90-179 day owners who have:

- Occupied the acquired units 90 days prior to initiation of negotiations;
- Relocated into decent, safe and sanitary comparable units; and

- Filed a claim within 18 months of the time move is completed.

The relocation benefit is based on the difference between what units comparable to the acquired unit are being sold or rented for, and not on the cost of the unit into which the displacee wants to move.

It should be clearly understood by everyone involved in the acquisition/relocation process that the benefits under the URA are "rights" to which the displacee is entitled and that the grantee's job is to ensure that all displacees receive the maximum amount of benefit to which they are entitled. There are no income or need criteria for benefits. Certain benefits may be prorated for unrelated individuals living together.

In addition to financial assistance, displacees are also entitled to receive housing referrals, counseling and referrals to social service agencies.

Common Deficiencies

- Unfamiliarity with the relocation process and the benefits and assistance required for displacees under the URA.

Task #8 Process Claims and Make Payments

Definition

Assist or prepare claim forms: process and verify claims; document claims and make payments.

Procedures

Relocation claims may be filed up to 18 months following the completion of a move. This means that claims can be filed months, after the conclusion of the grant. Therefore, if there are unsettled relocation cases at the time of close out of the grant, the grantee should show maximum payments for each potential claimant as unpaid costs on the closeout documents otherwise, the Department may cancel the funds remaining in the grant and the grantee would be financially liable for relocation costs. This also highlights the need to try and expedite relocation.

Relocation Claim Forms

- Claim for Moving Costs and Related Expenses-Families and Individuals; and
- Claim for Replacement Housing Payment for180-Day Homeowner; or
- Claim for Rental Assistance Payment; or
- Claim for Downpayment Assistance.

Payment Responsibility

The grantee is responsible for ensuring that all payments are made in a timely fashion. Payments should be issued within 30 days following submission of sufficient documentation to support the claim. The regulations further state that advance payments must be made where they would avoid or reduce a hardship. When advance payments are made, the grantee must document that the payment was used for the purpose intended. The grantee should have the recipient sign a letter acknowledging receipt of relocation payments and services (Attachment 8).

Downpayment Payment
Payments for downpayment assistance must be applied to the purchase price of a replacement dwelling and related incidental expenses. Payments for rental assistance to owners or renters need not be applied to housing costs. The rental assistance payment may be made in a lump sum or in installments. The grantee has no right to question the uses to which that payment is put; it need not be accounted for beyond receipt by the claimant.

Denied Claim for Payment
If a person makes a claim for payment and must be denied because the unit is substandard, the grantee must inform the claimant why the claim is being denied, indicate the assistance available for bringing the current unit up to decent, safe and sanitary standards, and the on-going opportunity to qualify for assistance by moving to a standard unit, providing the move is completed within 12 months of the date of removal from the acquired dwelling or receipt of final payment (if owner-occupant), whichever is later; and that the claim is submitted within 18 months of the completion of the move.

Documentation of Non-Payment
In any instance in which payments are not made, the grantee must be able to fully document its efforts to provide payments, the reasons payments were not made, and signed waivers of payment if possible. The regulations mandate that any claim for payment be submitted to the locality within a period of 18 months after displacement. The grantee should strictly adhere to this limitation and fully document its initial notification of this requirement and all subsequent reminders.

Waiver of Relocation
In a voluntary acquisition, owner-occupants may be required to waive their relocation benefit rights as a condition of sale. The grantee should have them sign a form indicating they understand what their relocation rights and benefits are and indicating that they are voluntarily waiving these rights. A waiver of relocation benefits does not apply for tenants.

If relocation has not been completed within 6 months of the date of issuance of the Notice of Relocation Eligibility, the grantee must provide in its files a written explanation of delay and plan for timely completion.

Common Deficiencies
- Failure to document claim.
- Inaccurate computation of relocation payments.
- Rental assistance payment not made in a lump sum.

Supporting Materials
- Sample Letter of Acknowledgement of Services Rendered and Payments Received (Attachment 8).

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ATTACHMENT 1

RELOCATION FILE CHECKLIST

DOCUMENTS TO BE MAINTAINED IN RELOCATION FILES. A SEPARATE FILE SHOULD BE ESTABLISHED FOR EACH HOUSEHOLD OR BUSINESS DISPLACED.

- ☐ 1. Fully Completed Case Record Form.
- ☐ 2. Copy of Notice of Relocation Eligibility.
- ☐ 3. Evidence of Referrals to Suitable Replacement Housing or Business Locations.
- ☐ 4. Copy of 90-Day Notice and Evidence of Receipt.
- ☐ 5. Copy of 30-Day Notice and Evidence of Receipt, if applicable.
- ☐ 6. Record of Inspection of Replacement Dwelling and Referral Units.
- ☐ 7. Copy of each Relocation Claim Form and Supporting Documentation.
- ☐ 8. Evidence of Verification of Claim and Receipt of Payment.
- ☐ 9. Appeal, if filed, and disposition.
- ☐ 10. Copies of Correspondence.
- ☐ 11. Other Data:

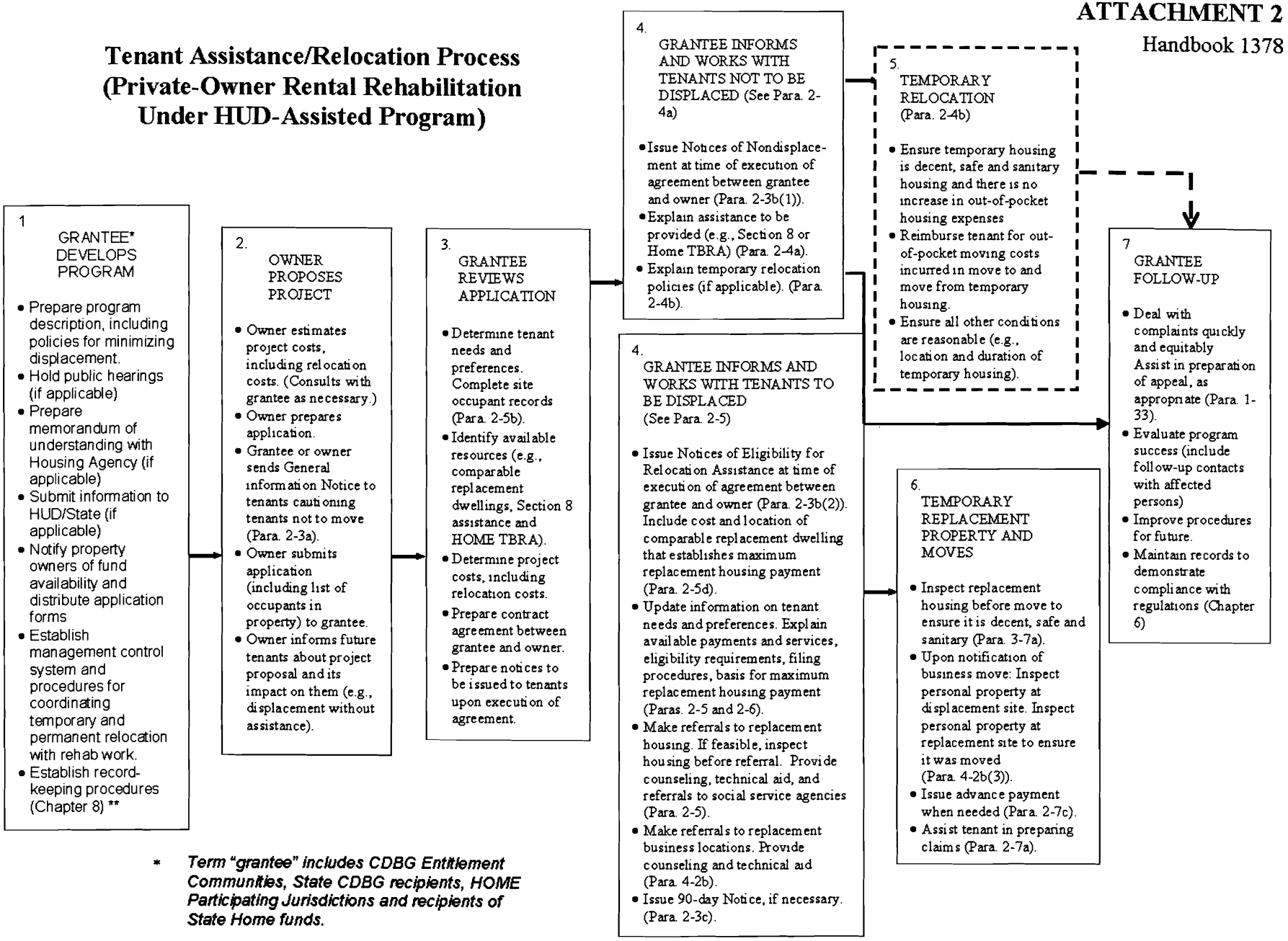
Specify:_____

_____

_____

- ☐ 12. If Relocation is not completed within six months following acquisition of property, explanation of delay and plan for timely completion.

Tenant Assistance/Relocation Process (Private-Owner Rental Rehabilitation Under HUD-Assisted Program)



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

** *References are to HUD Handbook 1378*

SUMMARY OF SIGNIFICANT CHANGES IN THE UNIFORM RELOCATION ACT (URA)

URA SECTION AMENDED	CHANGE	REMARKS
101(6)(A)	Extends URA coverage to persons as a direct result of rehabilitation, demolition or acquisition by a private entity.	
101(11)	Defines "displacing agency" to include person without power of eminent domain carrying out a program or project with Federal financial assistance that results in displacement.	
202(a)(4)	Adds new payment up to $10,000 for expenses to "re-establish a business" as component of payment for actual reasonable documented moving expenses.	Some expenses to m-establish business mandated by current regulations;
203(a)	Raises ceiling on replacement housing payment for 180-day homeowner-occupant from $15,000 to $22,500.	Under present regulations containing "make whole" financial means test, the payment ceiling has no effect.
204(a)	Reduces period covered by rental assistance payment from 48 to 42 months.	
	Raises ceiling on total rental assistance payment from $4,000 to $5,250.	Under present regulations containing "make whole" financial means test, the payment ceiling has no effect.
204(b)	Eliminates present matching requirement for down-payment assistance payment above $2,000.	
	Permits displacing agency to cap cash down payment at amount person would receive if renting a replacement dwelling.	Eliminates existing problem of budgeting for project in which potential downpayment assistance costs are much higher than potential rental assistance costs.
205(c)(3)	Revises (relaxes) law to require referral to comparable replacement housing before person is ordered to move.	Significant change. It would permit URA rules that make payment caps under Sections 203 and 204 meaningful.
301(2)	Permits establishment of procedures for waiving appraisal of low-value property.	

ATTACHMENT 4
SAMPLE

NOTICE OF RELOCATION ELIGIBILITY - 180-DAY HOMEOWNERS

Dear _____

On (date), the (acquiring agency) gave you a written offer to buy the building which you own at (address). The building is the site of (identify project).

This is a NOTICE OF RELOCATION ELIGIBILITY. In order to carry out our plans to develop the (identify project), it will be necessary for you to move sometime in the future. However, YOU DO NOT NEED TO MOVE NOW. And when you do move, you will be entitled to relocation payments and other assistance in accordance with regulations of the Federal Department of Housing and Urban Development (HUD). The effective date of this notice is (date of initiation of negotiations).

