TEAM KENTUCKY™

Community Development Block Grant Handbook 2021

Developed by
ICF
for the
Governor's Department for Local Government

ICF

Table of Contents

Glossary of Terms and Acronyms

These terms are used frequently throughout the handbook. Please reference these terms for explanation of commonly used names, acronyms, and phrases.

- ✓ **ACH Routing Number:** The number assigned to each bank by the Federal Reserve for the routing of financial transactions.
- ✓ **Activity Code:** The code numbers assigned for each activity in a project and shown on the cost summary in each grant agreement.
- ✓ **Affirmative Action:** A specific action or activity to eliminate or prevent discrimination. Affirmative action is often designed to remedy past discrimination and to ensure it does not reoccur.
- ✓ **Allowable Costs:** Costs that are acceptable under 2 CFR 200 and are approved as part of an activity in the grant agreement.
- ✓ **Amendment:** A written revision or change to the contract/grant agreement.
- ✓ **American Indian/Alaskan Native:** A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.
- ✓ **ADA:** Americans with Disabilities Act of 1991.
- ✓ **ARC:** Appalachian Regional Commission.
- ✓ **Area Development Districts (ADDs):** Regional planning and development organizations in which counties and cities work together to accomplish common goals and receive shared benefits.
- ✓ **Assessed Value:** The valuation of property for the purpose of levying a tax.
- ✓ **Appraised Value:** An estimate and opinion of the value of property resulting from the analysis of facts. The three generally accepted approaches to real estate value estimates are: (1) market approach - comparison with known sales of other properties in the same area and classification; (2) cost approach—reproduction costs less depreciation; and (3) income approach—capitalization of the estimated net income.
- ✓ **Asian:** A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.
- ✓ **Assurance:** A written statement or contractual agreement signed by the chief executive officer in which a grantee agrees to administer Federally-assisted programs in accordance with laws and regulations.

- ✓ **Beneficiaries:** Persons to whom assistance, services or benefits are ultimately provided.
- ✓ **Black/African-American:** A person having origins in any of the Black racial groups of Africa.
- ✓ **Community Development Block Grant (CDBG):** The Federal entitlement program that provides funds to States and cities/counties for community development programs and projects.
- ✓ **CEO:** Chief Executive Officer or Chief Elected Official.
- ✓ **Change Order:** A written revision or change to a contract.
- ✓ **Collateral:** Security given as a pledge for the fulfillment of an obligation normally in the form of fixed assets (i.e., land, building, equipment, etc.).
- ✓ **Community Development Plan:** See Development Plan.
- ✓ **Compliance:** The fulfillment of the requirements of applicable laws, implementing regulations and instructions.
- ✓ **Condemnation:** The act of taking private property for public use by a political subdivision.
- ✓ **Consolidated Plan (Con Plan):** A plan prepared in accordance with the requirements set forth in 24 CFR Part 91, which describes community needs, resources, priorities, and proposed activities to be undertaken under certain HUD programs, including CDBG.
- ✓ **Contract Amendment:** Any written alteration in the specifications, delivery point, day of delivery, contract period, price, quantity or other provision of an existing contract.
- ✓ **Contractors:** A contractor is an entity paid with project funds in return for a specific service (e.g., construction). Contractors must be selected through a competitive procurement process.
- ✓ **Contractual Break:** A point in time when a community closes all KCDBG projects it has been awarded.
- ✓ **Cost Reimbursable:** A type of contract where contractors are paid for the work accomplished. The contract specifies an estimate of total costs and designates a maximum dollar amount that cannot be exceeded without the approval of the contracting officer.
- ✓ **Department for Local Government (DLG):** The agency within the Commonwealth of Kentucky that administers the State CDBG Program.
- ✓ **Development Plan:** A plan for the redevelopment of all or part of an area when a local public agency is going to purchase and reuse it, including any amendments thereto, approved in accordance with the requirements of KRS 99.070. For CDBG purposes, the plan must be site specific.
- ✓ **Discrimination:** Unequal treatment of a class of persons. An action, policy or practice is discriminatory if the result is unequal treatment of a particular protected class.

- ✓ **Displaced Person or Business:** When a person or business is forced to move permanently as a direct result of acquisition, demolition or rehabilitation of HUD-assisted projects carried out by public agencies, nonprofit organizations, private developers, and others.

- ✓ **DUNS Number:** The Data Universal Numbering System (DUNS) is a unique numeric identifier assigned to a single business entity, developed and regulated by Dun & Bradstreet (D&B).

- ✓ **Easement:** The right, privilege or interest one party has in the land of another and is an encumbrance against the property that is subject to it. An easement may be permanent or temporary.

- ✓ **Equal Employment Opportunity (EEO):** Refers to a number of laws and regulations that together require that CDBG grantees provide equal opportunity to all persons without regard to race, color, religion, age, familial status, disability, sex, sexual orientation, gender identity, or national origin in the administration of their programs.

- ✓ **Eligible Costs:** The costs of a project that are acceptable according to Section 105 of the Housing and Community Development Act and that are consistent with the grant agreement.

- ✓ **Eminent Domain:** The power of the government to take private property for public use upon just compensation. The power extends to all lands acquired for the purpose of a higher public character deemed necessary for the proper performance of governmental functions essential to the life of the Commonwealth.

- ✓ **Environmental Assessment (EA) Checklist:** A concise public document to aid in a grantee's compliance with the National Environmental Policy Act.

- ✓ **Environmental Clearance:** A clearance given by DLG to indicate a grantee has met the CDBG environmental procedures and sufficient documentation and certification have been provided.

- ✓ **Environmental Impact Statement (EIS):** The documentation that is required when a project is determined to have a potentially significant impact on the environment.

- ✓ **Environmental Review (ER):** The technical process of identifying and evaluating the potential environmental effects of a specific project within each impact category and as a whole.

- ✓ **Environmental Review Record (ERR):** Documentation of the environmental review process including all assessments or environmental impact statements, published notices, notifications and correspondence relating to a specific project.

- ✓ **Equity:** Funds that will be invested in a project by a private company designated as the participating party in the grant agreement.

- ✓ **Extremely Low-Income (ELI):** As defined in the Consolidated Plan regulations and Section 8 Program, a family whose annual income does not exceed 30 percent of the area median family income.

- ✓ **Fair Housing:** Refers to a number of Federal and State laws and regulations that prohibit a wide range of discriminatory practices and require that CDBG-funded programs be administered in a manner that affirmatively furthers fair housing.

- ✓ **Fair Market Value:** The price at which a willing seller would sell and willing buyer would buy a piece of real estate with neither being under abnormal pressure. As defined by the courts, the highest estimated price a property would bring if exposed for sale in the open market.

- ✓ **Family:** As defined in the Entitlement program a group of persons residing together, and includes but is not limited to: a family with or without children, an elderly family; a near-elderly family; a disabled family; or a displaced family. An individual living in a housing unit that contains no other person(s) related to him/her is considered to be a one-person family for this purpose.

- ✓ **Federal Assistance:** Any funding, property or aid provided for the purpose of assisting a beneficiary.

- ✓ **Federal Tax ID Number:** The number assigned to the grantee by the Internal Revenue Service (IRS) for the purpose of filing tax information.

- ✓ **Fee Simple:** Absolute ownership of real property with unrestricted rights of disposition during the owner's life.

- ✓ **Firm Fixed-Price Contract:** A contract that provides for a price that is not subject to any adjustment in the performance of the contract.

- ✓ **Finding of No Significant Impact (FONSI):** A public document by a Federal agency or a KCDBG grantee briefly presenting the reasons why an action not otherwise excluded (40 CFR 1508.4) or exempt will not have a significant effect on the human environment and for which an environmental impact statement will not be prepared.

- ✓ **Full Release of Funds:** The date on which the grantee has received environmental clearance and DLG has received and approved all the items listed in the evidentiary section of the grant agreement.

- ✓ **Funding Agency:** Term used to refer to the entity that provides funding for an activity, project or program, as used particularly when completing environmental requirements. In the case of CDBG funds, DLG is the funding agency.

- ✓ **Grantee:** Refers to eligible communities that receive and use CDBG funds under the Commonwealth of Kentucky's CDBG Program.

- ✓ **Hispanic or Latino:** A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.

- ✓ **Household:** As defined in the Entitlement program, all persons occupying the same housing unit, regardless of their relationship to each other. The occupants could consist of a single family, two or more families living together, or any other group of related or unrelated persons who share living arrangements.

- ✓ **HUD Exchange:** Website with resources and information on various HUD programs, including CDBG. It can be found at www.hudexchange.info.
- ✓ **Inspection:** The examination and testing of supplies and services to determine if they conform to contractual requirements.
- ✓ **Internal Controls:** Policies and procedures that ensure project transactions will be carried out in conformity with applicable regulations and agency policy.
- ✓ **Invitation for Bids (IFB):** Under the sealed bidding method of procurement, the written solicitation document that explains what the grantee is buying and requests bids from potential contractors.
- ✓ **KCDBG:** Kentucky Community Development Block Grant.
- ✓ **KRS:** Kentucky Revised Statutes.
- ✓ **Language Assistance Plan (LAP):** A plan developed by organizations to address other-than-English language service capabilities for limited-English proficient (LEP) individuals.
- ✓ **Lease:** A contract in which a property owner (lessor) transfers the possession of an asset to another party (leasee), usually in exchange for the payment of rent.
- ✓ **Legally Binding Agreement:** Document entered into between the grantee and the nonprofit and/or participating party that defines and delineates each party's responsibilities as contained in the grant agreement.
- ✓ **Lien Position:** The order in which creditors will be satisfied in case of default.
- ✓ **Life Estate:** An estate or interest held during the term of a particular person's life.
- ✓ **Limited English Proficiency (LEP) Individuals:** Individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English.
- ✓ **Local Development Agency (LDA):** A locally based non-profit that is certified by the KCDBG program to implement CDBG activities under Section 105(a)15 and retain LDA proceeds, which are not considered program income and are not federal funds.
- ✓ **Local Match:** Funds provided by the locality/grantee as a condition of award/use of CDBG funds. Local match can come from a variety of non-grant, cash sources.
- ✓ **Low and Moderate Income (LMI):** As defined in the Consolidated Plan regulations and Section 8 Program a family whose annual income whose annual income is below 80 percent of the area family median income.
- ✓ **Low-income:** A household/family having an income below 50 percent of the area median income.

- ✓ **Microenterprise:** A commercial enterprise that has five or fewer employees, including the owner (or owners) of the business.
- ✓ **Middle Income:** As defined by the Consolidated Plan regulations, a household with an income between 80 and 95 percent of the area median income.
- ✓ **Minority:** A person or groups of persons differing from others in some characteristics such as race, color, national origin, religion, sex, disability or familial status.
- ✓ **Minority Business Enterprise/Woman-owned Business Enterprise (MBE/WBE):** Companies owned by minorities or women.
- ✓ **Miscellaneous Revenue:** Revenue recaptured by a grantee that is not program income and not subject to Federal requirements.
- ✓ **Moderate-income:** A household/family having an income above 50 percent but below 80 percent of the median income for the area.
- ✓ **Monitoring:** A routine review of projects during and after Federal assistance has been provided to the grantee.
- ✓ **National Objective(s):** Refers to the three main goals of the CDBG Program—(1) benefit to LMI persons, (2) prevent or eliminate slums/blight, or (3) meet a need having a particular urgency. All funds expended under the program must meet one of the three national objectives.
- ✓ **National Origin:** Can be defined as a person's ancestry, nationality group, lineage or country of birth of parents and ancestors before their arrival in the United States.
- ✓ **Native Hawaiian/Other Pacific Islander:** A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
- ✓ **Necessary and Appropriate:** The process used by the grantee to ensure that private firms benefiting from KCDBG projects will not be unduly enriched.
- ✓ **Negotiation:** Discussion regarding technical and price proposals with offers in the competitive range for a contract being awarded using the competitive proposals or noncompetitive proposal method of procurement.
- ✓ **Noncompetitive Proposals:** The method of procurement in which the grantee solicits proposal(s) from one source or a limited number of sources. This process may be used only under very limited circumstances and DLG must approve the use of noncompetitive proposals.
- ✓ **Noncompliance:** Failure or refusal to comply with an applicable law or regulation or DLG requirement.
- ✓ **Notice of Intent/Request Release of Funds (NOI/RROF):** The notice the grantee completes and submits to DLG once it is determined that a project will not require an environmental impact statement.

- ✓ **Office of Management and Budget (OMB):** This is the oversight agency of the Federal government.
- ✓ **Persons with Disabilities:** Persons who have physical or mental impairments that substantially limit one or more of their major life activities (i.e., talking, walking, working, etc.), have histories of those impairments, or are regarded as having those impairments under provisions of the ADA.
- ✓ **Participating Party:** For profit or nonprofit entity that is the beneficiary of the KCDBG funds awarded.
- ✓ **Potential Beneficiaries:** Those persons who are eligible to receive Federally- assisted program benefits and services.
- ✓ **Program Income:** Gross income received by a unit of general local government or a subrecipient that was generated from the use of CDBG funds.
- ✓ **Proposal:** In the competitive/noncompetitive proposal method of procurement, the offer submitted by a potential contractor.
- ✓ **Protected Class(es):** A person or persons who, by virtue of race or color, national origin, religion or creed, sex, disability, age or familial status are protected and given redress by the law when discriminated against.
- ✓ **Public Notification:** Process of publicizing information about CDBG projects. This is attained through the use of newspapers, newsletters, periodicals, radio and television, community organizations, grassroot and special needs directories, brochures, and pamphlets.
- ✓ **Public Posting:** Display of information such as notices in prominent locations throughout the community.
- ✓ **Quotation:** The price or offer submitted by a business in the small purchase method of procurement.
- ✓ **Recipient:** City and/or county that is awarded a KCDBG grant (also referred to as grantee). The term recipient can also be used to refer to beneficiaries of certain programs, like housing programs.
- ✓ **Regulations:** Refers to the implementing requirements that are developed and issued by the agency responsible for a certain program or requirement. In the case of CDBG, the regulations are issued by HUD and can be found at 24 CFR Part 570.
- ✓ **Request for Proposals (RFP):** Under the competitive proposal method of procurement, the agency's written solicitation to prospective firms to submit a proposal based on the terms and conditions set forth therein. Evaluation of the proposal is based on the factors for award as stated in the solicitation.
- ✓ **Request for Qualifications (RFQ):** A form of procurement of professional services by competitive proposals in which price is neither requested in the advertisement nor used as an evaluation factor. Only technical qualifications are reviewed and a fair and reasonable price negotiated with the most qualified firm.

- ✓ **Request for Quotations:** Under the small purchase method of procurement, a brief written request for a price quotation from potential contractors.

- ✓ **Responsible Bidder:** A bidder who has the technical and financial capacity to secure the necessary resources in order to deliver the goods or services.

- ✓ **Responsible Entity (RE):** Term used to refer to the entity responsible for completing and certifying an environmental review record, as required under 24 CFR Part 58. In the case of KCDBG funds, grantees (that are local governments) are the responsible entity.

- ✓ **Responsive Bid:** A bid that conforms exactly to the requirements in the invitation for bids (IFB).

- ✓ **Revolving Fund:** A separate fund that is independent of other program accounts established to carry out specific activities that, in turn, generate payments to the fund for use in carrying out such activities. Commonly used under CDBG program income funds for ongoing housing rehabilitation or economic development activities.

- ✓ **Right of Way:** A privilege operating as an easement upon land whereby the owner has given to another the right to pass over the land to construct a roadway or use as a roadway a specific part of the land. The right to construct through or over the land telephone, telegraph or electric power lines, or the right to place underground water mains, gas mains or sewer mains.

- ✓ **Sanctions:** Measures that may be invoked by DLG or HUD to exclude or disqualify someone from participation in HUD programs (e.g., debarment and suspension) or to address situations of noncompliance.

- ✓ **Sealed Bidding:** The procurement method for requesting competitive sealed bids. This method of procurement requires specifications be written clearly, accurately and completely describing the requirements. A public bid opening is held and evaluation of bids and award of the contract are based on the best bid submitted by a responsive and responsible contractor.

- ✓ **Section 3:** Refers to Section 3 of the Housing and Urban Development Act of 1968, as amended in 1992, which requires that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, be directed to low- and very low-income persons, and/or to businesses that provide economic opportunities to low- and very low-income persons.

- ✓ **Specifications:** Clear and accurate description of the technical requirements of a service or supply contract.

- ✓ **State Historic Preservation Office (SHPO):** The State office that determines whether a grantee's project includes historically significant properties under applicable environmental review requirements. In Kentucky, this office is the Kentucky Heritage Council.

- ✓ **Scope of Work (SoW):** Written definition of work to be performed that establishes standards sought for the goods or services to be supplied, typically used for service contracts.

- ✓ **Statute/Statutory:** Refers to requirements that have their basis in the law passed by Congress. In the case of CDBG, the statute is Title I of the Housing and Community Development Act of 1974. Statutory provisions cannot be waived by HUD, except in cases of a natural disaster, and must be changed or approved by Congress. There are also some parts of the Kentucky Revised Statutes applicable to the KCDBG Program.

- ✓ **Statutory Checklist:** A checklist covering environmental compliance required by other Federal agencies, executive orders and other HUD regulations (24 CFR 58.5).

- ✓ **Subrecipient:** Subrecipients are governmental or private nonprofit organizations chosen by the grantee to undertake certain eligible CDBG activities.

- ✓ **Super (Omni) Circular:** Regulations issued at 2 CFR 200 by the federal Office of Management and Budget (OMB) on December 26, 2013 (officially titled "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"), which is also referred to as the Omni Circular. The Super Circular supersedes and streamlines the uniform administrative requirements of 24 CFR Parts 84 and 85 as well as OMB Circulars A-133, A-110, and A-122. New audit requirements are effective for fiscal years beginning after December 26, 2014 (refer to Chapter 3).

- ✓ **System for Award Management (SAM):** An information system tool that streamlines the Federal acquisition business processes by acting as a single authoritative data source for vendor, contract award, and reporting information.

- ✓ **Termination for Convenience:** Termination of a contract on a unilateral basis when the grantee no longer needs or requires the products or services or when it is in the best interest of the grantee.

- ✓ **Termination for Cause:** Termination of a contract when the contractor fails to perform or make progress so as to endanger performance.

- ✓ **Time Delay:** An interruption during which services, supplies or work are not delivered in accordance with the performance time schedule stated in the contract.

- ✓ **Title VI of the Civil Rights Act of 1964:** Federal law (USC 2000d-4) prohibiting discrimination based on race, color or national origin.

- ✓ **Uniform Federal Accessibility Standards (UFAS):** Uniform standards for the design, construction and alteration of buildings so that physically disabled persons will have ready access to and use of them in accordance with the Architectural Barriers Act.

- ✓ **Uniform Relocation Act (URA):** The Federal regulation governing the acquisition of real property and the relocation or displacement of persons from Federally-assisted projects.

- ✓ **Urban Renewal Plan:** See Development Plan.

- ✓ **US Department of Housing and Urban Development (HUD**): HUD establishes the regulations and requirements for the program and has oversight responsibilities for the use of CDBG funds.

- ✓ **US Department of Labor (DOL):** Department of the U.S. Government that is responsible for Federal labor regulations and requirements.
- ✓ **US Environmental Protection Agency (EPA):** Department of the U.S. Government that is responsible for Federal environmental regulations and requirements.
- ✓ **Very Low-income:** As defined by the Consolidated Plan regulations and Section 8 Program, a family whose annual income falls in the range of 31 to 50 percent of the area median family income.
- ✓ **White:** A person having origins in any of the original peoples of Europe, North Africa or the Middle East.

Chapter 1: Project Administration

Introduction

Administering Kentucky Community Development Block Grant (KCDBG) grants requires regular attention to grant requirements and deadlines. This chapter provides grantees with general information on how to administer a CDBG grant from the Department for Local Government (DLG). The chapter details requirements for certified grant administrators, grant award procedures, release of grant funds, citizen participation and grievances, conflict of interest and record maintenance.

This chapter addresses the following:

1. Certified Grant Administrator Requirement
2. Grant Award Procedures
3. Release of Grant Funds
4. Citizen Participation and Grievance Procedures
5. Conflict of Interest
6. Meeting a National Objective
7. Project Signage
8. Applicable Laws and Regulations
9. Maintaining Records

The basic rules in this KCDBG manual may also apply to CDBG-Disaster Recovery (CDBG-DR); however, CDBG-DR funding allocations have additional or different rules and requirements that would be issued after a funding award. Please refer to your DLG Representative and HUD program guidance for questions or clarifications.

From the award of the grant-to-grant close out, the grant follows a specific course.

Section 1-A. Certified Grant Administrator Requirement

The Commonwealth of Kentucky requires that individuals administering CDBG funds be officially certified by DLG as CDBG Administrators.

Certification Requirements

To be certified as a CDBG Administrator, first time attendees must participate in the DLG-sponsored CDBG Administrator Certification training and pass a test, which is administered at the culmination of the training.

The test follows a comprehensive CDBG Administrator training, which is delivered periodically to allow individuals interested in CDBG administration the opportunity to become certified. The course will be marketed by the Commonwealth of Kentucky via the DLG website and email. Check the DLG website or reach out to a DLG representative for the dates the workshop is offered.

Upon completion of the training, individuals will be informed within approximately 60 days if they have successfully completed the test and received the certification.

It is important to note that it is the individual who attended the training and passed the test that receives the certification, not the firm that employs the individual. Therefore, if an individual leaves the organization the certification goes with the individual. A new CDBG Administrator at the organization will have to become certified.

DLG maintains an updated list of certified CDBG Administrators. The list is updated after new certifications are granted.

Periodic workshops are provided for previously Certified Administrators to update their knowledge and maintain the certification. Certified Administrators must attend required trainings (as notified by DLG) or the certification may be revoked. DLG reserves the right to revoke a certification in cases of repeated findings (refer to Chapter 12 for more information on monitoring) or failure to respond to DLG requests in a timely manner.

Section 1-B. Grant Award Procedures

Background Information

Submitting a CDBG funding application to DLG results in either an award or a notice of non-selection. Communities that are selected to receive a grant are sent a preliminary approval letter. This begins the process of setting up the grant and ensuring that all contractual documents are in place. The steps in the process for newly awarded grants are described in this section.

Steps in the Process

Setting up a new CDBG grant award involves a number of steps. These steps are outlined below.

1. DLG sends the preliminary approval letter to the grantee that announces the award, the amount of the grant, and instructions on how the grantee needs to respond (the process may differ depending on type of grant, i.e., housing, economic development, etc.). If the grantee accepts the terms specified in the preliminary approval letter, the Chief Executive Officer (CEO) will sign and return the offer.
2. The CEO of the grantee community attends a grant agreement conference with DLG staff and key parties such as the grant administrator, engineer/architect, subrecipient, etc. The meeting format and topics discussed will vary depending upon the type of grant.
3. After the grant agreement meeting, the CEO of the grantee community reviews the agreement with their legal counsel and both parties sign the agreement.
4. Two copies of the signed grant agreement are returned to DLG.
5. DLG processes and executes the grant agreement through the State approval system and defines all effective dates.
6. DLG maintains one copy of the grant agreement and sends the other copy back to the grantee for its records.

Grant Agreement Provisions

The grant agreement typically includes the following requirements and provisions:

✓ Legal boilerplate information,

- ✓ 2 CFR 200 (Subpart F) on audit information and requirements,
- ✓ Names and addresses of grantee and contacts,
- ✓ List of activities to be completed,
- ✓ A cost summary, and
- ✓ A list of all evidentiary items that are required prior to a release of funds (discussed in the next Section of this chapter).

Section 1-C. Release of Grant Funds

In order for the grantee to begin spending the grant funds, certain evidentiary materials must be submitted to DLG.

Evidentiary Materials Required

The grant agreement specifies which evidentiary materials are required for submission to DLG. DLG must receive and approve these materials before the grantee may expend any project funds for specified activities. Evidentiary materials will be required for the following items:

- ✓ Completion of an environmental review/environmental certification and required documentation (e.g., tear sheets for required notices) (See Chapter 2: Environmental Review);

Chapter 2: Environmental Review

- ✓ Firm commitments for "other funds" anticipated in the approved application. The local contribution should be placed in a restricted account for project use only;
- ✓ Evidence of mandatory sewer hook-up ordinance;
- ✓ Approval of Budget Ordinance/Amendment;
- ✓ Approval of Anti-displacement and Relocation Assistance Plan;
- ✓ Copy of adopted resolution approving the CDBG procurement code (see Chapter 4: Procurement);

Chapter 4: Procurement

- ✓ Cost overrun resolution stating that any cost overruns will be paid for by the grantee;
- ✓ State Clearinghouse assurance and comments;
- ✓ State Historic Preservation Office (SHPO) approval letter (See Chapter 2: Environmental Review);
- ✓ Evidence that tribal consultation requirements have been met (See Chapter 2: Environmental Review);
- ✓ Fair Housing Resolution or Ordinance (See Chapter 7: Fair Housing);

Chapter 7: Fair Housing

- ✓ Letter of designation of local fair housing/EEO responsible official
- ✓ Written assurance (on grantee letterhead signed by the designated grantee official) regarding
  - Maintenance of a copy of the State's Fair Housing Analysis of Impediments (AI)
  - Commitment to carry out fair housing activities (see list in Chapter 7)

- Maintenance of demographic records
- Required posters will be displayed
- Adoption of the State Title VI Plan
- Adoption of a drug-free workplace policy

✓ Policy of Non-Discrimination on the Basis of Disability Status (for grantees with 15 or more employees) (See Chapter 7: Fair Housing);

✓ Section 504 Accessibility Self Evaluation and Transition Plan (See Chapter 7: Fair Housing);

✓ Title VI Self Survey and Statement of Assurance or Title VI Implementation Plan (See Chapter 7: Fair Housing);

✓ Drug Free Workplace Statement;

✓ Submission of legally binding commitments between subrecipients, private participants and the grantee;

✓ Fully executed grant agreement;

✓ All inter-local agreements must be submitted for approval by either DLG or the AG office;

✓ Authorized Signature and Electronic Transfer of Funds Forms (See Chapter 3: Financial Management); and

Chapter 3: Financial Management
Chapter 5: Contracting

✓ Other possible documents:

- Submission of loan or lease agreements, as applicable;
- Submission of security documents, as applicable;
- Submission of certification by legal counsel relating to each of the above documents; and
- Submission of revolving fund procedures as applicable.

Similar to other community projects, economic development activities often require pre-approval of legal agreements, due to the participation of private, for-profit businesses in these projects. In addition to the above required materials, special conditions or materials may be required depending on the type of grant funded. It is recommended that the grantee submit all of the evidentiary items together in one package. The grantee should not hesitate to contact DLG with any questions, as delays in submitting these materials will delay program implementation.

Request for Approval of Evidentiary Materials and Release of Funds

After completing the evidentiary materials, the grantee should prepare the Request for Release of Funds and attach the necessary documentation (see Attachment 1-1: Request for Approval of Evidentiary Materials and Release of Funds). DLG will review the Request for Release of Funds and other documentation, and notify the grantee upon approval. Once approval is received, the grantee can begin expending project activity funds.

Attachment 1-1:
Request for Approval
of Evidentiary Materials
and Release of Funds

Note: **Grantees should note that DLG may terminate the grant and grant agreement if the required evidentiary and release of funds documentation are not submitted to the department within 90 days of the date of the preliminary approval letter.**

Note: **If the grantee obligates or expends any project funds for any activity (except for those costs relating to engineering and planning, as applicable) prior to DLG approval of the environmental clearance, these costs are considered an ineligible use of KCDBG funds and the grantee will be denied payment for such expenses.**

Section 1-D. Citizen Participation and Grievance Procedures

It is important that citizens of local jurisdictions are able to participate in the funding and decision-making process of local CDBG projects. To that end, Section 5304(a)(2) and (a)(3) of Title I and 24 CFR 570.486(a)5 and 91.115(e) require grantees to provide adequate citizen participation in the planning, implementation, and evaluation of CDBG activities.

Section 5304(a)(2)(3) of Title I of the Housing and Community Development Act of 1974
24 CFR 570.486(a)5
24 CFR 91.115(e)

Citizen Participation

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

Program Guidelines, "Citizen Participation Plan"

Grantees are required to conduct at least two public hearings during the course of the grant to elicit citizen feedback on the following:

- ✓ **Needs Assessment:** Solicit input on community development and housing needs as well as potential activities. This hearing must be held prior to application submission.
- ✓ **Review of Performance:** Review past use of funds and program performance. This hearing must be held prior to grant close-out. (Refer to Chapter 13: Project Closeout for more information on the close-out process and the required hearing at this stage.)

Chapter 13: Project Closeout

The citizen participation requirements include that the grantee must identify how the needs of non-English speaking residents will be met in the case of a public hearing where a significant number of non-English speaking residents can be reasonably expected to participate.

KYCDBG recipients are obligated under 24 CFR 91.105 (a) (2)(ii), and 24 CFR 91.115 (b)(3)(iii) to provide language services for the citizen participation process. The regulations provide that for CDBG recipients, "…[a] jurisdiction also is expected to take whatever actions are appropriate to encourage the participation of all its citizens, including minorities and non-English speaking persons, as well as persons with disabilities."

Chapter 7: Fair Housing and Equal Opportunity

Developing a Language Assistance Plan (LAP) is one of the steps that recipients and subrecipients must take to demonstrate that they have taken "reasonable steps" to provide language services to persons who have Limited English Proficiency (LEP), or who are considered LEP persons. See Chapter 7: Fair Housing and Equal Opportunity for more information or contact DLG for additional guidance.

Additional public hearings must be held if a substantial amendment to a funded activity occurs. See Chapter 12: Amendments and Monitoring for more information on substantial amendments.

Chapter 12: Amendments and Monitoring

The grantee, at a minimum, must perform the following activities in advance of all public hearings:

- ✓ **Develop the hearing notice** with the following elements (see Attachment 1-2: Sample Public Hearing Notice):
  - Description of the project;
  - Description of CDBG funding available, program income available, and parameters for assistance;
  - Amount of CDBG funds being requested and for which activities;
  - Anti-displacement plan (if applicable) due to activity undertaken;
  - Record of past uses of CDBG;
  - Summary of other important program requirements and available technical assistance;
  - Information for persons with disabilities on how to request an accommodation, including how to request documents in an alternative format; and
  - The State TDD number (800) 648-6056 or State relay number (800) 648-6057 or 711.

Attachment 1-2: Sample Public Hearing Notice

- ✓ **Publish the public hearing notice** as per the guidance provided below.
- ✓ **Also, an applicant/grantee must make additional efforts to notify the public by utilizing one or more of the methods set forth below**:
  - Post the notice of public hearing in public places such as city/county government buildings, libraries, etc.
  - Distribute leaflets or flyers to low- and moderate- income neighborhoods in prominent locations (i.e., grocery stores, churches, community centers, door-to-door, etc.) to notify the residents of hearings.
  - Conduct public service announcements on radio stations or television.
  - Post the public hearing announcement on web site and/or distribute e-mail announcement.
- ✓ **Conduct the public hearing** to inform the public about the CDBG activities being undertaken. At a minimum, the grantee must ensure the hearing involved the following components:
  - Held in handicapped-accessible location and/or provide accommodation for persons with disabilities so that they may participate;
  - Chosen at a time and date convenient for potential or actual beneficiaries;
  - Arranged for interpreters for non-English speaking persons (if necessary); and
  - Keep an attendance list and take minutes of the meeting, which should be signed and dated and placed in the files.

24 CFR 570.486
KRS 99.350(8)
KRS 61.252(1)

- ✓ **Respond to any written comments** that are received during the public hearing process. At a minimum, the grantee must:
  - Indicate comments were considered (including verbal comments at public hearings);
  - Cite reasons for rejection, if applicable; and
  - File comments and responses in the citizen participation file.

Public Notice/Advertisement Requirements

All legal advertisements required as part of the administration of a CDBG project, including, but not limited to, citizen participation, environmental review (Chapter 2) and procurement (Chapter 4), shall be published according to KRS Chapter 424. The advertisement must include the date, time, and location of the hearing, end of comment period, or bid opening.

Note: **Failure to strictly adhere to the requirements in this section may result in the advertisement being declared void and another advertisement being required or an application being rejected.**

Times of Publication

The general rule for legal advertisements is that the advertisement must run not less than seven, nor more than 21 days prior to the hearing, end of comment period, or bid opening. See Chapter 2 for more specific requirements for Environmental Review advertisements.

When a grantee desires to extend a deadline beyond the 21-day maximum, the grantee must advertise twice, and the second advertisement must fall within the publication window defined above. An exception to this would be an extension of a bid opening as part of a bid addenda, provided it is done within 72 hours of the original bid opening date. Please refer to Chapter 4: Procurement for more information on bid advertisements and addenda.

Calculation of Time

In calculating any period of publication required under a CDBG project, the date of the advertisement **shall not** be counted in the calculation.

Example: **For a citizen participation hearing scheduled to be held on the 25th day of the month (a Thursday), assuming a seven to 21-day publication period:**

Earliest possible advertisement date: **Thursday the 4th**

Latest possible advertisement date: **Thursday the 18th**

Grantees **shall not** schedule hearings or bid openings on Sundays or legal holidays. Whenever a public comment period ends on a Saturday, Sunday, or legal holiday, grantees shall accept comments until the end of the next day that is not a Saturday, Sunday, or legal holiday.

Qualifications of Newspapers

All advertisements shall be published, pursuant to KRS 424.120, in the **newspaper** of largest bona fide paid circulation that publishes in the publication area. A newspaper is considered to "publish" in the

publication area **only** if maintains its principal office in the publication area. "Publication area" means "the city, county, district, or other local area for which an advertisement is required by law to be made."

Grievance Procedures

Grievances Received by Grantees

Occasionally grantees receive complaints regarding their projects and activities; therefore, it is required under the citizen participation requirements that the grantee develop a procedure to respond to complaints and grievances.

Grantees must provide citizens with an address, phone number, and time period for submitting complaints and grievances. The grantee must respond to the complaint within 15 working days of receipt, where practical.

Each complaint and the resolution to the complaint should be well documented in the grantee's files and kept in a project complaint file for any project related complaints.

Grievances Received by DLG

Because complaints and grievances are best handled at the local level, DLG will forward any complaints it receives concerning projects to the grantee for response. The complainant will be notified that the complaint has been forwarded to the grantee for resolution. The grantee will follow their grievance procedures.

The grantee has to follow the same timeline of 15 working days from receipt from DLG (where practical). A copy of the letter of resolution must be submitted to DLG. If the grantee does not provide a resolution, DLG will work with the grantee and the complainant to resolve the complaint.

Section 1-E. Conflict of Interest

Conflict of interest requirements must be adhered to in order to ensure that public officers and employees are not gaining a financial and/or any other benefit in the procurement of goods and services, as well as in determining direct beneficiaries. Efforts should be made to recognize and resolve potential conflicts in the application phase of a project; however, a grantee must be vigilant throughout implementation.

Requirements and Persons Covered

Conflict of interest requirements are covered in the following:

- ✓ State CDBG regulations at 24 CFR 570.489;
- ✓ 2 CFR Parts 200, 215, 220, 225 and 230;
- ✓ KRS 45A.340 (covers what specifically constitutes a "conflict of interest" pertaining to public officers and employees) for public municipalities that have adopted the Model Procurement Code;
- ✓ KRS 99.350(8) (covers public officers and employees that participate in the formulation of a development area and dictates what conflicts are prohibited); and
- ✓ KRS 61.252 covers city employees, officers and exceptions to conflicts of interest.

24 CFR 570.489
2 CFR Parts 200, 215, 220, 225 & 230
KRS 45A.340
KRS 99.350(8)
KRS 61.252

The CDBG requirements pertaining to conflict of interest are summarized in the following paragraphs:

- ✓ **Conflicts Prohibited:** Except for the use of CDBG funds to pay salaries and other related administrative or personnel costs, the general rule is that no persons covered (defined below) who exercise or have exercised any functions or responsibilities with respect to CDBG activities or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds there under, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

  24 CFR Part 570.489(h)

- ✓ **Persons Covered:** The conflicts of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the State, the unit of local government, or of any designated public agencies or subrecipients that are receiving CDBG funds.
- ✓ **Exceptions:** Upon the written request of the recipient, DLG may review the provisions of this section on a case-by-case basis when it determines that such an exception will serve to further the purposes of Title I and the effective and efficient administration of the program or project. An exception may be considered only after the local government has provided the following:
  - A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and
  - A certification the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted activity in question;
  - An opinion of the local government's attorney that the interest for which the exception is sought would not violate State or local law.

Section 1-F. Meeting a National Objective

Before any activity can be funded in whole or in part with KCDBG funds, a determination must be made as to whether the activity is eligible under Title I of the Housing and Community Development Act of 1974, as amended. Additionally, activities must also meet one of the three national objectives.

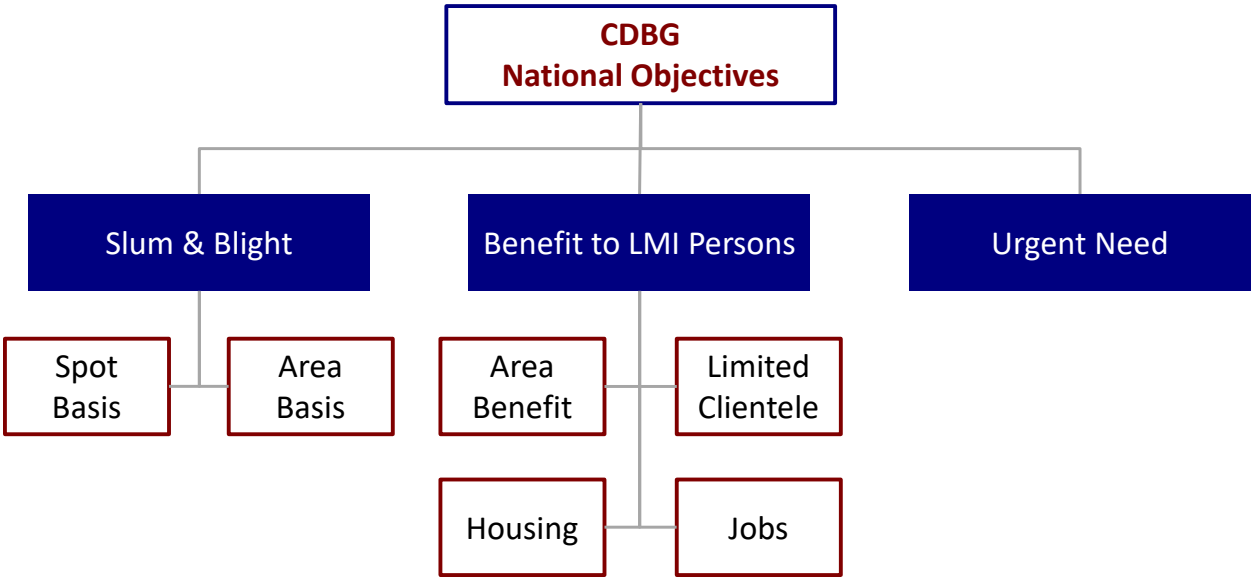
42 U.S.C. 5304(b)(3) and 24 CFR 570.483

All projects funded under KCDBG must address at least one of three national objectives of the CDBG Program. A determination of the eligibility of an activity is made as a part of the DLG application review process. DLG also reviews which national objective category a project will fall under. However, under the CDBG regulations, a project is not considered as *meeting* a national objective until it is complete. Therefore, grantees must be aware of the national objective category and document compliance appropriately.

National Objectives

- ✓ Benefit low- and moderate-income (LMI) persons
- ✓ Aid in the prevention or elimination of slums or blight
- ✓ Meet other community development needs having a particular urgency

There are a number of different criteria by which an activity can meet one of the three national objectives, as shown in the following exhibit:



The LMI national objective is often referred to as the "primary" national objective because the regulations require that DLG expend the majority of State CDBG funds to meet this particular objective. Applicants must ensure that the activities proposed, when taken as a whole, will not benefit moderate-income persons to the exclusion of low-income persons.

For more information regarding the national objectives, grantees should download a copy of the Guide to National Objectives and Eligible Activities for the State CDBG Program.

Guide to National Objectives and Eligible Activities for State CDBG Program:
https://www.hudexchange.info/resource/2179/guide-national-objectives-eligible-activities-state-cdbg-programs/

Section 1-G. Project Signage

Nonresidential construction projects funded by the KCDBG Program are required to have signage at the project site. The signage informs citizens that the project is being funded by DLG's CDBG Program, as well listing the sponsor, architect and/or engineer and contractor. The sign includes the required equal opportunity language. Visit https://kydlgweb.ky.gov/FederalGrants/CDBG_cities.cfm for the specifications for the required construction sign.

Section 1-H. Drug-Free Workplace

Grantees are required to make a good faith effort to ensure that they operate a drug-free workplace by providing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition. Additionally, grantees must establish an ongoing drug-free awareness program to inform employees about the dangers of drug abuse, the grantee's policy of maintaining a drug-free workplace, any available drug counseling or

rehabilitation, and the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

- ✓ Each person employed by a grantee that works on a project funded with CDBG dollars must be given a copy of the grantee's drug-free workplace statement.
- ✓ Employees must also be notified that, as a condition of working with CDBG dollars, they must abide by the terms of the statement and notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such a conviction.
- ✓ If an employee is convicted of committing a drug-related offense in the workplace, the grantee must notify every grant officer or other designee on whose grant activity the convicted employee was working. The notice should include the employee's name and title as well as the identification number(s) of each affected grant.
- ✓ Within 30 calendar days of a conviction, grantees must also take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended, or require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency.

Section 1-I. Applicable Laws and Regulations

The following is a list of federal laws, Executive Orders and State statutes applicable, in whole or in part, to the KCDBG Program. This list may not be all-inclusive as there are many laws, regulations and other requirements that may apply. To obtain copies of most of the federal publications, see the website address provided in the box to the right.

For copies of laws and regulations, go to the Government Printing Office at http://www.gpo.gov

Or

Go to the HUD Exchange at https://www.hudexchange.info/programs/cdbg/cdbg-laws-and-regulations/.