As the owner-occupant of the property, you are eligible to receive either (1) a payment for actual reasonable moving expenses, or (2) if you prefer, a fixed moving expense payment based on the number of rooms with furniture plus a $200 dislocation allowance.

Also, you may be eligible for a replacement housing payment to help you buy or rent a home. Based on a recent review of the offering prices of available decent, safe and sanitary houses that are comparable to yours, we estimate that you should be able to buy a comparable house for approximately $_____. If you owned and occupied your home for a least 180 days prior to (date of initiation of negotiations) and you buy a decent safe and sanitary replacement house, you may receive a replacement housing payment to cover the following three costs:

1 The difference between the amount you were offered for your present home ($_____) and the cost of a decent, and sanitary replacement home. Based on our estimate of the cost of a comparable, decent, safe and sanitary home, you may be eligible for an amount up to $_____ for this purpose.

2. Payment of any costs incidental to the settlement on your new home.

3. The increased cost of interest on the mortgage(s), if any, on your present home.

However, your total replacement housing payment is limited to $22,500, if you buy a replacement home. Should you wish to rent (rather than buy) a comparable house, our best estimate at this time is that you could qualify for a one-time replacement housing payment of $_____ covering rental assistance needs.

I am enclosing a brochure titled, "Relocation Assistance to Displaced Homeowners." Please read the brochure carefully. It explains your rights and some things you must do to obtain a payment. (For example, to obtain a replacement housing payment you must move to a decent, safe, and sanitary home within one year after you vacate your present home.)

I want to make it clear that you will receive assistance to help you relocate. In addition to payments and housing referrals, counseling and other services are available to you.

A member of this office will soon contact you to determine your needs and preferences and to help you find and relocate to suitable replacement housing. He/She will explain your rights and help you to obtain the relocation payments and other assistance which are rightfully yours.

In the meantime, If you have any questions, please call (name), (title). He/She can be reached at (phone) or (address). We are sure
that Mr./Ms. (name) can answer your questions.

Sincerely,

ATTACHMENT 4a
SAMPLE

NOTICE OF RELOCATION-RESIDENTIAL TENANTS ONLY

(Date)

Dear_____

On (*date*), the (*acquiring agency*) submitted a written offer to buy the building at (*address*). The building is the site of (*identify project*).

This is a NOTICE OF RELOCATION ELIGIBILITY. Our records indicate that you are occupying this building. In order that we can carry out our plans to develop the (*identify project*) it will be necessary for you to move sometime in the future. However, YOU DO NOT NEED TO MOVE NOW. And when you do move, you will be entitled to relocation payment and other assistance in accordance with regulations of the Federal Department of Housing and Urban Development (HUD). The effective date of this Notice is (date of initiation of negotiations).

As an occupant of the property, you are eligible to receive either (1) a payment for actual reasonable moving expenses, or (2) if you prefer, a fixed moving expense payment based on the number of rooms with furniture plus a $200, dislocation allowance.

Also, if you occupied your apartment for at least 90 days prior to (*date of initiation of negotiations*), you may be eligible for a replacement housing payment to help you rent or purchase a home. Based on a recent review of rental costs in the area, it appears that the cost of rent, including utility charges, for available decent, safe, and sanitary apartments similar to yours is presently about $_____ per month. If you must pay that amount to rent another apartment you may receive a one-time rental assistance payment of $_____. Should you choose to buy a home, we estimate that you could qualify for a downpayment assistance payment up to $_____. (Our staff will explain the procedures for computing a payment).

I am enclosing a brochure titled, "Relocation Assistance to Displaced Tenants". Please read the brochure carefully. It explains your rights and some things you must do to obtain a payment. (For example, to obtain a replacement housing payment, you must move to a decent, safe, and sanitary home within one year after you vacate your present apartment.)

I want to make it clear that you will receive assistance to help you relocate. In addition to payments and housing referrals, counseling and other services are available to you.

A member of this office will soon contact you to determine your needs and preferences and to help you find and relocate to suitable replacement housing. He/She will explain your rights and help you obtain the relocation payments and other assistance which are rightfully yours.

In the meantime, if you have any questions, please call (*name*), (*title*). He/She can be reached at (*phone*) or (*address*). We are sure that Mr./Ms. (*name*) can answer your questions.

Sincerely,

ATTACHMENT 5
SAMPLE

GRIEVANCE PROCEDURES

All written appeals, regardless of form, shall be promptly reviewed in accordance with the requirements of applicable law and HUD's Uniform Act implementing regulations (49 CFR Part 24, Subpart A-G).

Actions Which May be Appealed
You have the right to appeal any action of the (agency) on the following grounds:

> failure to properly determine eligibility for, or the amount of, a relocation or other incidental expenses due under the Uniform Act.

Your acceptance of the amount offered you by this agency does not limit your right to appeal that determination and seek a larger payment.

Time Limits for Initiating an Appeal
The reasonable time limit of _____* days has been locally established for a person to file an appeal. (*NOTE: time limit shall not be less than 60 days after the notification of determination of the amount of claim to be paid has been received by the claimant).

Right to Representation
You have the right to be represented by anyone of your choice. There is no cost reimbursement for such representation.

Review of Files
You are permitted to inspect and copy all materials pertinent to your appeal, except those classified by this agency as confidential.

Scope of Review
All pertinent justification and other material submitted by you shall be considered in the appeal in order to ensure a fair and full review of the case.

Determination and Notification
Upon receipt of all information submitted by a claimant, a prompt review will be made. A written copy of the determination on the appeal, including explanation of the basis on which the decision was made, will be furnished. Additional information shall be provided on the right to seek judicial review if the claim is not fully granted.

Reviewing Official
The review of appeals shall be made by (name of official). This person was not involved in any of the actions which are being appealed, but has knowledge of the Uniform Act procedures. Additionally, you have the right to appeal the decision on your claim with the Nebraska Department of Economic Development Division of Community and Rural Development, P.O. Box 94666, Lincoln, NE 6850946

ATTACHMENT 6
SAMPLE

LETTER TO RELOCATEE IN A SUBSTANDARD UNIT

Date

Dear_____:

Relocation regulations established by the Department of Housing and Urban Development will not permit the City to make a rental assistance payment to you until you move into an apartment or house that meets their definition of "safe, sanitary and decent" replacement unit. Your new apartment does not meet this definition because:

1. The wiring does not meet the City electrical code.

2. A two-bedroom apartment is too small for a family of five (2 adults, 1 16-year-old son, 1 14-year-old daughter and an 11-year-old son).

In order to be eligible for a replacement housing allowance you must move into an apartment or house that meets all these requirements within one year from the date you moved from your old apartment on 4th Street. You have to move into a qualified apartment or house by _____ to be eligible. Ms. Ellen Smith keeps a list of eligible houses and apartments and will help you find one and will arrange inspections of any apartments or houses you find on your own. Her phone number is 444-5441.

If you moved into a "safe, sanitary and decent house or apartment' by _____, you would be eligible to receive a rental assistance up to a maximum of $5,250 to cover the difference in the month cost between your old apartment and a new apartment for 42 months, or the difference between your new rent and 25% of your gross monthly income, whichever is less. This payment will be made in a lump sum if you file a claim for benefits within 18 months after the date you move into a safe, sanitary and decent apartment.

In order to receive these benefits, you must relocate into a standard unit. Please contact Ellen Smith and she will help you find and move into a standard unit. She is also available to talk with you about any questions you might have.

Sincerely,

Mary Simmons
City Secretary

ATTACHMENT 7
SAMPLE

90-DAY NOTICE TO VACATE

Date

Dear
As you know, the city is purchasing your home (**apartment**). The purchase will be completed on (**date, must be no later than 60 days after date of this letter**). We have been in contact with you since (**date**) to help you locate and move into suitable replacement housing. We have referred you to (number) such units.

The house (**apartment**) you are now living in must be vacated in 90 days by (**date, must be at least 60 days after date on this letter**). We will send you a second notice 30 days before you must vacate.

If you have any questions or need additional assistance in completing your move, please call Ms. Ellen Smith at 441-4533.

Sincerely,

Mary Simmons
City Secretary

SAMPLE

30-DAY NOTICE TO VACATE

Date

Dear_____:

This letter is to inform you that you must vacate this house (**apartment**) within 30 days, on (**date, must be 30 days after date of this letter, and 30 days after City has title**).

If you have any questions or need additional assistance to complete your move, please call Ms. Ellen Smith at 441-4533.

Sincerely,

Mary Simmons
City Secretary

ATTACHMENT 8
SAMPLE

LETTER OF ACKNOWLEDGMENT
SERVICES AND PAYMENTS RENDERED

Department of Community Development
City of West Linn
City Hall
West Linn, Lillian 00153

To: _____, Relocation Officer

This is to certify that the Relocation Assistance, Services and Payments rendered by the Department of Community Development at the time of my displacement from _____to_____ were done to my satisfaction.

I further certify that I have received reimbursement of my moving expense and/or Relocation Payment by the Department of Community Development checked below.

MOVING EXPENSE:

_____ Fixed payment of $_____.

_____Reimbursement of paid receipt from a Mover or Direct Payment to a Mover of $_____.

ADDITIONAL RELOCATION PAYMENTS (Tenants and Certain Others)

_____Downpayment Assistance of a lump sum of $_____.

_____Rental Assistance Payment of $_____ in a lump sum.

REPLACEMENT HOUSING PAYMENT (Owner-Occupants)

Replacement Housing Payment in a lump sum of $_____.

_____ _____
DATE CLAIMANT

_____
BY

CHAPTER 13 – FINANCIAL

Financial Management System

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

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

The financial management system required for grantees and the use and accounting for CDBG funds is governed by:

- 24 CFR Part 570
- OMB Circular No. A-87, "Cost Principles for State, Local, and Indian Tribal Governments";
- OMB Circular A-133, "Audits of State and Local Governments";
- 24 CFR Part 85 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" (only sections as identified in 24 CFR Part 570)
- Department Requirements

The financial management system requirements identified in 24 CFR Part 85.20:

(1) **Financial reporting.** Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) **Accounting records.** Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) **Internal control.** Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) **Budget control.** Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) **Allowable cost.** Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

(6) **Source documentation.** Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) **Cash management.** Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

The Department's Requirements

The Department identifies three basic functions that must be served by the financial management system:

1) The financial management system must have an identified procedure for recording all financial transactions.

2) All expenditures should be related to activities proposed in the grant application approved by the Department.

3) All expenditures of CDBG funds should be in accordance with applicable laws, rules, and regulations.

Accounting Records

Each grantee should determine the accounting records that will assist in providing accurate and complete financial information. The CDBG accounting records may be fully integrated into the grantee's existing accounting system or may be partially integrated into the existing system with subsidiary ledgers developed as needed to provide the required grant accounting. At a minimum, the grant accounting system must:

1) Clearly identify all receipt and expenditure transactions of the grant; and

2) Provide for budgetary control by tracking expenditures and accrued obligations by approved CDBG activity.

Department staff or the grantee's auditors should be able to readily trace CDBG transactions through the accounting system. Also, all amounts shown on CDBG reports should reconcile to the grantee's accounting records.