General Statutes and Regulations

- ✓ Title I of the Housing and Community Development Act of 1974, as amended
- ✓ 24 CFR Part 570, Subpart I, Community Development Block Grant: State Program Regulations; Subpart C, Eligible Activities
- ✓ Kentucky Revised Statutes available at www.lrc.state.ky.us/krs/titles.htm

Acquisition/Relocation

- ✓ 24 CFR Part 42 (includes Uniform Relocation Assistance and Real Property Acquisition Policies Act
- ✓ Section 104(d) (One for One Replacement)
- ✓ 24 CFR Part 570.606, Displacement, Relocation, Acquisition, and Replacement of Housing
- ✓ KRS 416

Fair Housing, Equal Opportunity and Accessibility

- ✓ Title VI-Civil Rights Act of 1964
- ✓ Title VII-Civil Rights Act of 1968
- ✓ Title VIII-Civil Rights Act of 1968, as amended
- ✓ Section 109 of the Housing and Community Development Act of 1974, as amended
- ✓ Section 504 of the Rehabilitation Act of 1973, as amended
- ✓ Executive Order 11246-Equal Employment Opportunity, as amended by Executive Order 11375, Parts II and III
- ✓ Executive Order 11063-Equal Employment Opportunity, as amended by Executive Order 12259
- ✓ Equal Employment Act of 1972
- ✓ Age Discrimination Act of 1975, as amended
- ✓ Executive Order 12432-National Priority to Develop Minority and Women Owned Businesses
- ✓ Executive Order 12138-National Women's Business Enterprise Policy
- ✓ Executive Order 11625-Minority Business Participation
- ✓ Executive Order 12892-Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing
- ✓ Vietnam Era Veterans' Readjustment Assistance Act of 1974
- ✓ Immigration Reform and Control Act of 1986
- ✓ Fair Housing Amendment Act of 1988, as amended
- ✓ Americans With Disabilities Act of 1990
- ✓ Civil Rights Restoration Act of 1988
- ✓ 24 CFR Part 5 (FR 5863-F-02) and 24 CFR Part 100 (FR 5248-F-02)
- ✓ Kentucky Civil Rights Act, Chapter 344

Environmental

- ✓ National Environmental Policies Act of 1970, as amended
- ✓ National Historic Preservation Act of 1966, as amended (Section 106)
- ✓ Executive Order 11593, Protection and Enhancement of the Cultural Environment
- ✓ 24 CFR Part 58
- ✓ Executive Order 11988 and 24 CFR Part 55, Floodplain Management
- ✓ Executive Order 11990, Protection of Wetlands

CPD Notice 17-13: Notice for Interpreting the Limits of the Floodway for Linear Infrastructure Projects Complying with HUD Floodplain Management Regulations, 24 CFR Part 55

- ✓ 40 CFR 149, Sole Source Aquifers
- ✓ Safe Drinking Water Act of 1974, as amended
- ✓ Endangered Species Act of 1973, as amended, and 50 CFR 402
- ✓ Wild and Scenic Rivers Act of 1968, as amended
- ✓ Clean Air Act, as amended (Sections 176(c) and (d)) and 40 CFR 6, 51 & 93
- ✓ Clean Water Act
- ✓ Solid Waste Disposal Act, as amended
- ✓ Farmland Protection Policy Act of 1981 (7 CFR 658)
- ✓ 24 CFR 51 B, Noise Abatement and Control
- ✓ 24 CFR 51 C, Siting of HUD-Assisted Projects Near Hazardous Operations
- ✓ 24 CFR 51 D, Airport Clear Zones and Accident Potential Zones
- ✓ Executive Order 12898, Environmental Justice

Financial Management

- ✓ 2 CFR Part 200 (OMB Omni Circular) as adopted by HUD at 2 CFR Part 2400
- ✓ 24 CFR Part 570
- ✓ KRS 43
- ✓ KRS 91A
- ✓ Housing and Community Development Act, Section 104c

Housing Rehabilitation (see also Fair Housing)

- ✓ Truth in Lending Act
- ✓ Title I Consumer Protection Act
- ✓ Lead Safe Housing Rule, 24 CFR Part 35
- ✓ Architectural Barriers Act of 1970 (41 CFR Part 101-107)

Labor Standards

- ✓ Federal Labor Standards Act, including Davis-Bacon
- ✓ 24 CFR Part 24, Debarment and Suspension
- ✓ Contract Work Hours and Safety Standards Act
- ✓ Copeland “Anti-Kickback” Act
- ✓ KRS 337

Procurement and Contracting

- ✓ Section 3 of Housing and Urban Development Act of 1968, as amended
- ✓ 2 CFR Parts 200 (200.317-200.326)KRS 45A
- ✓ KRS 424

Section 1-J. Maintaining Records

It is important that the grantee fully document compliance with all applicable regulations. This is accomplished through maintaining comprehensive records and submitting all necessary reports.

The filing system should be easy to use and provide a historic account of activities for examination and review by the State, auditors and local staff. All records must be available to the following entities upon request:

- ✓ U.S. Department of Housing and Urban Development,
- ✓ The Inspector General,
- ✓ The General Accounting Office,
- ✓ The Comptroller General of the United States,
- ✓ Department for Local Government,
- ✓ Legislative Research Commission, and
- ✓ Auditor of Public Accounts.

These entities must have access to any pertinent books, records, accounts, documents, papers, and other property that is relevant to the grant. Certain records must be available to the public as well. However, grantees must keep files that contain personal information, such as social security numbers, in a secure place.

Files should, to the extent possible, be maintained in a central location. The grantee is responsible for maintaining records for ***at least five years*** after final project close-out.

The list below identifies major file categories, and the materials that should be maintained in each file. This list is not all-inclusive; therefore, refer to applicable laws and regulations as well as the other chapters of this handbook for more information.

National Objectives

Grantees must maintain records that funded activities meet one of the national objectives. Depending on the objective, the files must contain the specific documentation below. This documentation can also be used in reporting performance measures information.

- ✓ Low/Mod Area Benefit
  - Boundaries of service area
  - Census data including total persons and percentage low/mod
  - Evidence area is primarily residential

- Survey documentation (if applicable)

✓ Low/Mod Limited Clientele

- Documentation that the beneficiaries are low/mod or presumed to be low/mod (by category)

✓ Low/Mod Housing (see also Housing section below)

- Income verification of households (using the Section 8 definition) including source documentation

✓ Low/Mod Job Creation and Retention

- Number of jobs created or retained
- Type and title of jobs created or retained
- Income of persons benefiting from the jobs created or retained

✓ Slum and Blight

- Area designation (e.g., boundaries, evidence area meets State slum/blight requirements)
- Documentation and description of blighted conditions (e.g., photographs, structural surveys, or development plans)
- If applicable, evidence that the property meets spot designation requirements (e.g., inspections)

✓ Urgent Need

- Documentation of urgency of need and timing
- Certification that other financing resources were unavailable and CDBG had to be used

Application

✓ Application

✓ Amendments and revisions to the application, if any

✓ Correspondence regarding the application

Grant Agreement

✓ Preliminary Approval Letter

✓ Grant Agreement

✓ Records/correspondence concerning Evidentiary Materials

✓ Amendments and documentation

✓ Performance Measures information

Acquisition

✓ Acquisition Documentation System Chart

✓ Property Acquisition File for each property acquired

✓ Written letter of voluntary acquisition

- ✓ For involuntary acquisition:
  - HUD Form 40061, "Selection of Most Representative Comparable Replacement Dwelling for Purposes of Computing a Replacement Housing Payment"
  - Documentation of eminent domain authorization, if applicable
  - Contract of sale
  - Statement of Settlement Costs showing the grantee reimbursed the property owner for acquisition price, recording fees, transfer taxes, title option, prepayment penalty on a mortgage, and pro-rate share of property taxes, etc.
  - Receipt for purchase price and the cancelled check
  - Copy of the recorded deed
- ✓ Urban Renewal Plan, if applicable
- ✓ Statement of Qualification of Appraisers
- ✓ Kentucky Appraisal Certificate
- ✓ Appraisal contracts
- ✓ Donations/Waiver of Rights and Benefits of the Uniform Act
- ✓ Copies of public solicitations for voluntary acquisitions
- ✓ Annual Report on Relocation and Real Property Acquisition Activities
- ✓ Acquisition Log of Contacts

Audit

- ✓ Professional Services Agreement with independent CPA (if paid with CDBG funds)
- ✓ Annual audit(s), as applicable
- ✓ Documentation that all CDBG-related audit findings and any questioned costs have been cleared

Citizen Participation

- ✓ Documentation of the public hearings (notices, minutes, comments/responses)
- ✓ Documentation of comments received and responses
- ✓ Complaint procedures
- ✓ Complaints and resolution documentation

Fair Housing and Equal Opportunity

- ✓ Fair Housing Resolution
- ✓ Policy of Nondiscrimination on the Basis of Disability Status (for grantees with 15 or more employees)
- ✓ Project Benefit Profile and documentation
- ✓ Local government employment records

- ✓ Fair Housing Profile
- ✓ Demographic data, including data for target area projects
- ✓ Employment Affirmative Action Plan
- ✓ Documentation of actions taken to affirmatively further fair housing in the community
- ✓ Section 504 Self Evaluation and Transition Plan and project documentation
- ✓ Title VI Implementation Plan and Self-Survey
- ✓ Drug Free Workplace Certification
- ✓ Record of complaints and how they were resolved

Contracts

- ✓ Bid package(s)
- ✓ Professional contract(s)
- ✓ Pre-construction activities
  - Council/Fiscal Court authorization of contract award
  - Notice of Contract award and Preconstruction Conference sent to DLG's Office of Federal Grants
  - Notice to proceed issued to contractor and a copy to DLG
- ✓ Documentation of construction inspection
- ✓ Notice of Completion/ Final Inspection
- ✓ Adequate documentation of services provided, including invoices and deliverables
- ✓ If a Section 3 Plan was required, documentation that it was carried out
- ✓ Construction contract/subcontracts
- ✓ Attorney certification
- ✓ Evidence of bonding
- ✓ Legally binding agreement(s)

Economic Development

- ✓ Procurement Form and the Contracting & Contract Management Form, if applicable
- ✓ Minority & Women's Business Enterprise Form, if applicable
- ✓ Labor Standards Form, if applicable
- ✓ Property Acquisition Form, if applicable
- ✓ Business Relocation Form, if applicable
- ✓ For Infrastructure projects
  - Assessment plan, if required

- Documentation that entities covered under the infrastructure assessment plan have been reporting as required

✓ For activities carried out through nonprofit organizations

- Legally binding agreements
- Documentation of eligible costs
- Evidence that the nonprofit has conducted an on-site inventory of equipment purchased or leased with grant funds
- Building and equipment appraisals, if applicable

✓ For direct assistance to businesses

- Evidence that the grantee has conducted an on-site inventory of equipment purchased with grant funds
- Building and equipment appraisals, if applicable

✓ For microenterprise assistance

- Evidence that the entity providing training has written agreements with owners outlining their responsibilities
- Documentation of the cost of providing training

✓ For service facilities in support of economic development

- Legally binding agreement with assisted businesses
- Documentation of eligible costs

✓ Loan/lease and security documents

✓ Job creation/retention documentation

Environmental Review

✓ Environmental Review Record

✓ Finding of Exemption, Finding of Categorical Exclusion Not Subject to 24 CFR Part 58.5, or Statutory Checklist for Categorically Excluded Activities/Projects

✓ Combined Notice of Finding of No Significant Impact (FONSI) Determination and Notice of Intent to Request Release of Funds published in the local newspaper

✓ Public Notice Distribution List

✓ Request for Approval of Evidentiary Materials

✓ Environmental Certification signed by the Certifying Officer

✓ Historic Preservation and tribal consultation documentation, as applicable

✓ Environmental Assessment Checklist and documentation for projects requiring an Environmental Assessment

Financial Management

- ✓ Authorized Signature Form
- ✓ Direct Electronic Transfer of Funds Form
- ✓ Requests for Payment
- ✓ Accounting records
- ✓ Record of commitment of other funds
- ✓ Source documentation (approved invoices, payrolls, contracts, etc.)
- ✓ Canceled checks, deposit slips, bank statements, etc.
- ✓ Copy of current city or county budget or amendments
- ✓ Records documenting acquisition of asset(s)
- ✓ Records of any disposition of properties
- ✓ Program income records including revolving loan funds (receipt, accounting, expenditure, etc.)

Housing

- ✓ Program guidelines
- ✓ Local rehabilitation policies and procedures
- ✓ Applications for assistance
- ✓ Rehabilitation Household Survey
- ✓ Income verifications
- ✓ Rehabilitation contract file for each job
- ✓ Lead-Based Paint Hazard Notification, documentation the appropriate pamphlet was provided, and notification of any hazard reduction activity and clearance results
- ✓ Lead-Based Paint Testing Report, Assessment and/or Screening report
  - For projects where the level of assistance provided is under $5,000, a clearance report
  - For projects where the level of assistance provided is $5,000-$25,000, a clearance report
  - For projects where the level of assistance provided is over $25,000, an abatement report
- ✓ Work write-ups and cost estimates (including lead-based paint work calculations if necessary)
- ✓ Evidence of systematic and thorough inspections
- ✓ Notice of Acceptance of work signed by the homeowner for each payment
- ✓ Documentation of change orders
- ✓ Evidence and certification of Safe Work Practices and Occupant Protection (including relocation, if necessary)
- ✓ Documentation of exemptions when relocation was not required

- ✓ Written agreements
- ✓ Certificate of Inspection, at project completion
- ✓ Executed loan/grant documents
- ✓ Proof of ownership
- ✓ Certification of primary residence
- ✓ Proof of current insurance
- ✓ For multifamily rehab:
  - Documentation that the rents for the LMI units do not exceed the applicable HUD FMR for the area (by bedroom size)
  - Documentation of a local system that monitors rents charged (or to be charged) after rehab, for each dwelling unit in each rehabilitated structure.
  - Estimated number of units rehabilitated in each structure and the percent of units that will be occupied by low- and moderate-income households.
- ✓ For single-family rehab:
  - An estimate of the number of units to be rehabilitated
  - Income characteristics of the area in which the rehabilitation is to be carried out
  - Number of units to be rehabilitated for low- and moderate-income households
  - Amount spent on each unit to be rehabbed for low- and moderate-income households
- ✓ Progress reports
- ✓ Release of liens and warranties signed by the contractor and any subcontractors

Labor Standards

- ✓ Federal and state wage rates, as applicable
- ✓ Construction bid and awards
- ✓ Contracts containing proper and applicable labor standards provisions
- ✓ Notice of Contract Award and Notice to Proceed
- ✓ Change orders
- ✓ Weekly payrolls from prime and subcontractors
- ✓ Payroll Deduction Authorizations
- ✓ Employee interview forms
- ✓ Overtime waivers
- ✓ Evidence that the contractor posted the wage rate decision and wage rate poster at the job site (with the date and time noted by inspector)
- ✓ Documentation of resolution of any underpayment or nonpayment of wages

Procurement

- ✓ Procurement Code
- ✓ Professional services contract procurement files
- ✓ Construction contract procurement files
- ✓ Evidence of MBE/WBE outreach efforts and listing
- ✓ Contract/Subcontract Activity Report
- ✓ Section 3 Plan and evidence of qualitative efforts
- ✓ Notice of Contract Award and Notice to Proceed
- ✓ Signed contract with scope of work
- ✓ Documentation of three price quotes for small purchases
- ✓ Copies of all bids received and bid tabulation for competitive sealed bids
- ✓ RFQ/RFP, responses to RFQ/RFP, and written basis for selection for competitive negotiation awards
- ✓ Documentation that the contractor performing the grant administration is a Certified Administrator, if applicable
- ✓ Evidence of a wage rate modification obtained from DLG, if contract was awarded after 90 days.
- ✓ Written statement explaining why each low bidder was deemed non-responsible or non-responsive, if contract not awarded to lowest bidder.

Relocation/Displacement

- ✓ Residential Anti-displacement and Relocation Assistance Plan
- ✓ One-for-One Replacement Summary Grantee Performance Report
- ✓ Relocation file for each relocated or displaced household
  - Documentation of owner receiving reimbursement for moving expenses
  - Receipts of moving expenses to document cost reasonableness
  - Various forms, as required (see Chapter 8: Relocation)

Chapter 8: Relocation

Monitoring

- ✓ State letters of findings/recommendations
- ✓ Grantee response to letter of findings
- ✓ State response to clearance of findings
- ✓ Other correspondence related to compliance assistance reviews and technical assistance visits

Grant Close-out

- ✓ Close-out Public Hearing Notice, minutes and comments/responses
- ✓ Project Completion Report (PCR)

Chapter 2: Environmental Review

Introduction

The purpose of the environmental review process is to analyze the effect a CDBG-funded project may have on the people in and the natural environmental features of a project area.

Grantees who are recipients of KCDBG funds are considered responsible entities (REs) and must complete an environmental review of all project activities prior to obligating any project funds. This requirement also applies to projects funded with KCDBG-generated program income.

This chapter will cover the environmental regulations and requirements that must be followed on all KCDBG funded projects. Definitions, forms and step-by-step instructions on how to complete the environmental reviews are provided within this chapter and its attachments.

Section 2-A. Applicable Regulations

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

24 CFR Part 58:
Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities

The information contained in this chapter summarizes a number of state and federal statutes and regulations and is solely intended to give the grantee (responsible entity) an overview of its obligations in the environmental review process. Citation of these summaries may not be used as the basis for any action or inaction or as a defense in any litigation. The grantee (responsible entity) and the Environmental Certifying Officer are responsible for referring to and complying with the specific citations listed herein.

Section 2-B. Legal Responsibilities

The Responsible Entity

Under 24 CFR Part 58, the term "responsible entity" (RE) means the grantee (unit of local government) under the state CDBG Program. Therefore, these terms are used interchangeably with grantee throughout this chapter and the attachments. (The term "funding agency" is used in place of DLG, but can be interpreted to include any agency that provides funds to a project and has environmental oversight responsibilities.) The responsible entity must complete the environmental review process.

Environmental review responsibilities have both legal and financial ramifications. As part of the assurances and agreements signed by the responsible entity, the Chief Executive Officer (CEO) of the

responsible entity agrees to assume the role of "responsible federal official" under the provisions of the National Environmental Policy Act (NEPA). This means that if someone brings suit against the responsible entity in federal court on environmental grounds, the CEO will be named as the defendant. There may be financial implications associated with any lawsuit and, of course, any fines, judgments or settlements that may result. The Commonwealth of Kentucky accepts no responsibility or liability for the quality or accuracy of the local environmental review process. DLG's responsibility is to inform the grantee of the proper procedural requirements of various environmental statutes, regulations, and executive orders and review that process.

Environmental Certifying Officer

Under Part 58, the local chief elected or appointed official must assume the role of the Environmental Certifying Officer (ECO) or formally designate another person to do so. If the CEO does designates a staff person to serve as the ECO, this designation must be made in writing and signed by the CEO and placed in the Environmental Review Record (ERR).

The ECO accepts full responsibility for the completeness and accuracy of the review and compliance with applicable laws and regulations. Local officials should review the municipal liability and indemnification statutes as well as the status and coverage of local liability insurance policies when accepting responsibility under environmental laws. The responsibilities of the ECO include making findings and signing required certifications.

Other key points regarding the ECO designation include:

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

Environmental Review Record

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

24 CFR Part 58.38

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

- ✓ Describe the project and each of the related activities comprising the project, regardless of individual activity funding source;
- ✓ Evaluate the effects of the project or the activities on the human environment;

- ✓ Document compliance with applicable statutes and authorities; and
- ✓ Record the written determinations and other review findings required by 24 CFR Part 58.

The ERR will vary in length and content depending upon the level of review required for the categories of proposed activities.

Public comments, concerns and appropriate resolution by the recipient with regard to public notices that have been issued by the grantee are extremely important and must be fully documented in the ERR.

Section 2-C. Actions Triggering Environmental Review and Limitations Pending Clearance

Actions Triggering the Requirements of Part 58

All HUD-assisted activities must have some level of environmental compliance review completed for them. Compliance with the Part 58 requirements is initiated with the acceptance of applications from applicants for KCDBG funds to the state.

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

There are certain kinds of activities that may be undertaken without risking a violation of requirements of Part 58. For example, the act of either hiring a consultant to prepare a Phase I Environmental Site Assessment (an investigative study for environmental hazards), or hiring a consultant to complete an engineering design study or plan, or a study of soil and geological conditions, would be allowed. Environmental compliance reviews for these activities may be completed early on, and even prior to the grantee's execution of a grant agreement with the state.

24 CFR Part 58.22

Limitations Pending Environmental Clearance

According to the NEPA (40 CFR 1500-1508) and Part 58, the RE is required to ensure that environmental information is available before decisions are made and before actions are taken. In order to achieve this objective, Part 58 prohibits the commitment or expenditure of CDBG funds until the environmental review process has been completed and, if required, the grantee receives a release of funds from the state. This means that the grantee may not spend either public or private funds (CDBG, other federal or

The RE should note that, on the average, an environmental review usually takes at least 45 to 60 days to complete. Environmental assessments may take longer depending upon the environmental conditions and applicable requirements.

non-federal funds), or execute a legally binding agreement for property acquisition, clearance or grading, rehabilitation, conversion, demolition, repair or construction pertaining to a specific site until environmental clearance has been achieved. In other words, grantees must avoid any and all actions that would preclude the selection of alternative choices before a final decision is made – that decision being based upon an understanding of the environmental consequences and actions that can protect, restore and enhance the human environment (i.e., the natural, physical, social, and economic environment).

Note that HUD issued a policy in April of 2011 that states that a grantee (or other project participants) cannot go to bid on activities that would be choice limiting (e.g., construction, demolition) until an environmental review is complete. This policy is based on NEPA and requires the environmental process to be completed prior to bidding in order to allow for an unprejudiced decision about the action and to allow for any modifications or project cancellation based upon the environmental review. To comply with this policy, grantees must have a signed environmental clearance from DLG prior to bid advertisement.

Moreover, until the grantee has completed the environmental review process (and received a release of funds), these same restrictions apply to project participants (e.g., subrecipients, developers, consultants, real estate agents, etc.) as well. It is the responsibility of the grantee to ensure project participants are apprised of these restrictions.

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

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

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

It is also acceptable to execute an option agreement for the acquisition of property when the following requirements are met:

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

In a memo issued by HUD on August 26, 2011, the use of conditional contracts in acquisitions of existing single family and multifamily properties that involve the use of CDBG funds was clarified. A conditional contract for the purchase of property is a legal agreement between the potential buyer of a real estate property and the owner of the property. The conditional contract includes conditions that must be met

for the obligation to purchase to become binding. Conditional contracts can be used in more limited circumstances than option contracts. As already mentioned, conditional contracts are allowed only for residential property acquisition.

Secondly, for single family properties (one to four units):

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

Finally, for multi-family properties:

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

Language that Must be Included in Conditional Contracts for Purchase of Residential Property

"Notwithstanding any other provision of this Contract, Purchaser shall have no obligation to purchase the property and no transfer of title to the Purchaser may occur, unless and until [the RE name] has provided purchaser and/or seller with a written notification that: 1) it has completed a federally-required environmental review and its request for release of funds has been approved and subject to any other contingencies in this contract, (a) the purchase may proceed or (b) the purchase may proceed only if certain conditions to address issues in the environmental review shall be satisfied before or after the purchase of the property; or 2) it has determined that the purchase is exempt from federal environmental review and a request for release of funds is not required. [RE name] shall use its best efforts to conclude the environmental review of the property expeditiously."

Please contact DLG if assistance is needed with options or conditional contract language.

Section 2-D.Classifying Activities and Conducting the Review

To begin the environmental review process, the responsible entity must first determine the environmental classification of each activity in the project. This section will focus upon the five environmental classifications that are recognized under the CDBG program:

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

This section discusses the types of classifications and the steps required for each classification to ensure compliance with the applicable requirements.

The environmental regulations at 24 CFR Part 58.32 require the responsible entity to "…group together and evaluate as a single project all individual activities which are related geographically or functionally," whether or not HUD-assistance will be used to fund all the project activities or just some of the project activities. Once this has been done, the responsible entity must decide if the project is exempt, categorically excluded, or the project requires an environmental assessment or an environmental impact statement. The level of environmental review will be dictated by whichever project activity that requires the higher level of review. For example, if one activity in a project requires an environmental assessment then the entire project must be assessed at this level of review.

24 CFR Part 58.32

Exempt Activities

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

- ✓ Environmental and other studies;
- ✓ Information and financial services;
- ✓ Administrative and management activities;
- ✓ Engineering and design costs;
- ✓ Interim assistance (emergency) activities if the assisted activities do not alter environmental conditions and are for temporary or permanent improvements limited to protection, repair or restoration actions necessary only to control or arrest the effects of disasters, or imminent threats to public safety, or those resulting from physical deterioration;
- ✓ Public service activities that will not have a physical impact or result in any physical changes;
- ✓ Inspections and testing of properties for hazards or defects;
- ✓ Purchase of tools or insurance;

- ✓ Technical assistance or training;
- ✓ Payment of principal and interest on loans made or guaranteed by HUD; and
- ✓ Any of the categorically excluded activities subject to Part 58.5 (as listed in 58.35(a)) provided there are no circumstances which require compliance with any other federal laws and authorities listed at Part 58.5 of the regulations. Refer to the section below on categorically excluded activities subject to Part 58.5. NOTE: This decision is based upon the results of having completed a "Finding of Categorical Exclusion Subject to Section 58.5" (Attachment 2-2).

24 CFR Part 58.34 (a)(12)

If a project is determined to be exempt the responsible entity is required to document in writing that the project is exempt and meets the conditions for exemption. The responsible entity must complete the HUD form titled *Environmental Review for Activity/Project that is Exempt or Categorically Excluded not Subject to Section 58.5* (Attachment 2-1). The form must be signed by the certifying official and a copy sent to the appropriate funding agency for review.

Attachment 2-1: Environmental Review for Activity/Project that is Exempt or Categorically Excluded not Subject to Section 58.5

Categorically Excluded not Subject to Part 58.5 Activities

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

24 CFR 58.35(b)

- ✓ Tenant based rental assistance;
- ✓ Supportive services including but not limited to health care, housing services, permanent housing placement, short term payments for rent/mortgage/utility costs, and assistance in gaining access to local, state, and federal government services and services;
- ✓ Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training, recruitment, and other incidental costs;
- ✓ Economic development activities including but not limited to equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or expansion of existing operations;
- ✓ Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction such as closing costs, down payment assistance, interest buy downs and similar activities that result in the transfer of title to a property; and
- ✓ Affordable housing predevelopment costs with ***NO*** physical impact such as legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact.
- ✓ Approval of supplemental assistance to a project previously approved under Part 58, if the approval was made by the same RE that conducted the environmental review on the original project AND re-

evaluation of the findings is not required under Part 58.47. See the section later in the chapter on re-evaluation of previously cleared projects for further guidance.

To complete environmental requirements for Categorically Excluded projects not Subject to 24 CFR Part 58.5, the responsible entity must make a finding of Categorical Exclusion Not Subject to 58.5 for activities that qualify under that category (using Attachment 2-1) and put in the ERR. The RE must also carry out any applicable requirements of 24 CFR Part 58.6 and document the ERR.

Attachment 2-1: Environmental Review for Activity/Project that is Exempt or Categorically Excluded not Subject to Section 58.5

- ✓ Finally, the RE must complete the Request for Approval of Evidentiary Materials and Release of Funds form and submit to DLG along with the Environmental Review for Activity/Project that is Exempt or Categorically Excluded not Subject to Section 58.5 form (Attachment 2-1).

Attachment 1-1: Sample Request for Approval of Evidentiary Materials and Release of Funds Form

The RE does not have to publish or post the Notice of Intent to Request Release of Funds (NOI/RROF) or execute the environmental certification.

Categorically Excluded Subject to Part 58.5 Activities

The list of categorically excluded activities is found at 24 CFR Part 58.35 of the environmental regulations. While the activities listed in 58.35(a) are categorically excluded from National Environmental Protection Act (NEPA) requirements, the grantee must nevertheless demonstrate compliance with the laws, authorities and Executive Orders listed in 58.5 and 58.6.

24 CFR Part 58.35(a) and 58.5

The following are categorically excluded activities subject to 58.5:

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

- For non-residential structures including commercial, industrial and public buildings:
  - The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and
  - The activity does not involve a change in land use, e.g. from commercial to industrial, from non-residential to residential, or from one industrial use to another.

✓ An individual action on up to four-family dwelling 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;

✓ An individual action on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site;

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

✓ Combinations of the above activities.

To complete environmental requirements for Categorically Excluded projects subject to 24 CFR Part 58.5, the responsible entity must take the following steps:

✓ Determine whether or not the project is located in or will have an impact on floodplains and/or wetlands.

- It is highly desirable to avoid floodplains and wetlands when undertaking project activities. However, when this cannot be avoided, specific review procedures contained in 24 CFR Part 55 (Floodplain Management and Wetlands Protection) must be completed. Since development in these areas is clearly an environmental issue, the effects of these actions must be clearly articulated in one of the decision processes described in §§ 55.12(a) and 55.20, whichever process is applicable.

NOTE: For "minor" improvement of single family (1-4 unit) residential buildings, neither decision making process must be undertaken. However, it must be documented on Attachment 2-4 that § 55.12b)(2) is applicable.

- If the project is located in the floodplain or proposes construction in a wetland, the RE must provide written documentation of the decision process in the ERR. See the section, "Projects in Floodplains and Wetlands" later in this chapter for more information.

✓ Complete the Environmental Review for Activity/Project that is Categorically Excluded Subject to Section 58.5 (Attachment 2-2). The checklist helps to comply with the other (non-NEPA) federal laws.

Attachment 2-2: Environmental Review for Activity/Project that is Categorically Excluded Subject to Section 58.5

- In regard to "Historic Properties," review Clearinghouse comments prior to writing to the State Historic Preservation Officer (SHPO) for comments. (The Clearinghouse may have already stated that the SHPO has no objection to the project.) If the Clearinghouse states that a SHPO review is required, send a letter describing the activities and the reviewer's determination if the activity (or activities) have an effect on

Attachment 2-3a & b: SHPO Project Cover Sheet & Instructions

historic preservation or not, to the SHPO allowing 30 days for comments. Respond to these comments as required and file all correspondence and evidence of response in your ERR. Be sure reliable sources are cited on each line of the checklist. All historic property reviews must be done prior to the responsible entity making a final determination of environmental status.

- Consultation with tribal entities is also required. See Attachment 2-4 for a Sample Tribal Consultation letter. Refer to HUD Notice 12-006 for more guidance.

Attachment 2-4:
Sample Tribal Consultation Letter

- ✓ For those projects that cannot convert to exempt, publish and distribute the Notice of Intent to Request a Release of Funds (NOI/RROF). The Notice, which has been updated for 2015, informs the public that the grantee will accept written comments on the findings of its ERR and of the grantee's intention to request release of funds from the state. At least seven (7) calendar days after the date of publication must be allowed for public comment. The notice also says that DLG will receive objections for at least 15 days following receipt of the grantee's request for release of funds (Attachment 2-5).

Attachment 2-5:
Sample Notice of Intent to Request a Release of Funds (NOI/RROF)

Attachment 2-6:
Sample Public Notice Distribution List

- ✓ **The NOI/RROF must be published in a newspaper of general circulation**. The grantee must retain the "tear sheet" from the newspaper evidencing that the notice was published and on what date.
- ✓ **The grantee must also send a copy of the notice (NOI/RROF) to interested parties** (i.e., persons and entities that have commented on the environmental process or that have requested to be notified of environmental activities), local news media, appropriate local, state, and federal agencies, the regional Environmental Protection Agency (EPA) and the HUD Kentucky State Office (Attachment 2-5).
- ✓ The grantee may also post the notice in prominent public locations (e.g., library, courthouse, etc.); however, publication is still required.

TIP: **All time periods for notices 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 of the notice.**

- ✓ After the seven-day comment period has elapsed, the responsible entity must prepare and submit the actual Request for Approval of Evidentiary Materials and Release of Funds (Attachment 1-1) and Environmental Certification (Attachment 2-7) and attachments to the appropriate funding agencies. The Environmental Certification certifies that responsible entities are in compliance with all the environmental review requirements.

Attachment 1-1:
Request for Approval of Evidentiary Materials and Release of Funds

Attachment 2-7:
Sample Environmental Certification

- ✓ At the completion of the review, check the ERR using the Environmental Review Record Checklist provided in the attachments to ensure that it contains the following documents:

Attachment 2-8: Environmental Review Record Checklist

  - Completed Environmental Review for Activity/Project that is Categorically Excluded Subject to Section 58.5 (including statutory checklist and other elements as well as supporting documentation)
  - Correspondence with the SHPO (and documentation of mitigating measures, if applicable);

- Floodplain notices and documentation of alternatives considered, if applicable;
- Full tear sheet from newspaper with Notice of Intent to Request Release of Funds (NOI/RROF);
- Request for approval of evidentiary materials and release of funds, environmental certification and related correspondence; and
- DLG's approval of the release of funds.

Projects in Floodplains and Wetlands (24 CFR Part 55)

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

Executive Order 11988 and 11990
24 CFR Part 55

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

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

- Disposition of multifamily and single family (1-4 unit) properties [sec. 55.12(a)(1)].
- Repair, rehabilitation, modernization, weatherization, or improvement of existing residential properties (multifamily, single family, assisted living, etc.) [Sec. 55.12.(a)(3)]
    - Number of units is not increased more than 20%;
    - Does not involve conversion from non-residential to residential; and
    - Does not meet definition of "substantial improvement" [sec. 55.2(b)(10)(i)].
- Repair, rehabilitation, modernization, weatherization, or improvement of nonresidential properties (i.e., public facilities, commercial/retail, and industrial) [sec. 55.12(a)(4)]
    - Does not meet the threshold of "substantial improvement" (i.e., the cost equals or exceeds 50% of the market value before repair is started or damage occurred; and
    - The structure footprint and paved area is not significantly increased more than 10%.

- Repair, rehabilitation, modernization, weatherization, or improvement of a structure listed on the National Register of Historic Places or on a State Inventory of Historic Places. ["Substantial improvement" does not apply to historic properties, Sec. 55.2(b)(10)(ii)(B)].

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

There are also two decision-making processes identified in Part 55 concerning proposed construction in wetlands. Typically, the 8-Step or 5-Step process is required (sec. 55.20). However, there may be circumstances for which the U.S. Army Corps of Engineers (COE) has issued an Individual Permit under section 404 of the Clean Water Act. In this case, a 3-Step decision process may be followed instead, provided that all the stipulations outlined in sec. 55.28 are met.

NOTE: When a project is located in a floodplain AND also proposes construction in a wetland, the 8-Step decision process must be completed regardless of the issuance of a Section 404 permit (sec. 55.20(a)(3)). Below is an overview of each of the steps in the 8-Step decision process. When the 5-Step decision process is permissible, only Steps 1, 4 through 6, and 8 are applicable. For construction in wetlands, when the 3-Step decision process is permissible due to an Individual Section 404 permit, Steps 6-8 are applicable. All steps must be documented in writing.

- ✓ **Step One: Floodplain Determination**. Determine if the project is located in a base (100-year) floodplain, or 500-year floodplain for Critical Actions. A floodplain refers to any land area susceptible to being inundated from any source of flooding including those which can be flooded from small and often dry water course. 24 CFR Part 55 requires HUD and Responsible Entities to rely on floodplain maps issued by the Federal Emergency Management Agency (FEMA) to evaluate flood risks and impacts. In general, this will be the current, effective Flood Insurance Rate Map (FIRM). However, when FEMA has issued interim flood hazard data, including Advisory Base Flood Elevations (ABFE) or preliminary maps or studies, these sources must be used as the best available information.
  - The maps identified below are published by the Federal Emergency Management Agency (FEMA). Check the following maps to determine if the project is located within a floodplain:
    - Flood Hazard Boundary Map; and/or
    - Flood Insurance Rate Map (both can be found here: https://msc.fema.gov/portal).
    - Additional information on Floodplain Maps for HUD Projects can be found here: https://www.hudexchange.info/resource/5834/floodplain-maps-for-hud-projects/
  - If the community has been identified as flood-prone by FEMA, a copy of the community's most recently published map (including any letters of map amendments or revisions) should be obtained. The map will identify the community's special flood hazard areas.
  - If the FEMA maps are not available, a determination of whether the project is located in a floodplain may be made by consulting other sources, such as:
    - U. S. Army Corps of Engineers - Hydrology, Hydraulics, and Coastal Team;
    - Local Soil Conservation Service District;
    - Floodplain Information Reports;
    - USGS Flood-prone Area;

- Topographic Quadrangle maps; or
- State and local maps and records of flooding.

– The responsible entity should request developers to provide an evaluation by an engineer or hydrologist for areas which are not covered by FEMA or these other sources. Further information may be available at the Kentucky Division of Water (DOW).

– Use floodplain maps to make this decision and record date in the ERR

✓ **Step Two: Early Public Review**. 24 CFR Part 55 includes requirements that the public be provided adequate information, opportunity for review and comment, and an accounting of the rationale for the proposed action affecting a floodplain or wetland. Involve the public in the decision-making process as follows:

– **Publish the Floodplains and Wetlands Early Public Notice in the non-legal section of the newspaper** of general circulation in the area to make the public aware of the intent. Refer to sec. 55.20(b) for the minimum information that must be given in the notice. See also the sample in Attachment 2-9: Sample Floodplains and Wetlands Early Public Notice. **The Floodplains and Wetlands Early Public Notice *must* be published (it cannot be posted).**

Attachment 2-9:
Sample Floodplains and Wetlands Early Public Notice

– The notice must provide a complete description of the proposed action.

– The notice must allow at least a 15-day comment period for public comments.

✓ **Step Three: Identify and Evaluate Alternate Locations**. Determine if there is a practical alternative. This determination requires the responsible entity to consider whether the base floodplain and/or wetland can be avoided:

– Through alternative siting;

– Through alternative action that performs the intended function but would minimize harm to/within the floodplain; or

– By taking no action.

✓ **Step Four: Identify Impacts of Proposed Project**. Identify and evaluate the potential direct and indirect impacts associated with the occupancy or modification of the 100-year floodplain (or 500-year for Critical Action) or the wetland and the potential direct and indirect support of floodplain and wetland development that could result from the proposed action.

Floodplain evaluation: If negative impacts are identified, methods must be developed to prevent potential harm as discussed in Step 5. The focus should be on adverse impacts to lives, property, and natural and beneficial floodplain values. See 24 CFR Part 55.20(d)(1) for additional information.

Wetland evaluation: The responsible entity shall consider factors relevant to the project's potential adverse impacts on the survival and quality of the wetland. Among the factors that should be considered are public health, safety and welfare including water supply, quality recharge, and discharge; pollution; flood and storm hazards; sediment and erosion; maintenance of natural systems including existing flora and fauna; natural hydraulic function; wildlife; timber; food sources; and cost increases attributed to wetland development. See 24 CFR Part 55.20(d)(2) for additional information.

- ✓ **Step Five: Identify Methods to Restore and Preserve Potential Harm to Floodplains and Wetlands Area**. If the proposed project has identifiable impacts (as identified in Step 4), the floodplains and wetlands must be restored and preserved, where practicable.
  - Minimization techniques for floodplain and wetland purposes include, but are not limited to: use of permeable surfaces, natural landscape enhancements that preserve/restore natural hydrology, use of native plant species, storm water capture and reuse, floodproofing and elevating structures, etc. See 24 CFR Part 55.20(e) for more information.
  - Appropriate compensatory mitigation is recommended for unavoidable impacts to more than 1 acre of wetland. Compensatory mitigation includes, but is not limited to, mitigation banking, use of preservation easements, and any form of mitigation recommended by state or federal agencies.
  - Actions covered under 55.12(a) must be rejected if the proposed mitigation is financially or physically unworkable.
  - All critical actions in the 500-year floodplain shall be designed and built at or above the 100-year floodplain and include additional project modifications including the preparation of an early warning system as outlined in 24 CFR Part 55.20(e)(3).

Methods to be used to perform these actions are discussed in Step 6.

- ✓ **Step Six: Re-evaluate Alternatives**. At this stage, the proposed project needs to be re-evaluated, taking into account the identified impacts, the steps necessary to minimize these impacts and the opportunities to restore and preserve floodplain and/or wetland natural and beneficial functions and values.
  - Discuss whether the alternatives rejected in Step 3 are now practicable in light of information gained in Steps 4 and 5.
  - If the proposed project is determined to be no longer feasible, consider limiting the project to make non-floodplain or wetland sites practicable.
  - If the proposed project has impacts that cannot be minimized, the recipient should consider whether the project can be modified or relocated in order to eliminate or reduce the identified impacts or, again, take no action.
  - Discuss the economic costs due to locating the project in a floodplain or wetland.

The reevaluation should also include a provision for comparison of the relative adverse impacts associated with the proposed project located both in and out of the floodplain. The comparison should emphasize floodplain values and a site out of the floodplain should not be chosen if the overall harm is significantly greater than that associated with the floodplain site.

- ✓ **Step Seven: Publish the Floodplains and Wetlands Notice of Explanation**. If the re-evaluation results in the determination that the only practicable alternative is to locate the project in the floodplain, the grantee must ***publish*** the Floodplains and Wetlands Notice of Explanation in the non-legal section of a local newspaper of general circulation (Refer to sec. 55.20(b) and (g) for the minimum information that must be given in the notice. See also the sample in Attachment 2-10: Sample Floodplains and Wetlands Notice of Explanation).

Attachment 2-10:
Sample Floodplains and Wetlands
Notice of Explanation

- The Floodplains and Wetlands Notice of Explanation (described previously) may ***not*** be posted.
- It should be noted that when a project triggers the E.O. 11988/11990 "Eight Step Process," the Notice of Early Public Review should be published first and the minimum 15-day comment period elapsed ***before*** the grantee can publish the Floodplains and Wetlands Final Notice of Explanation.
- The Floodplains and Wetlands Final Notice of Explanation can be published simultaneously with the 24 CFR Part 58 required Combined/Concurrent Notice of Finding of No Significant Impact (FONSI) and Notice of Intent to Request Release of Funds (NOI/RROF) (Attachment 2-14).