Grantees must be able to report CDBG expenditures by approved activity. Budget balances must be maintained for each approved activity that account for CDBG expenses accrued or obligations incurred (e.g. contracted amounts) which have not yet been paid.

Source Documents

Source documents provide information to be transferred to the accounting records. A source document may be a check, invoice, purchase order, time sheet, or contract. All source documents that pertain to the CDBG project should be identified through a code or by using the CDBG grant number. This will assure that the charges against the project are properly recorded in the CDBG accounting records.

Purchase orders should be used when requesting supplies and materials for the project. The purchase order is prepared in the same manner as all other purchase orders for the grantee and should include a reference to CDBG.

Contracts should be kept in a separate file. The signed contract represents an obligation of CDBG funds. When payments are made on the contract, these should be recorded in the contract file on a contract control card. If there are several contracts, a contract register should be used as a management tool.

An invoice or statement for services rendered is typically submitted by a contract seeking payment. The accuracy of the invoice should be verified against purchase orders or contracts.

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

Cancelled checks, bank deposit slips, receipts, and other miscellaneous documents represent important source documents which are used in accounting for program expenditures or program income.

Receipt Procedures

In addition to CDBG payments from the Department, cash receipts may also include program income and project funds received from other outside sources. Program income is funds earned through the repayment of housing rehabilitation loans, sale of property, and other miscellaneous receipts.

The Grantee must be certain that project receipts are adequately safeguarded. This includes providing for proper bonding in accordance with state law of those individuals that handle program funds.

All CDBG project receipts should be promptly deposited to the proper bank account and recorded as a receipt in the accounting system. CDBG funds are to be drawn down only as required to pay immediate obligations. The Department will consider the grantee in violation of the requirement to minimize the elapse of time between receipt and expenditure of CDBG funds, if more than ten working days elapses between receipt and expenditure.

Electronic Funds Transfer

All CDBG payments to grantees are by Electronic Funds Transfer (EFT) to a designated local bank account. These payments are made through the Nebraska Information System (NIS); the new state accounting system that became effective in March 2003 for all federal and state grant payments to local governments and other organizations.

All local governments in Nebraska – cities, villages, counties – have an "electronic address" established by the State Treasurer's Office which corresponds to a designated local bank account for receipt of funds from the State of Nebraska. This electronic address and corresponding bank account will be used for CDBG grant payments with no additional action required by the local government grantee except to transfer CDBG funds when received to a non-interest bearing account in accordance with CDBG program requirements.

If a local government grantee wishes to have CDBG funds deposited directly into a designated local non-interest bearing bank account, the grantee should complete and submit the State Treasurer ACH Enrollment Form. This form may be downloaded from the State Treasurer website at *http://www.treasurer.state.ne.us* or from the Department's website and mailed to the Department upon completion. The Department will review the completed form and forward to State Accounting for action and State Treasurer for information. The State Treasurer is the designated "automated clearinghouse" or ACH for the State of Nebraska.

It is not required that the ACH enrollment form be submitted to receive CDBG funds. If no action is taken by the grantee, the standard electronic address will apply for the receipt of CDBG funds. If a CDBG-designated account (or Department-designated account) has been previously established through submission and processing of an ACH enrollment form, it is not necessary to submit this form for each new CDBG grant; however, it is necessary to submit this form as a change action whenever a bank account in which CDBG funds are currently being deposited has been changed (financial institution or account number).

If the local government grantee wishes to direct CDBG funds to a designated account, a completed State Treasurer ACH Enrollment Form must be sent to the Department. The form must be checked NEW (no bank account designated for CDBG or Department funds currently exists) or CHANGE (making change to financial institution or account number).

In the VENDOR INFORMATION section, "Name" refers to the local government, i.e. City of Seward, Village of Otoe, Gage County, etc. "Address" is the Mailing Address (normally a PO Box Number). "Federal Tax ID #" is the 9-digit number which (for local governments) begins with "47" followed by a dash and 7 additional digits.

In the area below "FAX #" enter: DED PAYMENTS ONLY (if this account may be used for CDBG, HOME/NAHTF grant payments, or other Department payments of any type) or CDBG PAYMENTS ONLY (if to be used for CDBG grant payments only). The Department will not forward an ACH Enrollment Form to State Accounting for a specific CDBG grant, as these accounts tend to be transitory, subject to closure when account activity ceases, and frequently create confusion when multiple accounts are established.

The local bank completes the FINANCIAL INSTITUTION INFORMATION section. The service agreement portion of the form should be completed by both parties as to notification procedures on receipt of funds via EFT. Make sure both parties sign the form and that all other entries are completed and accurate. Mail the completed form to:

Nebraska Department of Economic Development
CDBG Financial Administrator
PO BOX 94666
Lincoln, NE 68509-4666

It may be up to 4 weeks or longer before the locally designated CDBG or Department account has been assigned an electronic address by state government or an account number for an existing electronic address has been revised. Local government grantees should confirm with the Department that action has been completed before submitting an applicable request for CDBG funds.

Bank Accounts

Grantees are not required to maintain separate bank accounts for the deposit of CDBG funds except for program income revolving loan fund (RLF) accounts. However, grantees must be able to reconcile CDBG balances in the depository account.

Since interest may not be earned on the deposit of CDBG funds, grantees that must make every effort to not earn interest on CDBG funds or to draw down CDBG funds on a reimbursement basis. Under this system, the grantee pays all project costs (both the CDBG share and the local share) and reimburses the account for the CDBG share. In this way there are never unexpended CDBG funds on deposit that would accrue interest earnings.

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

Bank accounts must be secured by F.D.I.C. insurance or bank pledged collateral for the full amount of CDBG funds held in the account. Reconciliation of bank statements should be performed promptly.

Payment Procedures
The grantee must establish a system to review and approve all billings presented for payment under the grant. All invoices should be reviewed to determine that the costs are accurate, reasonable and allowable under CDBG regulations. The governing body of the grantee should review and approve all payments.

The grantee should determine when CDBG disbursements will be made--weekly, bi-weekly, monthly, quarterly. Identifying a cut-off time when all invoices and vouchers must be submitted will assist in the planning for the request for funds. This timeline should be communicated to contractors and vendors. All parties should also know that it will generally be about 14 days from the time a drawdown request is approved by the Department until the grantee receives the CDBG funds.

Contractors' invoices should be paid after a verification has been made of work completed. A list of disbursements to be made should be prepared and the total federal cash requirements submitted to the Department on the appropriate forms. All payments for expenditures must be supported by source documentation, i.e., invoices or vouchers and kept on file.

Administrative Costs
Administrative costs are the costs associated with implementation of the grant. These costs may include: salaries for personnel who devote full or part time to the grant, cost of equipment and supplies used for grant activities, and the cost of administrative services provided by other agencies. General administrative costs for the grant should be separated from administrative costs for a particular activity. General administration costs are those costs directly related to the administration of grant requirements (e.g. submitting Requests for CDBG Funds, completing Project Status Reports, etc.). Costs that are administrative in nature but are indirect support of a project activity should be charged to the project activity rather than general administration.

All administrative costs charged to the project must be documented, i.e., through timesheets, purchase orders, and invoices. OMB Circular A-87 provides guidelines for determining allowable costs.

Employees paid in whole or in part from CDBG funds should prepare timesheets indicating the hours worked for each pay period. Based on these timesheets and the hourly payroll costs for each employee, a voucher statement indicating the distribution of payroll charges should be prepared and placed in the appropriate files.

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

Indirect Costs
Grantees who will charge indirect costs to the grant must submit cost allocation plans to the Department and receive prior approval to claim such costs.

Requesting CDBG Funds

The request by the grantee for CDBG funds is made using the Request for CDBG Funds form. This form can be downloaded from the Department's website. If a grantee is unable to download the form, it may be requested from the Department. The website and the reverse side of the form include complete instructions for properly completing the form to request funds.

Please take special note of the following concerning the request, receipt and expenditure of CDBG funds:

- A request for funds may not be submitted until the grantee has received a Notice of Release of Funds.
- Double and triple check the completed Request for CDBG Funds form before sending it to the Department, as any errors will cause considerable delay in payment.
- Request only the amount of funds needed to pay immediate obligations.
- Funds may be requested at any time and in any frequency; however, the minimum request is $500 except for the final request on a grant.
- Program income must be disbursed prior to requesting additional funds.
- Federal funds on hand must be disbursed prior to requesting additional funds.
- Grantees may not earn interest on the deposit of federal funds pending disbursement.
- If excessive amounts of cash (over $5,000) are on hand for an extended period of time (over ten working days), the local government must return the excess to the Department.
- The request for payment must be in accordance with the approved budget for the grant contained in the Sources & Uses Of Funds section of the grant contract.
- Grantees are required to show local match or other funds in the proportionate amount for each activity as included in the approved budget when requesting funds for an activity.
- The request for funds should show the status of all approved activities even if no funds are requested for one or more activities in a specific request.
- Amounts must be requested in whole dollar amounts only.

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

Grantees must contact their Program Representative if budget amendments, extensions of contract completion dates, match waivers, or other actions are needed in connection with requesting CDBG funds. Written approval of changes affecting the budget is required before payment requests will be processed. Grantees may reallocate less than 10% of the total grant amount among approved project activities without prior approval or budget amendment, however, approved budget amounts for Administration & Audit may not be increased without written approval. The Department's website has a CDBG Contract Amendment Request form for use by the grantee in requesting changes.

Grantees should normally receive payments of requested CDBG funds within two weeks of receipt of the request by the Department if there are no errors in the request or other reasons for delay. All CDBG payments to grantees are by Electronic Funds Transfer (EFT) to a designated local bank account. These payments are made through the Nebraska Information System (NIS) based on the "electronic address" established by the Nebraska State Treasurer.

Contract Records

Grantees will enter into contracts that will require record keeping and reporting consistent with the CDBG financial management requirements.

A proper system of management should include:

- A contract file for each signed contract.
- Enter the contract in a contracts register.
- Establish a control card for each contract that tracks invoices and payments.

The file for each contract must contain the following:

- A signed contract and amendments.
- A schedule of payments supported by copies of time sheets; copies of checks or transfer notifications; copies of approved authorization/payment forms; and copies of invoices.
- All project related correspondence.
- Property records (where appropriate).
- Any notice of cancellation, termination or suspension of the contract.
- Final inspection reports.

A contracts register should be used to record all contracts signed. This register will be the summary record for all contracts. The register also indicates which contracts require compliance with other federal requirements.

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

Property Records

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

During the operation of the CDBG project, there are several different types of real or personal property for which funds may be spent ranging from office supplies to real estate. Property purchased with CDBG funds is governed by 24 CFR Part 570 and 24 CFR Part 85.

Any real or personal property purchased with CDBG funds of $300 or more must be authorized as a separate budgetary line item in the application or be approved by separate communication from the Department.

Real property, for purposes of keeping records, includes land, land improvements or buildings; but not public improvements such as water systems or rehabilitation of facilities owned by others. Personal property includes all other property like desks, chairs, and equipment.

The ownership of property purchased with CDBG funds is governed by federal regulation. The title to real property acquired with CDBG funds vests with the grantee subject to the continuing use of the real property for the authorized purpose. If the property is no longer needed for the authorized purpose, the grantee should contact the Department to determine the options available for using the property for another purpose or for disposal instructions.