Attachment 2-14:
Combined Concurrent FONSI NOI RROF Notice

- Any written comments received in response to the above required notice must be addressed and filed in the ERR.
- Document compliance with E.O. 11988/11990. See Attachment 2-11: Sample HUD Case Study for Floodplains/Wetlands Eight Step Process and on HUD Exchange at: https://www.hudexchange.info/resource/3190/floodplain-management-8-step-decision-making-process/

Attachment 2-11:
HUD Case Study Sample Documentation for Floodplains/Wetlands Eight Step Process

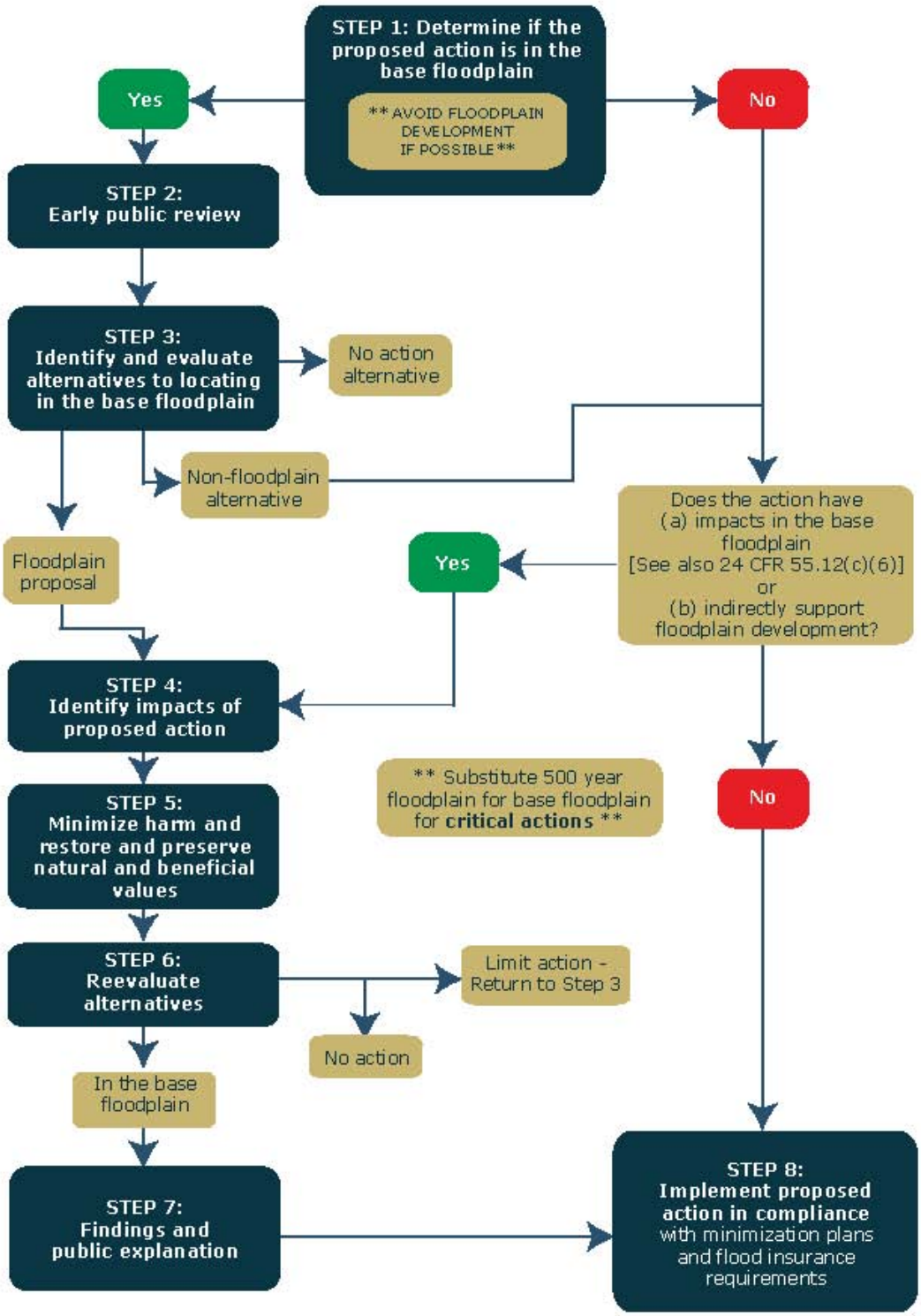
- File all documentation and responses relating to the above described procedures in the ERR.

✓ **Step Eight: Implement the Proposed Project**. Implement the project with appropriate mitigation.

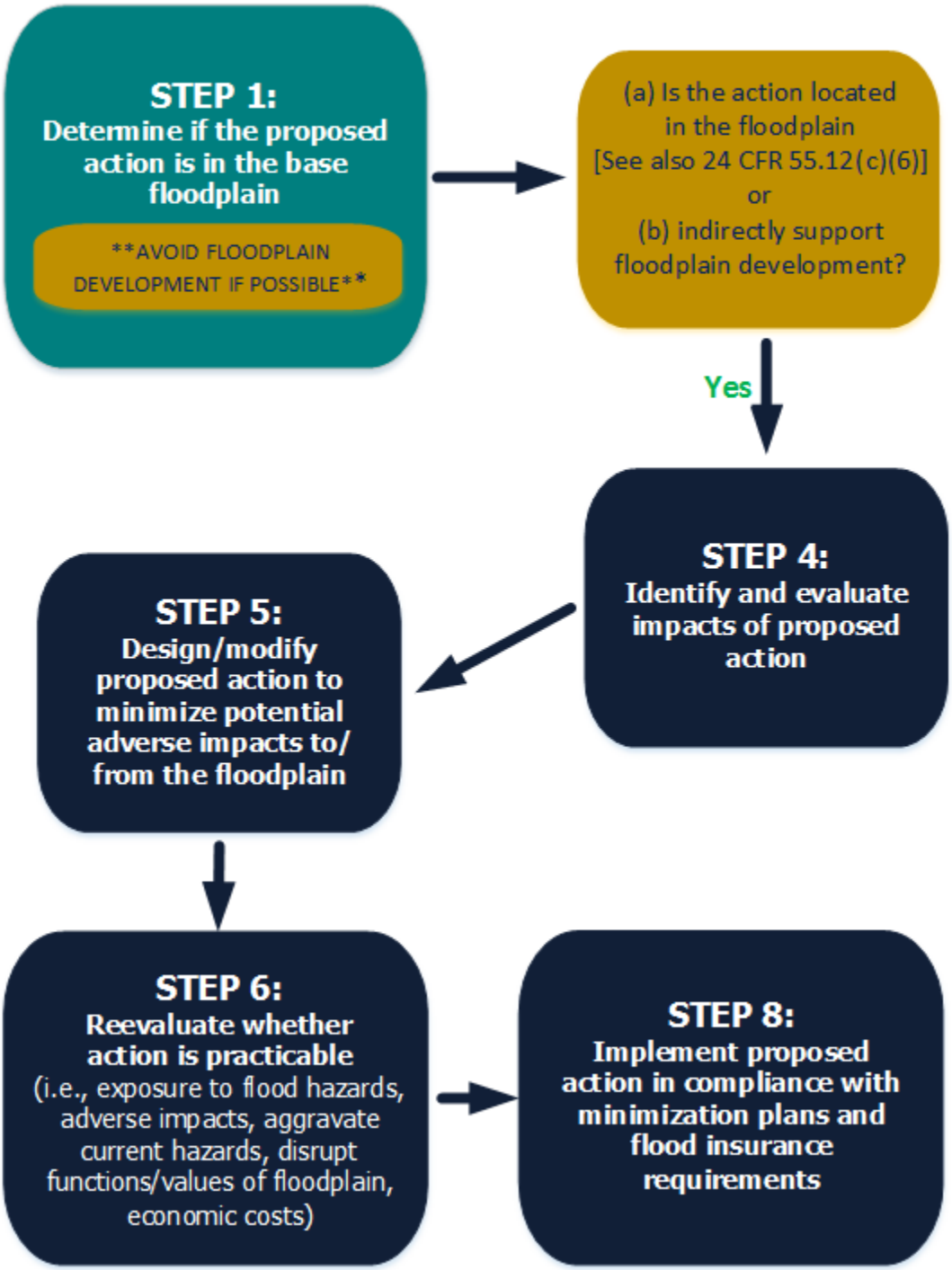
NOTE: If directional boring or drilling beneath a wetland is anticipated, please consult with DLG prior to undertaking the Eight-Step Process. HUD issued guidance in 2011 that exempts directional boring/drilling beneath wetlands from the Eight-Step Process *provided that* certain conditions are met. The memo on directional boring can be found on HUD Exchange at: https://files.hudexchange.info/resources/documents/Memo-Directional-Boring-Beneath-Wetlands-and-EO-11990.pdf

As stated previously, when the 5-Step decision process is required, only Steps 1, 4 through 6, and 8 are applicable. For construction in wetlands when the 3-Step decision process is permissible due to an Individual Section 404 permit, Steps 6-8 are applicable. The flow charts to follow show the 8-Step (for floodplains and wetlands), 5-Step (for floodplains and wetlands), and 3-Step (wetlands only) processes. All steps must be documented in writing.

8- Step Decision-Making Process for Executive Order 11988

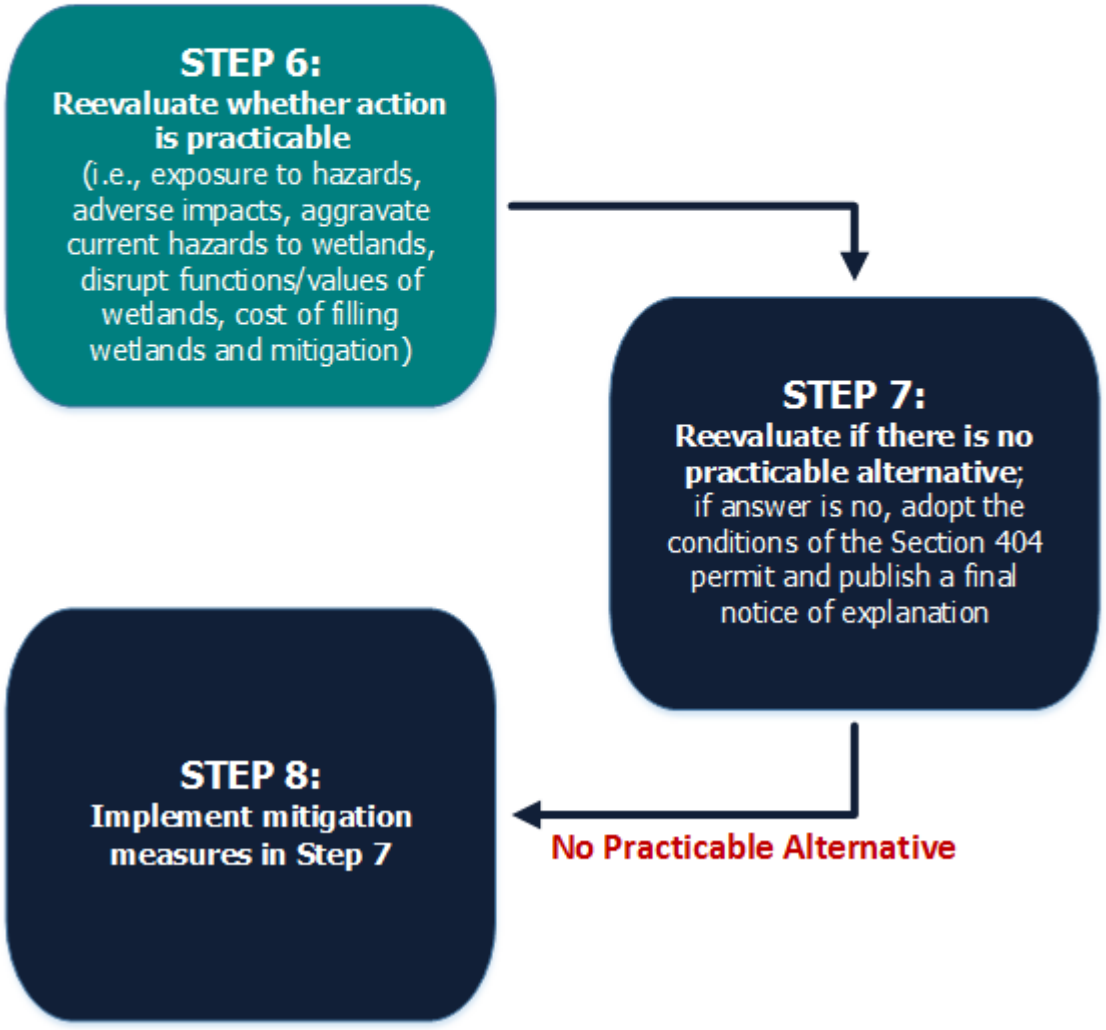


5-Step Decision-Making Process for Executive Order 11988 (Floodplain Management)



3-Step Decision-Making Process for Executive Order 11990 (Wetlands Protection)

NOTE: All of the following conditions must be met for the 3-Step decision-making process to be applicable: the applicant must have submitted the Section 404 permit with their application for HUD-assistance, the proposed action is outside the floodplain, and the proposed action is covered by the permit, and the Section 404 permit that was issued is not a general permit. (24 CFR 55.28)



Circumstances Requiring NEPA Review

If a responsible entity determines that an activity or project identified under the above sections about categorical exclusions (both subject to and not subject to Part 58.5) 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 24 CFR Part 58.35(c).

24 CFR Part 58.35(c)

The responsible entity is responsible for determining that a given activity qualifies under the definitions for exclusion and/or expedited procedures. 24 CFR Part 58.2(a)(3) an activity's clearance level may be elevated if it exhibits extraordinary circumstances that affect its impact on the environment.

24 CFR Part 58.2(a)(3)

Such circumstances are defined as actions that are unique and without precedent; are substantially similar to those which would require an Environmental Assessment (EA) or Environmental Impact Statement (EIS); are unlikely to alter HUD policy or HUD mandates; or due to unusual physical conditions on the site or in the vicinity, have a potential for a significant impact on the environment or in which the environment could have a significant impact on users of the facility.

The environmental review record must contain a well-organized written record of the process and determinations made per 24 CFR Part 58.38.

Activities Requiring an Environmental Assessment

Activities that are not determined to be exempt or categorically excluded will require an environmental assessment (EA) to document compliance with NEPA, HUD environmental requirements and other federal laws.

24 CFR 58.36 and 58.5

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

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

- ✓ Follow the instructions for categorically excluded projects subject to 24 CFR Part 58.5 to complete the statutory checklist, including historic preservation and floodplain requirements.
- ✓ The floodplain requirements do not apply if the project is not located within a floodplain.
- ✓ Complete the Environmental Assessment form. The responsible entity must ensure that reliable documentation sources are cited and incorporated into the ERR for every item on the EA checklist (see Attachment 2-12).

Attachment 2-12: Environmental Assessment

- ✓ The final step in the process involves making a determination as to whether the project will or will not have a significant impact on the environment. This can be done once the review has been completed and all comments have been addressed appropriately. The RE must select one of the following two findings/determinations:
- ✓ The project is not an action that significantly affects the quality of the human environment and, therefore, does not require the preparation of an environmental impact statement; or

- ✓ The project is an action that significantly affects the quality of the human environment and, therefore, requires the preparation of an environmental impact statement. Both the finding and the environmental assessment must be signed by your environmental certifying officer and included in the ERR. A sample checklist for completing the environmental assessment is included as Attachment 2-13.

Attachment 2-13: Sample Environmental Assessment Process/File Checklist

No Environmental Impact Statement Required

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

- ✓ Provide public notice called the Combined/Concurrent Notice of Finding of No Significant Impact (FONSI) and Notice of Intent to Request Release of Funds (NOI/RROF) from the appropriate funding agency. A sample notice is provided as Attachment 2-14.
  - The FONSI and NOI/RROF must **be published in a newspaper of general circulation**.
  - The grantee must retain the "tear sheet" from the newspaper evidencing that the notice was published and on what date.
    - The notice must also be distributed to interested parties, local news media, appropriate local/ state/federal agencies, regional EPA, and Kentucky HUD. (See Attachment 2-6: Sample Public Notice Distribution List for a more complete listing of potentially interested parties.)
    - The notice must also be posted in public buildings within the project area.

Attachment 2-14: Sample Combined/Concurrent Notice to Public of No Significant Impact on the Environment and Notice to Public of Request for Release of Funds

Attachment 2-6: Sample Public Notice Distribution List

- ✓ It is very important to remember this requires two separate 15-day review periods. A 15-day period for comment to the city/county and, after that period, a 15-day period for comment to the appropriate funding agency. The appropriate funding agency 15-day comment period does not commence until the date the appropriate funding agency receives the notice, or the date specified in the published notice, whichever is later. Call or email the appropriate funding agency to verify dates on the combined/concurrent notice before publishing.
    - Any written comments received in response to these notices must be addressed and filed in the ERR. The persons that provided the comments should be added to the distribution list of interested parties.
  - The environmental certification, request for approval of evidentiary materials and release of funds forms must be submitted to the appropriate funding agency at least 16 days after publishing the combined/concurrent notice.
  - Check the ERR. Be sure this file contains all items listed on the ERR Checklist (Attachment 2-15).

Attachment 2-15: Sample Environmental Review Record Checklist

Environmental Impact Statement

An Environmental Impact Statement (EIS) is required when a project is determined to have a potentially significant impact on the environment. Consult with DLG if an EIS is anticipated.

Section 2-E. Re-Evaluation of Previously Cleared Projects

Sometimes, projects are revised, delayed or otherwise changed such that a re-evaluation of the environmental review is necessary. The purpose of the responsible entity's re-evaluation is to determine if the original findings are still valid. If the original findings are still valid, but the data and conditions upon which they were based have changed, the responsible entity must amend the original findings and update their ERR by including this re-evaluation and its determination based on its findings. A sample determination is provided as Attachment 2-16. It has to document the following:

24 CFR 58.47

Attachment 2-16: Sample Re-Evaluation Determination

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

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

If the responsible entity determines that the original findings are no longer valid, it must either reject the project, prepare a new EA or an EIS if the reevaluation indicates potentially significant impacts.

Section 2-F. Environmental Reviews Prepared by or for Other Federal Agencies

DLG will accept environmental reviews prepared by or for other federal funding agencies provided that the ERR, including consultation with other agencies and documentation, as well as associated public notifications meet or exceed the requirements established by 24 CFR Part 58 and are NEPA-like reviews. Contact DLG for further guidance.

Chapter 3: Financial Management

Introduction

With KCDBG funding comes certain administrative and financial management requirements. Financial management is the constant process of tracking progress towards financial objectives and safeguarding the financial assets of an organization. The key principles of financial management are common to all types of organizations and include sound financial management systems, internal controls, allowability of costs, use and tracking of program income, and audits.

This chapter details the financial management regulations and requirements that apply to the use of KCDBG funds.

Section 3-A. Applicable Requirements

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

- ✓ In addition, 2 CFR Part 200 "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards" which was adopted by HUD at 2 CFR 2400, also applies. It is referred to as the Omni Circular because it consolidated and replaced numerous previously applicable circulars and regulations
- ✓ 2 CFR Part 200 establishes principles and standards for determining allowable costs under federal grants. It also includes requirements for audits such as the type and level of audit required, reports issued by auditors, and audit review and resolution. It includes requirements for financial management systems, reports, records, and grant close-outs for recipients of federal grant funding. Subjects covered include financial management standards, internal controls, budget controls, accounting controls, cash management, procurement, and contracting.

24 CFR 570.489
2 CFR Part 200
2 CFR Part 2400

Section 3-B. Establishing a Financial Management System

Overview

Financial management is important to grantees administering KCDBG funding. A fundamental purpose of financial management is to ensure the appropriate, effective, timely and honest use of funds.

Specifically, grantees must ensure that:

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

Requirements

In establishing a financial management system, grantees are to follow 24 CFR Part 85 "Administrative Requirements for Grants and Cooperative Agreements to state, Local, and Federally Recognized Indian Tribal Governments" (also known as the Common Rule).

2 CFR 200.302

Both 24 CFR Part 570 and 2 CFR Part 200 govern CDBG grantee financial management systems. In addition, the use and accounting for KCDBG funds are governed by DLG requirements, HUD Notice CPD-04-11, and Treasury Circular 1075. KRS 91A.020 requires grantees to follow generally accepted accounting principles (GAAP). Failure to account for and manage KCDBG funds accordingly may result in sanctions imposed by DLG and/or HUD.

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

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

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

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

Tip: **Use the Sample Financial Management Checklist (see Attachment 3-1) as a tool to help your organization set up and maintain your financial management system.**

Attachment 3-1: Sample Financial Management Checklist

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

Internal Controls

Internal controls refer to the combination of policies, procedures, defined job responsibilities, personnel, and records that allow an organization (or an agency) to maintain adequate oversight and control of its cash, property, and other assets.

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

- ✓ Effectiveness and efficiency of operations;
- ✓ Reliability of financial reporting; and
- ✓ Compliance with applicable laws and regulations.

With a sound internal control system, a grantee can ensure:

- ✓ Resources are used for authorized purposes and in a manner consistent with applicable laws, regulations, and policies;
- ✓ Resources are protected against waste, mismanagement or loss; and
- ✓ Information on the source, amount, and use of funds is reliable, secured, and up-to-date and that this information is disclosed in appropriate reports and records.

As part of an effective internal control system, one person should be designated as the primary person at the grantee organization responsible for the financial management of a KCDBG project. This person should be familiar with their organization's present accounting system. The accounting of KCDBG funds can be integrated into the grantee's existing system. Refer to 2 CFR 200.303 for more information.

Accounting Records

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

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

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

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

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

Budget Controls

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

Source Documentation

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

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

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

Additionally, contracts should be kept in a file separate from accounting files. The signed contract represents an obligation of funds. When payments are made on the contract, they should be recorded in the contract file.

Receipt of Funds Procedures

In addition to CDBG funds received from DLG, receipt of other project funds may also include program income and project funds received from other sources.

The grantee must be certain that project funds are adequately safeguarded. This includes providing proper bonding of those individuals that handle program funds, in accordance with state and local law.

All project funds should be promptly deposited to the proper bank account and recorded as a receipt in the accounting system. KCDBG funds are to be drawn from DLG only as required to pay immediate obligations.

Payment Procedures

Before the grantee can expend any funds, the grantee's budget must include appropriations for the grant. Additionally, the budget must be approved and enacted by the appropriate legislative body.

A Request for Payment (Attachment 3-2) may not be submitted until the grantee has received a Notice of Release of Funds. Grantees may request only the amount of funds needed to pay immediate obligations. Grantees must submit Requests for Payment to DLG by the 3rd and the 18th of the month. More information on Requests for Payment is provided in Section 3-D of this chapter.

Attachment 3-2:
Request for Payment Form

In order to safeguard the grant funds and ensure an effective system of internal controls, an individual apart from the person authorized to request funds should approve expenditures. Additionally, all invoices should be reviewed to determine that the costs are accurate, reasonable, and allowable. DLG is required to ensure that program income is expended before additional funds are drawn down. To allow DLG to track available program income, grantees are required to report all program income that has been received since the last draw of CDBG funds on the Request for Payment Form. Refer to Section 3-C for additional information on tracking and reporting program income.

Invoices and Vouchers

To assist in the planning for the Request for Payment, grantees should establish an internal deadline for submission of all invoices and vouchers.

Before providing full payment for a contractor's invoice, grantees should verify that the work has been completed. This is a good time to ensure that all payments for expenditures are supported by source documentation (i.e., invoices or vouchers and kept on file). A list of disbursements to be made should be prepared and the cash requirements submitted to DLG on the Request for Payment form. Refer to Section 3-D of this chapter for more information on Requests for Payment.

Bank Accounts

In dealing with CDBG funds, the grantee is required to maintain a ***non-interest bearing*** bank account for the deposit of CDBG funds. The account must be FDIC insured or secured by bank-pledged collateral for the full amount of KCDBG funds held in the account. The bank must provide collateral to secure those funds that are in excess of $100,000.

It is important that the grantee be able to reconcile all balances in the account. Grantees should reconcile bank statements as soon as bank statements are received.

Grantees may not earn interest on the deposit of federal funds pending disbursement. All federal funds on hand must be disbursed before requesting additional funds. If excessive amounts of cash (over $5,000) are or will be on hand for an extended period of time (over five days), the grantee must return the excess to DLG.

Forms

After establishing the accounting system and bank account to be used, the grantee needs to complete two forms:

- ✓ **The Authorized Signature Form.** This form (Attachment 3-3) designates to DLG who has the authority to sign grant documents and reports. Only a person listed on this form may sign Request for Payment forms. The grantee's CEO must sign the form and submit it to DLG. A copy of the form is provided as an attachment to this chapter.
- ✓ **Direct Electronic Transfer of Funds Form**. This form is used to designate the bank and the account number into which DLG will deposit the grantee's KCDBG funds. The grantee should complete the community and project information section including providing the CDBG pass through number and CDBG project number With the assistance of the designated bank, the grantee must complete the depository information. The grantee's CEO should then sign the form. The grantee must include a voided check containing the grantee's name, address, phone number and the name of the bank account. Attach the ***voided check to the form*** and submit it to DLG. A copy of the form is provided as Attachment 3-4 to this chapter.

Attachment 3-3:
Authorized Signature Form
Attachment 3-4:
Direct Electronic Transfer of Funds Form

Common Mistakes to Avoid

- ✓ Failure to maintain records that track KCDBG expenditures by activity.
- ✓ Lack of source documentation for KCDBG expenditures.
- ✓ KCDBG funds drawn down being held in an interest bearing account.
- ✓ Bank statements not reconciled.
- ✓ Program income not reported.
- ✓ Inadequate documentation of local administrative costs.
- ✓ Lack of tracking of real or personal property purchased with CDBG funds.

Allowable Costs

Any cost incurred must be allowed as per 2 CFR 200.402 – 202.475. It is a grantee's responsibility to ensure that CDBG funds are spent only on reasonable and necessary costs associated with grant activities.

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

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, supplies used for grant activities, and the cost of administrative services provided by other agencies. General administration costs are those costs **directly** related to the administration of grant requirements.

In charging administrative costs, grantees should note:

2 CFR 200.402 - .475

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

Matching Funds

Grant records should account for all matching funds committed to the project. The receipt and expenditure of the matching funds should be carefully documented. If matching funds are derived from a source outside the local government, project records should identify the source and amount. Guidelines for appropriate matching contributions are contained in the Omni Circular (2 CFR 200) and the amount of match required is shown in the grant agreement.

Asset Management

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

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

24 CFR 570.489(j) and (k)
2 CFR 200.310-.316

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

Grantees must maintain records that properly document the disposition of any CDBG-funded property. It should be noted that real property purchased with KCDBG funds in excess of $100,000 must continue to meet the CDBG national objective approved for the project for at least five years after close-out of the grant that funded the property purchase or improvement. Should the recipient choose to change the use of property they must contact DLG to ensure that proper procedures are followed. Failure to do so can result in payback of the grant award.

Section 3-C. Program Income, Miscellaneous Revenue and LDA Proceeds

Overview

Any repayment of funds or proceeds generated from a KCDBG activity will fall into one of three categories; 1) program income, 2) miscellaneous revenue, or 3) LDA proceeds. Different rules apply for each of these three categories. The following section defines each of these types of funds and the rules that will apply.

Under the KCDBG Program, funds received back to the community as a result of a KCDBG-funded activity are generally referred to as program income. Program income funds retain their federal identify and are subject to all CDBG and other federal requirements. Program income is defined in detail below. Funds not considered program income, including miscellaneous revenue and local development authority (LDA) proceeds, will be covered in the next section.

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

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

What Is Program Income

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

- ✓ Proceeds from the disposition by sale or long-term lease of real property purchased or improved with KCDBG funds;
- ✓ Proceeds from the disposition of equipment purchased with KCDBG funds;

24 CFR Part 570.489(e)(1)

- ✓ Gross income from the use or rental of real or personal property acquired by the unit of general local government or a subrecipient of a unit of general local government with KCDBG funds, less the costs incidental to the generation of the income;
- ✓ Gross income from the use or rental of real property owned by the unit of general local government or a subrecipient of a unit of general local government, that was constructed or improved with KCDBG funds, less the costs incidental to the generation of the income;
- ✓ Payments of principal and interest on loans made using KCDBG funds;
- ✓ Proceeds from the sale of loans made with KCDBG funds;
- ✓ Proceeds from the sale of obligations secured by loans made with KCDBG funds;
- ✓ Interest earned on funds held in a revolving fund (RF) account;
- ✓ Interest earned on program income pending disposition of the income;
- ✓ Funds collected through special assessments made against nonresidential properties and properties owned and occupied by households that are not low and moderate income if the special assessments are used to recover all or part of the KCDBG portion of public improvements; and
- ✓ Gross income paid to a unit of general local government or subrecipient from the ownership interest in a for-profit entity acquired in return for the provision of KCDBG assistance.

Program income does not include the following:

- ✓ The total amount of funds which does not exceed $35,000 received in a single year from activities other than revolving funds that is retained by the unit of local government and its subrecipients; these funds are considered miscellaneous revenue;
- ✓ Amounts generated by activities eligible under Section 105(a)(15) of the Act and carried out by an entity under the authority of Section 105(a)(15) of the Act (non-profit organizations and local development organizations, such as LDAs, when undertaking community economic development, neighborhood revitalization, or energy conservation projects) (these funds are referred to as LDA proceeds); Payments of principal and interest made by a subrecipient carrying out an activity on

behalf of the unit of local government towards a loan from the local government to the subrecipient to the extent that program income is used for the repayment;

- ✓ Certain types of interest income as outlined in 24 CFR 570.489(e)(2)(iv);
- ✓ Proceeds from the sale of real property purchased or improved with CDBG funds if the proceeds are received more than five years after expiration of the grant agreement between the state and the unit of local government.

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

Pro-Rating Program Income

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

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

Program Income Funds and Close-Out

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

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

Use of Program Income

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

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

lead-based paint hazard treatment, etc. As stated previously, miscellaneous revenue and LDA proceeds are not subject to these rules.

The grantee can expend up to 20 percent of the total program income received for administration with approval from DLG. The 20 percent limitation is established by federal regulation and cannot be exceeded under any circumstances.

Approval for Use Request for Program Income and Miscellaneous Revenue

In order to expend program income, a grantee must request approval from the state. An Approval for Use Request (Attachment 3-5) and related certifications must be submitted prior to local approval of the project. DLG staff will review the request to determine conformance with eligibility and national objective requirements, if applicable. In most cases, a grantee must use program income on a new proposed project.

Attachment 3-5:
Approval for Use Request

Grantees looking to expend their miscellaneous revenue funds will need to establish that the funds qualify as miscellaneous revenue and are thus exempt from the program income use requirements. Further details are provided later in the section.

As a condition to grants currently being funded, DLG requires program income be used before requesting additional KCDBG dollars. If approved, the transaction is reported on the subsequent Semi-Annual Repayment—Program Income/Miscellaneous Revenue/LDA Proceeds Report (Semi-Annual Repayment Report).

Transfer of Program Income and Miscellaneous Revenue

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

Accounting Systems for Program Income and Miscellaneous Revenue

A program income/miscellaneous revenue accounting system should:

- ✓ Record program income/miscellaneous revenue appropriately in the grantee's accounting records;
- ✓ Ensure that all program income/miscellaneous revenue is collected and properly classified; and
- ✓ Ensure that the handling of program income/miscellaneous revenue complies with applicable federal and state requirements.

The method of accounting to be used for tracking program income/miscellaneous revenue shall meet Generally Accepted Accounting Principles (GAAP). Any accounting system used must be detailed enough to provide the necessary information for completing DLG's Semi-Annual Repayment Report(Attachment 3-6) and comply with the requirements of 24 CFR Part 85. A separate interest-bearing account must be maintained for a revolving fund.

Attachment 3-6:
Semi-Annual Repayment Report

The grantee must maintain files that accurately account for all funds received and disbursed. This documentation must include bank statements and canceled checks (copies are acceptable if both sides of canceled checks are copied).

The grantee must also maintain documentation that shows program income funds were spent in compliance with Title I requirements. This includes documentation that the funds were spent on eligible activities, that a national objective was met, and that all other requirements such as environmental review, fair housing, relocation and citizen participation were complied with. See also *Chapter 1: Administration* for more information on the records that must be kept to demonstrate compliance.

Revolving Funds

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

DLG may approve the use of KCDBG program income for the purpose of capitalizing a RF for specifically identified activities.

24 CFR Part 570.489(f)

- ✓ RFs are typically established to continue housing or economic development activities.
- ✓ The establishment of a RF must be in the evidentiary materials and approved by DLG.

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

Attachment 3-2:
Request for Payment

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

Development of Revolving Fund Guidelines

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

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

Administration of a RF involves three primary areas of responsibility:

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

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

- ✓ RF Goals and Objectives
- ✓ Eligibility Requirements
  - Eligible and Ineligible Activities
  - Eligible Applicants
  - Eligible Types of Loans
- ✓ Loan Review, Selection and Approval
  - Loan Review Committee
    - Members and Terms
    - Procedures and By-Laws
  - Application Requirements
    - Justification of Need
    - Beneficiaries
    - Necessary and Appropriate Documentation
    - Certifications
  - Loan Approval Procedures
- ✓ RF Operations and Management
- ✓ Accounting System
- ✓ Reporting and Record keeping
- ✓ Loan Documentation, Disbursement and Servicing
- ✓ Title I Compliance and Monitoring
- ✓ Administrative Staffing, Costs and Fees
- ✓ Audits
- ✓ Conflict of Interest

Sample RF Guidelines are provided at the end of this Chapter as Attachment 3-7 (Housing) and 3-8 (Economic Development).

Attachment 3-7:
Sample Housing Revolving Fund Guidelines

Attachment 3-8:
Sample Economic Development

Subrecipients and Revolving Funds

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

Waiver of Requirements

DLG may waive or modify the requirements of this chapter when it determines that, in so doing, it will promote the more efficient administration of the program and/or further the accomplishment of objectives. However, DLG cannot waive HUD or other federal regulatory requirements concerning the use of program income.

Monitoring of Revolving Funds

Revolving funds will be monitored periodically by DLG to insure compliance with all federal and state requirements. A grantee must agree to return all unexpended funds and collectable accounts to DLG in the event of fraud, waste, or mismanagement and/or substantial non-compliance with the local RF guidelines.

Reporting of Revolving Funds

HUD requires vigorous oversight of program income retained at the local level. Therefore, DLG must ensure the proper use of these funds is in a manner consistent with CDBG requirements. For this reason, the Semi-Annual Repayment Report is required (see Attachment 3-6).

Attachment 3-6:
Semi-Annual Repayment Report

A grantee generating program income must submit a report for the six-month period ending June 30th and December 31st of each year.

Subrecipients and Reporting

Since the grantee has ultimate responsibility for grant compliance, that entity is responsible for completion and submission of the report. Should the grantee utilize a subrecipient organization to manage a RF, the subrecipient organization entity is responsible for providing the necessary program and financial information required for the report to the grantee, and the grantee should then send the report to DLG.

Monitoring

Review of the Semi-Annual Repayment Report may be included as part of a normal project monitoring. Any deficiency that is noted and appears as a finding in the monitoring letter must be resolved as would any other finding. Refer to Chapter 12 for more information on monitoring.

LDA Proceeds

As defined earlier in the Chapter, Section 105(a)(15) of the Act allows DLG to designate non-profit organizations and local development organizations as Local Development Agencies (LDA). These organizations when undertaking community economic development, neighborhood revitalization, or energy conservation projects can generate income that will not be considered program income and not hold the federal requirements of its original source of funds. These funds will be referred to as LDA proceeds. LDA proceeds are generated when a grantee provides CDBG funds to a DLG designated LDA to implement a CDBG eligible activity, such as economic development. In this example, DLG would designate in the funding agreement with the grantee that the funds would be administered by the LDA and income generated from the activity would be considered LDA proceeds and exempt from program income requirements. This exception to the program income designation only applies to a designated LDA project and only covers generated income that is received back by the LDA. If payments such as principal and interest generated from an LDA funded project were paid to the Grantee or subrecipient, these funds would be program income, continue to hold their federal identify, and fall under all of the program income requirements listed in the earlier section of this chapter.

Use of LDA Proceeds

DLG will work with the LDA to establish a re-use plan for LDA proceeds. The LDA may choose to set up an RF to target and market the use of LDA proceeds to further the mission of the LDA. Because the LDA proceeds are not considered to retain their federal identity, their reuse does not trigger the CDBG requirements or other federal requirements such as environmental review and federal labor standards.

Transfer of LDA Proceeds

The exemption from the program income requirements only applies to funds generated from an LDA activity that are retained by the LDA. If LDA proceeds are transferred to or repaid to the CDBG grantee these funds would trigger all of the program income reporting and reuse requirements detailed in the earlier program income section of this chapter.

Monitoring of LDA Proceeds

LDA proceeds will be monitored periodically by DLG to insure compliance with KCDBG requirements. Monitoring may include verification of the information provided in the Semi-Annual Repayment Report.

Attachment 3-6:
Semi-Annual Repayment Report

Reporting of LDA Proceeds

DLG will track compliance with LDA proceeds requirements through the review of the Semi-Annual Repayment Report.

Section 3-D. Requests for Payment

Funds for approved KCDBG activities should be requested as close to the time of disbursement as is possible. To ensure continued public awareness and fiscal oversight of the project, the project

administrator should report project information to the city council/fiscal court monthly. This report should include project progress, anticipated completion date, and the use and availability of funding.

Procedures

Submit all requests for payment of KCDBG funds to DLG on the form provided. If possible, please hold the draw request until there is a fair amount of money to request (i.e., $2,000). The request should outline the:

- ✓ Amount of federal funds previously requested;
- ✓ Amount of federal funds disbursed;
- ✓ Amount of program income; and
- ✓ Balance of federal funds on hand.

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

Program income will be disbursed by the grantee before additional funds are requested. Cash on hand will be subtracted from the amount of funds requested.

Request for Payment Form Completion

The following outlines the method for submitting the Request for Payment Form (see Attachment 3-2). Grantees may submit this form to DLG twice monthly, by the 3rd and the 18th of the month. A copy of the form is provided as an attachment to this chapter.

Attachment 3-2:
Request for Payment Form

General

The top portion of the Request for Payment form should be completed with the appropriate identifying information:

- ✓ **KCDBG Grant Number**—The number assigned to each grant as noted on the Grant Agreement.
- ✓ **Request Number**—Each Request for Payment will be consecutively numbered by the grantee. If a grantee has received more than one grant, a Request for Payment will be made separately and numbered consecutively for each grant.

On all forms, the grantee should round all dollar amounts to the nearest dollar.

Part I—Status of Funds

Part I of the Request for Payment provides the status of funds. Fill in the fields with the following information:

- ✓ **Line 1**—List all KCDBG funds received to date.
- ✓ **Line 2**—List the program income received from KCDBG activities since the last draw.
- ✓ **Line 3**—Add lines 1 and 2.

- ✓ **Line 4**—List the total of all disbursements of KCDBG funds to date.
- ✓ **Line 5**—Subtract line 4 from line 3. This gives the Federal funds on hand that have not been disbursed, a.k.a. the organization's "cash on hand."

Part II—Cash Requirements

Part II of the Request for Payment provides information on the funds the grantee is requesting. Part II is to be completed for all approved activities even if funds are not currently being requested for a particular activity.

- ✓ The first three lines give an overview of a grantee's activities. Identify the activities by entering the activity code and a brief description above each column. The current approved budget amount for each activity should be included as well. Totals should be calculated at the far right as well as at the bottom.
- ✓ **Line 1**—Enter the total of all KCDBG cash requirements to date for each approved activity. This amount should be equal to all KCDBG expenditures paid to date plus cash needed to meet immediate needs.
- ✓ **Line 2**—Show the total amount of KCDBG funds requested on previous draw requests.
- ✓ **Line 3**—Subtract line 2 from line 1. This will result in the amount of KCDBG funds needed on this request for each activity.

If there are more than nine activities, use a second request form to include all activities. The second page should contain the total for both pages and the authorized signature.

Part III—Project Status

Part III describes in brief the status of the project. This section should include accomplishments achieved since the last request and if necessary discussion of any project delays.

After the narrative, indicate the amount of other funds drawn and expended on this project. Break these funds down using the classifications shown in the grant agreement.

Certification

After reviewing the form and verifying that all of the conditions listed in the certification have been complied with, the CEO or person authorized on the Authorized Signature Form should sign and date the form in the space provided.

Once the form is completed, the grantee must mail or email the signed form to DLG.

Common Mistakes to Avoid

- ✓ Unsigned or improperly signed Requests for Payment are submitted.
- ✓ All approved activities not shown on each Request for Payment.
- ✓ Disbursements to date are not correct.
- ✓ Amounts not rounded to nearest dollar.
- ✓ Mathematical errors.
- ✓ Budget Amendments have not been approved.
- ✓ **Status of project not included**.

Section 3-E. Audits

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

Audits are a critical component of any financial management system and the Kentucky Revised Statutes (KRS) emphasize the significance of audits. Regardless of the type or size of the entity, an effective audit can improve management operations and yield significant dollar savings.

Audit Requirements

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

There are both Federal and state requirements for audits. 2 CFR Part 200 Subpart F provides Federal requirements for audits of governmental entities and nonprofit organizations. The KRS detail the state audit requirements for both cities and counties. As noted below, there are differences between both the KRS and Federal requirements; however, cities and counties are required to follow both laws.

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

Federal Requirements

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

- ✓ Organizations that have expended more than $750,000 in a fiscal year are required to have a single audit. A single audit is an audit that includes both an entity's financial statements and its federal awards (from all applicable Federal programs).
- ✓ Organizations that have expended less than $750,000 in federal funds in a fiscal year are exempt from the audit requirement; however, financial records must be made available if requested.

State Requirements for Cities

KRS 91A.040 outlines Kentucky Audit requirements for cities in the Commonwealth of Kentucky. Cities may be audited by the Auditor of Public Accounts or a certified public accountant (CPA). Generally, all cities must have an audit of their funds performed at the end of each fiscal year. All audits must be completed by March 10th immediately following the fiscal year being audited. There are two exceptions:

KRS 91A.040

- ✓ A city with a population of less than 2,000 (according to the most recent decennial census) shall every even year complete the KRS 424.220 financial statement by October 1, and every odd year complete a 2-year audit by March 1 following the close of the fiscal year.
- ✓ Any city that receives and expends less than $75,000 and does not have long-term debt shall not be required to have an audit for that particular year but shall prepare the KRS 424.220 financial statement and send one electronic copy to the DLG Cities Branch by October 1 following the close of the fiscal year.

State Requirements for Counties

As per KRS 64.810, all counties must audit their funds at the end of each fiscal year. The Office of the State Auditor of Public Accounts or a CPA must conduct the annual audit of the funds in each county's budget. Refer to KRS 64.810 for further information on county audits.

KRS 61.810

The Audit Process

In procuring audit services, grantees should follow the applicable procurement standards and KRS 91A.040. The grantee should ensure that the auditor is knowledgeable about specific accounting requirements that apply to local government.

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

2 CFR 200.514(a)

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

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

- ✓ A copy of the Grant Information Sheet received with the Grant Agreement;
- ✓ A copy of the Grant Agreement;
- ✓ A copy of all draw sheets processed during the fiscal year;

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

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

The Audit Report

KRS 91A.040 and 2 CFR Part 200 require that audit reports issued upon completion of an audit include:

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

Deadline and Submission

The submission of all audit information is the responsibility of the grantee. It is the administrator's responsibility to inform the grantee of all audit requirements and to ensure that **completed audit reports are submitted to DLG** and the appropriate offices, including the Federal Audit Clearinghouse, on a timely basis.

Federal Submission Requirements

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

Grantees have no later than 30 days after receipt of the auditor's report or March 31st (whichever is earlier) to submit the final copies to the Federal Audit Clearinghouse (FAC). The grantee should also forward one copy to DLG, Office of Federal Grants.

According to 2 CFR 200 Subpart F, grantees must make copies of their audit available for public inspection, ensuring that protecting personally identifiable information is not included. This requirement will apply for FY2016 forward.

State Publication and Submission Requirements

All city audits must be performed by a CPA and completed by March 10 immediately following the close of the fiscal year. County audits done by a CPA must be completed by February 1 immediately following the end of the fiscal year. County audits performed by the State Auditor's office are to be completed in a reasonable time as determined by the APA. (KRS 43.070).

In accordance with KRS Chapter 424 and 91A.040, cities must publish an advertisement regarding the audit within 30 days of the presentation of the audit to the City's legislative body.

In addition, KRS requires cities to submit one electronic copy of the audit to the Cities and Special Districts Branch of DLG. **KCDBG grantees must also send an additional copy to the Office of Federal Grants in order to meet the CDBG-related requirements.**

DLG Audit Submission

Office of Federal Grants
100 Airport Road, 3rd Floor
Frankfort, KY 40601Frankfort, KY
40601-8204

For counties, the fiscal court or county official should submit the accountant's written report to the Governor, the General Assembly, the Attorney General, the State Librarian, and the county attorney. A copy must also be provided to DLG to comply with CDBG requirements.

Additionally, the fiscal court or county official must send the report to the newspaper having the largest paid circulation in the county. The letter of transmittal accompanying the report should be published in the newspaper in accordance with the provisions of KRS Chapter 424.

2 CFR Part 200 Audits must be submitted to:

Federal Audit Clearinghouse
1201 E 10th Street
Jeffersonville, IN 47132
http://harvester.census.gov/facweb

Chapter 4: Procurement

Introduction

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

Section 4-A. KCDBG Procurement Code

2 CFR Part 200.318

All procurements funded in whole or in part with KCDBG funds must comply with the applicable federal requirements found in 2 CFR Part 200 (referred to as the Super or Omni Circular). The goal in using these procurement procedures is to achieve maximum open and free competition.

Attachment 4-1:
KCDBG Procurement Code

Each grantee (and nonprofit subrecipient) shall adopt and abide by the KCDBG Procurement Code (Attachment 4-1), which shall apply only to procurements funded with KCDBG dollars, as authorized in 2 CFR 200.318. The KCDBG Procurement Code follows the Kentucky Model Procurement Code (KRS Chapter 45A), except where the Model Procurement Code conflicts with federal procurement standards and where DLG has stricter requirements. The KCDBG Procurement Code includes:

- ✓ A code of conduct to govern the performance of the grantee's officers, employees or agents in contracting with KCDBG funds and to ensure adherence to the conflict of interest and disclosure requirements (outlined in Chapter 1: Project Administration); and

Chapter 1: Program Administration

- ✓ A requirement that positive efforts be made to use small, minority, female, low-income and/or locally-owned businesses; and
- ✓ A requirement that contracts be awarded, to the greatest extent feasible, to businesses that provide economic opportunities for low and very low-income persons residing in the project area.

Section 4-B. Overall Procurement Requirements

Environmental Review and Bidding

Chapter 2: Environmental Review

As stated in Chapter 2: Environmental Review, it is HUD policy as of April 2011 that the environmental review process be completed prior to bidding to allow for an unprejudiced decision about the action and to allow for any modifications or project cancellation based upon the environmental review.

Minority Business Enterprises/Women Business Enterprises (MBE/WBE)

Background

The regulations at 2 CFR Part200.318 requires grantees to take affirmative action to contract with small and minority-owned firms and women business enterprises. DLG does not require set asides or participation quotas, but grantees are expected to make special efforts to award contracts to MBE and WBE firms. Goals for minority participation in construction (by county) are provided in Chapter 6 as Attachment 6-3.

2 CFR 200.318

Attachment 6-3:
Goals for Minority Participation in the Construction Industry

Requirements

Grantees are required to notify MBE/WBE firms of the opportunity to bid on KCDBG funded contracts. Each grantee must ensure appropriate outreach has been completed to ensure MBE/WBE firms have the opportunity to participate in the KCDBG program. The Kentucky Procurement Technical Assistance Center (PTAC) has been reinstated and may be available to post bid notifications or provide bid matching services with MBE/WBE businesses for KCDBG grantees. A form is provided as Attachment 4-2 for this purpose. Refer to www.kyptac.com or contact their office at (859) 251.6019. Grantees will also need to establish additional outreach steps to comply with the MBE/WBE requirements (see below).

Attachment 4-2:
PTAC Bid Match Form

Suggested Outreach

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

- ✓ Assuring that small businesses and MBE/WBEs are solicited whenever they are potential sources.
- ✓ Maintain a list of qualified small, minority, and female owned businesses.
- ✓ Use the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the U. S. Department of Commerce and the Community Services Administration as required.
- ✓ Including MBE and WBE firms on solicitation lists and sending them an Invitation to Bid.
- ✓ When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum participation by small businesses and MBE/WBEs.
- ✓ Where the requirements permit, establishing delivery schedules which will encourage participation by small businesses and MBE/WBEs.
- ✓ If any subcontracts are to be let, requiring the prime contractor to take the above affirmative steps.
- ✓ Setting aside a percentage of KCDBG funds to be awarded to MBE/WBEs.
- ✓ Including MBE/WBE criteria with additional points in selection criteria for professional services procurement.

Resources for Identifying MWE/WBE Contacts

- ✓ Kentucky Procurement Technical Assistance Center (KYPTAC) for bid match services. www.kyptac.com or (859) 251.6019.
- ✓ Associated General Contractors of Western Kentucky maintains a list of DBE, MBE and WBE contractors. **https://www.agcwky.org/members?mbe**
- ✓ Associated General Contractors of Kentucky maintains a listing and will share if you contact them at (502) 537-5243 or email jmckibben@agcky.org.
- ✓ Kentucky Department of Transportation Small Business & Civil Rights section has a link for Disadvantaged Business Enterprises which includes minority, disadvantaged, and women business enterprises.
    - More information on their programs are available at **https://transportation.ky.gov/Civil-Rights-and-Small-Business-Development/Pages/Small-Business-Development.aspx.** Tony Youseffi is the contact at (502)782.4810.
    - Certified DBE directory: **http://transportation.ky.gov/Civil-Rights-and-Small-Business-Development/Pages/Certified-DBE-Directory.aspx**

Section 3

Background

Section 3 of Housing and Urban Development Act of 1968

24 CFR Part 75

Section 3 is a provision of the Housing and Urban Development Act of 1968. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by certain HUD investments, to the greatest extent feasible, are directed to low- and very low-income persons and to business concerns which provide economic opportunities to low- and very low-income persons. The goal is to keep dollars local and help foster local economic development, neighborhood economic improvement, and individual self-sufficiency. Section 3 focuses on opportunities for jobs, training and business ownership opportunities, via contracts. Opportunities such as these can help to lift individuals out of poverty and encourage self-sufficiency.

The new Final Rule 24 CFR Part 75 became effective on November 20, 2020. The obligations to meet the Section 3 rule can be challenging; the key is to have a plan for efforts to meet the rule requirements and to maintain good documentation to demonstrate compliance.

Section 3 Key Points

- ✓ Section 3 applies to recipients of $200,000 or more in KCDBG assistance. The types of projects that are covered by Section 3 are housing construction, demolition, rehabilitation, or other public construction (e.g., infrastructure or community facilities).
- ✓ Section 3 applies to the entire project even when the KCDBG funds are only a portion of the total funding
- ✓ Compliance can be met in two ways:
    - Quantitative goals:
        - **25%** or more of all labor hours must be worked by Section 3 workers
        - **5%** or more of all labor hours must be worked by Targeted Section 3 workers

      OR
    - Qualitative Goals
        - If a grantee has not met the quantitative goals, they can still be considered to in compliance if they can provide evidence of a number of qualitative efforts to assist low and very low-income persons with employment and training opportunities
        - KCDBG Section 3 Guide provides a list of qualitative efforts KCDBG recipients may undertake to document the project made qualitative efforts to assist low and very low-income persons with employment and training opportunities

Defining Section 3 Workers

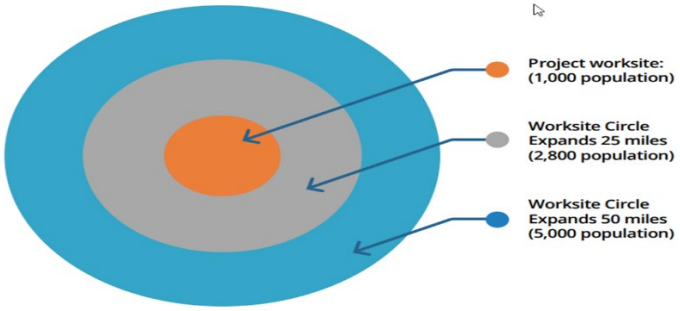
A Section 3 worker is any worked who currently fits, or when hired within the past five years fit, at least one of the following categories as documents:

- ✓ A low or very low-income worker
- ✓ Employed by a Section 3 business concern
- ✓ A Youthbuild participant

Defining Targeted Section 3 Worker

- ✓ Employed by a Section 3 business concern
- ✓ Currently fits or when hired fit at least one of the following categories as documented within the past five years:
    - Living within the service area or the neighborhood of the project, as defined in 24 CFR 75.5 **and** qualifies as a low or very low-income worker
    - A YouthBuild participant

Service Area as Defined in 24 CFR 75.5



OR

- ✓ **If > 5,000 people live within one mile of Section 3 project, then, Service Area = an area within a circle centered around the Section 3 project site that encompasses 5,000 people.**

To ensure grantees have an adequate plan to satisfy the Section 3 requirements, a grantee must develop and implement a Section 3 Action Plan that outlines how it will achieve these goals. The plan must state the grantee's commitment to Section 3 and outline steps to implement it. The DLG Section 3 Guide Attachment 4-3 provide a step-by-step plan to implement the Section 3 requirements and establish the needed files to document compliance. KCDBG recipients will need to maintain records of Section 3 compliance and will report their Section 3 efforts and accomplishments at the closeout of their grant utilizing the KCDBG Project Completion Report Attachment 13-2a.

Requirements

Contractors or subcontractors for housing construction, demolition, rehabilitation or other public construction triggering Section 3 are required to comply with the Section 3 regulations. Refer to the Section 3 Guide available on DLG's website along with Chapter 5 and the Contracts Document Guide for additional information on Section 3. The Contracts Document Guide provides not only language to include in construction contracts, but also a Contractor Section 3 Plan Format, which is required to be completed by the contractor/subcontractor to demonstrate compliance with Section 3.

Note: In cases where a grantee receives KCDBG assistance of over $200,000 for a program but no individual project or activity exceeds the $200,000 threshhold, the Section 3 requirements do not apply.

Reporting Requirements

Attachment 4-3:
Grantee Section 3 Action Plan

It is important to document efforts made to comply with Section 3. For the qualitative efforts, each project that triggers the Section 3 requirements will be required to report the total labor hours for the project, labor hours completed by Section 3 qualified workers, and labor hours for Targeted Section 3 workers. Documentation of the quantitative efforts should contain memoranda, correspondence, advertisements, etc., illustrating attempts to meet Section 3 goals (e.g., to reach out to eligible persons regarding employment or training and/or business concerns). Documentation will show the steps taken to implement the plan, and will most likely cross-reference information in other files, such as procurement and construction

contracting. The mere existence of a Section 3 Action Plan is not sufficient. Affirmative attempts to reach Section 3 goals must be made.

Finally, grantees are required to report on both quantitative outcomes and qualitative efforts at the completion of the project on the KCDBG Project Completion Report 13-2a. Contact DLG for guidance on completing the report, if necessary.

Attachment 13-2a:
KCDBG Project Completion Report

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

Conflicts of Interest

Background

The procurement process must be fair to all those seeking to do business with a Grantee or subrecipient. Nothing is more detrimental to a successful procurement operation than to have the relationship between the Grantee and the contractor questioned regarding real or apparent conflicts of interest. Conflict-of-interest issues deal with the relationship between the parties and financial gain. Essentially, those that are in positions of trust, such as local officials, employees, consultants, family members, and business partners, cannot personally gain from procurement transactions. Furthermore, Grantees should not overlook the fact that this rule applies to both actual conflicts of interest and "apparent" conflicts. Too often, staff members mistakenly believe that indirect or noncash benefits would not be considered a conflict of interest. However, vendor or contractor donations to employee fund-raising drives, event tickets, meals, or gifts of any kind could potentially be considered conflicts of interest. For more information on conflicts of interest, see Chapter 1: Project Administration.

Chapter 1: Project Administration

Requirements

Grantees should be thoroughly familiar with the conflict of interest requirements in 2 CFR Part 200, Kentucky Revised Statutes and the CDBG regulations. Any possible conflict of interest issues must be brought to the attention of DLG immediately. The sooner a real or apparent conflict of interest is identified the better. If any potential conflict is known at the time of application, it must be brought to the attention of DLG staff.

Separation of Duties

Grantees must be vigilant to eliminate the possibility of fraud in the procurement process. One of the most important checks and balances to limit fraud is through the separation of duties of staff. The person tasked with ordering the goods or managing the procurement process should be different from the person receiving and accepting the goods and the person paying for the order. When this is not possible due to the limited size of staff, grantees should have additional rules in place, such as limiting dollar authorizations and periodic reviews by an independent individual. Grantees should ensure that only designated individuals have the authority to make binding contracts. If the grantee has a small staff, there should be some procedure in place to provide for independent oversight. The grantee's procurement procedures should outline the positions involved in the procurement process and the responsibilities of each person, a formal system of authorization and review, and separation of duties.

The rule of thumb should be that if an employee touches the money, mail, or goods purchased, he or she should not touch the books.

Open Competition

KCDBG procurement must be conducted in a manner that ensures full and open competition consistent with the standard set forth in 2 CFR Part 200 and the KCDBG Procurement Code. ***All*** services to be provided must be procured in accordance with 2 CFR Part 200 and the KCDBG Procurement Code. Actions that might restrict competition would include:

- ✓ Placing unreasonable requirements on firms in order for them to qualify to do business.
- ✓ Requiring unnecessary experience.

Section 4-C. Methods of Procurement

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

Small Purchase Procedures

For purchases of less than $50, efforts must be made to get the lowest and best price. The grantee is not required to maintain written records for these purchases.

Otherwise, small purchase procedures entail a relatively simple and informal process that can be used when goods *and* services, in the aggregate, cost no more than $30,000. Under this process, the grantee should:

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

Competitive Sealed Bids

KRS 45A.365

The Competitive Sealed Bids method of procurement is used when clearly detailed specifications for the goods or services to be procured can be prepared, and the principle basis for award is cost. The sealed bid method is the preferred method for procuring KCDBG-funded construction work with estimated costs in excess of $30,000. (See Chapter 6: Labor Standards and Construction Management for detailed information on preparing construction bid documents.) The following requirements apply to the competitive sealed bid procurement process:

Chapter 6: Labor Standards and Construction Management

KRS 424.120

- ✓ Competitive sealed bids are initiated by publishing an Invitation for Bids (IFB) (sample provided as Attachment 4-4).
- ✓ The IFB must be advertised in the newspaper of largest circulation in the jurisdiction at least one time for not less than seven days or more than 21 days before the date set for the opening of bids.

Attachment 4-4: Advertisement for Bids

- ✓ The IFB must also be publicized by distributing the IFB to a list of qualified contractors.
  - Remember, the grantee must include MBE /WBE and Section 3 firms on solicitation lists and send them an Invitation for Bid.
- ✓ The IFB will include specifications that define the services or items required in order for the bidder to properly respond.
- ✓ 2 CFR Part 200 requires a bid guarantee from each bidder equal to five percent of the bid price. This guarantee serves as an assurance that the chosen contractor will execute the contract within the time specified.
- ✓ All bids must be publicly opened at the time and place stated in the Invitation for Bids.
- ✓ The bids must be tabulated and reviewed.
- ✓ Preparation and signing of a contract formalizing a scope of work and the terms of compensation is required.
  - The contract awarded must be a firm-fixed-price contract (lump sum or unit price with a maximum amount identified).
- ✓ If alternates (additives or deducts) will be taken, the bid documents must be clear as to what order those alternates will be applied.

Competitive Negotiation

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

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

Competitive negotiations are initiated by publishing a Request for Proposals (RFP) or Request for Qualifications (RFQ). The RFP is used when price is a factor in selection; the RFQ is used when price is considered after selections (generally only for engineering services). In both the RFP and RFQ, all significant evaluation factors and their relative importance should be clearly stated. In addition, the grantee should provide or make available any materials such as reports, maps, and site plans to assist interested firms in preparing responsible submissions. A sample RFQ is provided as Attachment 4-5 and a sample RFP is provided as Attachment 4-6 to this Chapter.

Attachment 4-5:
Sample Request for Qualifications (RFQ)

Attachment 4-6:
Request for Proposal (RFP)

The following requirements apply to the competitive negotiations procurement process:

KRS 424.120

- ✓ The RFP or RFQ must be advertised in the newspaper of largest circulation in the jurisdiction at least one time for not less than seven days or more than 21 days before the date set for the opening of proposals.

- The grantee must include MBE and WBE firms on solicitation lists and send them the RFP or RFQ.
- If an RFP is used, it should specify the scope of services to be provided and the type of contract to be used, which should be either fixed price or an hourly rate with a not to exceed figure.
- An RFP should also:
  - Specify that cost and pricing data is required to support the proposed cost;
  - State anticipated start and completion dates; and
  - List evaluation criteria that will be used in ranking proposals.

✓ The RFP or RFQ must also be distributed to a list of qualified firms.

✓ All proposals received must be reviewed and ranked according to the selection criteria, and the review must be documented in writing. Attachment 4-7 provides a sample Professional Services Evaluation. Attachment 4-8 provides a sample Review Panel Selection Summary.

- There must be at least two proposals from qualified sources to permit reasonable competition.

Attachment 4-7: Sample Professional Services Evaluation

Attachment 4-8: Sample Review Panel Selection Summary

✓ For both RFPs and RFQs, selection is made on the basis of the most responsible offer or price with consideration given to the factors identified in the RFQ or RFP.

- For RFQs, an invitation is then made to one or more respondents to negotiate a price or fee. Document the reason the firm is chosen and that the price established is reasonable.

✓ The grantee must maintain documentation of cost reasonableness for all services and reasons for selection.

✓ The grantee must prepare and sign a contract formalizing a scope of work and the terms of compensation.

✓ The grantee should promptly notify unsuccessful offerors.

Non-Competitive Negotiations

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

✓ There is some public emergency that will not permit delay resulting from competitive solicitation (the grantee must declare an emergency as authorized by law); or

✓ The results of the competitive negotiations are inadequate; or

✓ The product or service is available only from a single source.

Caution: The use of the non-competitive negotiations procurement method must be authorized in writing by DLG prior to utilizing this method.

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

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

Section 4-D. Other Procurement Issues

Bid Overages

Overview

2 CFR 200.318 requires grantees to perform a cost or price analysis in connection with every procurement action, including competitive sealed bids. Too often, inadequate or incorrect cost analyses result in cost estimates that are too low and, consequently, low bids coming in over budget. Such bid overages can unnecessarily delay time-sensitive projects, and rectifying the overage is often costly and time consuming. Grantees shall carefully conduct and review their cost estimates and to utilize safeguards such as deductible alternates in order to minimize the risk of overages that will require a re-bid. Despite careful cost analyses and safeguards, there are occasions when all bids will exceed available project funds. This section governs the process for dealing with such a situation.

Options

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

1. Obtaining additional funds from another source and continuing with the original IFB.
2. Rejecting all bids, revising project scope and bid specifications, and issuing a revised IFB (competitive sealed bid) open to the entire public; or
3. Conducting competitive negotiations with **all** bidders. (**Grantees must seek pre-approval from DLG for this option**).

Competitive negotiations under option (3) must take place under the following criteria:

1. If discussions pertaining to the revision of the specifications or quantities are held with any bidder, all of the bidders shall be afforded an opportunity to take part in such discussions.
2. After discussions with all bidders, the grantee shall revise the scope of work accordingly and issue an IFB open to all bidders, providing for expedited proposals. No advertisement is required, but the grantee shall allow **at least seven days** for all bidders to submit proposals.
3. The IFB shall be awarded on the basis of **lowest bid price**.

Deductible Alternates

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

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

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

It is imperative that the grantee's IFB or the information for the bidders packet explicitly states the method of award, including use of any deductible alternates. Failure to be clear and precise on the procedures that will be utilized can cause confusion or disputes among bidders that could, at the very least, cause project delays. DLG recommends that the grantee's attorney be consulted in these cases.

Grant Administration Services

To assist with administering a grant, grantees may consider procuring the services of a certified professional grant administrator. As set forth in Section 1-A, above, the Commonwealth of Kentucky requires that any person administering CDBG funds be certified by first participating in the CDBG Administrator Certification training and passing the subsequent exam (see Chapter 1). It is important to note that the services of the professional grant administrator must be obtained by following the procurement requirements set forth in this Chapter. DLG maintains an updated list of certified CDBG administrators, which might be helpful for procurement.

Chapter 1: Program Administration

An agreement must be signed and executed, formalizing the scope of work and the terms of compensation. Documentation verifying reasonability of cost must also be maintained.

Chapter 5: Contracting

A grantee may instead choose to perform some or all of these services with their own staff member that is a certified administrator, and can be reimbursed for the time an employee spends working on the KCDBG project. It is important to note that time sheets must demonstrate the time spent on the KCDBG project and only time associated with the KCDBG project may be charged to the KCDBG project.

Front-end Costs

Front-end costs are those incurred by the applicant community before funding is obtained. Examples of front-end costs include the preparation of the application, preliminary engineering, and services necessary to prepare the application. A grantee often will contract with consulting and engineering firms to perform specific planning and design functions prior to a project being funded. Federal procurement procedures do not apply if non-KCDBG funds are used to pay for these up-front professional services. All services to be provided must be procured in accordance with 2 CFR 200 and the KCDBG Procurement Code. The grantee is, of course, still bound by local procurement codes when procuring any goods and services.

Private Sector Entities

In economic development projects, it is common for a private sector participating party to procure assets or services. Private sector entities, even when financed with federal funds, are not subject to the

provisions of the Omni Circular. Therefore, most participating party procurements will not be monitored. However, cost reasonableness, as required by the Omni Circular, does apply to the grantee and its expenditures. In the absence of procurement, the grantee will be required to evaluate costs to determine if they are reasonable. Private sector entities may be required to provide some comparative cost information to assist the grantee in this evaluation process and the grantee should maintain this documentation in its files.

Sales Tax on CDBG Projects

Kentucky law prohibits contractors from claiming that a project is exempt from sales tax merely because the project is being constructed or purchased by a governmental entity. See KRS 139.470 and 103 KAR 26:070. A contractor may not "borrow" a Grantee's tax-exempt status when purchasing equipment, materials or supplies for use on a CDBG project.

Grantees are strongly cautioned against purchasing supplies and equipment directly for CDBG projects in order to save sales tax. A variety of legal and contractual issues, including invalid warranty claims, may arise from such transactions. Grantees should contact DLG to discuss these issues.

If, despite these concerns, a grantee still desires to purchase equipment, materials or supplies for a CDBG project, they may do so *only* if the grantee procures all of those materials according to the KCDBG Procurement Code. Federal and state laws require all city and county purchases to be competitively procured. Purchasing these items directly from the contractor's preferred vendors, even when the contractor itself has been properly procured, *does not* satisfy this requirement. Grantees that purchase equipment, materials or supplies must provide proof that the purchases were competitively procured by the Grantee. Failure to provide such documentation may result in the purchases being deeming ineligible for reimbursement with CDBG funds and/or may require repayment of improperly withheld sales tax.

Section 4-E. Procurement of Professional Services

This section describes steps that are required to help ensure grantees comply with federal and state procurement requirements in the procurement of professional services. The grantee cannot turn these steps over to their existing contractor to complete as this would violate the goal of maintaining open competition. All services to be provided must be procured in accordance with 2 CFR 200 and the KCDBG Procurement Code.

Step 1: Establish a Contract Procurement File

The grantee should create and maintain a procurement file in order to document compliance with procurement requirements. At the end of the process, the procurement file must contain the following items:

- ✓ Tear sheets of advertisements requesting proposals or qualifications;
- ✓ A listing of firms that were sent the RFP/RFQ directly;
- ✓ A copy of the RFP/RFQ, including a description of the method used to select professional services;
- ✓ RFQ qualification statements received or RFP responses received;
- ✓ Written evaluation of statements/responses received;
- ✓ Written statement explaining the basis for selection; and

✓ Written evidence that proposals/costs were determined to be reasonable.

Step 2: Solicit Proposals

The first step in preparing a solicitation is determining the scope of work. The grantee must clearly define the services requested and the factors to be used in the evaluation and selection process. The competitive negotiation method is generally used to procure professional services in excess of $30,000 for which the grantee will issue either an RFP or RFQ. Attachment 4-6 provides a sample Request for Proposals.

Attachment 4-6:
Sample Request for Proposals

Step 3: Review Submissions

After the qualifications from the RFQ or proposals in response to the RFP have been received, the grantee should start the review process according to the established selection criteria. Attachment 4-6 provides a sample Professional Services Evaluation form for use by the grantee. The process should be thorough, uniform, and well documented. The review should be conducted by a committee composed of at least three people who have technical knowledge of the type of project being considered. However, these reviewers should have no potential conflicts of interest with any of the firms or individuals under review.

Evaluation criteria should include:

- ✓ Specialized experience or technical expertise of the firm and its personnel in connection with the type of services to be provided and the complexity of the project.
- ✓ Past record of performance on contracts with the locality and other clients, including quality of work, timeliness 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.
- ✓ An evaluation consideration to small, local, minority or female owned firms. These firms may be awarded extra points in order to promote the employment of these firms.

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

Chapter 1: Program Administration
KRS 45A.455

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

Step 4: Prepare a Contract

Once a firm is chosen and the basis of selection is documented along with the reasonability of cost, it is time to start the preparation of a contract with the successful individual or firm. See Chapter 5: Contracting for information on contract requirements.

Chapter 5: Contracting

Note: **A project using Rural Development (RD) contracts must amend the contracts by addendum to ensure the contract includes all standard CDBG general and supplemental conditions.**

Section 4-F. Procurement of Construction Services

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

Step 1: Establish a Contract Procurement File

The grantee should create and maintain a procurement file in order to document compliance with procurement requirements. At the end of the process, the procurement file must contain the following items:

- ✓ Copies of the IFB;
- ✓ Newspaper tear sheets advertising the IFB;
- ✓ A listing of firms contacted directly;
- ✓ Copies of all addenda;
- ✓ Evidence all bidders received notice of any addenda;
- ✓ Copies of all bids received;
- ✓ Bid tabulations and evaluation of bids; and
- ✓ Signed minutes of the bid opening.

Step 2: Bid the Contract

The bid package should be prepared with the correct wage decisions and labor requirements included. (See Chapter 6: Labor Standards and Construction Management) for information on preparing bid packages with labor requirements and wage decisions.) Bids must be solicited by public advertising, and must conform to the Omni Circular, State law, and local ordinance with respect to number of times advertised and scheduled. Attachment 4-4 provides a sample Advertisement for Bids.

Chapter 6: Labor Standards and Construction Management
KRS 424.130

Attachment 4-4:
Sample Advertisement for Bids

All construction contracts in excess of $30,000 must be advertised at least once, seven to 21 days before bids are opened. The advertisement must also call the bidder's attention to the requirement for prevailing wages as well as Section 3, equal opportunity, and other related requirements. In order to give maximum opportunity to small and minority firms, bid advertisements must also be sent to the MBE/WBE firms.

State law also requires that all construction contracts estimated by the grantee to exceed $100,000 include bidder security. Bidder security protects against contractors bidding low and then, prior to contract execution, requesting a price adjustment due to "unforeseen" events. Acceptable forms of bidder security are "bid bonds" in an amount equal to five percent of the amount of the bid, or the equivalent in cash. Grantees also have discretion to require bid bonds on contracts under $100,000 if the circumstances warrant such security.

KRS 45A.430

Step 3: Issue Addenda

If the bid document is amended during the advertisement period, addenda must be sent to all bidders who have received bid documents. However, addenda may be issued only up to 72 hours of bid opening. If an addendum is necessary within the 72-hour period before the scheduled bid opening, the bid opening date must be extended at least one week. All bidders must be sent copies of each addendum and evidence of notification must be maintained in the bid files. (Any applicable revision to the wage determination must also be distributed as an addendum.)

Step 4: Confirm Wage Rates

Nine days before bid opening, the grantee must contact DLG to determine if there have been any modifications or revisions to the Davis-Bacon wage rate decision. The grantee should document the "Nine-Day Call" with a memorandum to the Labor Standards File. This "Nine-Day Call" is important because, if modifications have been made before the scheduled bid opening, the grantee is liable for the difference between the original and any recently modified rates. If it is determined during the "nine day call" that there has been a modification, DLG will send the most recent modification to the grantee, The grantee will then send it as an addendum to all contractors who received the original bid package no later than 72 hours prior to bid opening.

Step 5: Open Bids

All bids received should be logged in with the time/date of receipt, name of bidder, and assigned a number. All bids received must remain sealed and in a safe place until the bid opening. At the date scheduled, the public bid opening should be conducted in a businesslike manner. Prior to opening bids, the grantee should state the engineer's estimate on each contract to be awarded. The bids should be read aloud during the bid-opening meeting and the apparent low bidder should be determined during the bid opening.

- ✓ The bids must also be reviewed for both technical and legal responsiveness of bids.
- ✓ In addition, the bidders must be evaluated as having the capacity to furnish products and/or services required.

Minutes of the opening must denote the apparent low bidder, include a bid tabulation, and be signed and placed in the contract file.

Step 6: Award the Contract

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

is awarded by official action of the local governing body.) More than 30 days may be required if the project is bond financed, financed with federal funds not available at the time bids are received, the Kentucky legislature must act before funds are available, or other extenuating circumstances exist. If the grantee expects to require more than 30 days to award, the advertisement and bid document should so state.

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

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

- ✓ To be responsive, the bidder must have submitted all required documentation. However, the responsiveness criteria must be uniformly applied to all bidders. If one bidder is rejected for failing to submit a particular document, for example, all bidders failing to submit that documentation must be rejected.
- ✓ The grantee must check the contractor and all subcontractors' names against the Federal Excluded Parties List System (EPLS) available at https://www.sam.gov/portal/SAM/##11. The grantee must document that the contractors and subcontractors are not on this list.
- ✓ The bidder may also be determined non-responsible if, in the grantee's judgment and the judgment of the consulting professional, the bid is so unreasonably low that the project cannot be constructed for the amount bid. This is often a problem with inexperienced contractors. The grantee should always contact its attorney and its DLG Program Advisor if the grantee must award to other than the low bidder.

Step 7: Notify DLG and Execute the Contract

Attachment 4-9:
Notice of Contract Award and
Preconstruction Conference

Once the bidder is accepted and the reasonability of cost is established, the grantee must send a Notice of Contract Award and Preconstruction Conference within 10 days to DLG and the Kentucky Department of Labor Regional Office of Federal Contract Compliance. Attachment 4-9 provides this notice and relevant contact information.

Attachment 6-10:
Notice to Proceed

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, bid proposal, executed contract, notice to proceed, contractor certifications, and bond and insurance forms. See Chapter 5: Contracting and Chapter 6: Labor Standards and Construction Management for information on contract and construction oversight requirements.

Chapter 5: Contracting and
Chapter 6: Labor Standards and
Construction Management

Chapter 5: Contracting

Introduction

Once goods and services have been properly procured, it is time to develop the legal instruments necessary to establish contractual obligations and rights. This chapter provides general guidance concerning the compliance aspects of contract administration as well as sample contract language.

Section 5-A. General Contract Requirements

As with all contractual obligations, the grantee is advised to seek the advice of legal counsel regarding rights, duties, obligations and liabilities arising from legal arrangements. DLG is also available to provide general, non-legal advice concerning contracting requirements.

Tip: **Grantees are not required to obtain advance approval of contracts from DLG. However, grantees must send the Notice of Contract Award included in Chapter 4. In addition, DLG will review contracts during scheduled monitoring and compliance assistance visits to ensure compliance with CDBG and other federal and state requirements.**

Attachment 4-10:
Notice of Contract Award

General Contract Contents

Contracts involving the use of KCDBG funds must include the following provisions to ensure compliance:

- ✓ **General Administrative Provisions** including effective date of the contract, names and addresses of the parties to the contract, reference to the authority of the local unit of government to enter into the contract, conditions and terms for violation or breach of the contract, and procedures for contract amendment.
- ✓ **A Scope of Services** including a detailed description of the work to be performed and/or products to be delivered, the schedule for performance, and specification of materials.
- ✓ **Method of Compensation** including fee or payment schedules, retainage, rates and maximum amounts payable. All contracts using KCDBG funds must have a not-to-exceed clause.
- ✓ **Terms and Conditions** - Consistency of the contract with the requirements of the grant agreement between DLG and the grantee. This is particularly true of those terms and conditions that involve the scope of project, implementation schedules, and method and amount of payments. In other words, the relevant terms and conditions of the grant agreement between DLG and the grantee should be reflected in subsequent contracts between the grantee and the entities they hire to provide services for the project.
- ✓ **Special Conditions/Specific Provisions** - Inclusion of specific contract provisions may be required by state and federal law. These provisions are dependent on a combination of:
  - Whether the contract is for construction or non-construction services (e.g., professional services such as administration, surveying, legal, etc.),
  - The dollar value of the contract, and

– Statutory mandates.

Section 5-B. Contract Provisions

Tip: **DLG has provided documents for construction and non-construction documents along with the Contract Documents Guide. These documents have been provided to help grantees to adopt documents that will provide the required elements as described in this chapter. DLG encourages grantees to utilize the samples and guide to maintain compliance with the Contracting requirements.**

Non-Construction Contracts

The Contract for Professional Services (Attachments 5-1 and 5-2) should be used when contracting for non-construction (professional) services paid for with KCDBG funds. The grantee should carefully review the citations included in Part II to determine specifically which provisions are appropriate for its non-construction contracts.

Attachment 5-1: Contract for Professional Services—Part I

Attachment 5-2: Contract for Professional Services—Part II (required non-construction language)

Construction Contracts

A construction contract must include all items included in the bid package as well as the standard contract terms and conditions, contractor certifications, and bond and insurance forms. Because this is a legal document, the grantee is required to consult legal counsel and obtain a signed letter certifying that the counsel has reviewed and approved the documents.

Note: **Neither the cost-plus-a-percentage nor percentage-of-construction cost methods of contracting are allowed.**

The grantee should be concerned with both the body of the contract as well as the compliance requirements that are frequently included as exhibits to the base contract. The following must be included in the contract text:

- ✓ Parties to the agreement;
- ✓ Project location;
- ✓ Scope of services;
- ✓ Financial commitments;
- ✓ Starting and ending dates;
- ✓ Performance schedule and milestones;
- ✓ Contract representatives (grantee, contractor, subcontractor(s));
- ✓ Conflict of interest;
- ✓ Reporting requirements;
- ✓ Suspension clause;
- ✓ Incorporation of attached requirements;
- ✓ Payment schedule and contract cost;

- ✓ Signatures; and
- ✓ CDBG General Conditions and any other General Conditions pertinent to the contract.

Additional clauses required by the federal government (e.g., labor standards, Section 3, etc.) must also be incorporated in the contract. They require specific language, which must be inserted verbatim into the contract. The ***KCDBG Contract Documents Guide***, which is available on DLG's website, provides the relevant clauses and information on the dollar value of the contracts to which they apply. These paragraphs generally advise contractors that they must comply with specific federal laws pertaining to the environment, fair housing, labor, and other laws attached to the KCDBG legislation.

KCDBG Contract Documents Guide:
https://kydlgweb.ky.gov/Documents/CDBG_handbook/KY%20CDBG%20Contract%20Documents%20Guide%20Final%202017.pdf, listed under Chapter 5: Contracting

Tip: **Grantees must have a full, bound copy of each executed contract in its files for review by DLG. All conditions must be contained within the contract document.**

Subcontracting

An important labor standards component is proper subcontracting. Prime contractors are required to hire only eligible subcontractors (i.e., that are not on the Excluded Parties List; refer to Chapter 4). Prime contractors must also execute a subcontract document with each subcontractor containing all CDBG provisions such as labor standards and other required provisions, such as equal opportunity and general conditions. This subcontract agreement is required for all subcontractors wishing to participate in a KCDBG project.

A sample subcontract agreement with the required language is provided in Attachment 5-3. A copy of the executed subcontract agreement should be obtained and filed prior to or upon receipt of the first subcontractor payroll for that respective subcontractor.

Attachment 5-3: Subcontract Form

Note: **The executed subcontract document must be on file before subcontractor pay requests can be processed. Work closely with the prime contractor to track the subcontractors and ensure that copies of the fully executed subcontracts, containing all required CDBG provisions are obtained and filed in project files.**

Section 5-C. Bonding Requirements

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

KRS 45A.430 and 2 CFR 200.325

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

State law requires that, for project contracts over $100,000, contractors must secure a performance bond for 100 percent of the contract price as it may be increased and a payment bond for 100 percent of the original contract price. Federal bonding requirements are also triggered when contracts exceed $100,000 in value, per 2 CFR 200.325.

The circumstances that dictate the specific assurances, certifications, or other provisions in any given contract can be complex. Grantees should consider contacting DLG or legal counsel for guidance in this area.

Section 5-D. Subrecipient Agreements

It is not uncommon for grantees to carry out project activities through a subrecipient. A subrecipient is defined as a public or private nonprofit agency, authority, or organization, or other eligible entity, that is provided CDBG funds to carry out eligible activities on behalf of the grantee.

The most likely scenario under which a grantee would opt to utilize a subrecipient is when the grantee wishes to "support" certain eligible activities that are either being carried out or are the primary responsibility of some agency outside of the grantee. In effect, the grantee's goals coincide with the subrecipient's, and it makes more sense to utilize the capacities of an existing organization rather than create the apparatus necessary to carry out project activities and/or duplicate services.

It is crucial to stress the importance of the grantee-subrecipient relationship. The grantee is not absolved of its responsibilities by utilizing a subrecipient to carry out project activities; in fact, many of these responsibilities cannot be undertaken by anyone other than the grantee, such as environmental determinations and requesting funds from DLG. Further, all KCDBG requirements are applicable to subrecipients in terms of how they carry out project activities (procurement, financial management, labor compliance, acquisition, etc.).

When is an Entity not Considered a Subrecipient?

An organization or individual is not considered a subrecipient if the entity is:

- ✓ A contractor procured according to the requirements described in Chapter 4: Procurement;

Chapter 4: Procurement

- ✓ A homeowner or landlord of an apartment building receiving a rehabilitation loan or grant;
- ✓ A nonprofit or for-profit entity receiving relocation payments and other relocation assistance;
- ✓ A for-profit business receiving a loan for a special economic development project; or
- ✓ A public agency of the grantee, designated by the grantee, to administer a CDBG project.

There may be additional nonprofit organizations that are not considered subrecipients. These are certain types of nonprofits authorized under section 5305(a)(15) of the CDBG statute that carry out community economic development, neighborhood revitalization or energy conservation projects. A grantee should contact DLG if they are uncertain regarding the status of a particular organization.

Written Agreements with Subrecipients

In order to protect the grantee, and to ensure the subrecipient's compliance with all relevant requirements, the relationship between the two entities must be formally defined through a written agreement (or contract). Such an agreement's purposes are to clearly establish the terms and

Attachment 5-4:
Legally Binding Agreement

conditions under which the KCDBG funding is provided and establish a legal basis for action if those terms and conditions are not met. A sample agreement that can be used as the basis for a subrecipient agreement is provided as Attachment 5-4.

This agreement must contain the following minimum provisions (like the contract provisions discussed in Section 5-B above, these require specific language, and simple reference is not sufficient):

- ✓ **Scope of Work** – In sufficient detail to provide a sound basis for evaluating performance, a schedule and a budget.
- ✓ **Records and Reporting** – Specifying the records that must be maintained and reports which must be submitted in order for the grantee to meet its own record keeping and reporting responsibilities.
- ✓ **Program Income** (if applicable) – Subrecipients may be allowed to retain program income for use in specified eligible activities during the life of the agreement. If the grantee allows the subrecipient to retain program income, the agreement must specify which activities may be undertaken with those funds.
- ✓ **Administrative Requirements** – Specifically requiring compliance with all applicable uniform administrative mandates.
- ✓ **Program Requirements** – Specifying compliance with KCDBG requirements and other state and Federal overlay requirements (labor standards, nondiscrimination and equal opportunity, etc.), except that the subrecipient may not assume the grantee's environmental responsibilities.
- ✓ **Conditions for Religious Organizations** – Where applicable, the conditions prescribed by HUD for the use of KCDBG funds by religious organizations.
- ✓ **Suspension and Termination** – Specifying the conditions for convenience and cause.
- ✓ **Reversion of Assets** – Stipulating that, on the expiration of the agreement, the subrecipient must transfer to the grantee any KCDBG funds on hand and any accounts receivable attributable to KCDBG funds. This must also include provisions designed to ensure that any real property acquired or improved in whole or in part with KCDBG funds in excess of $25,000 is either:
  - Used to meet one of the three national objectives for at least five (5) years after the expiration of the agreement, or longer if stipulated by the grantee; or
  - Disposed of in a manner those results in the grantee being reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to non-KCDBG expenditures. (Reimbursement is not required after five years from closeout.)
- ✓ **Cessation of the Subrecipient** – Providing remedies and procedures in the event of the subrecipient ceases to exist.
- ✓ **Standard Provisions** – Required of all contracts (such as equal opportunity, Section 3, Section 504, labor, etc.). See Section B of this chapter.