A property register must be maintained for property purchased with CDBG funds. The register will summarize all property acquisitions and dispositions. This record must be available at the time of the audit. In addition, an accounting of property acquired with grant funds must be made at the time of closeout.

The property register will provide information on the date acquired, a description, identification numbers, purchase order and check numbers, costs, percent of CDBG funds used in the acquisition, where the property is located, the condition, and disposition of the property.

The grantee may also utilize a control card for each acquisition. Disposition of the property can be recorded on the back side of the card.

CHAPTER 14 – REPORTING REQUIREMENTS

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

Grantees should use the most current form for a particular report they are submitting. Current forms are available at the Department's website near the on-line version of this manual in an area called "Forms". The grant's program representative will provide assistance, if needed, with locating and/or sending the current on-line form.

Project Status Reports

The Department requires all grantees to submit Project Status Reports every six months during the life of the project. The Project Status Report form with instructions is available at the Department's website. The report must be submitted within 10 days after each 6-month reporting period. The uniform 6-month reporting period ending dates of June 30 and December 31 will be used for all projects.

WARNING: The Department reserves the right to not process any requests for funds for projects that do not have status reports into the Department by the uniform due dates of July 10 and January 10.

Job Creation/Retention Reports

The Department requires all grantees funded under the economic development category and other grantees funded with job creation and/or retention as the national objective to submit a Job Creation/Retention Report every six months. The Job Creation/Retention form with instructions is available at the Department's website. The report must be submitted within 10 days after each 6-month reporting period. The uniform 6-month reporting period ending dates of June 30 and December 31 will be used for all projects.

Businesses must have each employee hired or retained under the terms of the project complete and sign an Employee Certification Form. Information from the Employee Certification Form is used to complete the semi-annual job creation/retention reports. Employee Certification Forms can be found in the CDBG Economic Development Application Guidelines. Businesses must keep the completed Employee Certification Forms for all employees until project closeout is complete. Department staff will monitor job creation/retention information.

Program Income Reports

The Department requires grantees to report on program income earned from CDBG projects on a semi-annual basis. The Program Income Report form with instructions is available at the Department's website. The reports are due July 15th for the preceding period January 1 through June 30, and January 15th for the preceding period July 1 through December 31.

There are two categories of program income, economic development and non-economic development. Program income received from projects funded from the economic development category is reported on the economic development report, and program income received from other categories (i.e. housing or public works) is reported on the non-economic development report.

More guidance on program income is available in Chapter 9 – Program Income.

Notification of Annual Audit

Each recipient of a grant from the Department is required to submit a Notification of Annual Audit for each year CDBG funds are expended. The Notification of Annual Audit form is available at the Department's website. The form is due October 31.

More information on audit requirements is available in Chapter 16 – Audit & Closeout.

Final Reports

The Department requires the submission of a Final Performance and Final Financial report for every project before closing out the project. Some projects also require the submittal of a Final Job Creation/Retention report and/or Final Wage Compliance Report. Planning projects also need to submit a final product prior to closeout. All final reporting forms are available at the Department's website.

More information on closeout is available in Chapter 16 – Audit & Closeout.

CHAPTER 15 – MONITORING

Goal

The Department's goal is to ensure that CDBG-funded projects are implemented in a timely manner, meet national objectives and proposed outcomes and are managed within the rules of the program.

Objectives of Monitoring

- Document compliance with program rules
- Ensure timely expenditure of CDBG funds and timely closeout of projects
- Track program/project performance
- Identify technical assistance needs

Compliance Review

To ensure that all statutory and regulatory requirements are being met for activities with HUD funds, the Department uses various monitoring standards and procedures.

The Department is responsible for ensuring that grantees under the CDBG program carry out projects in accordance with both Federal and State statutory and regulatory requirements. These requirements are set forth in the grant contract executed between the State and the grantee. The Department provides maximum feasible delegation of responsibility and authority to grantees under the program. Whenever possible, deficiencies are rectified through constructive discussion, negotiation and assistance.

The Department conducts two basic types of monitoring that is determined by the established "Risk Analysis" process: off-site, or "desk" monitoring, and on-site monitoring. Department staff regularly reviews each project to verify that it is proceeding in the manner set forth in the CDBG Contract in accordance with applicable laws and regulations. The "Risk Analysis" monitoring plan determines whether a project review is conducted by a "desk" monitoring or on-site monitoring. Desk monitoring is an ongoing process in which the program representative responsible for overseeing the grantee's project uses all available information to review the grantee's performance in carrying out the approved project. This review process enables the Department to identify problems requiring immediate attention and to schedule projects for on-site monitoring. Material used for this review includes, but is not limited to: Amendments/Extensions to the CDBG Contract; Project Status Reports, Requests for a Draw-down of Funds; and other supporting documents.

On-site monitoring is a structured review conducted by the program representative at the locations where project activities are being carried out or project records are being maintained. One on-site monitoring visit is normally conducted during the course of a project, unless determined otherwise by the "Risk Analysis" process. The "Risk Analysis" components for determination of "desk" or on-site monitoring compliance review includes, but is not limited to: a) grant award amount, b) length of time since grantee monitored, c) length of time Certified Administrator last evaluated, d) significant outstanding audit issues, e) significant outstanding compliance issues, and f) types of prior projects monitored. The review considers all available

evidence of conforming to approved program, substantial progress toward program goals, compliance with laws, and continued capacity to carry out the approved program. Checklists are utilized to ensure that all issues are addressed. The number of times a project is monitored depends upon the issues that arise during the desk and on-site monitoring. In summary, the Department uses the following processes and procedures for monitoring projects receiving HUD funds: evaluation on program progress, compliance monitoring, technical assistance, project status reports, monitoring technical assistance visits, special visits and continued contact with grantees by program representatives.

On-Site Review Process

The Department uses the following process to set-up, undertake and report on on-site monitoring visits:

1. Program Representative calls the grant administrator to schedule an on-site visit.
2. Program Representative sends a letter prior to visit that confirms date and time, the checklists that will be used, and the people and files needed during the visit.
3. Program Representative conducts on-site visit, reviews files, inspects property, completes checklists and writes report.
4. Program Representative submits monitoring report to the grantee within 30 days of visit unless circumstances noted on the checklist would indicate a delayed report would be more appropriate.
5. Program Representative works with grantee until monitoring is cleared.

File Preparation

The Department expects the grantee to have all documents needed for review to be available at the site of the visit. All grant records must be maintained and under the control of the grantee. The records must be readily accessible by the Department. Furthermore, all documentation should be well organized for easy review. A good organization approach should be based upon the structure of the monitoring checklist.

Monitoring Report

The monitoring report issued to the grantee following a review contains the following as applicable:

(1) Compliance areas reviewed, files reviewed, who conducted the review and the date it occurred;

(2) A brief description of the specific statute, regulation or requirement examined;

(3) The conclusion (i.e. Satisfactory Performance, Concern, Question of Performance, Finding) and basis for the conclusion reached.

(a) A Satisfactory Performance determination is a conclusion that the grantee is meeting its statutory and regulatory responsibilities.

(b) A Concern raises an issue that does not involve a statute, regulation or requirement, but may involve a management suggestion or program improvement.

(c) A Question of Performance is an inconclusive review that raises a question of whether or not a violation of a statute, regulation or requirement has occurred or compliance cannot be demonstrated. In this case the reviewer will first informally discuss the review with the grantee. If a determination of compliance still cannot be made, the reviewer will request additional information, to be provided within a 30-day period, to determine whether a violation did occur. This determination is only for a limited period of time. When the Grantee responds to the question, a final determination will be made.

(d) A Finding is a clear, specific and identifiable violation of a statute, regulation or requirement about which there is no question. The action normally requested is for the grantee to explain, within a 30-day period, what steps it will take to remedy and/or prevent a recurrence of the violation.

Monitoring Checklist

The attached checklist provides guidance to grantees on the areas of CDBG projects the Department reviews through desk monitoring and on-site visits.

Attachment 1

Nebraska Department of Economic Development
Community Development Block Grant Monitoring Checklist

Grantee: CDBG Grant#:
Program Rep.: Contact Person:

Performance Review Monitoring Checklist
Enter Monitoring Dates (Month/Day/Year) for areas monitored (If not applicable insert NA in box).

A. National Objective / Activity Eligibility	
B. Program Progress	
C. Environmental Review	
D. Grantee File Documents	
E. Financial Management	
F. Procurement	
G. Professional Services Contracts	
H. Civil Rights	
I. Construction	
J. Acquisition	
K. Relocation	
L. Housing Rehabilitation	
M. Demolition	
N. ED Legal/Loan Documents	
O. Job Creation/Retention Verification	
P. Equipment Verification	
Q. Performance and Capacity Considerations	

Date Project Began: Current Status:

Location of Project:

Project Budget: Expenditures to Date:

Ending Date:

A. National Objective / Activity Eligibility

List each approved activity from the project and any approved amendments.
Indicate the national objective being met as identified in the funding approval.

Activity Description	National Objective
1.	
2.	
3.	
4.	
5.	

If National Objective is LMA:

Total Number of beneficiaries are _____

Number of beneficiaries that are LMI _____ Percentage that are LMI _____%

Are beneficiary numbers from _____ census or ____ survey (check one that applies)

If survey: When was the survey conducted? _____
Who conducted the survey? _____
What survey method was used? _____
Was there a sufficient response rate? Yes or No

If National Objective is LMC:

Total Number of beneficiaries are _____

What clientele benefit from the activity? (i.e. – elderly, handicapped, LMI persons)

_____

Do actual beneficiary numbers differ from what was originally proposed for the activity? State if higher or lower and explanation grantee has for the difference.

_____
_____
_____

If activity is for the removal of architectural barriers, give a brief description of barrier and what was done to remove it.

_____
_____
_____
_____
_____
_____

If National Objective is LMH:

If Rehab:

How many owner occupied LMI housing units were proposed for rehab? _____
How many owner occupied LMI housing units were actually rehabbed? _____

Were all applications for rehab properly recorded and tracked? Yes or No

Were household income verifications properly done for all housing units that were rehabbed?
Yes or No

If Homebuyer Infrastructure:

How many total housing units benefited from the infrastructure? _____
How many housing units were purchased by LMI households? _____ % of total units _____

If National Objective is LMJ:

Total number of jobs created or retained are _____
Number of jobs created or retained that are held by LMI individuals _____ % that are LMI _____

Job creation/retention records are complete and support job creation/retention totals and LMI figures?
Yes or No

If National Objective is Slum or Blight:

If Slum/Blight is for an area basis:

Has area been officially designated as Slum or Blighted by local or county government? Yes or No
Is there proper documentation? Yes or No

If Slum/Blight is on a spot basis:

What makes the property considered blighted? (brief description)

_____
_____
_____
_____

B. Program Progress (Applicable to all Grants)

1. Compare the status of each activity to the projected status in the implementation schedule. For each activity, indicate whether the activity is substantially on schedule or behind schedule. Note implementation schedule quarter and ending date.

If any activity is substantially behind schedule (three months or more), note the circumstances/reasons. Does the grantee anticipate difficulty completing the activity by the projected completion date? If so, can the implementation schedule be revised to extend the program period or will a program extension be necessary?