Section 5-B: Specific Contract Provisions

Section 5-E. Public Agency Contracts

Grantees are permitted under Title I to designate public agencies to assist in carrying out eligible activities on behalf of the grantee. Such designation is a non-procurement action by which the grantee may obtain services

Chapter 4: Procurement

through non-competitive negotiations with another public agency (e.g., water/ sewer or industrial authority that is a separate legal and financial entity from the grantee). (Note that this does not apply to administration by Area Development Districts.) See Chapter 4: Procurement for applicable procurement requirements.

Once the negotiations are complete, a contractual agreement must be executed. This agreement designates the scope of services, roles and responsibilities of each party, the time of performance and cost for such services. The contract must also contain the specific contract provisions found in the KCDBG Contracts Document Guide available on DLG's website.

A summary of the direct and indirect charges to be reimbursed under the contract, and the basis on which these charges are calculated, should be provided to the grantee with each payment request. Time sheets documenting staff time spent on the project should also be maintained.

Section 5-F. Intergovernmental and Cooperative Agreements

Intergovernmental and cooperative agreements can be used by local jurisdictions to assist in the development, operation, and/or management of KCDBG projects.

- ✓ An intergovernmental agreement typically involves two or more units of local governments who enter into an agreement to apply jointly for KCDBG funding.
- ✓ A cooperative agreement is often used when a local governmental entity applies for a grant to construct public facilities or improvements and decides to have another government entity own, operate, and/or maintain the improvements once they are completed.
- ✓ At a minimum, intergovernmental agreements and cooperative agreements should:
  - State that the parties have agreed to cooperate in undertaking the project;
  - Delineate the responsibilities and authorities of each party with respect to the administration of the grant and continuing ownership, operation and maintenance of facilities if applicable; and
  - Authorize one of the parties to be the recipient of the funds and have primary administrative responsibility.

Section 5-G. Reporting Requirements

HUD Form 2516 Contract and Subcontract Activity Report (Attachment 5-5) must be completed by the grantee and submitted to DLG by September 15 of each year. (DLG is then required to submit these reports to HUD by October 1.) The form is also available for downloading from DLG's website at https://kydlgweb.ky.gov/FederalGrants/CDBG_cities.cfm.

Attachment 5-5:
Contract and Subcontract Activity Report

Grantees should only report on contracts executed during the report period, including both professional and construction contracts. Once all contracts have been reported, the grantee should write "No additional contracts to be awarded" on the activity report.

Chapter 6: Labor Standards and Construction Management

Introduction

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

This chapter describes the policies and procedures that must be followed when undertaking construction projects with KCDBG funds, including bid preparation, compliance with labor standards, pre-construction meetings and inspection and approval procedures.

Section 6-A. Pre-Bidding Requirements

The first step in effective management of KCDBG-funded construction projects is the preparation of a bid package. This requires the writing of the technical bid specification – usually by an architect or engineer on the basis of prepared plans or working drawings. These specifications must provide a clear and accurate description of technical requirements for materials and products and/or services to be provided in the contract. Please refer to Chapter 4: Procurement for more guidance on bidding.

Chapter 4: Procurement

Additionally, the plans and specifications for non-residential construction must be stamped by an architect or engineer registered in Kentucky. Water and sewer projects also require the approval of various state agencies. While the engineer/architect prepares the technical specifications, the Certified Grant Administrator must determine the applicability of Labor Standards and request the necessary wage decisions (see Section B of this chapter).

Note: **The environmental review must be completed and, if applicable, release of funds obtained prior to publishing the bid advertisement. Please refer to Chapter 2: Environmental Review for more information.**

Chapter 2: Environmental Review

Property Acquisition Issues

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

Chapter 9: Acquisition

Section 6-B. Determining the Applicability of Labor Provisions

Federal Requirements

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

- ✓ The Davis-Bacon Act requires that workers receive no less than the prevailing wages being paid for similar work in the same locality. The CDBG regulations apply this Act to construction work that is financed in whole or in part with CDBG funds of more than $2,000.

Davis-Bacon Act: 40 USC, Chapter 3, Section 276a-276a-5

- ✓ The Copeland Anti-Kickback Act requires that workers be paid weekly, that deductions from their pay be permissible, and that contractors keep and submit weekly payrolls and Statements of Compliance.

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

- ✓ The Contract Work Hours and Safety Standards Act requires that workers receive overtime compensation for hours they have worked in excess of 40 hours in one week. This Act applies to all KCDBG-assisted construction contracts of $100,000 or more.

Contract Work Hours and Safety Standards Act: 40 USC, Chapter 5, Sections 326-332

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

Exceptions

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

- ✓ Construction contracts at or below $2,000. Note that arbitrarily separating a project into contracts below $2,000 in order to circumvent the requirements is not permitted.
- ✓ Rehabilitation of residential structures containing less than eight units. See Chapter 10: Housing for other rehabilitation requirements.

Chapter 10: Housing

- ✓ Non-construction related activities will not cause Davis-Bacon to apply to the whole project. These are activities such as real property acquisition, procurement of furnishings, architectural and engineering fees, and certain pieces of equipment that would not become permanently affixed to the real property. Exempt equipment purchases would be those that are incidental to the project that require minimal installation costs. Please contact DLG for equipment installations to determine whether the labor requirements will apply.

- ✓ Simple water and sewer line extensions without pumps, tanks, etc. may also be exempt. Grantees must first check with DLG staff.
- ✓ Separate and distinct projects. In some cases, an activity can occur in the same vicinity as another activity, but because it is a separate and distinct project, labor provisions may apply to one and not the other. Contact DLG for guidance.
- ✓ Contracts solely for demolition, when no construction is anticipated on the site.

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

Equipment and Installation

When CDBG funds are utilized in whole or in part to finance equipment, the applicability of wage rates to the installation must be determined. The general rule is that installation work performed in conjunction with an equipment supply contract is subject to labor standards where it involves more than an incidental amount of construction activity. Factors requiring consideration include: nature of the prime contract work; type of work performed by employees installing the equipment; extent to which structural modifications to buildings are needed to accommodate the equipment; the cost of the installation work both in terms of absolute amounts as well as in terms of the proportion of the total equipment and project cost. An equipment analysis must be completed in which all items of equipment are included with an explanation of related installation/modification costs and submitted to DLG to make a proper determination.

State Requirements

Prior to January 17, 2017, the Kentucky Prevailing Wage Law at KRS 337.505-550 required state prevailing wages be paid by any public authority for construction of any public works project fairly estimated to cost more than $250,000. **The KY prevailing wage requirement was repealed by the Governor as of January 7, 2017**. Therefore, projects for which bids had been awarded prior to that date are subject to the previous state prevailing wage requirements, while projects for which bids have NOT been awarded by that date are NOT subject to the state prevailing wage requirements.

KRS 337.505-550, 337.010, 337.285 and 33.540

The state overtime requirements of KRS 337.285 regarding payment of time and one-half for hours in excess of a 40-hour workweek will continue to apply to all contracts, unless exempt. Kentucky also requires employers to pay employees overtime at the rate of 1½ time their regular rate for all hours worked on the seventh day when an employee works seven days in a work week, unless exempt.

The state overtime requirements of KRS 337.540 (time and one-half for hours over eight in a workday) were repealed along with the state prevailing wage requirements and will only apply to contracts that were subject to state prevailing wage rates, which means only projects for which contracts were awarded prior to the January 7 repeal of the prevailing wage requirement. For those projects still subject to the 8-hour workday overtime requirements (i.e., those awarded prior to January 7, 2017), the state requires that a contractor enter an agreement with each participating employee in order to waive the eight (8) hour overtime provision in favor of a four (4), ten- (10) hour day week. A sample Kentucky Prevailing

Attachment 6-18:
Sample Kentucky Prevailing Wage Overtime Agreement

Wage Overtime Agreement for the projects subject to the prior requirements can be found in Attachment 6-18 for this purpose.

Section 6-C. Bidding and Contracting Requirements

A grantee or the grant administrator must be sure to include all applicable labor standards, equal opportunity, and other language in the bid specifications and contract documents, in addition to verifying contractor/subcontractor eligibility (as described in Chapter 4). The grantee is responsible for obtaining all required documentation, monitoring project compliance, and maintaining appropriate files.

Chapter 4: Procurement

Preparing Bid Packages to Meet Federal and State Labor Standards Provisions

Once it is determined that a construction project is subject to federal and/or state labor standards provisions, the following steps must be taken to ensure compliance.

Step 1: Request Applicable Federal Wage Rate Decision

The grantee may access federal wage rate decisions through the Internet at https://sam.gov/content/wage-determinations

Attachment 6-1: Request for Determination of Wage Rate

However, in order to ensure accuracy, the grantee **must** request the applicable federal wage rate decision from DLG using Attachment 6-1: Request for Determination of Wage Rate form. **This form must be submitted a minimum of 30 days in advance of binding bid documents**, though the turn-around time from DLG is usually much quicker than this. DLG prefers your request to be in the form of an email. **Be sure to include the appropriate return email address as requested on the form.**

Note that federal wage determinations are issued for four categories: Building, Residential, Heavy, and Highway. Most KCDBG construction projects will involve either Building or Heavy determinations. In determining which type of wage decision to request, it is important to understand the differences to avoid paying wages from an inappropriate determination.

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

A grantee's DLG Program Advisor should be consulted if there are questions about properly identifying the type of construction on the project and the wage determination necessary.

NOTE: State prevailing wage requirements were repealed as of January 7, 2017 and thus do not apply to projects awarded after that date.

Step 2: Add Labor Provisions to the Bid Package

The wage rate decision must be a physical part of the bid package. The bid package must contain the labor standards requirements, which are summarized below and separately in this Chapter as Attachment 6-2.

Attachment 6-2:
Federal Labor Standards Provisions
(HUD 4010)

- ✓ Davis-Bacon provisions;
- ✓ Contract Work Hours and Safety Standards clause;
- ✓ Copeland Anti-Kickback clause;
- ✓ Employment of Apprentices/Trainee clause; and
- ✓ Applicable wage rate determination(s).

Caution: If the grantee fails to include the correct wage rate determination(s), the grantee will be responsible for paying the difference between the proper wage rate and the wages paid by the contractor based upon the information provided in the bid package. Also, the grantee *must* make the "Nine-Day Call" to DLG to confirm the wage rates. This requirement is described in detail in Chapter 4: Procurement.

Preparing Contracting Procedures to Meet Equal Opportunity Requirements

The grantee must review all draft bid and contract documents to insure compliance with equal opportunity requirements and establish procedures for monitoring compliance during project execution. The following equal opportunity provisions and signed contractor and subcontractor certifications must be included in all bid and contract documents:

- ✓ Certification of Bidder regarding Section 3;
- ✓ Certification by Proposed Subcontractor regarding Section 3 Segregated Facilities;
- ✓ Certification of Bidder regarding Equal Employment Opportunity;
- ✓ Contractor Section 3 Plan Format (if project exceeds $200,000);
- ✓ Certification by Proposed Subcontractor regarding Equal Employment Opportunity;
- ✓ Three-paragraph Equal Opportunity Clause for Activities and Contracts not subject to Executive Order 11246 (if contract is less than $10,000);
- ✓ Executive Order 11246 clause (if contract is $10,000 or above);
- ✓ Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (if contract over $10,000);
- ✓ Standard KCDBG-assisted Equal Employment Opportunity Construction Contract Specification (if contract over $10,000);
- ✓ Certification of Non-segregated Facilities clause (if contract over $10,000);
- ✓ Title VI Clause, Civil Rights Act of 1964;

- ✓ Section 109 clause, Housing and Community Development Act of 1974;
- ✓ Section 3 Compliance in the Provision of Training, Employment and Business Opportunities clause (if contract exceeds $100,000);
- ✓ Rehabilitation Act of 1973, Section 503 Handicapped clause (if contract $2,500 and above);
- ✓ Section 402 Veterans of the Vietnam Era clause (if contract over $100,000); and
- ✓ Age Discrimination Act of 1975 clause.

Female and Minority Participation Requirements

Grantees should pay particular attention to the Standard KCDBG-assisted Equal Employment Opportunity Construction Contract Specifications. These specifications include a place for the grantee to insert both minority and female goals. The nationwide goal for female participation is 6.9 percent.

Minority goals are specific to "Economic Areas," so the grantee must refer to the regulations for the minority goal for their locality. Attachment 6-3 lists the female and minority participation goals by county.

Attachment 6-3:
Goals for Female and Minority Participation

The Minority Employment Goals By Economic Area for State of Kentucky apply to each construction craft and trade in the contractor's entire workforce that is working in an area covered by goals and timetables and not just on those jobs that are KCDBG-assisted. A contractor with a KCDBG contract in Standard Metropolitan Statistical Area (SMSA) X and a non-KCDBG assisted contract in SMSA Y must meet SMSA X goals for the workforce in SMSA X, and SMSA Y goals for the workforce in SMSA Y, even though that contract is not KCDBG-assisted.

These goals for contract specifications make written affirmative action plans unnecessary unless the U.S. Department of Labor, Office of Federal Contract Compliance Programs determines a specific contractor or group of contractors needs to establish higher goals in order to remedy the effects of past discriminatory behavior.

Other Bidding and Contracting Requirements

KCDBG Provisions

The bid package must also include all KCDBG-related provisions and the grantee's terms and conditions. The following provisions for KCDBG-assisted projects must be included, as applicable.

- ✓ Bonding and Insurance Requirements Clause (Kentucky state law for contracts over $25,000 and 2 CFR 200 Omni Circular if over $100,000);
- ✓ Conflict of Interest;
- ✓ Certification of Compliance with Air and Water Acts (if over $100,000);
- ✓ Special Conditions Pertaining to Hazards, Safety Standards and Accident Prevention (including Lead-based Paint Prohibition);
- ✓ Energy Efficiency; and
- ✓ Access to Records/Maintenance of Records.

Cost and Pricing Format

The bid package must include cost and pricing formats. Generally street, water, sewer, utility and landscaping projects 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. All bid packages should indicate that the grantee can reject any and all bids received.

Attorney Review

Finally, the bid package should be reviewed in its entirety by the grantee's attorney to ensure compliance with applicable federal, state and city/county laws.

Procurement Requirements

Once the bid document is prepared, it is time to advertise for construction bids. Refer to Chapter 4: Procurement for specific instructions on how to proceed with the bidding process.

Chapter 4: Procurement

Section 6-D. Pre-Construction Requirements

Pre-construction Conferences

Before any work is performed by a contractor, DLG highly recommends that the grantee, the grant administrator, the engineer or architect, and any other technical advisors to the grantee conduct a pre-construction conference with the contractor to explain contractual requirements and performance schedules. Though no longer required in order to comply with federal labor standards, this conference reduces the likelihood of later conflicts caused by assumptions and misunderstandings between the contractor and the grantee.

The grantee should prepare an agenda, and plan to utilize and distribute a pre-construction checklist as a guide to ensure that all areas are properly addressed. (See Attachment 6-4: Outline of a Pre-construction Conference.) A tape recorder may be used to record the meeting and/or a stenographer may be asked to prepare notes. The grantee should clearly present the federal statutory compliance requirements as well as performance expectations. A copy of the minutes should be signed by all parties to the contract and placed in the files.

Attachment 6-4:
Outline of a Pre-Construction Conference

Items that should be covered at the pre-construction conference include, but are not limited to:

- ✓ Explain to the contractors their responsibilities with respect to labor standards and equal opportunity requirements as well as the technical job requirements.
  - DLG has prepared a list of Commonly Asked Questions Concerning Equal Opportunity (provided as Attachment 6-5), which should be distributed and discussed.
  - At this time, the grantee should correct any outstanding deficiencies, such as securing signed Section 3 Plans and Certifications of Compliance.
  - Obtain the contractor's Federal Identification Number. This must be a Data Universal Numbering System (DUNS) number that is registered in the System for Award Management (SAM).

- ✓ Have the contractor complete Attachment 6-6: Contractor Employee Breakdown Form, listing each employee expected to work on the project by race, sex, job classification, and salary/wage rate. This form can then be used to cross check against future employment for the project to determine if minority and female hiring goals are being achieved.

Attachment 6-6: Contractor Employee Breakdown Form

- ✓ Explain that the contractor must submit weekly payrolls and Statements of Compliance signed by an officer of the company, and that the prime contractor is responsible for securing, checking, and reviewing payrolls and Statements of Compliance from all subcontractors.
- ✓ Explain that wages paid must conform to those included in the wage rate decision included in the contract. Discuss the classifications to be used. If additional classifications are needed, contact DLG immediately.

Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects: http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/guidebooks/4812LR

- ✓ Explain that employee interviews will be conducted during the project.
- ✓ Emphasize that both a copy of the wage rate decision and the wage rate poster must be posted at the job site.
- ✓ Explain that apprentice or trainee rates cannot be paid unless the apprentice or training program is certified by the State Bureau of Apprenticeship and Training. If apprentices or trainees are to be used, the contractor must provide the grantee with a copy of the state certification of his/her program.
- ✓ If the contract is $100,000 or greater, explain that workers must be paid overtime if they work more than 40 hours in one week. Only a waiver from the Secretary of Labor can override the Contract Work Hours and Safety Standards Law. If state wage rates apply to the contract, explain that workers must also be paid overtime if they work more than eight hours in a day or 40 hours in a week, unless signed agreements have been obtained from each employee. (See Section 3 of this chapter for more information.)
- ✓ Indicate that **failure to pay workers at least time and a half whenever overtime violates the Contract Work Hours and Safety Standards law (more than 40 hours per week) makes the contractor liable for not only restitution but also liquidated damages of $25 per day for every day each worker that exceeded 40 hours a week without being paid time and a half.** Grantees should contact their DLG Program Advisor for assistance if a violation occurs.
- ✓ **Explain that no payroll deductions can be made that are not specifically listed in the Copeland Anti-kickback Act provisions as permissible payroll deductions. In addition, some of the permissible deductions require written permission of the employee.** An unidentified payroll deduction is a method used by unethical contractors to get their workers to "kickback" a portion of their pay. This is a particularly common problem in times of high unemployment and in areas of minority concentrations. Unspecified payroll deductions are a serious discrepancy and should be resolved prior to further contractor payments.
- ✓ Explain debarment proceedings relative to violation of labor standards and equal opportunity requirements. Obtain any outstanding documents including Contractor/Subcontractor Eligibility Certifications Regarding Debarment, Suspension and Other Responsibilities.

- ✓ Provide contractor with posters for the site, such as "Davis Bacon Act," "Notice to All Employees Working on Federal or Federally Financed Construction Projects," "Safety and Health Protection on the Job," and "Equal Employment Opportunity is the Law." These posters are referenced in the text box to the right. Inform the contractor that it is his/her responsibility to employ only eligible subcontractors who have certified eligibility in a written subcontract containing federal labor standards and equal opportunity provisions. (See Chapter 5, Attachment 5-4.)

Attachment 6-7 (a-d):
Contracting Posters

Also available online at
https://www.hud.gov/program_offices/davis_bacon_and_labor_standards/olrmk13

- ✓ Provide the contractor with a copy of the "Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects." This guide can be downloaded at: https://www.hud.gov/sites/documents/4812-LRGUIDE.PDF.
- ✓ Provide handouts explaining everything covered and obtain the contractor's signature to document receipt.
- ✓ The grantee should also describe the compliance monitoring that will be conducted during the project, and indicate that discrepancies and underpayments discovered as a result of compliance monitoring must be resolved prior to making further payment to the contractor. Remind the contractor that labor standards provisions are as legally binding as the technical specifications, and failure to pay specified wages will result in contractor payments being withheld until all such discrepancies are resolved.

Following the pre-construction conference, the grantee should prepare and maintain a pre-construction conference report. This report is meant to record the minutes of the meeting. A sample Pre-construction Report Format is provided as Attachment 6-8.

Attachment 6-8:
Pre-Construction Report Format

Notice to Proceed

Following execution of the contract documents and completion of the pre-construction conference, issue a Notice to Proceed to each prime contractor to begin performance of 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 Notice to Proceed must include the name of the contractor and the amount of the contract. The construction period and basis for assessing liquidated damages must be consistent with those sections of the contract documents. A sample Notice to Proceed is provided as Attachment 6-9. **The Notice to Proceed must also be sent to DLG following execution.**

Attachment 6-9:
Notice to Proceed

Contract File Review

The grantee should also review each contract file and associated compliance file to make sure documentation is complete at the time of contract award. The following list of Construction Contract file requirements identifies the items that should already be located in the contract file. Note that Section 3 of this chapter provided a listing of labor standards and equal opportunity requirements, so they are not repeated below but must be reviewed as well.

- ✓ Preliminary design and cost estimates;
- ✓ Final design documents and cost estimates;
- ✓ Evidence that all necessary land or easement acquisition has been completed prior to advertising for bids;
- ✓ Bid documents;
- ✓ Approval of bid documents by authorities having jurisdiction over the project, as appropriate;
- ✓ Tear sheet or affidavit documenting the advertisement for bids;
- ✓ Addenda, if any, and evidence of timely distribution to plan holders;
- ✓ Signed minutes of public bid opening;
- ✓ Certified tabulation of bids;
- ✓ Recommendation for Award;
- ✓ Notice of Contract Award/Council or Fiscal Court Approval;
- ✓ Recommended pre-construction conference report;
- ✓ Executed contract and subcontract documents;
- ✓ Certification of Insurance/Bonding; and
- ✓ Notice to Proceed.

Section 6-E. Payroll Review Requirements

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

Grantees must obtain copies of all general contractor and subcontractor weekly payrolls (accompanied by the Statements of Compliance), and review them to ensure that there are no discrepancies or underpayments in accordance with HUD guidelines. See Attachment 6-10: Payroll Falsification Indicators, for HUD guidance on detecting falsification through frequent payroll review and interview comparison.

Attachment 6-10: Payroll Falsification Indicators

Certified payroll reports must submitted by the contractor to the grantee within seven to eleven working days of the end of the payroll period. A Payroll Form and Statement of Compliance is provided as Attachment 6-11. Note that an employee's full social security number and address are not to be included on these certified payroll reports. Instead, an alternative individual identity number should be used, such as the last four digits of the employee's social security number or an employee ID. This form does not have to be used, but alternative payroll documentation must include all of the same elements in order to

Attachment 6-11: Payroll Form/Statement of Compliance (WH 347)

determine compliance with applicable regulations. And a Statement of Compliance must accompany each payroll submission.

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

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

- ✓ The correct classification of workers;
- ✓ A comparison between the classification and the wage determination to determine whether the rate of pay is at least equal to the rate required by the determination;
- ✓ A review to ensure that work by an employee in excess of 40 hours per week is being compensated for at rates not less than one and one-half times the basic rate of pay;
- ✓ Review of deductions for any non-permissible deductions; and
- ✓ The Statement of Compliance (part of the payroll form in Attachment 6-11) has been completed and signed by the owner or an officer of the firm.

HUD Handbook 1344 is a good resource for labor standards information. https://www.hud.gov/program_offices/administration/hudclips/handbooks/sech/13441.

Any discrepancies and/or falsification indicators must be reported to DLG, along with the steps being taken by the grantee to resolve the discrepancies. Where underpayments of wages have occurred, the grantee is responsible to make sure the correct wages are paid and that the employer will be required to pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less permissible and authorized deductions. Grantees are required to submit a Section 5.7 Report (provided as Attachment 6-16 including instructions) whenever an employer is found to have underpaid its employees by $1,000 or more. Grantees should contact their DLG Program Advisor for assistance if a violation occurs.

Attachment 6-16 (a – b): Instructions and Section 5.7 Enforcement Report

Caution: **Owner-operators of power equipment, like self-employed mechanics, may not submit their own payrolls certifying to the payment of their own wages *BUT* must instead be included on the responsible contractor's certified payroll report.**

Section 6-F. Construction Management Requirements

General

During construction, the grantee is responsible for monitoring the labor standards and equal opportunity requirements described in this Chapter. In addition to payroll reviews and interviews, the grantee is responsible for ensuring proper construction management. This role may be fulfilled by the architect/engineer and, if so, should be included in the scope of services for that professional services contract. Construction management must include on-site inspection and general supervision of construction to check the contractor's work for compliance with the drawings and specifications, as well as quantity and quality control.

Note that written inspection reports must accompany any contractor's request for partial payment. It is also strongly recommended that monthly progress meetings be held to allow the grantee, engineer, grant administrator, and funding agencies to review the status of the project, resolve problems, and review requests for payment.

Labor Standards Requirements

Construction management requirements include conducting job site interviews with workers using Attachment 6-12: Record of Employee Interview Form.

Attachment 6-12:
Record of Employee Interview Form (HUD Form 11)

The grantee must conduct interviews using the representative sampling technique and the interviews should include a sufficient sample of job classifications represented on the job to allow for a reasonable judgment as to compliance. At least 10 percent of the workers on-site, and a least one in each job classification working at the site, should be interviewed.

The grantee should ensure the following actions are performed:

- ✓ DLG recommends that interviews be conducted at least once during the course of each phase of construction on each project.
- ✓ Payrolls should be used to verify data obtained during on-site interviews. Check to see that employees are being paid the amounts specified in the wage decision, the amount shown on the payrolls, and the hours shown on the payrolls. Include hours of the supervisor.
- ✓ Identification and correction of any discrepancies between on-site interviews, payrolls, and wage rates.
- ✓ A fully completed and signed Record of Employee Interview form is maintained in the contract file.

Interview Protocols

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

- ✓ The interview should take place on the job site if it can be conducted properly and privately (this is a one-on-one process).
- ✓ The interviewer should see that the wage determination and other required posters are properly displayed.
- ✓ The interviewer should observe the duties of workers before initiating interviews. Employees of both the prime and sub-contractors should be interviewed. Administrators may choose to complete the Project Wage Rate Sheet found in Attachment 6-7d. This should be posted adjacent to the wage determination and other required posters on the job site at a location readily accessible to workers.

Attachment 6-7d:
Project Wage Rate Sheet (HUD Form 4720)

- ✓ To initiate the interview, the authorized person shall:
  - Properly identify himself/herself;
  - Clearly state the purpose of interview; and
  - Advise the worker that information given is confidential, and his/her identity will be disclosed to the employer only with the employee's written permission.
- ✓ When conducting employee interviews, the interviewer should pay particular attention to:

- The employee's full name.
- The employee's permanent mailing address.
- The last date the employee worked on that project and number of hours worked on that day. The interviewer should make it clear that these questions relate solely to work on the project and not other work.
- The employee's hourly rate of pay. The aim is to determine if the worker is being paid at least the minimum required by the wage decision.
  - The interviewer should be sure the worker is not quoting their net hourly rate or "take-home" pay.
  - If it appears the individual may be underpaid, the interviewer should closely question the worker:
    - Ask for any records.
    - Arrange to re-interview the employee.
- Enter the worker's statement of his/her classification.
- Observe duties and tools used:
  - If worker's statements and observations made by the interviewer indicate the individual is performing duties conforming to classification, indicate this on the Record of Employee Interview form.
  - If there are discrepancies, detailed statements are necessary.
- Enter any comments necessary.
- Enter date interview took place.

✓ If there are wage complaints, the interviewer should complete the Federal Labor Standards Complaint Intake Form (HUD Form 4731) using Attachment 6-13.

Attachment 6-13:
Federal Labor Standards
Complaint Intake Form
(HUD Form 4731)

✓ The payroll examiner must compare information on the Record of Employee Interview form with the certified payroll submission:

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

Wage Restitution

Where underpayments of wages have occurred, the employer will be required to pay wage restitution to the affected employees. Wage restitution must be paid promptly in the full amounts due, less permissible and authorized deductions. All wages paid to laborers and mechanics for work performed on the project including wage restitution, must be reported on a certified payroll report.

Notification to the Prime Contractor

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

Computing Wage Restitution

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

Correction Payrolls

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

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

A properly signed Statement of Compliance must be attached to the correction certified payroll.

- ✓ Generally, the contractor is not required to obtain the signature of the employee on the correction payroll to evidence receipt of the restitution payment or to submit copies of restitution checks (certified, cashiers, canceled or other, or employee-signed receipts or waivers) in order to document the payment.

Review of Corrected Certified Payroll

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

The contractor is required to provide the employee with a Documentation of Restitution Employee Release Form (Attachment 6-17) to verify that the employee is in agreement with the amount of restitution and relinquishes all claims of underpayment.

Attachment 6-17: Documentation of Restitution Employee Release Form

Unfound Workers

Sometimes, wage restitution cannot be paid to an affected employee because the employee has moved or otherwise can't be located. After wage restitution has been paid to all of the workers who could be located, the employer must submit a list of any workers who could not be found and paid including name, employee identification number, last known address and the gross amount due. At the end of the project, the prime contractor will be required to establish a deposit or escrow account in an amount equal to the total amount of restitution that could not be paid. The grantee must continue to attempt to locate the unfound employee(s) for three years after completion of the project. After three years, any amount remaining in the account should be credited and/or forwarded to DLG.

Section 5.7 Enforcement Report

The U.S. Department of Labor Regulations require all federal agencies to submit a report to the Secretary of Labor regarding all enforcement actions where underpayments by a contractor or subcontractor occurred in excess of $1,000 or where there is reason to believe that the violations were willful. The instructions for filling out the form and the form itself can be found in Attachment 6-16a and b.

Attachment 6-16 (a – b): Instructions and Section 5.7 Enforcement Report

Liquidated Damages for Overtime Violations

As mentioned previously, failure to pay workers at least time and a half whenever overtime violates the Contract Work Hours and Safety Standards Act (more than 40 hours per week) or, if applicable, KRS 337 (more than eight hours or, if a written agreement, 10 hours per day) makes the contractor liable for liquidated damages of $2 per day for every day each worker exceeded 40 hours a week without being paid time and a half. Grantees should contact their DLG Program Advisor for assistance if a violation occurs.

Semi-Annual Labor Standards Enforcement Reports

Grantees must submit Semi-Annual Labor Standards Enforcement Reports (HUD 4710 and 4710i) twice a year. The first report should include all contracts subject to Davis-Bacon and related acts awarded between April 1 and September 30. It is due no later than September 15. The second semi-annual report should include all contracts subject to Davis-Bacon and related acts awarded between October 1 and March 31. It is due not later than March 15. If no contracts were awarded, please fill in the agency name (city or county), the period covered and mark "not applicable" at the top of the form. The form and instructions can be found in

Labor Relations and Related Forms http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/forms/hud4

Attachment 6-15 (a – b): Instructions and Semi-Annual Labor Standards Enforcement Report (HUD 4710)

Attachments 6-15a and 6-15b. Grantees should submit the report via email to DLG.

Equal Opportunity Requirements

The grantee must also visit the construction site to ensure the project site is posted with the required Equal Employment Opportunity is the Law poster (provided in Attachment 6-7b). These visits can be done in conjunction with employee interviews for labor standards compliance. The results of each visit should be noted in the Equal Opportunity Compliance file.

Attachment 6-7b:
"Equal Employment Opportunity is the Law" Poster

In addition, the grantee should interview each contractor during the course of work to determine compliance with the Standard KCDBG-assisted Equal Employment Opportunity Construction Contract Specifications contained in the contract.

Equal Opportunity Compliance Files

Equal opportunity compliance files must be maintained for each contractor on the project. At project completion, each equal opportunity compliance file should contain the following items:

- ✓ Verification of contractor/subcontractor eligibility concerning Section 3 and equal opportunity, as well as a written Section 3 Plan if over $200,000 (or cross reference the contract file that includes fully executed certifications and Section 3 Plan).
- ✓ Contractor eligibility, cross-referenced from Labor Standards Compliance file.
- ✓ Correspondence concerning contractor equal opportunity compliance.
- ✓ Site visit reports indicating equal opportunity posting on site and contractor compliance with equal opportunity provisions, cross-referenced from Labor Standards Compliance file.
- ✓ Equal opportunity problems uncovered in employee interviews and evidence of resolution.
- ✓ Evidence of interview with contractor concerning equal opportunity compliance.
- ✓ Contractor Employee Breakdown Form (Attachment 6-6).

Attachment 6-6:
Sample Contractor Employee Breakdown Form

Section 6-G. Review and Payments

Progress Payments

Upon agreement as to quantities of work completed, a contractor may submit 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.

Upon receipt of certificates for partial payment and necessary documentation, the grantee must check equal opportunity and labor standards compliance files to ensure that:

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

Retainage from Progress Payments

Although retainage is not a requirement, many grantees have found it helpful to maintain 10 percent retainage from partial payments until after final inspection, in case of any unresolved problems. See below for information on how retainage is addressed in the Final Payment.

Change Orders

Change orders must be prepared by the construction inspector and/or architect/engineer. Change orders are permissible where the cumulative cost of all such orders does not exceed 20 percent of the original contract price and these changes do not constitute a major alteration of the original scope of work. If the proposed change orders will cumulatively exceed 20 percent of the original contract, the grantee must contact DLG for prior approval.

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 and cannot be issued after final payment.

Final Payment

When construction work has been completed, the contractor must certify completion of work and submit a final request for payment. The grantee or the architect/engineer should make the final inspection and prepare a written report of the inspection prior to the issuance of a final certificate of payment. Before making final payment (less 10 percent retainage), the grantee must ensure that:

- ✓ All weekly payrolls and Statements of Compliance have been received, reviewed, and discrepancies have been resolved;
- ✓ Any underpayments of wages and/or liquidated damages have been appropriately handled and documented;
- ✓ All discrepancies identified through job site interviews have been resolved;
- ✓ All other required equal opportunity and labor standards provisions have been satisfied;
- ✓ All contract submissions have been received;
- ✓ All claims and disputes involving the contractor have been resolved;
- ✓ All files are complete; and
- ✓ As-built plans have been filed.

If the inspection is satisfactory, the grantee can then issue acceptance of work and final payment, less a 10 percent retainage.

Retainage from Final Payment

Within 30 days from the filing of the acceptance of the work and upon submission of a clear lien certificate by the contractor, the grantee should release the 10 percent retainage that has been withheld from each progress and final payment to the contractor (at the grantee's option).

If any claims or liens remain after the 30-day period, the grantee must take appropriate action for disposition of the retainage and all claims against the bonds in accordance with state law.

Section 6-H. Documentation Requirements

The labor standards compliance documents contain highly sensitive and confidential information. With the growing rise in identity theft and fraud, it is critical to carefully guard this sensitive information so that the person(s) or form(s) to which that information pertains is not unduly exposed to financial or personal risk. The standard compliance documents must be preserved and retained for a period of five years following the completion of work. Therefore, it is important to follow guidelines outlined in the Labor Relations Letter 2006-02 to minimize risk of improper and/or unnecessary disclosure.

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

At project completion, in addition to the equal opportunity file requirements described in the sections above, each contract file should contain the following labor standards compliance items:

- ✓ Wage Decision(s);
- ✓ "Nine-Day Call" documentation (ensuring wage decision is still current);
- ✓ Copies of Contractor Certifications Concerning Labor Standards (or cross reference contract file that includes executed certifications);
- ✓ Tear sheet of Bid advertisement;
- ✓ Copies of all bid responses;
- ✓ Minutes of the bid opening;
- ✓ Verification of contractor/subcontractor eligibility;
- ✓ Notice of Award;
- ✓ Executed construction contract;
- ✓ Pre-construction Conference Report;
- ✓ Notice to Proceed;
- ✓ Contractor Employee Breakdown Report;
- ✓ Weekly payrolls, Statements of Compliance, and evidence that payrolls were reviewed;
- ✓ Kentucky Prevailing Wage Overtime Agreement
- ✓ Employee interviews;
- ✓ Site visit reports;
- ✓ Engineering inspection reports;

- ✓ Evidence that the on-site interviews were checked against payrolls and the applicable wage rate decision;
- ✓ Evidence of restitution/resolution of identified discrepancies;
- ✓ Documentation of Restitution Employee Release Form (see Attachment 6-18 for a sample);
- ✓ Complaints from workers, if any, and actions taken;
- ✓ Liquidated damages assessed, appeals, if any, and outcome;
- ✓ Notice of Completion/Final Inspection;
- ✓ Construction Oversight Checklist (see Attachment 6-14 for a sample);
- ✓ Semi-Annual Labor Standards Enforcement Reports; and
- ✓ Section 5.7 Enforcement Report (see Attachment 6-16b)

Attachment 6-14:
Sample Construction Oversight Checklist

Attachment 6-16b:
Section 5.7 Enforcement Report

Chapter 7: Fair Housing and Equal Opportunity

Introduction

This chapter summarizes the key regulations and requirements of fair housing and equal opportunity laws applicable to KCDBG projects. To be in compliance, the grantee must adhere to all the basic tenets of fair housing and equal opportunity regulations. To demonstrate support for ensuring these tenets, grantees must endorse in attitude and deed all regulations for fairness in the provision of KCDBG funded programs and projects.

Fair housing and equal opportunity laws are like an umbrella, intended to protect individuals from discrimination in housing, employment, through business opportunities such as contracting, or through other benefits created by KCDBG projects. No person shall be subjected to discrimination because of: race, color, religion, sex, disability, familial status or national origin, all of which are collectively referred to as the "protected classes," which protects all people.

- ✓ HUD regulations revising the CDBG regulations that took effect in March 2012 also provide for fair housing to persons regardless of sexual orientation or gender identity (actual or perceived).
- ✓ An amendment to Executive Order 11246 also extended coverage to these classes in 2014 and further guidance was issued in September of 2016 (more information later in this chapter).
- ✓ In September 2016, HUD issued guidance formalizing legal standards regarding sexual harassment in housing and how the Fair Housing Act applies to ensure that local nuisance or crime-free housing ordinances to not lead to discrimination.
- ✓ HUD also issued guidance in September 2016 regarding Fair Housing Act protections for persons with Limited English Proficiency (LEP).

This chapter is broken down into three broad areas: Fair Housing and Nondiscrimination; Accessibility; and Equal Opportunity. The fourth section of this chapter is dedicated toward appropriate record keeping and monitoring. Exhibit 7.1 at the end of this chapter provides the grantee with references to the major regulations and requirements covering fair housing and equal opportunity.

Section 7-A. Fair Housing and Nondiscrimination

When the assurances were signed as a part of the grantee's application for KCDBG funds, a commitment was made for the grantee to perform the following activities to further fair housing and ensure nondiscrimination:

- ✓ Maximize choice within the community's total housing supply;
- ✓ Lessen racial, ethnic and economic concentrations of housing;
- ✓ Facilitate desegregation and racially inclusive patterns of occupancy and use of public facilities;
- ✓ Provide for equal access in HUD-funded programs and facilities/buildings; and
- ✓ Administer the KCDBG project in a manner to affirmatively further fair housing. The regulations identify fair housing responsibilities for both states and local grant recipients.

Grantees should be aware that fair housing provisions apply to the locality as a whole and not just those activities that are KCDBG-funded; and that implementing fair housing activities is an essential part of the KCDBG responsibilities.

Fair housing actions should increase housing opportunities and affirmatively promote fair housing throughout the entire housing market at all income levels. These activities may include independent actions by the grantee or cooperative ventures with housing related industries, such as mortgage lenders, home builders, and local non-profits working in housing. The grantee is expected to take progressive actions to further fair housing with each KCDBG project. Grantees should include the fair housing logo on all published materials marketing their housing programs.

Further, provisions regarding equal access (as previously mentioned on page 1 of this chapter) apply to KCDBG-funded facilities and buildings that may or may not involve housing (e.g., shelters, service facilities, etc.).

Tip: **Review this chapter along with your local policies on fair housing and equal opportunity and update, as necessary. Follow up with DLG staff on any questions.**

Fair Housing Activities

Grantees are required to designate a fair housing and equal opportunity coordinator to be the prime liaison with DLG. This coordinator will review all plans and activities for compliance to suggest strategies and actions that can be undertaken to comply with the spirit and intent of the law.

Grantees are required to pass a fair housing resolution as part of evidentiary materials prior to release of grant funds (as outlined in Chapter 1: Project Administration). The resolution should be published in a newspaper of general circulation or posted in prominent locations throughout the community. (See Attachment 7-1: Fair Housing Resolution for sample language.)

Chapter 1: Project Administration
Attachment 7-1:
Fair Housing Resolution

Grantees must also undertake one or more activities to affirmatively further fair housing depending upon local conditions and needs to ensure that all citizens in your community are aware that affirmatively furthering fair housing is a priority. Provided below is a list of the types of activities that should be undertaken to satisfy the requirement of promoting fair housing and equal opportunity. Discretion is left at the local level to determine the appropriateness of the activity(ies) that are chosen.

- ✓ Counseling services,
- ✓ Market the fair housing resolution,
- ✓ Creation of human rights commission,
- ✓ Education programs,
- ✓ Use of HUD affirmative marketing plans,
- ✓ Assistance to fair housing groups,
- ✓ Assistance to minorities in locating to non-minority areas,
- ✓ Voluntary affirmative lending plans,
- ✓ Voluntary affirmative realtor plans,

- ✓ Voluntary affirmative homebuilder plans,
- ✓ Local compliance and monitoring process, and
- ✓ Advertising the benefits of an open community.

Nondiscrimination

The grantee must assure that all KCDBG-funded activities undertaken as part of the project are conducted in a manner that will not cause discrimination on the basis of race, color, religion, sex, disability, familial status, or national origin. Also, effective March 2012, the CDBG regulations (24 CFR Part 570) were revised such that the definition of a household includes unrelated individuals regardless of perceived sexual orientation, gender identify or marital status. Segregated facilities, services or benefits, or different treatment are prohibited. For facilities or buildings that have physical limitations or configurations that require and/or that are permitted to have shared sleeping quarters or bathing facilities, refer to 24 CFR Part 5, Federal Register Notice FR 5863-F-02 published September 21, 2016. This notice provides guidance on measures to ensure that recipients and subrecipients, owners, operators, and managers of shelters and other buildings and facilities and providers of services grant equal access to such facilities and services to individuals in accordance with an individual's perceived gender identity.

Grantees must demonstrate compliance with Title VI of the Civil Rights Act of 1964 and KRS 344.015. All organizations that receive pass-through federal funding from DLG must comply with DLG's (refer to the link provided) or its own Title VI Implementation Plan. To meet the requirements of compliance, grantees have two options.

DLG's Title VI Plan can be found at:
https://kydlgweb.ky.gov/Documents/CDBG_cities/2021%20DLG%20Title%20VI%20Plan.pdf

- ✓ Option 1: The grantee can adopt the plan created by DLG. To do so, grantees must complete Attachment 7-2: Title VI Self-Survey and Statement of Assurance. In addition, the following items MUST be retained by the grantee with your completed Civil Rights Title VI Self-Survey: (1) Nondiscrimination Policy; and (2) Compliance Assurance, including a copy of all contracts used to provide direct services to clients and a copy of all contracts used to assure that subcontractors or vendors are clearly aware of your agency's commitment to Title VI.