Activity Code	Activity Description	Substantially On Schedule	Ahead of Schedule	Behind Schedule
1				
2				
3				
4				
5				
6				
7				
8				

C. Environmental Review (Applicable to All Grants)

Check the applicable items at the time of the visit and note any deficiencies:

1. Is there an Environmental Review Record (ERR) with a project description including location(s) and all related HUD or non-HUD funded activities? Yes___ No____
2. Is there a written Finding of Exemption signed by the Chief Elected Official (CEO), consistent with the activities undertaken? Yes___ No___ N/A___ (If all activities are exempt, the remaining items are not applicable)
3. Is there a written Finding of Categorical Exclusion signed by the CEO, consistent with the activities undertaken? Yes___ No___ N/A___
4. Has clearance been obtained from the State Historic Preservation Officer? Yes___ No___ N/A___
5. Is there evidence that other federal laws listed at 24 CFR 58.5 have been addressed and appropriate authorities recognized as sources to support determinations (refer to notes, maps, consultation letters and other sources of documentation on Statutory Checklist)? Yes___ No___ N/A___
6. If project is located in a floodplain or wetland, were Floodplains/Wetland notices published? Yes___ No___ N/A___
   Date of Early Public Notice_____15 day comment period Yes___ No___
   Date of Notice of Explanation_____ 7 day comment period Yes___ No___

For those projects requiring environmental assessments: N/A___

7. Did the assessment consider impacts of the project on the character and resources of the project area? Yes___ No___
8. Did the assessment include alternatives and modifications considered and mitigation measures needed? Yes___ No___
9. Is there a written Finding Of No Significant Impact signed by the CEO? Yes___ No___
10. Is there a Finding of Significant Impact? Yes___ No___

For projects requiring publication and public comments: N/A___

11. Is there a copy of the (published or posted) Notice Of Intent to Request Release Of Funds? Yes___ No___ Date _____
12. Is there a copy of the (published or posted) Notice of FONSI? Yes___ No___ Date_____
13. Note any public comments and recipient responses to these comments.
14. Were all appropriate agencies notified of the Notice of Intent to Request Release Of Funds and other applicable requirements? Yes___ No___
15. List the recipients of the NOI/RROF and other applicable requirements: _____
    _____
16. Is the Request for Release Of Funds and Certification signed by the CEO, and submitted to DED, after appropriate comment period? Yes___ No___ (NOI/RROF 7-10 days, FONSI/NOIRROF 15-18 days)
17. Is the Release of Funds signed by DED in the file? Yes___ No____ Date of Letter _____
18. Was a Pre-Agreement Letter (for ED projects) issued by DED? Yes___ No___ Date of Letter _____
19. Do records show that no funds were obligated or spent, or that no physical development activities began, prior to receipt of Release of Funds or Pre-Agreement Letter? Yes___ No___

For projects requiring re-evaluation: N/A___

20. Were there substantial changes in the nature, magnitude or extent of the project, new circumstances or new conditions after the initial assessment? Yes___ No___
21. If so, were the new circumstances evaluated and original finding validated with Certificate of Continued Environmental Compliance? Yes___ No___

Explain all No responses below. Identify or explain any issues or concerns.

_____
_____
_____
_____

D. Grantee File Documents (Applicable to all Grantees)

Grant Application

Citizen Participation Plan

Residential Anti-displacement Plan

Survey Records

Notice of Approval (Date of the Notice_____)

Grant Contract (Contract Completion Date_____)

Notice of Release of Funds (Date of the Notice_____)

Citizen Comments/Complaints

Code of Conduct (Date of Adoption_____)

Procurement Procedures (Date of Adoption_____)

Environmental RROF Certification (Date Signed_____)

Financial Management Certification

Authorization to Request Funds

Implementation Schedule

Grantee Information Sheet

Excessive Force Certification

Proposed Fair Housing Actions

Requests for CDBG funds (The number of requests_____)

Notifications of Annual Audit (Notifications for fiscal years_____)

Copies of Audits (Audits for fiscal years_____)

CDBG Contract Amendments (# approved___ Last Approval Date_____)

CDBG Contract Extensions (# approved___ Last Approval Date_____)

E. Financial Management (Applicable to All Grants)

1. Internal Control

Determine if the grant has established the following:

An adequate system to review and approve all billings presented for payment under the grant. Describe:

A regular payment cycle to ensure bills are paid promptly and that the timing of the cycle has been conveyed to vendors and contractors. Describe:

2.Cash Management

Are drawdowns deposited promptly to the proper account?

Are funds drawn down only to meet immediate needs (determine if grantee tries to maintain a cushion in the CDBG account or if at any time the balance in the account exceeded $5,000 for more than 10 working days)?

Are bank statements reconciled promptly? (Note who performs reconciliation.)

Are accounts with CDBG funds interest bearing?

Is the person(s) responsible for handling CDBG Funds (Deposits and/or Disbursements) properly bonded according to state law?

3. Property Management

Has grantee received written approval for all purchases exceeding $300?

List items purchased which exceed $300.00

Does the grantee maintain an inventory of all property, furnishings and equipment purchased with CDBG funds?

4. Accounting Records

Determine the types of accounting records maintained for the grant (i.e. ledgers, computerized systems, etc.). Record must be reviewed to verify the following:

Are obligations tracked and activity budget balances maintained?

Can program costs and obligations be traced to source documentation (invoices, billings, contracts, canceled checks, timesheets, etc.)?

Does the grantee's records identify matching and other funds applied to each activity and proper matching percentage has been maintained? (If grantee has received waiver approval, note the terms of the waiver.)

If grantee is utilizing in-kind matching contributions, documentation that such contributions meet the criteria set forth in 24 CFR 85.24. If volunteer labor is utilized, documentation of the time each volunteer contributed and the value of that time.

Does the grantee maintain a contract file for each contract and use control cards or ledgers to track payments for each contract?

Determine if the grantee's system adequately tracks local administration costs incurred.

Describe how these costs are accumulated and reimbursed (City/Village employee's time spent on the grant must be supported by timesheets.)

What is the method of accounting for other costs such as copies or supplies if charged to the grant?

If the grantee charges indirect costs to the program, does the grantee have an indirect cost allocation plan which has been approved or acknowledged by a cognizant federal agency or Nebraska Department of Economic Development?

- Note date of plan and date of DED approval.

Grantee's records agree to reported amounts (i.e. drawdown requests, audits).

Select representative samples of costs charged to the grant and verify the following: (Note which drawdowns/expenditures were tested. List all exceptions.)

- Costs are allowable per OMB Circular A-87 and grant agreement.
- Costs can be traced to source documentation.
- Costs are charged to the proper activity.
- Costs have been reviewed and approved prior to payment.
- Costs were not obligated prior to the Notice of Release of Funds or Preagreement Authorization except administration coasts which should not be obligated prior to the Notice of Approval.

5. Audits

Are Notifications of Single Audit (or other Records) on file for each year which support the grantees determination whether an audit in accordance with OMB Circular A-128 was required?

Are copies of audits on file with any correspondence regarding audit findings?

6. Program Income

Determine if the grantee has earned program income from any grant activities. If yes, verify the following:

- Grantee has used program income to further the activity from which it was generated.
- Grantee has expended or committed all available program income prior to drawing down additional CDBG funds.

If grantee has earned program income, which is to be committed to a revolving loan fund or a Reuse Plan, verify the following:

- Has the grantee submitted a Notice of Intent to use program income? (Date must be within 90 days of Notice of Approval)
- Has the grantee submitted a Reuse Plan for their program income? (Date must be within 180 days of Notice of Approval)
- Has the grantee submitted their first reuse project to DED for approval? (Date must be within 24 months from the date of first receipt of program income for a Local Reuse Plan or 36 months for a Regional Plan)
- Is Program income that is received for a revolving loan fund held in a separate interest bearing account?
- Are funds that are held in the revolving loan fund expended for their intended use prior to drawing down CDBG funds for that activity?
- Does the grantee maintain repayment schedules for all outstanding loans and promptly follows up on all delinquent payments?

If grantee has program income or revolving loan funds from prior grants which must be applied to this grant has the grantee expended all program income prior to drawing down CDBG funds under this grant?

Draw-down Table

Draw #	Date Received	Payee/Contractor	Invoice Date	Invoice Amount	Approval Date	Payment Date	Check #	Breakdown of Funds	
								Local $	CDBG $

F. Procurement

Review the grantee's procurement records to determine if procedures used in obtaining goods and services are consistent with the grantee's written procurement procedures and code of conduct and are in compliance with 24 CFR 85.36. Review and identify procurement effort direct to minority and female firms. List all types of services or goods sought.

This section does not apply to the procurement of construction contracts; these procurement are covered under Section J - Construction.

For each procurement reviewed, note the following:

1. Type of service or Item Sought (examples of services are administrative, engineering/architectural, appraisal, audit, housing rehabilitation administration, testing).

2. Method of Procurement (competitive negotiation. competitive sealed bids, small purchase, non-competitive negotiation) and Grantee's Rationale for Method (if method was non-competitive negotiation, grantee must document that only one source could provide the service or item or that competition was determined to be inadequate).

3. Was Method of Procurement Appropriate?

4. If Procurement Was Made by Competitive Negotiation, Does Grantee Have All of the Following Items on File?

a) Copy of RFP or Request for Statements of Qualifications and list where sent or published; If sent, did grantee contact at least 3 qualified sources?; Does solicitation have clear and accurate description of all requirement s and all factors to be used in evaluating proposals or statements?; Does solicitation clearly state that contract amount will not be based on cost plus a percentage of cost or percentage of construction cost?

b) Copies of all proposals or statements received? Proposals received from:

c) Written evaluation criteria including criteria for judging responsiveness of proposals, reasonableness of costs and responsibleness of firms.

d) Written evaluation of proposal or statement based on written criteria.

e) Written statement explaining the basis for selection and basis for selection of contract type.

5. If Procurement Was Made by Competitive Sealed Bids (Formal Advertising), Does Grantee Have All of the Following Items on File?

a) Bid Advertisement /Proof of Publication; Does advertisement provide a clear and accurate description of all requirement and all factors to be used in evaluating bids?; Does advertisements clearly state that contract amount will not be based on cost plus a percentage of cost or percentage of construction cost?

b) Evidence bids were logged in ; copies of all bids received? Bids received from:

c) Written evaluation criteria including criteria for judging responsiveness and reasonableness of bids and responsibleness of bidders.

d) Minutes of bid opening, bid tabulation and recommendation for award based on written criteria.

6. If procurement was made by small purchase procedures, did grantee obtain price or rate quotations from at least 3 qualified sources?

7. Has the grantee established procurement procedures, which attempt to obtain goods and services from minority owned or female owned businesses? What efforts in this area were made?

8. Is there any indication that a conflict of interest or potential conflict of interest existed in the procurement?

a) Was procurement proposal prepared by a firm or individual that submitted a proposal? If so, identify and provide review.

b) Is the evaluation unduly restrictive and limits a firm or individual from competing fairly? If so, provide statement.

9. Did grantee procure multiple-services (more than one distinct service) in a proposal? If so, list the services. Is the procurement consistent with the CDBG Program policy on multiple services? If not, provide an explanation in the monitoring report.

G. Professional Services Contracts (Applicable to Grantees Having Professional Services Contacts)

The grantee must have all of the following items on file for each professional services contract. A separate file should be established for each contract. Review the grantee's contract file for administration, engineering, housing rehabilitation and appraisal services; for each file reviewed, check the times on file and note any deficiencies:

1. Indicate all professional services contracts that the grantee has entered into by naming the contractor and the type of professional service provided.

Contractor's Name	Service Provided

Note any deficiencies.

Are there any multi-service contracts? Note the particulars.

2. Review the executed contract and evidence of approval by the governing body. Note the date the contract was approved by the governing body. Note any deficiencies.

3. Each executed contract must consist of the following:

Method of Compensation Including Basis for and Frequency of Partial Payments.

Time of Performance/Completion Date:

Provision for Amendments/Changes to Contract.

Clause Prohibiting Transfer of Interest/Assignment.

Access to Records/Maintenance of Records

Conflict of Interest Clause.

Termination of Cause/Convenience.

Title VI Clause.

Section 109 Clause.

Age Discrimination Clause.

Rehabilitation Act Clause.

Section 3 Clause and Requirement for Written Plan if Contract is $10,000 or Over.

Equal Employment Opportunity Provisions.

Is contract amount fixed or included not to exceed clause (amount cannot be based on cost plus a percentage of cost)?

Contract Execution Date:

Does contract execution date precede Notice of Release of Funds?

For administrative services contracts, Contract Execution Date:
Does admin services contract precede Notice of Approval Date?

4. Review copies of any reports, plans, or work products under this contract. Indicate what reports, plans, work products were reviewed. Not any deficiencies.

5. How many minority or woman owned businesses were contracted with?

a. Type of professional service (please note each type, if more than one)

b. Dollar amount (separate by each business)

H. Civil Rights (Applicable to all grantees)

The grantee's records must contain the following information to document their compliance with the civil rights requirements. For each grantee reviewed, check the applicable items for compliance and note any deficiencies.

1. Program Beneficiaries

Examine any eligibility requirements the grantee may have established (e.g. in a housing rehab program) to determine whether the criteria or methods of administration may have the effect of subjecting individuals to discrimination on the basis of race, color, sex or national origin.

Determine whether any programs are being administered in a manner which tends to limit the number of minority or women beneficiaries or the level of benefits to minorities and women.

Grantees are to maintain and update this information throughout the project. Grantees will be asked to show source documentation. All items in this section are to be completed. Note any deficiencies.

a) Total beneficiaries in the project

Total numbers /male /female

Single Race	Total	# Hispanic
1. White		
2. Black/African American		
3. Asian		
4. American Indian/Alaskan Native		
5. Native Hawaiian/Other Pacific Islander		
Multi-Racial		
1. American Indian/Alaskan Native & White		
2. Asian & White		
3. Black/African American & White		
4. American Indian/Alaskan Native & Black/African American		
5. Asian & Black/African American		
6. Other Multi-Racial		
Total		

Female head of household _____

Disabled _____

b) CONCLUSIONS:
Are there any indications that any person or group was denied benefit on the grounds of race, age, sex, or disability?

If yes please explain.

2. Employment

Does the grantee have written equal opportunity employment /personnel policies and practices?

Are there any indications that any person or group was denied employment on the grounds of race, age, sex or disability?

If yes please explain

3. Fair Housing

The grantee records must document what meaningful action was taken to comply with the Title VIII of Civil Rights Act of 1968 concerning affirmatively furthering fair housing.

List activity(ies) undertaken by grantee during the grant period to affirmatively further fair housing.

4. SECTION 504

a) Has the grantee completed a self-evaluation of program access?

b) Does the grantee have 15 or more employees?
   i. Has the grantee designated a Section 504 Coordinator?
      Provide name and title:
   ii. Has the grantee adopted a written grievance procedure to resolve complaints regarding Section 504?

c) Is the grantee's file for this compliance area complete?

I. Construction (Applicable to Grantees Having Construction Contracts Exceeding $2,000 or Other Contracts Exceeding $2,500 Involving Laborers or Mechanics).

The grantee should have a separate file for each construction contract. Review at lease one general contract file and one subcontractor's file, if any; for each reviewed, note the following:

1. Project Name/Description:
2. Contractor Name:
3. Bid Opening Date:
4. Contract Award Date:
5. Contract Execution Date (Cannot be Prior to Notice of Release of (Funds):
6. Contract Amount:
7. Start of Construction Date: _____
8. Force Account Used?:
9. Name of Labor Standards Compliance Officer:

The grantee should have all of following items on file for each construction contract. For each file reviewed, note the items on file and note any missing items or deficiencies:

10. Preliminary and Final Design Documents and Cost Estimates.
11. Evidence Any necessary Property, Easement or Right-of Way Acquisition Was Completed Prior to Bid Advertisement.
12. Request for Wage Rate Determination and Acknowledgement (Construction Contracts Exceeding $2,000).
13. Bid Package and Evidence of Review By Municipal Attorney; Bid package to Consist of:
    a. General Conditions.
    b. Contractors and Subcontractors Certifications of Prevailing Wage Rate.
    c. Wage Determination No._____ Mod# _____ Date _____and Transmittal Form (Construction Contracts Exceeding $2,000).
    d. Bonding and Insurance Requirements Clause (Federal Bonding Requirements Apply to Contracts Over $100,000; Smaller Contracts Must Comply Only With Local Bonding Requirements). {Attachment 1}
    e. HUD 4010 Labor Standards Provisions (Construction Contracts Exceeding $2,000).
    f. Title VI Clause (Civil Rights Act of 1964) {Attachment 3}
    g. Section 109 Clause (HCDA of 1974) {Attachment 3}
    h. Age Discrimination Clause (Age Discrimination Act of 1975) {Attachment 3}
    i. Rehabilitation Act Clause (Section 504 of the Rehabilitation Act of 1973) {Attachment 3}
    j. Section 3 Clause and Requirement for Written Plan if Contract is $10,000 or Over (HUD Act of 1968) {Attachment 3}
    k. Equal Employment Opportunity Provisions:
       3 Paragraphs for Contracts $10,000 and
       Under 7 Paragraph E.O. 11246 Clause for Contracts Over $10,000 {Attachment 4}
    l. Access to Records/Maintenance of Records Clauses {Attachment 5}
    m. Conflict of Interest Clause {Attachment 5}
    n. Certification of Compliance with Clean Air/Water Acts (Contracts Over $100,000) {Attachment 6}
    o. Plans and Specifications.
14. Bid Advertisement/ Proof of publication; Does Advertisement Provide a Clear and Accurate Description of All Requirements and All Factors to be Used in Evaluating Bids?

Bid Advertisement Table

Newspaper	Dates Posted

15. Addenda to Bid Documents, If Applicable.
16. Evidence Bids Were Logged In; Copies of All Bids Received.
17. Evidence Wage Determination Checked 10 Days Prior to Bid Opening and, If Necessary, Revised (Construction Contracts Exceeding $2,000).
18. Written Evaluation Criteria Including Criteria for Judging Responsiveness and Reasonableness of Bids and Responsibleness of Bidders.
19. Bids.
    a. Minutes of Bid Opening;
    b. Bid Tabulation.
    c. Recommendation for Award Based on Written Criteria; and
    d. Wage Determination Was in Effect At Time of Bid Opening (construction contract exceeding $2,000).
20. Request for Contractor Clearance and Acknowledgement.
21. Authorization of Contract Award by Governing Body Date:_____
22. Awarding Contract:_____
    a. Notice of Contract Award and Pre-Construction Conference.
    b. Evidence Notice Sent to DED Within 10 Working Days of Contract Award;
    c. Wage Determination Was in Effect at Time of Contract Award (construction contract exceeds $2,000).
23. Evidence Contract Reviewed by Municipal Attorney.
24. Executed Contract Documents Consisting of:
    a. Bid Documents (See Item #13 Above).
    b. Bid Proposal Including 5% Bid Bond; Bid Cannot be Based on Cost Plus a Percentage of Cost.
    c. Contractor/Subcontractor Certifications of Insurance/ Bonding.
25. Minutes of Preconstruction Conference.
26. Evidence Contractor Requested and Received Wage Rate Determination for Any Classification(s) Not Included in Original Determination (HUD 4230A) (Construction Contracts Exceeding $2,000).
27. Contractor's Written Section 3 Plan if Contract is $10,000 or Over.
28. Contractor's Bonding/Insurance for 100% of Contract Amount; Check to See if In Effect at Time of Contract Execution, if applicable (contracts of $100,000 or less may be in compliance with local bonding requirements if so stated).
29. Copy of Contractor's Apprentice or Trainee Program Registration From DOL, If Applicable.
30. Evidence Notice to Proceed Issued to Contractor Date:_____
31. Evidence Notice of Start of Award Sent to DED Date:_____
32. Payroll Verifications:
    Copies of Weekly Payrolls and Evidence of Grantee Review/Verification;
    Payrolls Submitted Weekly and That They are Numbered and Signed;
    Payrolls in Compliance with Wage Determination (Rate of Pay Must be Correct for Each Employee);
    Additional Classifications Have Been Included;
    Apprentices or Trainees Have Been Paid Appropriately; and
    Computation of Overtime Pay Correct.
33. Weekly Statements of Compliance Form Contractor and Subcontractors (Construction Contracts Exceeding $2,000).
34. Change Order/ Contract Amendments.

Company	# of Change Order	Amount

35. Evidence that Grantee has Complied with Employee Interview Requirements:
    a. Copies of Record of Employee Interview;
    b. Grantee Has Interviewed All Classifications Represented on the Job; and
    c. Reviewed Contractor's Use of Apprentices/Trainees (construction Contracts Exceeding $2,000).
36. Evidence that Grantee Has Inspected Job Site for Posting the Following:
    a. Wage Determination (Construction Contracts Exceeding $2,000).

b. Notice to Employees Poster.
c. Job Safety and Health Protection Poster.
d. Equal Employment Opportunity Poster.

37. Project Inspection Reports.
38. Review of Payment Procedures Against:
    a. Requests for Partial Payments;
    b. Certification of Pay Estimates; and
    c. Inspection Reports.
39. Final Inspection/Acceptance of Work Form.
40. Copy of As-Built Plans.
41. Evidence of Final Payment Date:_____
42. Evidence Final Wage Compliance Report Sent to DED (Construction Contracts Exceeding $2,000).
43. Correspondence and Documentation Regarding Violations/Complaints and Actions Taken.