Attachment 7-2:
Title VI Self-Survey and Statement of Assurance

- ✓ Option 2: Though most organizations have chosen to adopt the DLG plan, a grantee may create its own Title VI Implementation Plan and submit it to DLG for approval. The standards for preparing a Title VI Implementation Plan are provided in 45 KAR 1:080.

Regardless of which option the grantee chooses, it must submit its chosen Title VI Self Survey and Plan to DLG as part of evidentiary materials and maintain a copy of Title VI documents for review by the general public and DLG, HUD or its representatives.

In addition to the specific Title VI requirements, the grantee should take care to ensure the following equal opportunities are made available:

- ✓ Access to any advantage arising out of CDBG projects/activities is not denied solely on the basis of race, color, religion, sex, disability, familial status or national origin alternatively, offered for the

enjoyment of a segment of the population in such a way as to intentionally exclude any member of these protected groups.

- ✓ HUD issued regulations regarding equal access for lesbian, gay, bisexual and transgender (LGBT) persons in February 2012. This includes a general provision which requires housing constructed with or using HUD funds be made available without regard to sexual orientation, gender identity or marital status.

Fair Housing for LGBT Persons:
https://www.hud.gov/LGBT_resources

- ✓ Selection of sites and locations for facilities and improvements do not have an exclusionary or discriminatory effect.
- ✓ Evaluation criteria and administrative practices do not have a discriminatory effect.
- ✓ Affirmative action to overcome the effects of past discrimination.
- ✓ An Equal Employment Opportunity Poster must be displayed in a prominent place at the office of the grantee. The poster may be obtained by calling the Kentucky Commission on Human Rights.

Kentucky Commission
on Human Rights
1-800-292-5566
TDD 502-595-4084

- ✓ A Fair Housing Poster must be displayed in a prominent place at the office of the grantee (see link to poster provided at right).
- ✓ An "Equal Access Regardless of Sexual Orientation, Gender Identity or Marital Status" Poster must be displayed at CDBG-funded shelters, housing, facilities and other buildings to ensure that individuals are aware of their rights to equal access.

Fair Housing Posters:
http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/marketing

- ✓ Grantees may use Attachment 7-3: Equal Opportunity Checklist to ensure their agency is following all required equal opportunity elements. It is also recommended that grantees have equal opportunity procedures for staff to refer to. (See also Chapter 4 and 5: Procurement and Contracting for detailed guidance on Section 3 concerning employment and business opportunities for low-income residents of the project area.) Suggested elements of equal opportunity procedures include but are not limited to the following:

Attachment 7-3:
Equal Opportunity Checklist
Chapters 4 and 5

  - Develop a nondiscrimination checklist to review policies, plans and actions, and documented reviews.
  - Develop a network of information points that serve minority, elderly, women, disabled persons and ethnic groups and make sure that information about project services, facilities and improvements is given to these groups for dissemination in addition to normal newspaper/public notice channels.
  - Incorporate discussion of the issue of nondiscrimination into decision processes concerning project activities and recipients and document consideration of the issue.
  - Develop and maintain a database for the project area that captures information about population characteristics.

- Develop a grievance procedure to handle the complaints the grantee receives. The procedure should be a formal written procedure and should be made available to the citizens. Each complaint should be addressed in a formal response to the complainant. Each complaint and the resolution to the complaint must be well documented in the project files.

Although assurances have been signed relative to nondiscrimination in project implementation, it is still necessary to go beyond the assurance and prove compliance. Both Title VI and Section 109 prohibit discrimination, denial of program benefits, and exclusion from participation in the administration of the project.

Housing Activities and Fair Housing

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

Some of the actions to ensure fair housing in housing activities are listed below.

- ✓ Verifying that a copy of the state's Analysis of Impediments (AI) to Fair Housing Choice or Assessment of Fair Housing (AFH) (if/when applicable) is reviewed periodically to ensure actions are taken by the local grantee to address the barriers identified in the AI. If the grantee has adopted its own AI, this document should be used to ensure actions have been taken.

  http://kydlgweb.ky.gov/FederalGrants/16_FedGrantsHome.cfm

- ✓ Marketing information concerning housing services and activities should be disseminated through agencies and organizations that routinely provide services to protected groups. Limited English Proficiency (LEP) requirements must be taken into account and incorporated as appropriate.
- ✓ Criteria for selecting recipients of housing services or assistance should be evaluated for any discriminatory practices or effect.
- ✓ Posters and other information should be disseminated and posted for all CDBG-funded programs and facilities.
- ✓ Policies guiding the provisions of relocation housing and services for persons displaced by housing activities should be evaluated for discriminatory effect.
- ✓ Legal documents used by grantees and lending institutions should be reviewed and revised if necessary to eliminate any discriminatory intent or practice.

Tip: **Review all documents to ensure fair housing language and logos are used. Also, be alert for situations where potential fair housing or nondiscrimination may occur.**

Section 7-B. Accessibility

This section of the chapter reviews the requirements grantees must follow to be in compliance with accessibility requirements of the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973 (Section 504). Collectively, the accessibility laws and implementing regulations prohibit discrimination

based on disability and establish requirements for physical accessibility in connection with federally-funded housing and non-housing activities.

Section 504 provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation in (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal funding assistance. Specifically, Section 504 imposes requirements related to:

Attachment 7-4:
Section 504 Checklist

- ✓ Program accessibility;
- ✓ Communications;
- ✓ Accessible design and construction for certain housing and non-housing activities;
- ✓ Grantee self-evaluation of programs, services, and activities to ensure programmatic and physical accessibility to persons with disabilities; and
- ✓ Nondiscrimination in employment.

For the purposes of compliance with Section 504, "accessible" means ensuring that programs and activities, when viewed in their entirety, are accessible to and usable by individuals with disabilities.

The Fair Housing Act also prohibits discrimination in the housing market based on disability, and imposes design and construction requirements to enhance accessibility in the built environment.

Program Accessibility

Existing housing and non-housing programs administered by the grantee and its funded entities (e.g., subrecipients, developers) must be accessible to persons with disabilities. Program accessibility means that a program, when viewed in its entirety, is readily accessible to and usable by persons with disabilities. This means that persons with disabilities must: (1) have an equal opportunity to participate in and benefit from the program, and (2) be offered the same range of choices and amenities as those offered to persons that do not have disabilities. Grantees ensure that their programs and services are readily accessible to and usable by persons with disabilities to the maximum extent feasible. In other words, the grantee must take steps to provide the necessary access to persons with disabilities, unless the actions would constitute an undue financial and administrative burden, or require a fundamental alteration in the nature of the program.

Examples of steps to ensure program accessibility include:

- ✓ Conduct meetings and program-related marketing and other activities in accessible locations.
- ✓ House program in-take offices in accessible locations.
- ✓ Ensure program-related communications are accessible to persons with disabilities (see Communications section below for more detail).
- ✓ In housing activities, distribute accessible units throughout projects and sites, and make them available in a sufficient range of sizes and amenities so as not to limit choice. Make accessible units available to persons with disabilities first.
- ✓ Make reasonable accommodations to persons with disabilities. A reasonable accommodation is a change, adaptation or modification to a policy, program, service, or workplace that allows a qualified

person with a disability to participate fully in a program, take advantage of a service, or perform a job. What is reasonable can only be determined on a case-by-case basis; however the following examples are often considered reasonable accommodations:

- A federally-assisted housing provider has a policy of not providing assigned parking spaces. A tenant with a mobility impairment, who has difficulty walking, is provided a reasonable accommodation by being given an assigned accessible parking space in front of the entrance to his unit.

- A federally-assisted housing provider has a policy of requiring tenants to come to the rental office to pay their rent. A tenant with a mental disability, who is afraid to leave her unit, is provided a reasonable accommodation by being allowed to mail her rent payment.

- A federally-assisted housing provider has a no-pets policy. A tenant, who uses a wheelchair and has difficulty picking up items off the ground, is allowed to have an assistive animal that fetches things for her as a reasonable accommodation to her disability.

- An older tenant has a stroke and begins to use a wheelchair. Her apartment has steps at the entrance and she needs a ramp to enter the unit. Her federally-assisted housing provider pays for the construction of a ramp as a reasonable accommodation to the tenant's disability.

Communication

Communication is an important component of program accessibility. Persons with impairments to hearing, vision, speech, or mobility may have special communication needs. To the maximum extent feasible, grantees must provide program information in ways to ensure that persons with these types of disabilities are able to access and enjoy the benefits of any program or activity receiving KCDBG funds.

Grantees must furnish auxiliary aids and services, as necessary, to ensure effective communication with persons with disabilities. These may include:

✓ For persons with hearing impairments:

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

✓ For persons with vision impairments:

- Websites that comply with Section 508;

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

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

Limited English Proficiency

Title VI of the Civil Rights Act of 1964 is the federal law that protects individuals from discrimination on the basis of their race, color or national origin in programs that receive federal financial assistance. The Fair Housing Act, as amended, further prohibits discrimination against protected classes.

In certain situations, failure to ensure persons who have Limited English Proficiency (LEP) can effectively participate in, or benefit from, federally assisted programs may violate Title VI's and the Fair Housing Act's prohibition against national origin discrimination. Specifically, housing providers are prohibited from using LEP selectively or as an excuse for intentional housing discrimination. In addition, landlords are prohibited from using LEP in a way that causes an unjustified discriminatory effect.

In addition, persons who, as a result of national origin, do not speak English as their primary language and who have limited ability to speak, read, write or understand English may be entitled to language assistance under Title VI to receive a particular service, benefit or encounter.

DLG has completed a four-factor analysis to ensure meaningful access for LEP persons.

- ✓ The number or portion of LEP persons served or encountered in the eligible service area.
- ✓ The frequency with which LEP individuals come in contact with the designated KCDBG grantees.
- ✓ The nature and importance of the program, activity or service provided by the program.
- ✓ The resources available to recipient and the cost.

Additionally, all KCDBG recipients will be required to use the same four-factor analysis prior to the release of funds.

DLG has developed a Language Access Plan (LAP) for persons with Limited English Proficiency (LEP), which is available on DLG's website. The LAP will serve as the guide for determining which language assistance measures DLG will undertake to guarantee access to the KCDBG programs by LEP persons. This guidance may be followed by grantees; however, grantees are required to ensure that LAPs address local limited English proficiency data and needs.

DLG Language Access Plan (LAP):

https://kydlgweb.ky.gov/Documents/CDBG_cities/2021%20DLG%20Language%20Access%20Plan.pdf

Size of Language Group	Recommended Provision of Assistance
1,000 or more in the eligible population in the market	Translated vital documents.

area or among current beneficiaries.	
More than 5% of the eligible population or beneficiaries and more than 50 in number.	Translated vital documents.
More than 5% of the eligible population or beneficiaries and 50 or less in number.	Translated written notice of right to receive free oral interpretation of documents.
5% or less of the eligible population or beneficiaries and less than 1,000 in number.	No written translation is required.

Grantees are not required to take any actions that would result in a fundamental alteration in the nature of a program or activity or undue financial and administrative burden. Grantees finding themselves in this situation should contact DLG for additional guidance.

Accessibility in Housing and Non-Housing Activities

Certain housing and non-housing facilities that are constructed or rehabilitated with KCDBG funds must be designed and constructed to be accessible.

Housing Activities

KCDBG-funded housing is subject to the accessibility requirements of both Section 504 and the Fair Housing Act, as amended. For housing purposes, an accessible dwelling unit is on an accessible route and has accessible features inside.

HUD CPD Notice 00-09 Accessibility Notice: Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act

Under Section 504:

- ✓ For newly constructed multi-family rental housing containing five or more units and substantial rehabilitation of multi-family rental housing with 15 or more units:
  - A minimum of five percent of total dwelling units (but not less than one unit) must be made accessible for individuals with mobility impairments;
  - An additional two percent of dwelling units (but not less than one) must be made accessible for persons with hearing or vision impairments.
- ✓ Units that are made accessible must be located on an accessible route (either on the ground floor, or on a floor that is served by an elevator).
- ✓ When alterations to a unit are not substantial, any alterations that are made to the multifamily dwelling unit must be made to be accessible to and usable by individuals with disabilities.
- ✓ A rehabilitation project is considered substantial when the rehabilitation costs are 75 percent or more of the replacement cost of the complete facility.
- ✓ Accessible features must meet the requirements of the Uniform Federal Accessibility Standard (UFAS).

Under the Fair Housing Act:

- ✓ All newly constructed units in buildings with four or more units that are on the ground level or can be reached by an elevator must be made accessible.
- ✓ The accessibility standard is outlined in the Fair Housing Act. This standard is often referred to as "adaptable," and is generally a less stringent standard of accessibility than UFAS.

Uniform Federal Accessibility Standards
https://www.access-board.gov/aba/ufas.html

Non-Housing Activities

All of Section 504's nondiscrimination, program accessibility, and reasonable accommodation requirements that apply to housing facilities and programs apply equally to the operation of non-housing facilities or programs. "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.

HUD CPD 05-10, issued Nov 5, 2005, "Accessibility for Persons with Disabilities to Non-Housing Programs funded by CDBG", http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_15258.pdf

Non-housing programs as well as existing facilities in which they are situated must be readily accessible to and usable by persons with disabilities, in accordance with the UFAS standard. In order to make its facilities accessible, a grantee may need to:

- ✓ Relocate programs to accessible facilities or accessible portions of facilities;
- ✓ Acquire or build new facilities that are accessible; or
- ✓ Selectively alter facilities to make them accessible to persons with mobility of sensory impairments.

State and local governments are also subject to Title II of the Americans with Disabilities Act of 1990 (ADA), which prohibits discrimination against persons with disabilities. Title II requires that facilities that are newly constructed or altered by, on behalf of, or for use of a public entity, be designed and constructed in a manner that makes the facility readily accessible to and useable by persons with disabilities. Title II also requires accessibility of newly constructed or altered streets, roads, highways, and pedestrian walkways.

ADA information is available at www.ada.gov

Self-Evaluation

DLG has conducted a self-evaluation of its programs, services, and activities to determine if they are programmatically and physically accessible to persons with disabilities. In turn, it requires each of its grantees to conduct a self-evaluation as well.

If a grantee has not already performed a Section 504 self-evaluation of programs, services, and activities to determine if they are programmatically and physically accessible to people with disabilities, they must conduct such evaluation and document all needs. If a grantee has already performed a self-evaluation, a new one is not required, unless facilities have been altered.

24 CFR 8.51

Grantees can complete the DLG self-evaluation guide, provided as Attachment 7-5, to adopt and use in their own programs.

Attachment 7-5:
Section 504 Self Evaluation

Grantees should also involve persons with disabilities in these evaluations.

While performing the self-evaluation, grantees should conduct a careful inspection of the following to determine if they are free from discriminatory effects and practices:

- ✓ Employment and personnel policies and practices;
- ✓ Programs and activities;
- ✓ Benefits and service delivery; and
- ✓ Contractual agreements.

Tip: **Conduct a "walk-through" of the process required for participation in the service or program to assess its accessibility. Analyze the physical path traveled, as well as the administrative requirements, service delivery, eligibility criteria, and application procedures.**

The self-evaluation (along with the transition plan discussed below) must be submitted to DLG as part of the evidentiary materials (see Chapter 1: Project Administration).

Chapter 1:
Program Administration

In the course of the self-evaluation, if the grantee identifies any policies and practices that are found to be discriminatory or contrary to Section 504 requirements, it must take steps to remedy the discrimination.

Transition Plan

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

The plan must address the following items:

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

Additional guidance for completing a transition plan is provided in Attachment 7-6. The grantee is not necessarily required to make every part of an existing facility accessible if that is not structurally possible, but grantees must address how persons with disabilities will be assured access. The transition plan must involve persons with disabilities and/or representative organizations. The transition plan must be sent to DLG as part of evidentiary materials (refer to Chapter 1).

Attachment 7-6:
Section 504 Transition Plan
Chapter 1: Project Administration

Special Requirements for Grantees with 15 or More Employees

There are two additional requirements for Section 504 compliance for grantees with 15 or more full or part-time employees:

- ✓ Designation of responsible employee and adoption of grievance procedures:
  - At least one person must be designated to coordinate 504 and related compliance efforts. The agency coordinator should be designated in writing and identified in any written notices.
  - A grievance procedure must also be adopted incorporating due process standards and allowing for prompt local resolution of any complaints of discrimination based on disability. Existing grievance procedures can often be adapted to satisfy this requirement. A sample Grievance Procedure is provided as Attachment 7-7.

    Attachment 7-7: Grievance Procedures for Complaints
  - Any individual or authorized representative who believes that they have been denied opportunities or treated differently due to their race, color, national origin, sex, age disability, religion, familial status, sexual orientation and gender identity may file a complaint. The complaint may be filed with DLG, the Kentucky Human Rights Commission or HUD. More information concerning complaints is provided as Attachment 7-8 to this Chapter.

    Attachment 7-8: Sample Fair Housing Complaint Information
- ✓ Notification to participants, beneficiaries, applicants and employees of their nondiscriminatory provisions. See 24 CFR 8.54 for specific details. In summary, the grantee must provide notice regarding the following:

  24 CFR 8.54
  - The grantee must publish in a newspaper of general circulation the notice "Policy of Non-Discrimination on the Basis of Disability Status," which can be found as Attachment 7-9.

    Attachment 7-9: Policy of Non-Discrimination on the Basis of Disability Status
    - To document this requirement, the Section 504 Compliance File should contain the printer's affidavit for the public notice "Policy of Non-Discrimination on the Basis of Disability Status" and other evidence of compliance with the notification policy. To ensure this notice reaches the visually and mobility impaired, it is also recommend to have the notice placed on local radio and/or television stations.
    - The policy must be submitted to DLG as part of evidentiary materials (see Chapter 1: Project Administration).
  - Grantees must include the same language of their policy of nondiscrimination (mentioned in the first bullet) in all material used for recruitment or general information.
  - Grantees must ensure that all members of the population with visual or hearing impairments are provided with the information necessary to understand and participate in the programs offered (e.g., TDD or TTY services, large print on outreach materials and application documents, etc.).

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

Tip: **Review program and projects with an eye toward accessibility compliance. Modify program procedures and housing project work plans as necessary.**

Section 7-C. Employment and Contracting

Employment

Nondiscrimination is a requirement of grantees with regard to employment and employment practices. Employment opportunities may not be denied on the basis of race, color, national origin, sex, age, religion, familial status, or disability. NOTE that for federally-funded construction contracts and subcontracts, Executive Order 13672 amended Executive Order 11246 in April of 2015 to include sexual orientation and gender identity as protected classes in terms of hiring and employment on such contracts and subcontracts.

Affirmative action and equal employment opportunity policies are fundamental aspects. Steps that can be taken by grantees to prevent discrimination in employment include the following:

- ✓ Review of jurisdictional employment policies and procedures for discriminatory intent or practice and document review.
- ✓ Advertise employment opportunities and/or to recruit employees for project-related positions.
- ✓ Develop and maintain employment data that indicates staff composition by race, sex, handicap status and national origin.

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

- ✓ No qualified individual with a disability shall, solely on the basis of their disability be subject to discrimination in employment under any program or activity that receives federal assistance.
- ✓ Any grantee cannot legally limit, segregate or classify applicants or employees in any way that negatively affects their status or opportunities because of disability.
- ✓ In pre-employment and employment activities, discrimination based on a disability must not occur and reasonable accommodations must be made to the physical or mental limitations of otherwise qualified individuals unless it creates undue hardship for the grantee. HUD regulations specify that an employer is prohibited from discrimination in the following instances:
  - Recruiting, advertising and processing of applications;
  - Hiring, upgrading, promoting, tenure, demotion, transfer, layoffs, termination right or return from layoffs, illness and rehiring;
  - Rates of pay and any other forms of compensation;
  - Job assignments, classifications and descriptions, organizational structures, lines, progression and seniority lists;
  - Leaves of absence, sick leave or any other leave;
  - Fringe benefits available by virtue of employment;

- Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities and selection for leaves of absence for training;
- Employer sponsored activities, including social or recreation programs; and
- Any other term, condition or privilege of employment.

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

Reasonable accommodation in employment, as mentioned in the above list, is determined on a case-by-case basis. It means reasonable modifications on the job or in the workplace to enable a disabled person to perform the job for which she/he is qualified.

It is important for grantees to remember that the essence of Section 504 provides for equal opportunity and not the same level of achievements. Section 504 does not require the hiring or promotion of someone simply because she/he has a disability.

Procurement and Contracting

Chapter 4: Procurement
Chapter 5: Contracting
Executive Order 11246 as amended by Executive Order 13672

Procurement and resulting contracting is another area of grant administration that must be nondiscriminatory. The grantee must ensure nondiscrimination in the solicitation, advertising and awarding of contracts for all of the protected classes with the addition of sexual orientation and gender identity. Bid specifications and/or evaluation criteria used to review bids must not be discriminatory. See Chapter 4: Procurement and Chapter 5: Contracting for more detailed information and guidance.

Section 7-D. Record Keeping and Monitoring

Chapter 1: Project Administration

Compliance with Federal and state laws is the responsibility of each recipient. DLG is required to monitor grantees for compliance with fair housing and equal opportunity laws and requirements. This monitoring is facilitated when records documenting compliance are maintained appropriately by recipients. DLG requires that the records demonstrating compliance with these requirements be kept on a current basis. Records must be maintained for five years following final close-out of the grant. Chapter 1: Project Administration also provides guidance on record keeping. All grantees in joint projects must undertake Fair Housing and Equal Opportunity activities as well as maintain full documentation and files.

Fair Housing Records

The following records must be maintained by the recipient in a separate equal opportunity and fair housing file:

✓ Documentation of policies, procedures and practices that ensure non-discrimination of all protected classes and comply with any applicable laws, regulations, policy guidance or other requirements.

✓ Documentation of the action(s) the recipient has taken to affirmatively further fair housing, including records on funds provided, if any, for such actions.

- ✓ Demographic data (actual survey or latest census data) depending on the project undertaken may include:
  - The population of the jurisdiction of the unit of general local government receiving KCDBG funds;
  - The minority population of the locality (number and percentage);
  - The target area population;
  - The minority population of the target area (number and percentage);
  - The number of disabled, elderly households, and female-headed households in the target area; and
  - A map of the locality showing the locations of assisted housing units, concentrations of minority population, concentrations of low and moderate income, and the target area.

Direct Benefit Records

As part of the KCDBG application, the grantee is required to submit statistical information on the persons benefiting from the project. It is important that this information be maintained and updated throughout the implementation of the project. Even if the project activities meet the "presumptive benefit" test for proving LMI benefits and surveys have not been conducted or statistical data on beneficiaries has not been collected, benefit data for fair housing and equal opportunity purposes must be maintained.

Data must be collected and retained on beneficiaries according to the statistical categories listed on the Project Beneficiary Profile Form that is part of the Project Completion Report (PCR) (Attachment 13-2 of Chapter 13). This information is necessary both in proving compliance with fair housing and equal opportunity laws and in meeting closeout requirements when the project is completed. The Project Benefit Profile will assist the grantee in maintaining specific data on project beneficiaries. The grantee may choose to conduct local surveys or use census data for documentation. These forms are to be maintained throughout the length of the project and updated as significant progress is made. In addition, documentation for each person benefiting must be included in the project files.

Attachment 13-2:
Project Completion Report

For direct benefit activities (i.e., housing and economic development job creation activities), grantees must also provide data on the extent to which persons have applied for benefits and participated in or benefited from any program or activity funded in whole or in part with KCDBG funds. Records must be kept by race, ethnicity and gender of heads of households.

Employment Records

- ✓ Data on employment of the local government that is carrying out an activity funded in whole or in part with KCDBG funds. The data to be maintained in the files includes:
  - A description of the local government work force in percentage by race, gender, job title, and hire date.
  - The percentage of minorities in the jurisdiction of the unit of general local government that is receiving KCDBG funds and the percentage of minorities working for that unit of general local government.

- The number of project area residents employed with KCDBG funds. Data should show the percentage by race and gender of the personnel in any department, office, or agency of the unit of local government using KCDBG funds to employ staff. (A sample Local Government Employment Work Force Analysis form is provided as Attachment 7-10 to this Chapter). For example, if KCDBG funds are being used to pay a portion of a bookkeeper's salary in the accounting department of the city, then employment data should be available for the department. Note this data is not required for any public or private entity performing services under contract to the unit of general local government; e.g., an Area Development District (ADD) or engineering firm that is administering a KCDBG project under a contract with a local government.

  Attachment 7-10: Local Government Employment Work Force Analysis

- Government hiring practices and policies.
- Affirmative Action Plan (if applicable).

✓ Documentation of the affirmative actions the grantee has taken to overcome the effects of prior discrimination as determined through a formal compliance review or court proceeding, where the recipient has previously discriminated against persons on the grounds of race, color, religion, sex, disability, familial status, national origin, sexual orientation, or gender identity in administering a program or activity funded in whole or in part with KCDBG funds.

Section 504 Records

✓ A copy of the self-evaluation;

✓ A copy of the transition plan;

✓ A list of interested persons who were consulted;

✓ A description of areas and buildings examined and any problems identified;

✓ A description of modifications made and remedial steps taken to comply with the regulations; and

✓ Evidence that new or substantial rehab multi-family projects were constructed/rehabilitated to meet 504 standards.

Monitoring

The designated fair housing and equal opportunity coordinator and/or officers should review compliance requirements on an annual basis.

Grantees will be monitored by DLG on a periodic basis. Proper notification of a monitoring visit will be provided, however; it is important for grantees to keep all records and files in “monitoring readiness” condition at all times. Some of the areas DLG staff will review to determine if grantees meet compliance with all fair housing and equal opportunity requirements and laws are listed below:

✓ A check of the availability and adequacy of employment records;

✓ Identification of programs and activities assisted through KCDBG funding and assessment of program impact on protected groups;

- ✓ An examination of procurement procedures and awards to assess the utilization of minority and/or female owned enterprises and businesses located in the project area or owned in substantial part by project area residents;
- ✓ A review of voluntary efforts to promote fair housing; and
- ✓ An examination of the extent to which various protected groups have been impacted by relocation activities.

HUD FHEO Compliance and Monitoring

HUD's Office of Fair Housing and Equal Opportunity (FHEO) 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 compliance including records of program participation by individuals with handicaps.

It is important for grantees to keep organized records and document their Section 504 activities.

A complaint can be made by any individual or authorized representative of that individual who believes they have been denied opportunities or treated differently, due to their race, ethnicity, gender, disability, or age.

This complaint would be filed with FHEO under the Housing Discrimination Form 903.1 (see website at right). 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. Grantees should have copies of this form available to the public.

Housing Discrimination Form 903.1:
http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/online-complaint

A person who believes his/her rights have been violated 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 may result ultimately in the termination of or refusal to grant federal assistance.

Exhibit 7.1

Federal and State Laws and Regulations (included amendments)	Fair Housing & Nondiscrimination	Accessibility	Equal Employment & Contracting
Title VI of the Civil Rights Act of 1964: This Act provides that no person shall be excluded from participation in, denied program benefits, or subject to discrimination based on race, color and/or national origin under any program or activity receiving federal financial assistance.	X		

Federal and State Laws and Regulations (included amendments)	Fair Housing & Nondiscrimination	Accessibility	Equal Employment & Contracting
Title VII of the Civil Rights Act of 1968 (The Fair Housing Act): This Act prohibits discrimination in housing on the basis of race, color, religion, sex and/or national origin. This law also requires actions that affirmatively promote fair housing.	X	X	
Restoration Act of 1987. This Act restores the broad scope of coverage and clarifies the application of the Civil Rights Act of 1964. It also specifies that an institution that receives federal financial assistance is prohibited from discriminating on the basis of race, color, national origin, religion, sex, disability or age in a program or activity that does not directly benefit from such assistance.	X		
Section 109 of Title 1 of the Housing and Community Development Act of 1974: This section of Title 1 provides that no person shall be excluded from participation in (including employment), denied program benefits, or subject to discrimination on the basis of race, color, national origin, or sex under any program or activity funded in whole or in part under Title I of the Act.	X		X
KRS Chapter 344.015(2) and 45 KAR 1:080 Section 1(7) and Section 2: These regulations require that all state agencies receiving federal funds submit an annual Title VI compliance report and any implementation updates to the Auditor of Public Accounts and the Commission on Human Rights Commission not later than July 1 of each year. Title VI of the Civil Rights Act of 1964 pertains to the delivery of services by recipients of federal funds.	X		
The Fair Housing Amendment Act of 1988: This Act amended the original Fair Housing Act to provide for the protection of families with children and people with disabilities, strengthened punishment for acts of housing discrimination, expansion of the Justice Department jurisdiction to bring suit on behalf of victims in federal district courts, and created an exemption to the provisions barring discrimination on the basis of familial status for those housing developments that qualify as housing for persons age 55 or older.	X		

Federal and State Laws and Regulations (included amendments)	Fair Housing & Nondiscrimination	Accessibility	Equal Employment & Contracting
The Housing for Older Persons Act of 1995 (HOPA): Retained the requirement that the housing must have one person who is 55 years of age or older living in at least 80 percent of its occupied units. The Act also retained the requirement that housing facilities publish and follow policies and procedures that demonstrate intent to be housing for persons 55 and older.	X		
The Age Discrimination Act of 1975: This Act provides that no person shall be excluded from participation in, denied program benefits, or subject to discrimination on the basis of age under any program or activity receiving federal funding assistance. Effective January 1987, the age cap of 70 was deleted from the laws. federal law preempts any state law currently in effect on the same topic including: KRS 18A.140; KRS 344.040; 101 KAR 1:350 paragraph 11; 101 KAR 1:375 paragraph 2(3); 101 KAR 2:095 paragraphs 6 and 7.	X		
Section 504 of the Rehabilitation Act of 1973: It is unlawful to discriminate based on disability in federally assisted programs. This section provides that no otherwise qualified individual shall, solely by reason of his or her disability, be excluded from participation in (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal funding assistance. Section 504 also contains design and construction accessibility provisions for multi-family dwellings developed or substantially rehabilitated for first occupancy on or after March 13, 1991.	X	X	X
The Americans with Disabilities Act of 1990 (ADA): This Act modifies and expands the Rehabilitation Act of 1973 to prohibit discrimination against “a qualified individual with a disability” in employment and public accommodations. The ADA requires that an individual with a physical or mental impairment who is otherwise qualified to perform the essential functions of a job, with or without reasonable accommodation, be afforded equal employment opportunity in all phases of employment. Kentucky adopted this Act in 1992 with the enrollment and passage of Senate Bill 210.	X	X	X

Federal and State Laws and Regulations (included amendments)	Fair Housing & Nondiscrimination	Accessibility	Equal Employment & Contracting
Executive Order 11063: This Executive Order provides that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in housing and related facilities provided with federal assistance and lending practices with respect to residential property when such practices are connected with loans insured or guaranteed by the federal government.	X		
Executive Order 11259: This Executive Order provides that the administration of all federal programs and activities relating to housing and urban development be carried out in a manner to further housing opportunities throughout the United States.	X		
Section 106(d)(5)(B) of the Housing and Community Development Act of 1974: This Act provides that grantees will conduct its programs and administer CDBG to affirmatively further fair housing.	X		
The Equal Employment Opportunity Act: This Act empowers the Equal Employment Opportunity Commission (EEOC) to bring civil action in federal court against private sector employers after the EEOC has investigated the charge, found "probable cause" of discrimination, and failed to obtain a conciliation agreement acceptable to the EEOC. It also brings Federal, state and local governments under the Civil Rights Act of 1964.			X
The Immigration Reform and Control Act (IRCA) of 1986. Under IRCA, employers may hire only persons who may legally work in the U.S., i.e., citizens and nationals of the U.S. and aliens authorized to work in the U.S. The employer must verify the identity and employment eligibility of anyone to be hired, which includes completing the Employment Eligibility Verification Form (I-9).			X

Federal and State Laws and Regulations (included amendments)	Fair Housing & Nondiscrimination	Accessibility	Equal Employment & Contracting
The Uniform Guidelines on Employee Selection Procedures adopted by the Equal Employment Opportunity Commission in 1978: This manual applies to employee selection procedures in the areas of hiring, retention, promotion, transfer, demotion, dismissal and referral. It is designed to assist employers, labor organizations, employment agencies, licensing and certification boards in complying with the requirements of federal laws prohibiting discriminatory employment.			X
The Vietnam Era Veterans' Readjustment Act of 1974 (and Jobs for Veterans Act of 2002): This Act was passed to ensure equal employment opportunity for qualified disabled veterans and veterans of the Vietnam War. Affirmative action is required in the hiring and promotion of veterans.			X
Executive Order 11246 as amended by Executive Order 13672: This Executive Order applies to all federally-assisted construction contracts and subcontracts. It provides that contractors and subcontractors shall not discriminate in hiring or employment on the basis of race, religion, color, national origin, sex, sexual orientation, gender identify, age or disability.			X
The Kentucky Civil Rights Act (KRS Chapter 344): This is the state corollary to the Federal Civil Rights Act and prohibits discrimination in employment, housing, accommodation, etc. The Kentucky Commission on Human Rights enforces the Act.	X	X	X

Federal and State Laws and Regulations (included amendments)	Fair Housing & Nondiscrimination	Accessibility	Equal Employment & Contracting
24 CFR Part 5 Equal Access in Accordance with an Individual's Gender Identity in Community Planning and Development Programs (FR 5863-F-02) 24 CFR Part 100 Quid Pro Quo and Hostile Environment Harassment and Liability for Discriminatory Housing Practices under the Fair Housing Act (FR 5248-F-02) Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Enforcement of Local Nuisance and Crime-Free Housing Ordinances against Victims of Domestic Violence, Other Crime Victims and Others who Require Police or Emergency Services (9/13/16) Office of General Counsel Guidance on Fair Housing Act Protections for Persons with Limited English Proficiency (9/15/16)	X	X	

Chapter 8: Relocation under the URA and 104(d)

Introduction

This chapter provides detailed guidance regarding relocation under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) and Section 104(d), as well as one-for-one unit replacement requirements. It outlines the procedures that grantees should follow to ensure compliance with both the URA and 104(d). In addition, information is provided to calculate payments to displaced persons, to keep records, and comply with other relocation requirements that may be applicable to CDBG-assisted projects.

Section 8-A. Overview

Applicable Regulations

There are three major types of requirements that cover relocation (and acquisition) activities in CDBG programs:

- ✓ The URA regulations, effective February 2005 implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) of 1970, as amended (49 CFR Part 24);
- ✓ Section 104(d) of the Housing and Community Development Act of 1974 and the implementing regulations at 24 CFR Part 570.496(a) and
- ✓ 24 CFR 570.606 of the CDBG Regulations, which requires compliance with the regulations, listed above.
- ✓ An over-riding principle in the CDBG program and the URA is that the grantee shall assure that it has taken all reasonable steps to minimize displacement in implementing activities.

49 CFR Part 24

Section 104(d) and 5305(a)(11) of Title 1, Housing and Community Development Act of 1974; 24 CFR 570.496(a)

24 CFR 570.606

Tip: **HUD Handbook 1378 (recently updated) is a resource available for relocation information. It can be downloaded from HUD's website at** http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/cpd/13780.

Grantees should also refer to the Department of Transportation's Federal Highway Administration's Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs. It may be downloaded from the Federal Highway Administration's website at http://www.fhwa.dot.gov/legsregs/directives/fapg/cfr4924a.htm.

URA the HUD Way - the 8-part web-based modular training course provides basic information and resources to HUD grantees and funding recipients on URA requirements for HUD funded projects.
https://www.hudexchange.info/trainings/ura-the-hud-way/

Overview of Requirements

Displacement results when people or a non-residential entity moves permanently as a direct result of the acquisition, demolition, or rehabilitation of property for CDBG-funded projects.

49 CFR Part 24

The Uniform Relocation Act (URA) protects all persons who are displaced by a federally-assisted project **regardless of their income**. However, Section 104(d) **only protects low/moderate income persons** (within 80% of the Area Median Income limit for their household size).

Section 104(d) requirements focus on the "loss" of low and moderate-income housing rental units) in a community through CDBG-funded demolition or conversion. Section 104(d) has two distinct components:

- ✓ **People:** 104(d) specifies relocation assistance for displaced low- and moderate-income renter households.
- ✓ **Units:** 104(d) requires one-for-one replacement of low and moderate-income dwelling units (as defined by the regulations) that are demolished or converted using CDBG or HOME funds to a use other than low-moderate income permanent housing. More information can be found later in the chapter.

24 CFR 570.496(a)

Section 8-B. Definitions

In order to understand applicable relocation requirements, it is necessary to understand some key terminology.

Who Is Displaced under the URA and CDBG?

The URA, the CDBG regulations and Section 104(d) each address specific circumstances that would qualify someone as a "displaced person."

Under the URA, the term "displaced person" means:

49 CFR 24.2(g); Handbook 1378, Chapter 1, Paragraph 1-4

Handbook 1378, Chapter 8, Paragraph 8-23

- ✓ A person who moves permanently from the real property after the property owner (or person in control of the site) issues a vacate notice to the person. An owner who refuses to renew an expiring lease in order to evade the responsibility to provide relocation assistance will also trigger URA coverage for the tenant.
- ✓ The effective move date of the displaced person is based on whether:
  - If the grantee has site control at the time the grantee submits an application for KCDBG funds for the project that is later approved, then the household is considered displaced on the submission date of the application; or
  - If the grantee does not have site control when the application for KCDBG funds, the effective date will be the date the grantee obtains site control.
- ✓ A person who moves permanently from the real property after the initiation of negotiations, unless the person is a tenant who was issued a written notice of the expected displacement prior to occupying the property (otherwise known as a "Move-In Notice")
- ✓ A person who moves permanently and was not issued a Notice of Nondisplacement after the application for KCDBG funds is approved.

Even if there was no intent to displace the person, if a Notice of Nondisplacement was not provided, HUD has taken the position that the person's move was a permanent, involuntary move for the project since the person was not given timely information essential to making an informed judgment about moving from the project.

Handbook 1378:
Chapter 1-4, Paragraph I- 4

Under CDBG, the regulations define a "displaced person" as someone who moves after a specific event occurs:

- ✓ This event establishes a presumption that a project may begin (e.g., date of submission of an application). It is presumed that displacement before this date did not occur "for the project" and is not covered by the URA, unless rebutted by convincing evidence to the contrary.
- ✓ It is also presumed that a permanent, involuntary move on or after that date is a displacement "for the project," unless the grantee or state determines otherwise.

HUD must concur in a determination to deny a person relocation benefits on this basis:

- ✓ When an owner either evicts a tenant or fails to renew a lease in order to sell a property as "vacant" to a grantee for a HUD-funded project, HUD will generally presume that the tenant was displaced "for the project." (Evictions for serious or repeated violations of the lease are permissible, but the owner must follow state tenant-landlord laws governing eviction.)
- ✓ In cases where the tenant was not notified of their eligibility for URA benefits, the grantee is responsible for finding the displaced tenant and providing appropriate relocation assistance, unless the grantee can demonstrate that the move was not attributable to the project.
- ✓ CDBG regulations also define a "displaced person" as:
  - A tenant who moves permanently after the KCDBG-funded acquisition or rehabilitation, and the increased rent is not affordable (they are "economically displaced").

The CDBG program regulations cover "economic displacement," while the URA is silent on this issue. If rents are increased after the KCDBG project is complete, and the new rent exceeds 30% of the tenant's gross monthly income, they would be "economically displaced." Generally an increase in rent within the first year or the project is seen as related to the federally funded project and may trigger "economic displacement" benefits.

Handbook 1378;
Chapter 1; Paragraph 4–5;
24 CFR 570.606(b)(2)(D)

- ✓ The URA also protects the following "displaced persons":
- ✓ A tenant-occupant of a dwelling who receives a Notice of Nondisplacement but is required to move to another unit in the building/complex may be considered displaced, if the tenant moves from the building/complex permanently and either:
  - The tenant was not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move within the project; or
  - Other conditions of the move within the project were not reasonable.
- ✓ A tenant who moves permanently after the building has a change from residential use to a public use as a direct result of a CDBG-assisted project (for example, the building now leases units to serve

persons who were homeless or require supportive housing). Under the CDBG program, leases of 15 years or more are considered acquisitions for the purposes of the URA.

- ✓ A nonresidential tenant who receives a Notice of Nondisplacement, but moves permanently from the building/complex, if the terms and conditions under which the tenant may remain are not reasonable.

It is expected that the grantee or property owner will negotiate these terms and conditions. A tenant who believes the offer is unreasonable may relocate and file an appeal seeking assistance as a "displaced person."

When Section 104(d) is triggered:

- ✓ The term "displaced person" means any lower-income household that moves from real property permanently as a direct result of the conversion of an occupied or low- and moderate-income dwelling unit or the demolition of any dwelling unit, in connection with a KCDBG-assisted activity.

Persons Not Considered Displaced

A person does not qualify as a "displaced person" (and is not entitled to relocation assistance at URA levels), if:

24 CFR 570.606(b)(2)(i)

- ✓ The person has no legal right to occupy the property under state or local law; or

49 CFR 24.2(a)(9)(ii)(k)

- ✓ The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement or other good cause, the grantee determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance; or

Handbook 1378,
Chapter 1, Paragraph 1-4 J (1)

- ✓ The person moves into the property after the date of the application for KCDBG funds and, before moving in, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase) and the fact that he or she would not qualify for assistance as a "displaced person" as a result of the project. See Attachment 8-1 for a sample notice to provide to prospective tenants.

Handbook 1378,
Chapter 1, Paragraph 1-4 J (2)
Attachment 8-1:
Notice to Prospective Tenants

People are also not considered displaced if:

49 CFR 24.2(a)(9)(ii)(C);
Prospective Tenants

- ✓ The person occupied the property for the purpose of obtaining relocation benefits.

Attachment 8-1: Sample Notice to Prospective Tenants

- ✓ The person retains the right of use and occupancy of the property for life following its acquisition (life estates).

49 CFR 24.2(a)(9)(ii)(I)

- ✓ The person is determined not to be displaced as a direct result of the project. Grantees may not make this determination on their own. Contact DLG for determination assistance.

Handbook 1378,
Chapter 1, Paragraph 1-4 J (4)

- ✓ The person is an owner-occupant of the property who moves as a result of a voluntary acquisition and received the voluntary acquisition notice. (Refer to Chapter 5 of HUD Handbook 1378 and Chapter 9: Acquisition of this Handbook for more information on voluntary acquisition.) (**NOTE:** Tenants living in properties that are acquired via a voluntary acquisition are covered by the URA regardless of their willingness to move.)

  Handbook 1378, Chapter 1, Paragraph 1-4 J (3)

  Handbook 1378, Chapter 5
  Chapter 9: Acquisition
  49 CFR 24.2(a)(9)(ii)(E)

- ✓ The person leaves due to code enforcement, unless the code enforcement results in rehabilitation or demolition for an assisted project. An owner-occupant or tenant who is required to move permanently as a direct result of this rehabilitation or demolition may be eligible for relocation assistance.

- ✓ The person, after receiving a notice of eligibility, is notified in writing that he or she will not be displaced.

  49 CFR 24.2(a)(9)(ii)(G)

Such a notice cannot be delivered unless the person has not moved and the agency agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of eligibility.

- ✓ The person is an owner-occupant who voluntarily applies for rehabilitation assistance on his or her property. When the rehabilitation work requires the property to be vacant for a period of time, this assistance is considered optional. Refer to Chapter 10: Housing for more information.

  49 CFR 24.2(a)(9)(ii)(H)

- ✓ The person is not lawfully present in the United States unless denial of benefits would result in “exceptional and extremely unusual hardship” to a lawfully-present spouse, child, or parent. This prohibition covers all forms of relocation assistance under the URA including both replacement housing payments (RHP) and moving assistance.

  49 CFR 24.2(a)(9)(ii)(L)
  Public Law 105-117, passed on November 21, 1997; Final Rule published on February 12, 1999

The current URA regulations include a definition of the phrase "exceptional and extremely unusual hardship," which focuses on significant and demonstrable impacts on health, safety, or family cohesion. This phrase is intended to allow judgment on the part of the grantee and does not lend itself to an absolute standard applicable in all situations. When considering whether such an exemption is appropriate, a displacing agency may examine only the impact on an alien's spouse, parent, or child who is a citizen or lawful resident alien.

An “alien not lawfully present in the United States” is defined as an alien present in the United States who has not been admitted or paroled into the United States pursuant to the Immigration and Nationality Act (8 United States C.1101 et seq) and whose stay in the United States has not been authorized by the United States Attorney General. It includes someone who is in the United States after the expiration of the period of stay authorized by the United States Attorney General or who otherwise violates the terms and conditions of admission, parole, or authorization to stay in the United States.

When a household contains some members who are present lawfully but others are present unlawfully, there are two different computation methods, one for moving expenses and one for replacement housing payments (RHP). For moving expenses, the payment is to be based on the proportion of lawful occupants to the total number of occupants. For example, if four out of five members of a family to be

displaced are lawfully present, the proportion of lawful occupants is 80 percent and that percentage is to be applied against the moving expenses payment that otherwise would have been received.

- ✓ For the RHP, the unlawful occupants are not counted as a part of the family and its size is reduced accordingly. Thus a family of five, one of whom is a person not lawfully present in the U.S., would be counted as a family of four. The comparable for the family would reflect the makeup of the remaining four persons and the Replacement Housing Payment (RHP) would be computed accordingly.

Initiation of Negotiations (ION)

The date of the Initiation of Negotiations ("ION") serves as a milestone in determining a person's eligibility for relocation assistance, including moving costs and a replacement housing payment. CDBG regulations establish a program-specific definition of ION as the trigger for issuance of the Notice of Eligibility for Relocation Assistance or Notice of Nondisplacement.

For CDBG programs, the term "initiation of negotiations" is defined as the following:

- ✓ If the displacement results from privately undertaken rehabilitation, demolition or acquisition, the execution of the grant or loan agreement between the grantee and the person owning or controlling the real property.
- ✓ If the displacement results from grantee demolition or rehabilitation and there is no related grantee acquisition, the notice to the person that he or she will be displaced by the project (or the person's actual move, if there is no such notice).
- ✓ When there is voluntary acquisition of real property by a grantee, the term "initiation of negotiations" means the actions described above, except that the ION does not become effective, for purposes of establishing eligibility for relocation assistance, until there is a written purchase agreement between the grantee and the owner. (See Chapter 9: Acquisition)

Chapter 9: Acquisition

- ✓ Whenever real property is acquired by a grantee that has the legal power under the Eminent Domain Act of Kentucky and the acquisition is an involuntary transaction, the initiation of negotiations means the delivery of the initial written offer of just compensation by the grantee to the owner to purchase the real property for the project.

24 CFR 570.606
49 CFR 24.2(a)(15)

After the ION, any person who seeks to rent a unit in the project must be issued a Move-in Notice before executing a lease; otherwise, the project will incur liability for relocation costs if the persons are found to be eligible as displaced persons.

Project

The definition of what is a "project" differs for URA and for Section 104(d).

- ✓ The term project is defined under URA as an activity or series of activities funded with federal financial assistance received or anticipated in any phase. In addition, URA states that program rules will further define what is considered a project.

Handbook 1378,
Chapter 1, Paragraph 1-4 DD
49 CFR 24.2(a)(22)

- ✓ Under Section 104(d), a project is an activity or series of activities undertaken with HUD financial assistance received or anticipated in any phase. Section 104(d) benefits are triggered if the activity is a CDBG or HOME funded activity and the HUD assisted activity is part of a single undertaking.

Handbook 1378,
Chapter 7, Paragraph 7-10

- ✓ In order to determine whether a series of activities are a project, look at:
  - **Timeframe**—Do activities take place within a reasonable timeframe of each other?
  - **Objective**—Is the single activity essential to the overall undertaking? If one piece is unfinished, will the objective be incomplete?
  - **Location**—Do the activities take place on the same site?
  - **Ownership—**Are the activities carried out by, or on behalf of, a single entity?

Section 8-C. General Relocation Requirements under the URA

The URA covers all types of displaced persons, including both residents and businesses. It also covers the temporary relocation of existing occupants. The following sections of the handbook are sorted by: (1) URA requirements that apply to all persons; (2) URA requirements that apply to displaced residential occupants; (3) URA requirements that apply to temporary relocation; and (4) URA requirements that apply to commercial occupants.

Acquisition and/or relocation of mobile homes is also covered by the URA. Since there are many variables in the ownership and tenancy of mobile homes, grant administrators are asked to consult with DLG before proceeding with the acquisition or relocation of mobile homes.

Following the URA text, this chapter covers Section 104(d). A flow chart summarizing the relocation process can be found as Attachment 8-2 of this chapter.

The requirements in this section apply to all projects where the URA is triggered. The URA relocation process can differ greatly depending upon the funding used in a project and whether an involuntary sale will be involved in the process. Attachment 8-2 provides a typical relocation scenario in a flow chart indicating key dates in the process.

Attachment 8-2:
URA Relocation Flow Chart with Trigger Dates

Planning for Relocation

If KCDBG funds will involve relocation, the grantee must develop written policies and procedures for managing the anticipated relocation caseload in the form of a "relocation plan." The relocation plan must be submitted to DLG after the funding award as part of the evidentiaries needed for the release of funds. Grantees are encouraged to contact DLG early in this process to consider the timing and project implications for projects potentially involving temporary or permanent relocation.

Attachment 8-3:
Guideform Residential Antidisplacement and Relocation Plan

These procedures must be in compliance with all elements of the Final Rule implementing changes to the URA and the Residential Antidisplacement and Relocation Plan, previously developed as part of the application for CDBG assistance.

The plan must contain two components:

- ✓ A commitment to replace all low- and moderate-income dwelling units that are demolished or converted to a use other than low- and moderate-income housing as a direct result of the use of KCDBG funds, and
- ✓ A commitment to provide relocation assistance required under Section 104(d) of the Housing and Community Development Act.

The plan must be adopted by the local governing body.

A sample of this plan is included as Attachment 8-3 of this chapter.

Advisory Services, Including Relocation Notices

The next step in the process is to provide relocation advisory services. This process requires the grantee to first personally interview the person to be displaced. The purpose of the interview is to explain the:

- ✓ Various payments and types of assistance available,
- ✓ Conditions of eligibility,
- ✓ Filing procedures, and
- ✓ Basis for determining the maximum relocation assistance payment available.

Grantees should use Attachment 8-4: Household Case Record to collect the required information for residential occupants. It is very important that all significant contact with displacees be logged into Section 5 of the Household Case Record.

Attachment 8-4:
Household Case Record

As a part of advisory services, the URA requires that all occupants receive notices informing them of their various rights.

General Information Notice

The General Information Notice (GIN) is referred to in Chapter 9 as one of the required notices when there is involuntary acquisition. This is a ***very important notice***!

As soon as feasible property owners should receive a GIN and copies of the GIN for each property included in the project should be included as a part of the grant application submission. The project administrator must provide the GIN to notify each household and/or business that the potential for displacement exists, including potential acquisition of the property. Samples of the GIN are provided in Handbook 1378 as Appendix 2 and 3. The GIN also informs the occupant prior to the initiation of negotiations not to move prematurely, because doing so will jeopardize any assistance that they may be due. By providing occupants with the GIN, the grantee protects themselves from claims for relocation benefits that could have been avoided if the person would not have been displaced.

Handbook 1378: Appendix 2 and 3,
General Information Notices for
Residential Tenants

Notice of Eligibility and Notice of Nondisplacement

After grant approval, the grantee should determine who must be displaced and who will be allowed to remain in (or return to) the project.

After making these determinations, the grantee should issue the appropriate relocation notices: either a Notice of Eligibility (for relocation assistance) or a Notice of Nondisplacement.

- ✓ The Notice of Eligibility informs occupants who will be displaced of their rights and levels of assistance under the URA.
- ✓ The Notice of Nondisplacement informs occupants who will remain in or return after completion of their rights under URA and of the terms and conditions of their remaining in the property. (See Handbook 1378 Appendix 4 and 6 for samples of these notices.)

Handbook 1378, Appendix 4: Notice of Non-displacement

Handbook 1378, Appendix 6

Notice of Eligibility for Relocation Assistance

In addition to these notices, copies of the HUD brochures, "Relocation Assistance to Displaced Homeowner Occupants" and "Relocation Assistance to Tenants Displaced from Their Homes" should be provided to displaced persons; these brochures are available on the HUD website – see link listed in text box. Note that these two brochures are for residential relocation only. There are different requirements for relocation of businesses, farms, and nonprofit organizations. Contact DLG for guidance on non-residential relocation.

Relocation Assistance to Displaced Homeowners Brochure

and

Relocation Assistance to Displaced Tenants from Their Homes

Brochures on HUD website at https://www.hudexchange.info/programs/relocation/publications/

Notice to Move

The grantee may issue a 90-Day Move Notice after a Notice of Eligibility has been sent and when the grantee wants to establish the move-out date (see Attachment 8-12). The 90-Day Notice may **not** be issued until at least one comparable unit has been identified and presented to the residential displaced person.

The 90-day notice must either state a specific date as the earliest date by which an occupant will be required to move, or state that the occupant will receive a further notice, at least 30 days in advance, indicating the specific date by which to move. A flow chart summarizing the relocation process can be found as Attachment 8-13 of this chapter.

Attachment 8-12: 90-Day Move Notice

Handbook 1378, Chapter 2, Paragraph 2-3(c)

Attachment 8-13: Tenant Assistance/Relocation Process Flow Chart

Discrimination in Relocation

Obviously, grantees must ensure that there is no discrimination in the relocation process. Individual displacees who have been discriminated against may not know how to take action on their own. Legal action is often too expensive to be a practical solution for them. The grantee must provide assistance in cases of discrimination. There are also different equal opportunity protections for businesses and additional protections for Fair Housing for displaced persons. See Chapter 7: Fair Housing of this handbook for additional information.

If a displacee has been discriminated against, there are two alternatives:

- ✓ The displacee can send a complaint to DLG within 180 days of the incident, simply telling DLG what happened. The relocation officer and grant administrator should advise the displacee of this option and assist in preparing the complaint if the displacee desires to make one. Upon receipt of the complaint, DLG may take one or more of the following steps:
- ✓ Investigate to see if the law has been broken;
- ✓ Contact the person accused of the violation and try to resolve the discrimination complaint;
- ✓ Refer the complaint to a local human rights commission for investigation and possible resolution and/or the Kentucky Commission on Human Rights (phone number 1-800-292-5566).
- ✓ Recommend that the displacee go to court.
- ✓ A suit may be filed in federal court, in which case the displacee should consult either an attorney or the local Legal Aid Society for assistance. The relocation officer should advise the displacee regarding both sources of help. If the court finds in favor of the displacee, it can stop the sale of the house or the rental of the apartment to someone else, and award the displacee damages and court costs.

Section 8-D. Residential Displacement under the URA

Residential occupants who will be displaced are entitled to receive a range of benefits under the URA. These include: (1) advisory services; (2) offer of a comparable replacement unit; (3) replacement housing payments; and (4) moving expenses. The following sections highlight each of these requirements.

Advisory Services for Displaced Households

The grantee should work with the household that will be displaced throughout the process to ensure the household is provided appropriate and required advisory services.

- ✓ Grantees must provide counseling and appropriate referrals to social service agencies, when appropriate.
- ✓ Grantees must offer or pay for transportation (e.g., taxi, rental car) to inspect comparable units or the actual unit selected by the displaced person.
- ✓ When a displacee is a minority, every effort should be made to ensure that referrals are made to comparables located outside of areas of minority concentration, if feasible.
- ✓ The grantee must provide current and continuing information on the availability, purchase price or rental cost and location of "comparable replacement dwellings." (See the section below for more information on comparable replacement dwellings.)

Comparable Replacement Dwelling Units

The grantee must make referrals to the replacement housing units (comparables) for displaced residential households. It is also recommended that the grantee inspect the comparables to determine if

they are in decent, safe and sanitary condition (including ensuring they are lead safe) prior to making referrals.

- ✓ The regulations stipulate that no person is to be displaced unless at least one, and preferably three, comparable dwellings are made available to the potential displacee. However, DLG requires the grantee to document the case file if three comparable dwellings are not identified.

49 CFR 24.204

- ✓ A comparable replacement dwelling means a dwelling which it meets local relevant housing codes and standards for occupancy;
- ✓ The replacement unit must be functionally equivalent to the displacement dwelling. The term "functionally equivalent" means that it performs the same function, and provides the same utility. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. In determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the grantee may consider reasonable trade-offs for specific features when the replacement unit is equal to or better than the displacement dwelling;
- ✓ Adequate in size to accommodate the occupants;
- ✓ If the displaced household were over-crowded, the comparable must be large enough to accommodate them.
- ✓ In an area not subject to unreasonable adverse environmental conditions;
- ✓ In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment;
- ✓ On a site that is typical in size for residential development with normal site improvements, including customary landscaping;
- ✓ Currently available to the displaced person on the private market (unless they are displaced from subsidized housing as described below); and
- ✓ Within the financial means of the displaced person. A replacement dwelling is considered to be within the person's financial means if a grantee pays the appropriate replacement housing payment.
- ✓ For a person receiving government housing assistance before displacement, a comparable dwelling unit that has similar government housing assistance must be offered. (For example, a comparable unit for a tenant who had a Housing Choice Voucher prior to displacement must be offered another unit where the Voucher could be used or is accepted.) When the government housing assistance program has requirements relating to the size of the replacement dwelling, the rules for that program apply.

Grantees may use Attachment 8-6: HUD Form 52580 Section 8 Existing Housing Program Inspection Checklist to determine whether a comparable unit is decent, safe and sanitary. Since replacement housing units must meet all local codes and housing standards, an inspector must be familiar with these requirements to ensure that displaced persons move to standard housing.

Attachment 8-6:
Section 8 Existing Housing Program Inspection Checklist HUD Form

Attachment 8-7: HUD Form 40061 may be used to identify the most representative comparable replacement dwelling units for purposes of computing a replacement housing payment.

Attachment 8-7:
Selection of Most Representative Comparable Replacement Dwelling for Computing an RHP

The grantee should then provide the potentially displaced household with a Notice of Eligibility for Relocation Assistance, Handbook 1378, Appendix 6. The notice must identify the cost and location of the comparable replacement dwelling(s).

Handbook 1378, Appendix 6
Notice of Eligibility for Relocation Assistance

Replacement Housing Payments

In some instances, a comparable replacement dwelling may not be available within the monetary limits for owners or tenants. This is the purpose of the Replacement Housing Payment (RHP).

49 CFR 24.401 and 24.402
49 CFR 24.404(a)

Relocation payments are not considered "income" for purposes of the IRS or the Social Security Administration.

The revised regulations do not allow a grantee to encourage or ask a displaced person to waive their relocation assistance; however, a fully informed person may choose not to apply for financial benefits and must acknowledge that decision in writing by clearly describing the assistance for which he/she will not apply. Grantees are encouraged to contact DLG if this situation is likely to occur.

49 CFR 24.209 and 24.207(f)

Replacement Housing Assistance for 90-Day Homeowners

Only homeowner-occupants who were in residency for 90 days prior to an offer to purchase their home ("ION") **USING INVOLUNTARY ACQUISITION are eligible for a replacement housing payment as "displaced persons". If homeowners were in occupancy for less than 90 days prior to the ION, they are protected by the URA as "displaced persons" but the calculation is made using the same method used for tenants.**

Note: **If an owner occupies a property acquired using voluntary acquisition requirements, they are NOT eligible for relocation benefits.**

For involuntary acquisitions, the ION is defined as the delivery of the written offer of just compensation by the grantee to the owner.

The RHP made to a 90-day homeowner is the sum of:

42 U.S.C. 4623(a)(1) and 42 U.S.C. 4624(b)

- ✓ The lesser of: the cost of the comparable or the cost of the actual replacement unit.
- ✓ Additional mortgage financing cost; and
- ✓ Reasonable expenses incidental to purchase the replacement dwelling.

To calculate the replacement housing payment for a 90-day homeowner, grantees should use the HUD claim form in 40057. If an owner elects to become a renter, the RHP can be no more than the amount would otherwise have received as an owner. The maximum payment is $31,000.

The displaced homeowner must purchase and occupy the replacement unit in order to qualify for a RHP as a displaced owner-occupant of 90 days.

HUD Claim Form 40057
https://www.hud.gov/sites/documents/40057.PDF
Claim Form for 90-day Homeowner

Replacement Housing Payments for Displaced Tenants

The amount of the replacement housing payment paid to a displaced tenant does not vary depending upon whether the household was in occupancy more or less than 90 days prior to the date of execution of the agreement.

The replacement housing payment is intended to provide affordable housing for a 42-month period. Although the URA regulations establish a $7,200 limitation on rental assistance payments, it also requires that persons receive the calculated payment under replacement "Housing of Last Resort." Therefore, families are entitled to the full 42 months of assistance even though the amount may exceed $7,200. See Section 8-G Relocation Requirements under Section 104(d) to determine if applicable to your project.

42 42 U.S.C. 4624(a)

For all tenants, the replacement housing payment makes up (for a 42-month period) the difference between:

- ✓ The lesser of rent and estimated utility costs at the replacement dwelling or comparable unit; and
- ✓ The lesser of:
  - Thirty percent of the tenant's average monthly gross household income (if the household is classified as low income—within 80% Area Median Income—using HUD's income limits), or
  - The monthly rent and estimated average utility costs of the displacement dwelling.

URA cash rental assistance must be provided in installments, unless the tenant wishes to purchase a home. If the displaced tenant wishes to purchase a home, the payment must be provided in a single lump sum so that the funds can be used for a down payment, including incidental expenses.

The amount of cash rental assistance to be provided is based on a one-time calculation. The URA RHP payment is not adjusted to reflect subsequent changes in a person's income, rent/utility costs, or household size. See HUD Claim form 40058 for the claim form to use for rental assistance or down payment assistance.

HUD Claim Form 40058:
Claim for Rental Assistance or Down Payment Assistance
https://www.hudexchange.info/news/revised-hud-ura-relocation-claim-forms-and-brochures/

Housing of Last Resort

When undertaking relocation activities, grantees must be sure to provide a comparable replacement dwelling in a timely manner. If the grantee cannot identify comparable replacement housing, they must seek other means of assisting displacees under the "Last Resort Replacement Housing" provisions of the regulations. This situation can occur in communities where there is a limited supply of available comparable units or when the replacement housing payment for a comparable unit exceeds the $7,200 limit. Grantees should contact DLG to confer on how to proceed.

49 CFR 24.404

The Last Resort sections of the URA require grantees to take alternate measures to assist displaced persons to be able to afford to move to a decent, safe and sanitary comparable unit. Such alternatives include rehabilitation of, and/or additions to, an existing replacement dwelling; a replacement housing payment in excess of regulatory limits; construction of new units; relocation of a replacement dwelling; and removal of barriers to the disabled in a replacement dwelling.

Handbook 1378,
Chapter 3, Paragraph 3-6

The Replacement housing payment for 90-day occupants is limited for rental housing assistance not to exceed $7,200. During the development of the relocation plan, whenever it has been determined that comparable replacement housing is not available within the monetary means for displaced households or occupants, the program must provide additional alternative assistance under the housing of last resort provisions. Use of last resort housing is required where an owner-occupant or tenant cannot otherwise be appropriately housed within the monetary limits. Specifically housing of last resort can be provided in several methods:

1. Replacement Housing Assistance – assistance exceeds the maximum assistance found at 49 CFR Part 401(b) or 402(a) for replacement housing payment

2. Other Last Resort Housing – construction of new housing or rehabilitation of existing housing to provide comparable, replacement dwelling units

3. Option of Displaced Person – displaced household accepts alternative housing assistance, such as housing voucher or a project-based rental subsidy (if available)

If the program makes the determination that, based on comparable, available dwelling units, relocation assistance will be provided under replacement housing of last resort, the files will need to provide a detailed discussion of the available options existing within the market and make the case for why Housing of Last Resort is required. This determination may be on a case by case basis or determined on a project-wide basis. A determination of Last Resort assistance will need to be reviewed and approved by DLG.

Early Movers: Relocation Prior to Notice of Eligibility

Some displaced persons will not wait for the grantee to locate comparable units and offer replacement housing assistance. These households may search for their own units and relocate themselves.

The implication of the early move will depend on when it occurs. If the move occurs after a General Information Notice (GIN) was sent to the household but before the Initiation of Negotiations, the household may have jeopardized their eligibility for relocation assistance.

However, after the Initiation of Negotiations, (the date that triggers eligibility for relocation assistance) relocation eligibility can be triggered for all occupants. So, it is vital that the grantee immediately send the Notice of Eligibility or Nondisplacement. If these notices are not sent in a timely or complete manner and the household moves out, HUD may require that the replacement housing be based on the actual unit they have chosen (if that exceeds a possible comparable), if that unit qualifies as decent, safe and sanitary. The budgetary consequences can be substantial.

Relocation into a Substandard Unit

If an individual locates or moves into a replacement unit that is not decent, safe and sanitary and that move occurred because the grantee was not timely in the delivery of the required URA notices, the grantee may try to upgrade the unit to the decent, safe and sanitary standard. Alternately, the grantee can offer the household the opportunity to move to a decent, safe and sanitary unit and the grantee must pay for that move.

In the event the grantee was timely in the delivery of the Notice of Eligibility but the household moved anyway to a substandard unit, the grantee must inform the displacee that if they remain in a substandard unit, they will be eligible only for moving expenses and not for replacement housing payments. The grantee must also inform the displacee that if he or she moves into standard housing within a year from the date he or she moved from the displacement dwelling and files a claim within 18 months of the date of displacement, he or she will be eligible for a replacement housing payment. A sample letter is provided as Attachment 8-8 of this chapter.

Attachment 8-8:
Sample Letter to Relocatee in a Substandard Unit

Payment for Residential Moving and Incidental Expenses

Displaced homeowners and tenants may choose to receive payment for moving and related expenses either by:

- ✓ Commercial mover selected through competitive bids obtained by the grantee paid directly to the mover or reimbursed to the household; OR
- ✓ Reimbursement of actual expenses for a self-move, OR
- ✓ Receipt of a fixed payment based upon a schedule established by the Department of Transportation, Federal Highway Administration (FHWA), for the current payment level established for Kentucky, which is available on their website.

Fixed Residential Moving Cost Schedule (2015):
http://www.fhwa.dot.gov/real_estate/uniform_act/relocation/moving_cost_schedule.cfm

The updated regulations at 49 CFR 24.301(b) clarified that grantees cannot allow residential self-moves based on the lower of two bids.

If reimbursement of actual expenses for a self-move is chosen, the grantee must determine that the expenses are reasonable and necessary and include only eligible expenses, which are:

49 CFR 24.301(b) and (g)(1-7)

- ✓ Transportation of the displaced person and personal property. (This may include reimbursement at the current mileage rate for personally owned vehicles that need to be moved.) Transportation costs

for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

- ✓ Packing, crating, uncrating and unpacking of the personal property.
- ✓ Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.
- ✓ Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, and other personal property.
- ✓ Insurance for the replacement value of the property in connection with the move and necessary storage.
- ✓ The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft or damage is not reasonably available.
- ✓ Credit checks.
- ✓ Utility hook-ups, including reinstallation of telephone and cable service.
- ✓ Other costs as determined by the agency to be reasonable and necessary.

49 CFR 24.301(h)

The following are ineligible expenses:

- ✓ Refundable security and utility deposits; or
- ✓ Interest on a loan to cover moving expenses; or
- ✓ Personal injury; or
- ✓ Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Agency; or
- ✓ The cost of moving any structure or other real property improvement in which the displaced person reserved ownership; or
- ✓ Costs for storage of personal property on real property owned or leased by the displaced person before the initiation of negotiations.

If the displaced homeowner/tenant chooses a fixed payment based upon a schedule established by the Department of Transportation, Federal Highway Administration (FHWA), the following apply:

- ✓ A person displaced from a dwelling or a seasonal residence may, at his or her discretion, choose to receive a fixed moving expense payment as an alternative to a payment for actual reasonable moving and related expenses.
- ✓ This payment is determined according to the applicable schedule published by FHWA. The most current schedule was published in 2015.
- ✓ The payment reflects the number of rooms in the displacement dwelling and whether the displaced person owns and must move the furniture. If a room or an outbuilding contains an unusually large amount of personal property (e.g., a crowded basement), the Agency may increase

www.hud.gov/relocation

Fixed Residential Moving Cost Schedule (2015): http://www.fhwa.dot.gov/real_estate/uniform_act/relocation/moving_cost_schedule.cfm

the payment accordingly (i.e., count it as two rooms). A current schedule is accessible on HUD's website.

- ✓ *Occupant of Dwelling with Congregate Sleeping Space (Dormitory).* The moving expense for a person displaced from a permanent residence with congregate sleeping space ordinarily occupied by three or more unrelated persons is $100.
- ✓ *Homeless Persons*. A displaced "homeless" person (e.g., the occupant of an emergency shelter) is not considered to have been displaced from a permanent residence and, therefore, is not entitled to a fixed moving expense payment. (Such a person may, however, be eligible for a payment for actual moving expenses.)
- ✓ In addition to the moving expenses, the updated regulations at 49 CFR 24.401(e)(4) added professional home inspection to the list of eligible incidental expenses for displaced owner-occupants only. This will only apply when a property is involuntarily acquired and owner occupied for a period of at least 90 days.

49 CFR 24.401(e)(4)

- ✓ The URA also allows grantees to pay for non-refundable security deposits but clarifies that refundable security and utility deposits are ineligible.

49 CFR 24.301(h)(12)

Section 8-E. Temporary Relocation

Agencies administering housing rehabilitation programs should establish written policies for temporary relocation of both owner-occupants and tenants.

Any temporary relocation may not exceed 12 months or the household is considered displaced. Agencies must administer their temporary relocation activities consistently and treat all people in similar circumstances the same. All terms must be "reasonable" or the temporarily-relocated household may become eligible as a "displaced person".

Lead-Based Paint Hazards Requirements and Relocation

The Lead Safe Housing Rule, 24 CFR Part 35, contain rules concerning the temporary relocation of occupants (renters and owners) before and during hazard reduction activities.

24 CFR Part 35
24 CFR 570.608

Under the lead regulations, circumstances when temporary occupant relocation is **not required** include:

- ✓ Treatment will not disturb lead-based paint or create lead-contaminated dust; or
- ✓ Treatment of interior will be completed within one period in eight daytime hours, the site will be contained, and the work will not create other safety, health or environmental hazards: or
- ✓ Only the building's exterior is treated; the windows, doors, ventilation intakes, and other openings near the work site are sealed during hazard reduction activities and cleaned afterward; and a lead-free entry is provided; or
- ✓ Treatment will be completed within five calendar days; the work area is sealed; at the end of each day, the area within 10 feet of the contaminant area is cleared of debris; at the end of each day,

occupants have safe access to sleeping areas, bathrooms, and kitchen facilities; and treatment does not create other safety, health or environmental hazards.

If these above conditions are not met, then the temporary relocation of the household is required. However, because the rehabilitation of owner-occupied units is considered voluntary, the relocation requirements of the URA do not apply regardless of whether the unit is being treated for lead-based paint. Any payments made on an owner-occupants' behalf would be addressed in an Optional Relocation Policy.

Again, note that the rehabilitation of tenant-occupied units is not considered voluntary and the URA requirements detailed earlier in this section apply.

Tip: **Elderly residents living in units undergoing lead hazard reduction activities may waive the requirement to relocate but only if the grantee obtains a written and signed waiver. (See Attachment 8-5.)**

The lead rule further requires that temporary dwellings not have lead-based paint hazards. Therefore, grantees are required to ensure that units used for temporary relocation are lead safe. This means that temporary housing units that were built after 1978 or have undergone a visual assessment and dust wipe sampling to ensure no lead hazards are present.

Attachment 8-5:
Elderly Waiver for Relocation

Temporary Relocation of Owner-Occupants in Rehabilitation Projects

An owner-occupant who participates in a CDBG grantee's housing rehabilitation program is considered a voluntary action under the URA, provided that code enforcement was not used to induce an owner-occupant to participate.

If a grantee chooses to provide temporary relocation assistance to owner-occupants, the grantee must adopt an Optional Temporary Relocation Assistance Policy.

Guidance for Owner-Occupant Temporary Relocation in Rehabilitation Projects

24 CFR 570.488 and 570.606(d)(2)

- ✓ The grantee should develop written policies as early as possible in the application stage so occupants can make suitable arrangements to move from of their homes with the least amount of disruption. Because the URA does not cover owner-occupants who voluntarily participate in housing rehabilitation programs, the grantee has broad discretion regarding payments to owners during the period of temporary relocation. If a grantee chooses to provide temporary relocation assistance to owner-occupants through a "voluntary" CDBG Program, the grantee must adopt an optional relocation assistance policy.
- ✓ The owner-occupant may be encouraged to stay with family or friends (noting the requirement to inspect these units to ensure the units are decent, safe and sanitary and lead-safe), but if there are circumstances in which there is no suitable alternative, and the owner would be faced with a hardship, the agency may set a policy that describes what constitutes a "hardship" and provide a certain level of financial assistance.
- ✓ An agency may negotiate with various hotels to establish an attractive rate and pay the negotiated rate on the owner's behalf. The hotel units must be decent, safe and sanitary, and cannot present a

lead-paint hazard to occupants. Agencies should inspect the hotel units prior to signing an agreement to use them as a resource. In addition, agencies may provide a stipend for meals if the temporary unit does not have cooking facilities.

Temporary Relocation of Tenants in Rehabilitation Projects

Tenants are protected by the URA during temporary relocation. HUD's Handbook 1378 suggests that at least 30 days advance notice be given to tenants prior to the temporary move. In addition, the tenant must be provided:

Handbook 1378,
Chapter 2, Paragraph 2-7

- ✓ Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent/utility costs at such housing. (They are still responsible for paying their share of the rent for the unit undergoing renovation.)
- ✓ Appropriate advisory services, including reasonable advance written notice of:
- ✓ The date and approximate duration of the temporary relocation;
- ✓ The address of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;
- ✓ The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe and sanitary dwelling in the building/complex upon completion of the project; and
- ✓ The provisions of reimbursement for all reasonable out-of-pocket expenses.

Handbook 1378,
Chapter 2, Paragraph 2-7

The tenant must receive a Notice of Nondisplacement (Handbook 1378, Appendix 4) which advises a person that they may be or will be temporarily relocated.

Once it becomes evident that the tenant will need to be temporarily relocated, the grantee should send a Temporary Relocation Notice to inform households who will be temporarily relocated of their rights and of the conditions of their temporary move. (See Attachment 8-15 for a sample Temporary Relocation Notice.)

Handbook 1378 , Appendix 4:
Notice of Nondisplacement

Attachment 8-15: Sample
Temporary Relocation Notice

Tip: **The Notice of Non-displacement is very important when dealing with temporary relocation because it helps prevent temporary moves from becoming permanent.**

Guidance on Tenant Temporary Relocation

To assist with the temporary relocation of tenants, the grantee could encourage tenants to identify their own temporary housing (within the established guidelines), but ultimately the agency is responsible for finding suitable shelter until rehabilitation is complete. In addition, the agency could use hotel rooms and provide a meal stipend if there are no cooking facilities. The stipend could vary depending on the age of the children in the household (if any).

The terms and conditions of the temporary move must be reasonable or the tenant may become "displaced." The grantee should be aware that the temporary unit need not be comparable, but it must be suitable for the tenant's needs. It must be inspected, found to be decent, safe, sanitary, and lead safe. Attachment 8-6: Section 8 Existing Housing Program Inspection Checklist may be used to document the inspection. If the tenant claims to be paying rent to a friend or family member, the grantee should document that rent was paid and the housing was suitable. The tenant must be provided adequate advance notice to move out of their unit and back when rehabilitation work is complete. A good rule of thumb suggested by DLG is that temporary relocation is reasonable for six months or less. Anything in excess of one year is considered permanent displacement.

Attachment 8-6:
Section 8 Existing Housing
Program Inspection Checklist

If the owner of the property is planning to raise the rent or offer a different unit in the property (that exceeds the greater of their former rent or 30% of gross monthly income), the tenant must be notified of these changes before moving back. If the cost of rehabilitation including lead hazard control work causes the rent to be increased and creates a rent burden ("economic displacement"), the tenant is protected by the URA and could be eligible for relocation assistance.

The term "economic displacement" is used to cover households who lived in the project prior to the federally-funded activity (acquisition or rehabilitation) and whose rent is raised resulting in a move because they can no longer afford to remain.

If the rent will be increased and the household can no longer afford to stay, the grantee should treat the household as a displaced person and provide them with all of the assistance outlined under Section 8-D including: Advisory Services, Moving Expenses, and a Replacement Housing Payment as needed.

Section 8-F. Non-Residential Relocation under the URA

Displaced businesses (including non-profit organizations and farm owners) are entitled to advisory services and relocation assistance under the URA. A business is defined for this purpose as:

49 CR 24.2(a)(4)

- ✓ A for-profit business, engaged in any lawful activity involving purchase, sale of goods or services, manufacturing, processing, marketing, rental of property, or outdoor advertising when the display must be moved;
- ✓ To qualify for assistance, the business must meet the definition of a "displaced person" discussed earlier in this chapter. It must move permanently as a direct result of an assisted project involving acquisition, rehabilitation, or demolition.

Handbook 1378,
Chapter 1, Paragraphs 1-4

The URA provides coverage for business owners (whether they are on-site or not), for owner/occupants of a business, and for tenants operating a business in rented space.

Business versus Residential Assistance

URA coverage for moving expenses is similar for residential and non-residential displacees. Qualified businesses may choose

Handbook 1378,
Chapter 4, Paragraphs 4-2 and 4-5

between a fixed payment or actual moving expense. The fixed payment is based on a formula, rather than a schedule.

A displaced business is eligible to choose a fixed payment if the grantee determines that:

- ✓ The business either (a) discontinues operations, or (b) it relocates but is likely to incur a substantial loss of its existing patronage (The URA presumes this unless there is a preponderance of evidence to the contrary.); and
- ✓ The business is not part of a commercial enterprise having more than three other entities which are not being displaced by the grantee, and which are under the same ownership and engaged in the same or similar business activities; and
- ✓ The business contributed materially to the income of the displaced person; and
- ✓ The business operation at the displacement property is not solely for the rental of that real property to another property management company.
- ✓ Actual moving expenses provide for reimbursement of limited reestablishment expenses.
- ✓ There are differences between coverage for residential and non-residential displaces.
- ✓ A 90-day Notice to Move may be issued without a referral to a comparable site.
- ✓ Businesses are entitled to temporary moving expenses; however, displaced businesses are not eligible for 104(d) assistance.

Handbook 1378, Chapter 4, Paragraph 4-3

HUD 1043 Booklet: Relocation Assistance to Displaced Businesses, Nonprofit Organizations and Farms

Owners or tenants who have paid for improvements will be compensated for their real property under acquisition rules. A complete, thorough appraisal is essential to making these decisions.

Advisory Services

Non-residential moves are often complex. Grantees must interview business owners to determine their relocation needs and preferences. Displaced businesses are entitled to the following:

- ✓ Information about the upcoming project and the earliest date they will have to vacate the property;
- ✓ A complete explanation of their eligibility for relocation benefits and assistance in understanding their best alternatives;
- ✓ Assistance in following the required procedures to receive payments;
- ✓ Current information on the availability and cost to purchase or rent suitable replacement locations;
- ✓ Technical assistance, including referrals, to help the business obtain an alternative location and become reestablished;
- ✓ Referrals for assistance from state or federal programs, such as those provided by the Small Business Administration, that may help the business reestablish, and help in applying for funds; and
- ✓ Assistance in completing relocation claim forms.

Notices and Inspections

The grantee must provide a business to be displaced with written information about their rights, and provide them with a General Information Notice (GIN) tailored to the situation when a Notice of Interest is issued to the property owner. See Attachment 16(a) for a sample GIN to use for businesses (non-residential tenants). The General Information Notice should include:

Handbook 1378, Chapter 2, Paragraph 2-3 B

Attachment 8-16(a): Guideform GIN Non-Residential Tenant to be displaced

- ✓ An explanation that a project has been proposed and caution the business not to move until they receive a Notice of Eligibility for Relocation Assistance. (See Attachment 8-16(b) for a sample of this notice.)

Attachment 8-16(b): Guideform Notice of Eligibility for Relocation Assistance—Business

- ✓ A general description of relocation assistance payments they could receive, the eligibility requirements for these payments, and the procedures involved. The HUD Information Booklet, Relocation Assistance to Displaced Businesses, Nonprofit Organizations, and Farms (HUD 1043-CPD) includes this general information and should be given to the business.

Handbook 1378, Chapter 7, Paragraph 7-7

- ✓ Information that they will receive reasonable relocation advisory services to help locate a replacement site, including help to complete claim forms;

Handbook 1378, Chapters 2 and 4, Paragraphs 2-3 B and 4-2b

- ✓ Information that they will not be required to move without at least 90 days' advance written notice; and
- ✓ A description of the appeal process available to businesses.

Handbook 1378, Chapter 2, Paragraph 2-3 C

If a business must be displaced, a tailored Notice of Relocation Eligibility (NOE) must be provided as soon as possible after the ION (see Attachment 8-16(a) for a sample notice). This Notice should:

- ✓ Inform the business of the effective date of their eligibility.
- ✓ Describe the assistance available and procedures.
- ✓ If necessary, a 90-day Notice to Move may be sent after the initiation of negotiations.

Handbook 1378, Chapter 4, Paragraph 4-2b

- ✓ The business must be told as soon as possible that they are required to:
- ✓ Allow inspections of both the current and replacement sites by the grantee's representatives, under reasonable terms and conditions;
- ✓ Keep the grantee informed of their plans and schedules;
- ✓ Notify the grantee of the date and time they plan to move (unless this requirement is waived); and
- ✓ Provide the grantee with a list of the property to be moved or sold.

Grantees need to be aware of when a property will be vacated. In many situations, the grantee must be on-site during a business move to provide technical assistance and represent the grantee's interests. In accordance with state law, any property not sold, traded or moved by the business becomes the property of the grantee.

Handbook 1378, Chapter 4, Paragraphs 4-2b (2) and 4-2d

To be certain that the move takes place at a reasonable cost, an inventory containing a detailed itemization of personal property to be moved should be prepared and provided to the grantee. The grantee should verify this inventory and use it as a basis of comparison with bids or estimates and eventual requests for payment.

Handbook 1378, Chapter 4, Paragraphs 4-2b (2)

Reimbursement of Actual Moving Expenses

Handbook 1378, Chapter 4, Paragraph 4-2a

Any displaced business is eligible for reimbursement of reasonable, necessary actual moving expenses.

- ✓ Only businesses that choose actual moving expenses—versus a fixed payment—are eligible for a reestablishment expense payment.
- ✓ Grantees should not place additional hardships on businesses, but they can limit the amount of payment for actual moving expenses based on a least-cost approach.
- ✓ Businesses may choose to use the services of a professional mover or perform a self-move. Eligible expenses include:
  - Transportation of personal property;
  - Packing, crating, uncrating, unpacking of personal property;
  - Disconnecting, dismantling, removing, reassembling, and reinstalling machinery, equipment, and personal property;
  - Storage of personal property;
  - Insurance for replacement value of personal property in connection with the move and/or storage;
  - Any license, permit or certification required at the new location;
  - Professional services to plan the move, move the personal property or install the personal property at the new location;
  - Provision of utility service from the Right of Way to the business;
  - Professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation including but not limited to, soil testing, feasibility and marketing studies (excluding any fees or commissions directly related to the purchase or lease of such site).
  - Impact fees or one-time heavy utility use assessments;
  - Re-lettering signs and replacing existing stationery that are obsolete due to the displacement; and
  - Reasonable costs incurred while attempting to sell items that will not be relocated.

A business is eligible for either a "Direct Loss" or "Substitute Equipment" payment if the displacee will leave or replace personal property. A business can accept either of these (but not both) for an item.

A "Direct Loss" payment can be made for personal property that will not be moved. Payments can also be made as a result of discontinuing the business of the nonprofit or farm. The business must make a good faith effort to sell the personal property (unless the grantee determines it is unnecessary) in order to be eligible for a Direct Loss payment. A Direct Loss payment is based on the lesser of:

49 CFR 24.301(g)(14)

- ✓ The fair market value of the item for continued use at the displacement site, minus the proceeds from the sale, or
- ✓ The estimated cost to move the item, with no allowance for the following: storage, or reconnecting a piece of equipment if the equipment is in storage or not being used at the acquired site. If the business is discontinuing, the cost to move is based on a moving distance of 50 miles.
- ✓ A "Substitute Equipment" payment can be made when an item used by the business, nonprofit, or farm is left in place, but is promptly replaced with a substitute item that performs a comparable function at the new site. A Substitute Equipment payment is based on the lesser of:
- ✓ The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or
- ✓ The estimated cost to move and reinstall the item, but with no allowance for storage.

Certain costs incurred while searching for a replacement location are also eligible. Businesses are entitled to reimbursement up to $2,500. Grantees can pay more than this if they believe it is justified.