44. How many minority and female contractors and subcontractors participated in the program?

    a. Type of work (please note each type, if more than one)

    b. Dollar amount (separate by each contractor)

PayPeriod/Company	Last,First Name	Title	Stand. Hours	Stand. Wage	O.T. Hours	O.T. Wage	Total Pay	DB Rate	Comment

Project	Company	Bid

J. Acquisition (Acquisition from another public entity and temporary easements are not subject to the URA)

1. Is there a separate file for each acquisition: Yes___ No___
2. Is there evidence that the General Information Notice was hand delivered or mailed with certified receipt filed? Yes___ No___ (If the acquisition was a donation go to 20. If a voluntary acquisition go to 21)
3. Is there a copy of the appraisal in the file? Yes___ No___
4. Is there evidence that the owner was invited to accompany the appraiser? Yes___ No___
5. Was a review appraisal done? Yes___ No___
6. Were qualified independent appraisers used? Yes___ No___
7. If not appraised, was the value of the property $2,500 or less? Yes___ No___
8. If less than $2,500, was the value based upon a review of the available market data? Yes___ No___
9. Is a copy of the written offer to purchase in the file? Yes___ No___
10. Was the offer issued promptly after the appraisal? Yes___ No___
11. Was a statement of the basis for determining the offer included with the offer? Yes___ No___
12. Is there evidence of clear title, a current survey, deed and legal description of the property on file? Yes___ No___
13. Was a statement of settlement costs included in the file? Yes___ No___
14. Is proof of receipt of payment in the file (cancelled check)? Yes___ No___
15. Was payment timely? Yes___ No___
16. Is there proof of recording deed in the file? Yes___ No___
17. If recipients determined not to purchase after distributing the notice to acquire and/or offer, is there a written notice of such decision in the file with evidence of hand delivery or by certified mail? Yes___ No___ N/A___
18. If the recipient permitted an owner or tenant to occupy the real property acquired, was the rent charged equivalent to the fair rental value of the property? Yes___ No___ N/A___
19. Was a copy of any appeal or payment for incidental expenses or certain litigation expenses in the file? Yes___ No___
20. If property was donated: N/A___
    - Is a signed release of the grantee's obligation to an appraisal in the file? Yes___ No___
    - If appraisal obligation is not waived, is a copy of appraisal or determination of value data on file? Yes___ No___
    - Is a signed waiver of rights of "just compensation" in the file? Yes___ No___
    - Is a copy of all required title documentation included in file (recorded deed or easement)? Yes___ No___
    - Was grantee's payment of all incidental costs to the transfer of title documented (recording fees, survey, title insurance, transfer fees, prorated taxes, deed preparation)? Yes___ No___
21. If property was voluntarily acquired: N/A___
    - Was it acquired by public advertisement? Yes___ No___
    - Was it acquired by invitation? Yes___ No___
    - Was it acquired by other means? Yes___ No___ Specify_____
    - Is the advertisement or invitation in the file? Yes___ No___
    - Did the advertisement or invitation contain language that made a general request for a non-specific site (general request for land for a water tower site or lagoon site or a dilapidated housing site)? Yes___ No___
    - Did the grantee inform the responding property owner, in writing, that in the event the negotiation failed, the grantee will not acquire the property? Yes___ No___

K. Relocation (Applicable to grantees providing relocation assistance or otherwise displacing persons by the use of CDBG funds)

Date on the race, ethnic, and gender characteristics of displaced households:

Documentation of the location of the CDBG-funded activity, which caused the displacement.

Did the grantee carry out relocation activities in a manner which promoted fair housing by providing displaces with a maximum choice of replacement housing in the community's total housing supply regardless of race, color, religion, sex or national origin?

Records documenting that relocation services and benefits to displaced persons and businesses were provided in a manner, which did not result in different or separate treatment on account of race, color, sex, or national origin.

Part 1 Residential Relocation

The grantee should have all the following items on file for each household displaced. A separate file should be established for each household. Review the displacing – causing activity to determine if it is subject to the uniform Act or Section 104(d). See Relocation module for additional information. Review at least one completed relocation case file, noting the name and addresses (former and current) of the displaced household. For each file reviewed, check the items on file and note any deficiencies:

1. Record Form Indicating:

a. Date that the occupant was initially contacted provided general information about the relocation.

b. Address of acquired dwelling and date of household's initial occupancy;

c. Name, age, minority-group classification, marital status, disabilities or head of household;

d. Name, age and sex of household member;

e. Monthly gross income of all adult household members;

f. Monthly housing cost at acquired dwelling; and

g. Relocation needs of household.

2. Evidence of notice of Relocation Eligibility, Review Adequacy of Notice; Notice to be Issued Promptly After the Initiation of Negotiations.

3. Documentation of Services and Assistance Provided, Including Nature and Dates.

4. Evidence of Referrals to Comparable Replacement Housing, Including Date of Referral, Address, Sale or Rental Price, Monthly Housing Cost and Date of Availability. If Referral is Rejected, Reason(s) for Rejection.

5. When Applicable, Copy of Any Lease or Other Occupancy Agreement Between the Grantee and Occupant and a Statement Identifying the Basis for Grantee's Determination of the Fair Rental After Acquisition.

6. Copy of 90-Day Notice and Evidence of Receipt; Review Adequate and Timing of Notice.

7. Copy of 30-Day Notice and Evidence of Receipt, Review Adequacy and timing of Notice.

8. Record of Inspection, Date of Inspection, Address and Description of Replacement Dwelling; Date of the Relocation. Note What Standards Grantee Uses to Determine if Replacement Dwelling is Decent, Safe and Sanitary.

9. Copy of Each Relocation Claim Form and Supporting Documentation; Copy of Worksheets Used to Determine Benefits; Review Correctness of Computations and Determination of Benefits.

10. Evidence of Verification of Claim and Receipt of Payment.

11. Appeal, if Filed, and Disposition.

12. Copies of Correspondence.

13. If Relocation Has Not Been Completed Within 6 Months Following Acquisition of Property, Explanation of Delay and Plan for Timely Completion.

Interview Member of Displaced Household Using HUD Form 4002-.

Part 2. Nonresidential Relocation

The grantee should have all of the following items on file for each business displaced. A separate file should be established for each business. Review at least one completed relocation case file and check for the items below, noting any deficiencies:

1. Record from form indicating

a. Date that the occupant was initially contacted and provide general information about the relocation;

b. Name, age, minority-group classification, disabilities of business owner (or principal official);

c. Address, complete name, telephone number, and type of business;

d. Approximate annual gross sales, payroll and number of employees;

e. Size of business by square feet, number of stories, parking area, space leased or owned;

f. Monthly rental or mortgage cost (not landlord or institution receiving payment);

g. Number of years in business and at present location.

2. Evidence of Notice of Relocation Eligibility, Review Adequacy of Notice. Notice to be Issued Promptly After the Initiation of Negotiations.

3. Relocation Requirements (should reflect those of description in item 1.).

4. Evidence of Referrals and Other Assistance, Including Date, Address, Purchase or Rental Price, Date of Availability. If Referral is Rejected, Reason(s) for Rejection.

5. Copy of 90-Day Notice and Evidence of Receipt.

6. Description of Replacement Location.

a. Address.

b. Size.

c. Date Move Initiated and Completed.

d. Manner of Move (self move, commercial, etc.)

e. Cost (monthly rental/mortgage payment)

7. Copy of Each Relocation Claim Form and Supporting Documentation; Copy of Worksheets Used to Determine Benefits; Review for Accuracy.

8. Evidence of Verification of Claim and Receipt of Payments.

Moving costs.

Reestablishment costs (cannot exceed $10,000)

9. Appeal, if Filed, and Disposition.

10. Copies of Correspondence.

11. If Relocation Has Not Been Completed Within 6 Months Following Acquisition, Explanation of Delay and Plan for Timely Completion.

L. Housing Rehabilitation (Applicable to Grantees Undertaking Housing Rehabilitation)

1. Rehabilitation Program Guideline and Standard and Evidence of Adoption by Governing Body.

Review Standards to check for required language regarding removal of existing lead-based paint hazards and prohibiting the use of lead-based paint.

Review Guidelines to determine if all of the following elements are addressed, as applicable:

Types and amounts of financial assistance available; determine types(s) of program – e.g. streamlined, self-help, grantee representing owner.

Eligibility criteria (applicant and property), including income eligibility and any exclusions; review income provisions to determine if program exclusively benefits low-moderate income households.

Eligible property improvements;

Determination of the feasibility of rehab and treatment of infeasible rehabs;

Relocation or alternatives to rehab policies, if applicable;

Selection process;

Conflict of interest provision;

Contracting requirements;
Grievance procedure;

Treatment of emergencies, if applicable;

Rehab outside the target area(s), if applicable;

Role of advisory committee, if applicable;

Responsibilities of the recipient; (relate to type of program)

Operating procedures including those relating to change orders, dispute resolution and acceptance of work;

2. Application Forms; Do the Forms Request Sufficient Information to Determine Applicants' Eligibility?

3. Applications for Rehabilitation Assistance, Including Those Not Selected; Written Basis for Selection or Non-Selection.

4. Documentation all Applicants Have Been Notified of Selection of Non-Selection; for Non-selected Applicants, Notification Should include Reasons for Non-Selection.

5. For Each Applicant Selected, A Rehab Case File Consisting of the Following: (Not Name and Address of Property Owner).

Completed Application

Family Survey.

Title Search.

Verification of Income, Employment, etc.

Letter of Clearance from the State Historic Preservation Office.

Bid Package. NOTE: Bids not required if the owner is responsible for contracting the work.

Bid Advertisement/ Proof of Publication; Does Advertisement Provide a Clear and Accurate Description of All Requirements and All Factors to be Used in Evaluating Bids?

Evidence Bids Were Logged In; Copies of All Bids Received.

Written Evaluation Criteria Including Criteria for Judging Responsiveness and Reasonableness of Bids and Responsibleness of Bidders

Bid Tabulation and Recommendation for Award Based on Written Criteria.

Executed Contract Documents; Contract Must Include Work Write-Up and Required Language Regarding Removal of Existing Lead-Based Paint Hazards and Prohibiting Use of Lead Based Paint; Contract Must Specify Contract Amount, time of Performance, Method Schedule of Payments, Who Will Be Responsible for Performing Each Work Item, and Must Include Loan Agreement, If Applicable; Check to See that Contract Amount is Not Based on Cost Plus a Percentage of Cost

Evidence Lead-Based Paint Brochure Was Received by Property Owner/Occupants.

Truth-In-Lending and Loan Disclosure Statement and Notice of Right Recision, If Lien is Place on Property.
Notice to Proceed (Must be Dated After Any Right of Recision, Period and Should Specify When Work is to Begin and is to be Completed).

Site Inspection Reports That Are Dated and Signed; Note How Often Inspections Are Made.

Requests for Partial Payments and Documentation; Documentation Must Include Verification of Specific Contact Work Items Completed; Not Whether Grantee Retains a Portion of Payment Due Until All Work Completed Record of Date and Amount of Partial Payments, signed by all parties.

Change Orders, Signed by All Parties, Note the Extent of Work/Certificate of Completion.

Contractor/Subcontractor, Materialman Affidavit, Warranties, Release of Liens.

Evidence of Final Payments.

Evidence of Follow-up Inspection(s) Prior to Expiration of Contractor's Warranty.

Correspondence and Documentation Regarding Complaints, If Any, and Actions Taken.

If possible, perform limited inspection of completed units and units under construction.

Note the number of rehab applications received.

The number of jobs completed; in progress, and pending; .

How is the program publicized and how are applicant solicited? If the grantee has brochures or other literature used to publicize program, obtain copies.

How many contractors bid on rehab jobs? How does the grantee pre-qualify contractors?

M. Demolition (Applicable to grantees with demolition activity)

The grantee should have a separate file for each demolition project. If the unit was acquired by the grantee, the file may be the same as under the Acquisition section of the checklist. If not, determine how the units were chosen for demolition.

Evidence that the demolition contract was competitively selected and that the procurement process meets adopted procedures.

A copy of the contract used meets CDBG requirements. (Demolition contracts not subject to Davis Bacon wages unless it is a phase of construction project which is.)

Notice to Proceed issued. Date: .

Project inspection reports.

Final inspection and evidence of final payment approval.

One for One Replacement Requirement for Residential Demolition.

If the demolition was of a housing unit and it was occupied or vacant, but occupiable, then the unit must be replaced with a similar unit within 3 years (see Residential Antidisplacemnt and Relocation Assistance Plan Certification).

Review the requirements with the grantee for replacement of lower income housing lost from the community's stock through federally assisted activities.
Does the grantee have a definition of occupiable, i.e. suitable for rehabilitation.

Evidence that the grantee submitted the information required from the Residential Antidisplacement and Relocation Assistance Plan Certification (Exhibit G of the CDBG application).

Determine if there is a need for follow-up technical assistance and describe below.

N. Legal/Loan Documents (Applicable to ED projects)

The grantee should have all applicable legal documents duly executed and on file.

Memorandum of Understanding Date .

Loan Agreement Date:

Promissory Note Date .

Security Instruments:

- Mortgage Deed Date:
- Security Agreement Date:
- UCC Filings Date:
- Corporate/Personal Guaranty Date

Insurance Policies:

- Personal Key Man Life Insurance Expiration Date:
- Property Insurance Expiration Date:

Counsel Opinion Date:

Other Necessary/Appropriate Documents

O. Job Creation/ Retention Verification (Applicable to ED Projects)

Verification of the job creation/retention information will require the grantee to make at least one on-site visit to the business and have access to certain payroll and personnel records. In order to confirm the reported beneficiaries, the following information must be verifiable in the business' records for each employee tested:

Date of Hire:

Date of Termination:

Average number of hours worked per week and per year:

Employee Certification for or other documentation of LMI qualification:

Following an on-site visit to verify jobs created or retained, the following information should be summarized for the CDBG files maintained by the grantee. Doe the grantee's file contain the following information:
Date of on-site visit:

Name of Business:

Name of persons representing the business during the on-site visit:

Name of positions reviewed:

Number of individual employee records reviewed:

Names of company records reviewed to verify date of hires, hours worked

Number of Employee Certification Forms reviewed:

Summary of any issues or problems discussed with the business:

Based on a review of the above information, was the grantee's on-site review of job creation/retention records adequate?

P. Equipment Verification (Applicable to ED Projects)

1. Equipment Inventory Listing

The grantee should have the following information:

Description of the Equipment

Manufacturer

Model Number

Serial Number

Date of Purchase

Purchase Price

Does the equipment inventory listing identify all equipment purchased, both from CDBG funds and from matching leveraged funds.

2. On-Site Inspection

Did the grantee physically inspect all equipment purchases made by the business? Including both equipment purchased with CDBG funds and equipment purchased with leveraged funds?

Did the inspection include identification of equipment by model and serial numbers?

Did the grantee compare information from each piece of equipment inspected to the equipment inventory list?

Did the grantee discuss with the business the inventory control procedures the business maintains, such as inventory numbering system and the frequency of physical inventories taken?

Were issues or problems discussed with the business while on site?

Q. Performance and Capacity Considerations (Applicable to all Grantees)

1. Is the grantee implementing the local program as specified in the approved application, funding approval, and grant agreement?
If not, explain.

2. If amendments were made, were the proper procedures followed? Is the DED approval of the amendment on file? Amendment date:

3. If extensions have been granted, what is date for completion?
Is grantee meeting time lines to assure timely completion?
How many extensions have been granted: Most Current Extension Date:

4. Compare the status of each activity to the project status in the implementation schedule. For each activity, indicate if the activity is on schedule, ahead of schedule or behind schedule. Not progress in monitoring letter.

If any activity is substantially behind schedule (three months or more), note the circumstances/reasons. Does the grantee anticipate difficulty completing the activity by the projected completion date? If so, can the implementation schedule be revised to extend the program period or will a program extension be necessary? Note determination in monitoring letter.

5. Are the grantee and CDBG certified administrator demonstrating an adequate administrative capacity to implement the program?

CHAPTER 16 – AUDIT & CLOSEOUT

Project Closeout

Closeout is the process by which the Department determines that all requirements of the contract between the Department and the Grantee have been completed. As activities are completed and funds drawn down, closeout will begin.

The Department will issue a Notice of Closeout letter to each grantee near the time of the contract completion date or upon payment of all project funds in the grant, whichever occurs sooner. The Notice of Closeout letter will also be sent if the grantee requests initiation of the closeout process on the grant or indicates on a request for CDBG funds that it is a final request.

The Notice of Closeout requires grantees to submit:

- The Final Financial Report within 60 days;
- The Final Performance Report within 60 days;
- The Final Wage Compliance Report, if applicable, within 60 days (only for grants requiring adherence to labor standards, see Chapter 10 – Construction & Labor Standards);
- And other documents as applicable to complete closeout

The final reporting forms with instructions are available from the Department's website.

- The Final Financial Report – summarizes actions taken by the grantee in implementing the project.
- The Final Performance Report – details costs for the activities completed under the grant accounting for federal and non-federal funds.
- The Final Wage Compliance Report – measures compliance with labor standards on the project.

Audit Requirements

The Single Audit Act and Office of Management and Budget (OMB) Circular A-133 requires entities that expend $300,000 or more during the fiscal year in federal awards (from all sources) have a single audit conducted for that fiscal year.

Note: a revision of OMB Circular A-133, effective for fiscal years ending after December 31, 2003, increases the threshold for a single audit from $300,000 to $500,000.

Notification of Annual Audit

A Notification of Annual Audit form must be completed and returned to the Department within 30 days of the entity's (city, village or county) year-end. A memorandum will be sent to all grantees with open grants along with a copy of the Notification of Annual Audit form. The form is also available from the Department's website. The form, however, CANNOT be submitted before the end of the fiscal year.

The instructions for completing the form:

1. Include the date of the entity's fiscal year end.
2. List the sources of all federal expenditures received by the entity, include grant numbers for grants received from the Department.
3. Indicate if the entity must perform an audit.
    a. If an audit is required, note whether the audit to be performed will be a Single Audit or a Program-specific Audit. (Program-specific Audits must be pre-approved by the Department)
    b. The audit must be conducted in accordance with the Single Audit Act, OMB Circular A-133 and Generally Accepted Government Auditing Standards.
4. Include the name of the contact person responsible for audit arrangement.
5. The form must by certified by the Chief Official of the entity.

The Audit

Completed audits must be received by the Department the earlier of 30 days after the entity receives the auditor's report or nine months after the end of the audit period. For example, an entity with a September 30 fiscal year-end date would be required to submit the audit 30 days from when the audit is received, but no later than nine months after the entity's year-end or June 30 of the following year. If an audit is not received by the appropriate date, the Department will consider sanctions such as suspending payments until the audit is conducted.

Audits must be conducted in accordance with Generally Accepted Government Auditing Standards and OMB Circular A-133. The auditor's responsibilities are described in Subpart E. Program-specific audit requirements are found in A-133.235.

The appropriate CFDA number must be used in the Schedule of Expenditures of Federal Awards, 14.228 for CDBG. The CDBG grant number and amount must also be identified in this schedule. Local expenditures (matching funds, etc.) should not be included in this schedule.

The entity is responsible for follow-up and corrective action on all audit findings. At the completion of the audit, the auditee shall prepare a corrective action plan to address each audit finding included in the current year auditor's report. The corrective action plan shall provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date.

Upon completion of the audit each entity must:

a. Submit a copy of the single audit to the Department; or
b. If there were no single audit findings or questioned costs, the entity may provide written notification to the Department that an audit was conducted in accordance with A-133 (including the period covered by the audit, the name, amount and CDFA number of awards from the Department). A statement must be included stating that there were no current or continuing prior year findings or questioned costs.

c. Submit to the Federal Clearinghouse identified in A-133, one copy of a signed data collection form (SF-SAC), and one copy of the reporting package for the clearinghouse to retain as an archival copy, and one copy for each federal awarding agency when the schedule of findings and questioned costs disclosed audit findings relating to federal awards that the federal awarding agency provided directly to the entity. (Awards from the Department come to the entity as pass-through awards, not directly from the United States Department of Housing and Urban Development).

Auditor Selection

Grantees that are required to have a single audit must follow federal procurement procedures in selecting an auditor to perform the audit. If a single audit is to be performed, grantees must select an auditor in accordance with the procurement procedures detailed in 24 CFR 85.

The use of a Request for Proposal is generally the most appropriate method of procurement since auditor qualifications are critical to having a proper audit performed. Criteria for selection of an auditor may include previous experience with audits of CDBG or other federal programs and single audits. Additional information should be obtained to assure that the auditor is a CPA or licensed public accountant. Verification of the completion and timeliness of previous audits should be made and an assurance that the auditor is independent.

Single Audit Costs

If a grantee is required to have a single audit, they may charge each open federal grant a portion of the audit costs for the fiscal year audited. The allowable portion of audit costs to be charged to each grant is determined by dividing the expenditures of a federal grant in a fiscal year by the total expenditures of the local government in that year. The resulting percentage is then multiplied by the total audit cost to determine the allowable audit cost for that grant.

If the grantee feels that the allowable audit cost determined using the calculation method discussed above does not reasonable reflect a CDBG grant's share of the audit cost, the grantee may request that the Department grant a waiver of this provision and approval of a greater share of the audit cost to be charged to that grant. The request must include information from the auditor as to why the calculated audit cost is not representative of the actual audit costs incurred.

Audit costs may only be charged to the Grantee's general administration activity under the approved CDBG budget.

Audits of Subrecipients

Many CDBG projects use subrecipients to carry out project activities. Subrecipients are defined as local governments or nonprofit organizations that are granted CDBG funds by the grantee for specific project activities.

The grantee is responsible for obtaining the appropriate types of audits from all of its subrecipients. Further, the grantee is responsible for reviewing the subrecipient audit reports and for resolving any findings shown in the audit reports.

The grantee must:

1. Verify that the subrecipient will provide the appropriate type audits. Local government and non-profit subrecipients must follow the audit requirements of OMB Circular A-133.
2. See that all subrecipients submit the required audit reports to the grantee within the required timeframe.
3. Review all subrecipient audit reports and follow up on all audit findings. All audit reports must be reviewed and the findings resolved within six months of receipt of the report.
4. If an audit finding results in corrective action to be taken by the subrecipient, the grantee must work with the subrecipient to ensure the corrective action is implemented as soon as possible.

Certificate of Completion

A Certificate of Completion Letter will be issued to the grantee when the following criteria have been met:

1. CDBG grant funds have been expended in full.
2. Review of all grant requirements, including performance review, required documents, monitoring actions and reports.
3. Resolution of any applicable audit issues for the grantee.

The Certificate of Completion Letter will specify any follow-up actions required by state or federal regulations; however, this letter constitutes a certificate of satisfactory completion of all grant requirements.

File Retention

Grantees must maintain CDBG grant records for a period of four years after the issuance of the Certificate of Completion.