Costs may include reasonable levels of such items as:

- ✓ Transportation;
- ✓ Meals and lodging away from home;
- ✓ Time spent while searching, based on a reasonable pay salary or earnings; and
- ✓ Fees paid to a real estate agent or broker while searching for the site. (Note that commissions related to the purchase are not eligible costs.)

Handbook 1378,
Chapter 4, Paragraph 4-4a

49 CFR 24.301 (e)

The grantee may pay other moving and related expenses that the grantee determines are reasonable and necessary and are not listed as ineligible. Payment of other reasonable and necessary expenses may be limited by the grantee to the amount determined to be least costly without causing the business undue hardship.

There may be instances where a person is required to move personal property from real property but is not required to move from a dwelling (including a mobile home), business, farm or nonprofit organization. Eligible expenses for moving the personal property are listed above.

Businesses may have personal property that is considered low value, high bulk such as stock piled sand, gravel, minerals, metals or other similar items in stock. When the personal property to be moved is of low value and high bulk, and the cost of moving the property would be disproportionate to its value in the judgment of the grantee, the allowable moving cost payment shall not exceed the lesser of:

- ✓ The amount which would be received if the property were sold at the site; or

- ✓ The replacement cost of a comparable quantity delivered to the new businesses location.

See HUD Form 4055 for a sample claim form for moving and related expenses for businesses.

HUD Form 4055
Claim for Actual Reasonable Moving and Related Expenses—Businesses
https://www.hud.gov/sites/documents/40055.PDF

Reestablishment Expenses

Only certain small businesses are eligible for reestablishment expenses, up to $25,000. "Small businesses" for this purpose are defined as those with at least one, and no more than 500 people, working at the project site. Businesses displaced from a site occupied only by outdoor advertising signs, displays, or devices are not eligible for a reestablishment expense payment.

- ✓ Eligible items included in the $25,000 maximum figure are:
- ✓ Repairs or improvements to the replacement site, as required by codes, or ordinances;
- ✓ Modifications to the replacement property to accommodate the business;
- ✓ Modifications to structures on the replacement property to make it suitable for conducting the business;
- ✓ Construction and installation of exterior advertising signs;
- ✓ Redecoration or replacement at the replacement site of soiled or worn surfaces, such as paint, paneling, or carpeting;
- ✓ Other licenses, fees, and permits not otherwise allowed as actual moving expenses;
- ✓ Feasibility surveys, soil testing, market studies;
- ✓ Advertisement of the replacement location;
- ✓ Estimated increased costs of operation for the first two years at the replacement site for such items as:
  - Lease or rental charges,
  - Utility charges,
  - Personal or property taxes, and
  - Insurance premiums.
- ✓ Other reestablishment expenses as determined by the grantee to be essential to reestablishment.

Handbook 1378,
Chapter 4, Paragraph 4-3
49 CFR 24.304 and 42 U.S.C. 4622(a)(4)

Ineligible Expenses

The following are ineligible for payment as an actual moving expense, as a reestablishment expense, or as an "other reasonable and necessary expense":

- ✓ Loss of goodwill;
- ✓ Loss of profits;

Handbook 1378,
Chapter 4, Paragraph 4-4b

- ✓ Personal injury;
- ✓ Interest on a loan to cover any costs of moving or reestablishment expense;
- ✓ Any legal fees or other costs for preparing a claim for a relocation payment, or for representing the claimant before the grantee;
- ✓ The cost of moving any structure or other real property improvement in which the business reserved ownership;
- ✓ Costs for storage of personal property on real property already owned or leased by the business before the initiation of negotiations;
- ✓ Costs of physical changes to the replacement site above and beyond that required to move and reestablish the business;

Handbook 1378,
Chapter 4, Paragraph 4-4c

- ✓ The purchase of capital assets, manufactured materials, production supplies, or product inventory, except as permitted under "moving and related costs;" or
- ✓ Interior and exterior finishes solely for aesthetic purposes, except for the redecoration or replacement of soiled or worn surfaces described in "reestablishment expenses."

Fixed Payments

A displaced business may select a fixed payment instead of actual moving expenses (which include reestablishment expenses) if the grantee determines that the displacee meets the following eligibility criteria:

Handbook 1378,
Chapter 4, Paragraph 4-5
49 CFR 24.305

- ✓ The nature of the business cannot solely be the rental of property to others.
- ✓ The business discontinues operations or it will lose a substantial portion of its business due to the move. (The latest regulations state that a business is presumed to meet this test unless the grantee can demonstrate it is not "location sensitive".)
- ✓ The business is not part of an operation with more than three other entities where:
- ✓ No displacement will occur, and
- ✓ The ownership is the same as the displaced business, and
- ✓ The other locations are engaged in similar business activities.
- ✓ The business contributed materially to the income of the displaced business.

Handbook 1378,
Chapter 4, Paragraph 4-5c

- ✓ The term "contributed materially" means that during the two taxable years prior to the taxable year in which the displacement occurred (or the grantee may select a more equitable period) the business or farm operation:
- ✓ Had average gross earnings of at least $5,000; or
- ✓ Had average net earnings of at least $1,000;
- ✓ Contributed at least 33 1/3 percent (one-third) of the owner's or operator's average annual gross income from all sources;

- ✓ If the grantee determines that the application of these criteria would cause an inequity or hardship, it may waive these criteria.

The amount of the fixed payment is based upon the average annual net earnings for a two-year period of a business or farm operation.

Net earnings include any compensation obtained from the business that is paid to the owner, the owner's spouse, and dependents. Calculate net earnings before federal, state, and local income taxes for a two-year period. Divide this figure in half. The minimum payment is $1,000; the maximum payment is $40,000.

Handbook 1378, Chapter 4, Paragraph 4-5d (1) and 42 U.S.C. 4622(c)

The two-year period should be the two tax-years prior to the tax year in which the displacement is occurring, unless there is a more equitable period of time that should be used:

- ✓ If the business was not in operation for a full two-year period prior to the tax year in which it would be displaced, the net earnings should be based on the actual earnings to date and then projected to an annual rate.
- ✓ If a business has been in operation for a longer period of time, and a different two-year period of time is more equitable within reason, the fixed payment should be based on that time period.
- ✓ When income or profit has been adjusted on tax returns to reflect expenses or income not actually incurred in the base period, the amount should be adjusted accordingly.

Handbook 1378, Chapter 4, Paragraph 4-5d (2)

- ✓ When two or more entities at the same location are actually one business, they are only entitled to one fixed payment. This determination should be based on:

Handbook 1378, Chapter 4, Paragraph 4-5d

  - Shared equipment and premises, and
  - Substantially identical or inter-related business functions and financial affairs that are co-mingled, and
  - Entities that are identified to the public and their customers as one entity, and
  - The same person or related persons own, control, or manage the entities.

Businesses must furnish grantees with sufficient documentation of income to justify their claim for a Fixed Payment. This might include:

- ✓ Income tax returns,
- ✓ Certified or audited financial statements,
- ✓ W-2 forms, and

✓ Other financial information accepted by the grantee.

Optional form HUD-40056 "Claim for Fixed Payment in Lieu of Payment for Actual Reasonable Moving and Related Expenses" (Appendix 17 of HUD Handbook 1378) may be used to claim the fixed payment. If another form is used, it should provide the same information in at least the same level of detail.

HUD Form 40056
Claim for Fixed Payment in Lieu of Payment for Actual Moving and Related Expenses—Businesses
https://www.hudexchange.info/news/revised-hud-ura-relocation-claim-forms-and-brochures/

Section 8-G. Relocation Requirements under Section 104(d)

The relocation requirements of Section 104(d) differ from URA requirements. The grantee is required to provide certain relocation assistance to any lower-income person displaced as a direct result of (1) the demolition of any dwelling unit, or (2) the conversion of a low- and moderate-income dwelling unit to a use other than a low- and moderate-income dwelling in connection with an assisted activity. The rules implementing the Section 104(d) relocation requirements for the State CDBG program are found at 24 CFR 570.488.

24 CFR 570.496a(c)(2) and (3)

104(d) replacement housing payments are available only to low- or moderate-income households. In addition, Section 104(d) relocation assistance is not triggered for a project, but rather for a household within a specific unit.

Eligibility

To be eligible for Section 104(d) relocation assistance, a person must meet certain criteria. Under Section 104(d), a displaced person is a lower-income tenant who moves permanently, in connection with an assisted activity, as a direct result of conversion of a low- and moderate-income dwelling unit or demolition of any dwelling unit.

24 CFR 42.305

Amount of Assistance

Under Section 104(d), each displaced household is entitled to choose either assistance at URA levels (detailed earlier in the chapter) or the following relocation assistance:

- ✓ Advisory services (same as under URA) - Includes notices, information booklets, explanation of assistance, referrals to comparable housing and counseling.
  - In general, both 104(d) and the URA require that a General Information Notice, and a Notice of Nondisplacement or a Notice of Eligibility for Relocation Assistance be provided.
  - The Notice of Nondisplacement informs residential occupants who will remain in the project area after completion of the assisted activity of their rights and of the terms and conditions of their remaining in the property.
  - The Notice of Eligibility for Relocation Assistance informs residential occupants who will be displaced of their rights and levels of assistance under 104(d). (Handbook 1378 Appendix 6 and 4, Attachments 8-9 and 8-11).

Handbook 1378 Appendix 6 and 4, Attachments 8-9 and 8-11:

- ✓ Payment for moving and related expenses (the same as under URA) - Payment for actual reasonable moving and related expenses or a moving expense and dislocation allowance based on a schedule that is available from DLG (see Attachment 8-14: Residential Moving Expense and Dislocation Allowance Schedule). Also, see Handbook 1378, Appendix 11 for the claim form to use for moving costs and related expenses.
- ✓ Security Deposits (not required under URA) - The reasonable and necessary cost of any security deposit required to rent the replacement dwelling unit.

Attachment 8-14:
Residential Moving Expense and Dislocation Allowance Payment Schedule (https://www.fhwa.dot.gov/real_estate/legislation_regulations/fr_side-by-side/frsubd.cfm)
Handbook 1378, Appendix 11 Claim Form for Moving Costs and Related Expenses

- ✓ Credit checks (not required under URA) - Required to rent or purchase the replacement dwelling unit (also eligible under URA).
- ✓ Interim living costs (same as for URA) - The person shall be reimbursed for actual reasonable out-of-pocket costs incurred in connection with temporary relocation, including moving expenses and increased housing costs if the person must relocate temporarily because continued occupancy of the dwelling unit constitutes a substantial danger to the health or safety of the person or the public.
- ✓ Replacement Housing Assistance: The 104(d) replacement housing payment is intended to provide affordable housing for a 60-month period. There is no cap on the 104(d) replacement housing payment. As with URA, the 104(d) payment is calculated using the cost of the tenant's actual, decent, safe and sanitary replacement dwelling (including utilities) or a comparable replacement dwelling.
- ✓ The replacement housing payment makes up (for a 60-month period, not 42 months as in URA) the difference between:
  - The rent and utility costs for the actual replacement dwelling (or comparable), and
  - The tenant's Total Tenant Payment, calculated as the greater of:
    - Thirty percent of adjusted income,
    - Ten percent of gross income,
    - The welfare rent (see 24 CFR 5.628(a)(3)), and
    - Minimum rent in accordance with 24 CFR 5.630.

Note: **The amount of the rent at the displacement unit is NOT used in calculating the RHP under 104(d).**

Persons eligible for assistance under Section 104(d) are also eligible for URA assistance. In order for such persons to make an informed decision, grantees must determine and inform the person of the amount of replacement housing assistance available under Section 104(d) and the amount of replacement housing assistance available under the URA.

Attachment 8-11 to this Chapter summarizes the major differences between URA and Section 104(d) relocation assistance.

Attachment 8-11:
Summary of Major Differences between 104(d) and URA Relocation Assistance

The grantee has the option to offer all or a portion of this 104(d) rental assistance through a Section 8 Housing Choice Voucher, if the grantee has access to a Voucher and provides referrals to

comparable replacement dwelling units where the owner is willing to participate in the Section 8 Existing Housing Program.

If a person then refuses Section 8 assistance, the grantee has satisfied the Section 104(d) replacement housing assistance requirements. In such case, the displaced person may seek URA replacement housing assistance.

Cash rental assistance must be provided in installments, unless the tenant wishes to purchase a home. If the displaced tenant wishes to purchase a home, the payment must be provided in a lump sum so that the funds can be used for a down payment, including incidental expenses. The amount of cash rental assistance to be provided is based on a one-time calculation. The payment is not adjusted to reflect subsequent changes in a person's income, rent/utility costs, or household size. (Note: This guidance is also applicable under the URA.) Under 104(d), only a housing cooperative or mutual housing are eligible forms of ownership for down payment assistance.

Sample eligibility notices for Section 104(d) relocation assistance are included as Attachments 8-9 and 8-10 of this chapter. Also, the claim form for rental or purchase assistance under Section 104(d) can be found as HUD Form 40072.

Attachments 8-9 and 8-10:
Guideform Notices of Eligibility for Section 104(d) Relocation Assistance

HUD Form 40072:
Claim for Rental or Purchase Assistance under Section 104(d)

https://www.hud.gov/sites/documents/40072.PDF

Total Tenant Payment (TTP)

Under the URA, a displaced person's gross monthly income and old rent are used to calculate the replacement housing payment. However, under Section 104(d), the Total Tenant Payment (TTP) is used to establish the amount of replacement housing assistance.

Handbook 1378,
Chapter 7, Paragraph 7-20

- ✓ Under Section 104(d), a displaced person is eligible for financial assistance sufficient to reduce the monthly rent and estimated average monthly utility costs for a replacement dwelling to the Total Tenant Payment (TTP).
- ✓ To receive assistance, a person must sign a release authorizing any depository or source of income to furnish the grantee information necessary to verify income. In order of acceptability, the three methods of verifying a person's income are:

Handbook 1378,
Chapter 7, Paragraph 7-21(c)

- ✓ Third party written or oral verification. Written verification should not be hand-carried by the person.
- ✓ Review of documents, when third party verification is unavailable. Documents may include items such as pay stubs, government benefits statements like social security, and income tax returns provided they are updated to project income.
- ✓ Notarized self-certification, unless the grantee determines notarization is unnecessary.

Caution: The method of verifying income for the purposes of determining eligibility for housing assistance varies from what is described above. (See Chapter 10 for further guidance.)

Section 8-H. Section 104(d) One-for-One Unit Replacement

The basic concept behind the Section 104(d) requirements is that CDBG funds may not be used to reduce a jurisdiction's stock of affordable housing.

The 104(d) regulations state that: "All occupied and vacant occupiable low- and moderate-income dwelling units that are demolished or converted to a use other than as low- and moderate-income dwelling units in connection with an assisted activity must be replaced with comparable low income dwelling units."

Before obligating or expending funds that will directly result in demolition or conversion, the grantee must make public and submit to DLG the information required in the grantee's Residential Anti-displacement and Relocation Assistance Plan.

24 CFR 42.375(a)

There are four key issues in understanding the one-for-one replacement requirement.

- ✓ Which dwelling units must be replaced (and which need not be replaced)?
- ✓ What counts as a replacement dwelling unit?
- ✓ What information must be made public and submitted to the state before execution of contracts?
- ✓ What is the exception to one-for-one replacement rules?

All replacement housing must initially be made available for occupancy at any time during the period beginning one year before the grantee makes public the information required under the Residential Anti-displacement and Relocation Assistance Plan and ending three years after the commencement of the demolition or rehabilitation related to the conversion. Also, a One-for-One Replacement Summary Grantee Performance Report must be submitted before relocation activities can begin and kept updated (informing DLG of updates) for the low- and moderate-income units demolished or converted in the project. See Attachment 8-18(b) for a sample of the One-for-One Replacement Summary Grantee Performance Report.

Attachment 8-18(b): One-for-One Replacement Summary Grantee Performance Report

Dwelling Units That Must Be Replaced

Grantees must replace a housing unit if the unit **meets all three conditions** listed below:

- ✓ **Condition 1**: It meets the definition of low/moderate dwelling unit. A low/mod dwelling unit is defined as a dwelling unit with a market rent (including an allowance for utilities) that is equal to or less than the Fair Market Rent (FMR) for its size. A reduced rent charged to a relative or on-site manager is not considered market rent. Fair Market rents may be found on the HUD website at http://www.huduser.org/portal/datasets/fmr.html.

Fair Market Rents: http://www.huduser.org/portal/datasets/fmr.html

AND

- ✓ **Condition 2**: It is occupied or is a vacant occupiable dwelling unit. A vacant occupiable dwelling unit is defined as:

- A dwelling unit in standard condition (regardless of how long it has been vacant); or
- A vacant unit in substandard condition that is suitable for rehabilitation (regardless of how long it has been vacant); or
- A dilapidated unit, not suitable for rehabilitation, which has been legally occupied within three months from before the date of agreement.

AND

✓ **Condition 3**: It is to be demolished or converted to a unit with a market rent (including utilities) that is above the FMR or to a use that is no longer for permanent housing (including conversion to a homeless shelter).

It is important to note that the income of the particular occupant is irrelevant in one-for-one replacement. It is also important to note that local funds used to match a CDBG grant (including those in excess of the required match amount) are defined as any monies expended to support CDBG activity, which means that the use of the matching funds for the demolition or conversion of a unit that meets the criteria listed above would also trigger the Section 104(d) replacement requirements.

Criteria for Replacement Units

Replacement low- and moderate-income dwelling units may be provided by any public agency or private developer. Replacement units must meet all of the following criteria:

✓ Replacement units must be located within the grantee's jurisdiction and, to the extent feasible and consistent with other statutory priorities, the units shall be located within the same neighborhood as the units lost.

Applicable statutory priorities include those promoting housing choice, avoiding undue concentrations of assisted housing, and prohibiting development in areas affected by hazardous waste, flooding, and airport noise.

Replacement units must be sufficient in number and size to house no less than the number of occupants who could have been housed in the units that are demolished or converted.

✓ The number of occupants who could have been housed in units shall be determined in accordance with applicable local housing occupancy codes. The grantee may not replace those units with smaller units (e.g., a 2-bedroom unit with two 1-bedroom units) unless the grantee, before committing funds, must provide information to citizens and to DLG demonstrating that the proposed replacement is consistent with the housing needs of lower-income households in the jurisdiction.

Provided in standard condition and vacant; rehabilitation of occupied units toward replacement does not count. Replacement low- and moderate-income dwelling units may include units that have been raised to standard from substandard condition if:

✓ The unit must have been vacant for at least three months before execution of the agreement covering the rehabilitation (e.g., the agreement between the grantee and the property owner); and

✓ No one was displaced from the unit as a direct result of the assisted activity.

Provided within a four-year timeframe:

- ✓ Replacement units must be initially made available for occupancy at any time during the period beginning one year before the grantee's submission of the information required under 24 CFR 570.606(c) and ending three years after the commencement of the demolition or rehabilitation related to the conversion.

  24 CFR 570.606(c)(1)(iii)

- ✓ This period may slightly exceed four years. However, DLG requires all replacement units to be available before the project is closed.
  - A grantee that fails to make the required submission, will lose the year before submission for counting replacement units
- ✓ Affordable for 10 years.
  - Replacement units must be designed to remain LMI dwelling units for at least 10 years from the date of initial occupancy.
  - A key factor in projecting affordability is the character of the neighborhood in which the replacement units are located (i.e., neighborhood where current market rents are moderate and projected future rents are expected to remain within future FMRs).
  - Replacement low- and moderate-income dwelling units may include, but are not limited to, public housing, existing housing receiving Section 8 project-based assistance, HOME or CDBG-funded units that have at least a 10-year affordability period.

Grantee Submission Requirements

Before a grantee executes a contract committing to provide CDBG funds for any activity that will directly result in either the demolition of low- and moderate-income dwellings units or the conversion of low- and moderate-income dwelling units to another use, the grantee must make public by posting in the Chief Elected Official's (CEO) office and submit the following information in writing to DLG for monitoring purposes:

- ✓ **Description**—A description of the proposed assisted activity.
- ✓ **Location and number of units to be removed**—The location on a map and number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than as a LMI dwelling units as a direct result of the assisted activity.
- ✓ **A time schedule** for the commitment and completion of the demolition or conversion.
- ✓ **Location and number of replacement units**—The location on a map and the number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units.
- ✓ If such data is not available at the time of the general submission, the submission shall identify the general location on an area map and the approximate number of dwelling units by size. Information identifying the specific location and number of dwelling units by size shall be submitted and disclosed to the public as soon as it is available.

Exception to One-for-One Replacement

Replacement is not required if DLG determines that enough standard, vacant, affordable housing serving the jurisdiction is available. A grantee may not execute a contract for demolition or rehabilitation of dwelling units for which an exception is sought until the exception is authorized in writing by DLG.

The one-for-one replacement requirement does not apply to the extent DLG determines, based upon objective data, that there is an adequate supply of vacant lower-income dwelling units in standard condition available on a non-discriminatory basis within the grantee's jurisdiction.

In determining the adequacy of supply, DLG will consider whether the demolition or conversion of the low- and moderate-income dwelling units will have a material impact on the ability of lower-income households to find suitable housing. DLG will consider relevant evidence of housing supply and demand including, but not limited to, the following factors:

- ✓ **Vacancy rate**—The housing vacancy rate in the jurisdiction.
- ✓ **Number of vacancies**—The number of vacant LMI dwelling units in the jurisdiction (excluding units that will be demolished or converted).
- ✓ **Waiting list for assisted housing**—The number of eligible families on waiting lists for housing assisted under the United States Housing Act of 1937 in the jurisdiction. However, DLG recognizes that a community that has a substantial number of vacant, standard dwelling units with market rents at or below the FMR may also have a waiting list for assisted housing. The existence of a waiting list does not disqualify a community from consideration for an exception.
- ✓ **Consolidated Plan**—The needs analysis contained in the State's Consolidated Plan and relevant past predicted demographic changes.
- ✓ **Housing outside the jurisdiction**—DLG may consider the supply of vacant low- and moderate-income dwelling units in a standard condition available on a non-discriminatory basis in an area that is larger than the grantee's jurisdiction. Such additional dwelling units shall be considered if DLG determines that the units would be suitable to serve the needs of lower-income households that could be served by the low- and moderate-income dwelling units that are to be demolished or converted to another use. DLG will base this determination on geographic and demographic factors, such as location and access to places of employment and to other facilities.

Procedure for Seeking an Exception

The grantee must submit a request for determination for an exception directly to DLG. Simultaneously with the submission of the request, the grantee must make the submission public and inform interested persons that they have 30 days from the date of submission to provide to DLG additional information supporting or opposing the request. If DLG, after considering the submission and the additional data, agrees with the request, DLG must provide its recommendation with supporting information to HUD.

Section 8-I. Record Keeping

Each grantee is responsible for maintaining readily available and retrievable records in sufficient detail to demonstrate compliance with the URA, 104(d) and applicable relocation program regulations, irrespective of any tasks assigned to the real property owner. These records must be maintained for a

period of five years after final project close-out, or the date a person has received all of the financial assistance due, whichever is the latest date.

Each notice that the grantee is required to provide to a property owner or occupant must be mailed certified or registered, first-class mail, return receipt requested. The return receipt must be affixed to each individual case file. If hand delivered, a written acknowledgment of receipt must be obtained from the addressee.

Attachment 8-19: Relocation File Checklist identifies all the information required for each file. Grantees should keep a copy of the checklist in front of each relocation file for tracking purposes and to facilitate state and local review.

Attachment 8-19:
Relocation File Checklist

Records on Displaced Persons

The grantee must maintain a separate case file on each residential and non-residential displaced person. The case file must contain the following:

- ✓ Identification of person, address, racial/ethnic group classification, age and sex of all members of the household, household income, monthly rent and utility costs (if the unit is a dwelling), type of enterprise (if non-residential), and person's relocation needs and preferences'

The list may be maintained manually or electronically and may be used to track progress in implementing the relocation process.

- ✓ A list of all persons occupying the real property on:
  - The date of the application for KCDBG assistance;
  - The date the applicant obtained site control, if this is not obtained until after the date the KCDBG application was made;
  - The date of Initiation of Negotiations applicable to the project. (Refer to Chapter 8, Handbook 1378 to identify the applicable date for KCDBG projects.)
- ✓ A list of all persons moving into the project after the application for KCDBG funds has been made but before the project was completed.
- ✓ Evidence that the person received a timely General Information Notice and a general description of the relocation payments and advisory services for which he/she may be eligible, basic eligibility conditions and procedures for obtaining payments.
- ✓ Evidence that the person received a timely written Notice of Eligibility for Relocation Assistance and, for those displaced from a dwelling, the specific comparable replacement and the related cost to be used to establish the upper limit of the replacement housing payment.
- ✓ Evidence of dates of personal contacts and a description of the advisory services offered and provided.
- ✓ Identification of referrals to replacement properties, date of referrals, rents/utility costs (if rental dwelling), date of availability and reason(s) person declined referral.
- ✓ Identification of actual replacement property, rent/utility cost (if rental dwelling) and date of relocation.
- ✓ Replacement dwelling inspection report and date of inspection.

- ✓ A copy of each approved claim form and related documentation, evidence that the person received payment and if applicable, the Section 8 Certificate or Housing Voucher.
- ✓ A copy of any appeal or complaint filed and the grantee response. DLG also requires a separate complaint file be maintained for all general complaints.

Records of Persons Not Displaced

The grantee must also maintain information on persons not displaced:

- ✓ For each occupant who has not been displaced, the grantee must maintain evidence that the person received a timely General Information Notice indicating that he/she would not be displaced by the project.
- ✓ For each residential or non-residential occupant who was not displaced, evidence of the provision and receipt of a Notice of Nondisplacement.
- ✓ If by staying in the project there is a possibility the occupant may become "rent burdened," there are three options available to the grantee:
- ✓ The grantee can provide additional subsidies to make the unit affordable (e.g., tenant-based rental assistance),
- ✓ The owner can elect to limit rent increases for some units where the increase would result in a rent burden, or
- ✓ If neither of the above options is feasible, the grantee must consider the occupant a displaced person and issue a Notice of Eligibility for Relocation Assistance. If the occupant moves, the occupant is considered to be displaced by virtue of the activity that caused the rent to increase.

Note: Some rent-burdened tenants may elect to remain in the project and pay the higher rent. The tenant must be fully informed (via Notice of Eligibility for Relocation Assistance) of their rights to relocation assistance and waive those rights.

For tenants occupying a dwelling, there must be evidence that the tenant received a timely offer of:

- ✓ A reasonable opportunity to lease and occupy a suitable, affordable, decent, safe and sanitary dwelling on the real property, and
- ✓ Reimbursement of any out-of-pocket expenses incurred in connection with any temporary relocation or move to another unit on the real property.
- ✓ For each occupant that is not displaced, but elects to move permanently from the real property, this documentation is especially important to ensure that the person does not have a basis for filing a claim for relocation payments as a "displaced person."

Records of Occupants in Private Owner Rehabilitation Projects

For each private owner, multi-family rehabilitation project, the grantee must develop and maintain records identifying the name and address of:

- ✓ **Category** 1: All occupants of the real property at the time of submission of the application by the owner to the grantee;

- ✓ **Category 2**: All occupants moving into the property after the submission of the application but before completion of the project; and
- ✓ **Category 3**: All occupants immediately following completion of the project.

The grantee must be able to reconcile the available information on the persons in categories 1 and 2 above with the information on persons in category 3 so that a person reviewing the files can account for occupants (i.e., remained in occupancy, were displaced and received relocation assistance, or elected to relocate permanently even though not displaced).

Records on Voluntarily Relocated Households

The grantee must establish individual case files for each household that was temporarily relocated on a voluntary basis. At a minimum, each case file must contain the following:

- ✓ Name of homeowner or tenant being temporarily displaced;
- ✓ Address of unit being rehabilitated;
- ✓ Address of replacement dwelling unit;
- ✓ Copies of all financial records attributable to the relocatee during the temporary displacement;
- ✓ Date relocatee(s) occupied the temporary unit and returned to the rehabilitated dwelling;
- ✓ Inspections of the condition of the relocation dwelling upon evacuation and prior to occupying the temporary unit; and
- ✓ All invoices for temporary relocation costs including all utility charges during the relocation and any other charges directly attributable to the temporary displacement.

Section 8-J. Appeals

The grantee must develop an appeals procedure. It must outline the appeals process, including the grounds for filing an appeal, which appeals would be filed in the locality, appropriate time limits, and the right of appeal to DLG. These are outlined in Chapter 9: Acquisition and apply to appeals concerning relocation

Attachment 8-17:
Grievance Procedures

See Attachment 8-17 for sample grievance procedures.

Chapter 9: Acquisition

Introduction

This chapter describes the process required to acquire real property for any program-eligible activity funded wholly or partially with KCDBG funds. ("Real property" includes land with or without structures on it.) Acquisition assisted with KCDBG funds must comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) and current regulations, effective February 2005. This chapter also includes the appeals and record keeping processes for the acquisition of real property.

The following requirements apply to HUD-funded projects, which include those with KCDBG funds. There may be situations in which other federal agencies participate with KCDBG funds in a project (e.g., Rural Development). In this case, a lead agency must be designated and if it is an agency working with funds other than CDBG, that federal agency's policies and requirements must be followed. The investment of KCDBG funds triggering the URA requirements must be comply with the requirements as outlined within this chapter no matter who is the designated the lead agency.

Section 9-A. General Acquisition Requirements

For the purposes of this handbook, "property to be acquired" refers to any kind of permanent interest such as fee simple title, land contracts, permanent easements, long-term leases (50 years or more), and rights-of-way. Temporary easements are also subject to all of the same rules as other forms of acquisition unless the temporary easement exclusively benefits the property owner (refer to Section 9-C). Grantees should also be aware that all methods of acquisition (e.g., purchase, donation, or partial donation) are covered by the URA.

49 CFR 24.106

Acquisition rules must be followed whenever:

- ✓ The grantee undertakes the purchase of property directly;
- ✓ The grantee hires an agent, private developer, etc. to act on their behalf; and
- ✓ The grantee provides a nonprofit, or for-profit entity organization with funds to purchase a property; or
- ✓ The grantee provides federal assistance to individuals who are acquiring their own home (i.e. homebuyer assistance program) or economic development assistance provided to a for-profit entity to purchase property.

Tip: **HUD Handbook 1378, Chapter 5, is a resource available for acquisition information and is available at HUD's web site:** http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/cpd/13780**.**
The URA regulations can also be downloaded from the Federal Highway Administration's website at http://www.fhwa.dot.gov/legsregs/directives/fapg/cfr4924a.htm**.**

Note: **The first step grantees should consider before undertaking any acquisition is a title search to determine the legal owner of the property.**

Grantees must also adhere to environmental review requirements as they relate to acquisition including the requirements regarding options and conditional contracts. Refer to Chapter 2: Environmental Review for detailed guidance.

Chapter 2: Environmental Review

Section 9-B. Voluntary Acquisitions and Donations

Grantees must understand the critical difference between voluntary and involuntary sales to ensure compliance with all applicable rules. There are protections for sellers in both voluntary and involuntary sales. The key difference between the two types of acquisition is that when a voluntary sale occurs, **there can be no threat of eminent domain**.

Regardless of the form of acquisition used, it is strongly recommended that the grantee maintain a log of contacts with the owner in the acquisition file (see the sample in Attachment 9-1).

Attachment 9-1:
Sample Acquisition Log of Contacts

Note: **The use of federal funds may not be originally anticipated during the conceptual phase or at the beginning of a project. Therefore, grantees should proceed with caution if federal resources could be introduced later in the project. Acquisition activities are subject to the URA if there is intent to acquire property for a federal or federally-assisted project at any point during the course of a project.**

49 CFR 24.101

The URA recognizes three general types of purchases as potentially voluntary. Generally they are:

1. Purchases in which persons are acting on behalf of an agency with the power of eminent domain but the community states in writing it will not use this power.

    - *Example:* The grantee has identified parcel(s), but it will not use its powers to obtain the property through condemnation. The buyer must inform the seller of this fact in writing and – if the offer is not accepted – be prepared to look for another property. The property will not be taken using the condemnation process.

Handbook 1378,
Chapter 5, Paragraph 5-3 A

2. Purchases where the agency or person does not have the power of eminent domain.

    - *Example:* A nonprofit organization without the power of eminent domain is looking for properties suitable for purchase, rehabilitation, and resale. All their negotiations must be conducted in accordance with the rules for voluntary acquisition.

Handbook 1378,
Chapter 5, Paragraph 5-3 B

3. Purchases of property from government agencies (federal, state, or local) where the grantee does not have the power of eminent domain over the other entity.

    - *Example:* A nonprofit organization without the power of eminent domain selects a vacant lot that is owned by the Corps of Engineers. The nonprofit organization would never be able to purchase it if the Corps is not agreeable to their offer.

Sometimes there is confusion about what is actually considered "voluntary." A common misconception is that "willing seller" or "amicable agreement" means a transaction is "voluntary." This is not true under URA. The applicable requirements of the regulations at 49 CFR 24.101(b)(1)-(5) must be satisfied for a transaction to be considered voluntary.

49 CFR 24.101(b)(1)-(5)

Each type of voluntary acquisition, and the URA requirements pertaining to each, is described as follows:

- ✓ The public notice, advertisements and literature should include a description of what the grantee intends to purchase, its reasons, and any conditions of which a seller should be aware.
- ✓ The voluntary acquisition policy must a state that if a mutually satisfactory agreement cannot be reached, the grantee will not buy or condemn the property for the same purpose.
- ✓ The grantee should indicate that owner-occupants are not eligible for relocation benefits in the public notice and the acknowledgement form should be attached to the purchase offer.

While owner-occupants of a property acquired through voluntary acquisition are not eligible for relocation benefits, all tenants in legal occupancy (including non-residential occupants are protected by the URA and are eligible for relocation benefits under the URA. (See Chapter 8 for more information.)

Chapter 8:
Relocation under the URA and 104(d)

(1) Voluntary Acquisition by a Grantee or Persons Acting on Behalf of a Grantee with the Power of Eminent Domain

To be considered a voluntary acquisition by a purchaser with the power of eminent domain, the property may not be part of a planned or designated project area where substantially all the property in the area will be purchased within a specified time frame.

The search for alternative sites for the project or activity may be limited to one geographic area, but if none of the owners are willing to sell voluntarily, the grantee must be prepared to look in another area for a suitable site. Where an agency wishes to purchase more than one site within a general geographic area on this basis, all owners are to be treated in an equivalent or like manner.

If a grantee determines that a specific site is necessary for a program or activity it is planning to undertake, then the sale cannot be considered voluntary. It is assumed that, if negotiations fail, the grantee could ultimately acquire the property through condemnation. Thus, the acquisition is **not** considered voluntary.

Handbook 1378,
Chapter 5, Paragraph 5-3 A

Note: **Temporary or permanent easements are only very rarely not part of a planned, designated project as defined above; therefore, easements are discussed under Section 9-C: Involuntary Easements.**

If someone else, such as a private developer or realtor, is authorized to act on the grantee's behalf in negotiating the purchase, and the grantee is prepared to intervene and use condemnation if the negotiations are unsuccessful, the acquisition is not considered voluntary.

In order to be voluntary, the grantee must meet all the requirements listed below and inform the property owner in writing that:

- ✓ Federal funds are involved in the transaction; however, the grantee will not use its power of eminent domain if negotiations fail to result in an amicable agreement; and
- ✓ The grantee's estimate of the market value for the property to be acquired as outlined below.
  - To estimate market value in a voluntary acquisition, grantees must follow specific procedures:
    - A formal appraisal is *not* required by the URA in voluntary acquisitions. However, the purchase may involve a private lender requiring an appraisal.
    - While an appraisal for voluntary transactions is **not required,** grantees may still decide that an appraisal is necessary to support their determination of market value, grantees must have some reasonable basis for their determination of market value.
    - If an appraisal is not obtained, someone with knowledge of the local real estate market must make this property specific determination and document the file.

After a grantee has established a market value for the property and has notified the owner of this amount in writing, a grantee may negotiate freely with the owner in order to reach agreement. Since these transactions are voluntary, negotiations may result in agreement for the amount of the original estimate, an amount exceeding it, or for a lesser amount.

Although not required by the regulations, it could be appropriate for grantees to apply the URA administrative settlement concept and procedures in the URA regulations to negotiate amounts that exceed the original estimate of market value (if they can demonstrate that the offer was reasonable and necessary to accomplish the project). If grantees anticipate they will offer an amount greater than market value, they must submit a request in writing and provide supporting documentation to DLG for a basis to pay an amount that is more than market value. DLG must provide approval prior to payment (cautionary note: this may establish a dangerous precedent).

49 CFR 24.102(i)

Attachment 9-2:
Voluntary Acquisition – Agencies with Eminent Domain Authority Purchase Real Estate

Grantees cannot take any coercive action in order to reach agreement on the price to be paid for the property.

(2) Voluntary Acquisition by Organizations without the Power of Eminent Domain (Including Nonprofits and Individuals)

Nonprofit organizations and individual buyers generally do not have the power of eminent domain. Under such circumstances, the requirements for URA are limited. In these types of purchases, the buyer, who could be a private citizen, a developer, or an organization, must inform the seller of three things in writing:

Handbook 1378,
Chapter 5, Paragraph 5-3 B

- ✓ The buyer does not have the power of eminent domain,
- ✓ Federal funds are involved in the acquisition of their real estate, and the owner will not be eligible for relocation benefits, and

✓ An estimate of the fair market value of the property.

After the buyer/grantee has determined the property's market value and has notified the owner of this amount in writing, the buyer may negotiate freely with the owner in order to establish the purchase price.

If the seller refuses to accept the offer, the buyer/individual must look for another property to purchase.

The seller must be notified of the preceding information using Exhibit 5-1 from HUD Handbook 1378—Disclosures to Seller with Voluntary, Arm's Length Purchase Offer (see Attachment 9-3 of this chapter).

Attachment 9-3: Disclosures to Sellers with Voluntary, Arm's Length Purchase Offer

If, for any reason, the seller is not informed of these facts prior to closing, the seller should be immediately informed and allowed to withdraw from the purchase agreement without penalty.

These notice requirements may appear to only protect the seller in a voluntary transaction; however, they also help to protect the grantee from after-the-fact claims by sellers. The notice assists the grantee/ buyer to document that the owner-occupant was fully advised that their purchase price was voluntarily negotiated and they will **not** be eligible for relocation assistance. All organizations and individuals with KCDBG funds must comply with this requirement.

Tip: **Homebuyers assisted with KCDBG funds to purchase a home fall under this type of acquisition. Homebuyers must provide the requisite information to the sellers of homes to be purchased.**

(3) Purchases—Voluntary Acquisition of Government Property

Acquisition is considered voluntary when the property is owned by a government agency and the buyer does not have the power of eminent domain. Grantees and individual buyers do not possess the legal authority to condemn government-owned property.

49 CFR 24.101 (b)(3)

Donations of Property

Voluntary acquisition includes donations of real property; however, the owner must be fully informed of his or her rights under the URA, including the right to receive a payment for the property. In addition, the owner must acknowledge his or her URA rights and release the grantee, in writing, from its obligation to appraise the property. The grantee must keep this acknowledgement in the project file. Attachment 9-4 provides a sample form entitled "Sample Acknowledgement of Acquisition and Relocation Rights and Benefits under the Uniform Relocation Act."

Handbook 1378, Chapter 5, Paragraph 5-5

Attachment 9-4: Sample Acknowledgement of Acquisition and Relocation Rights and Benefits under the Uniform Relocation Act

Section 9-C. Involuntary Acquisitions

Note: **A state agency is defined as a city, county, redevelopment agency or any other entity that has the legal power to condemn land and acquire privately-held property under the Eminent Domain Act of Kentucky.**

Use of CDBG Funds and Eminent Domain

No CDBG funds may be used to support any federal, state or local projects that seek to use the power of eminent domain *unless* eminent domain is employed for a public use.

The types of projects that meet the definition of public use include: mass transit, railroads, airports, seaports or highway projects, as well as utility projects which benefit or serve the general public or other structures designated for use by the general public or which have other common carrier or public utility functions that serve the general public and are subject to regulation and oversight by the government, and projects for the removal of an immediate threat to public health and safety or brownfields as defined in the Small Business Liability Relief and Brownfield Revitalization Act. Public use cannot include economic development projects that primarily benefit private entities.

Grantees contemplating the use of eminent domain for any use or project should contact DLG for further guidance prior to proceeding.

Easements

Temporary easements are subject to all of the same rules as other forms of acquisition with one exception. The exception is a situation where the easement is for the exclusive benefit of the property owner. For example, if a grantee obtained an easement running a sewer connection to run a line from the sewer line in the public right of way to a home being rehabilitated with CDBG funds, the easement would exclusively benefit the owner and would not be subject to the URA.

Otherwise, the URA applies. For example, if a grantee is installing a new water or sewer line and requires permanent easements from property owners along the path of the line to install the line and ensure access for maintenance and repairs over time, permanent easements will be required and subject to the URA. If a project involved building a water tower that would benefit a low- and moderate-income (LMI) area and a temporary right of way would be required for construction vehicles while it is being built, the purchase of the needed temporary easement would be covered by the URA.

Guidance on valuation/appraisals for easements may be found later in this section.

Involuntary Transaction Requirements

Involuntary transactions are those that do not meet the requirements previously described for voluntary transactions. In accordance with the requirements of the URA, for involuntary transactions, the grantee must:

Handbook 1378,
Chapter 5, Paragraph 5-4
49 CFR 24.108

- ✓ Notify the seller of the agency's interest to acquire their property;
- ✓ Obtain an appraisal in compliance with the URA and invite the seller to accompany the appraiser;
- ✓ Notify the owner and, if applicable, any tenants of their URA protections;
- ✓ Determine the fair market value of the property based on the appraised value (reviewed by a Review Appraiser)
- ✓ Offer the fair market value for the property being acquired; and

Complete the sale as expeditiously as possible.**Tip: Voluntary transactions that fail to complete the required documentation will be held to the more stringent involuntary transaction requirements.**

Section 9-D.

Notification Requirements

There are two key notices that grantees must issue when undertaking an involuntary acquisition:

- ✓ Notify the seller of the agency's interest to acquire their property by sending a Notice to Owner or a Notice of Intent to Acquire. Grantees should exercise caution if they choose to send a Notice of Intent to Acquire rather than a Notice to Owner as discussed in this section. (The Notice of Intent triggers relocation eligibility for owner-occupants and tenants.)

Handbook 1378,
Chapter 5 Paragraph 5-5(A)(1)
Sample Notice to Owner

- ✓ After an appraisal is complete (and reviewed by a review appraiser), the grantee must determine the amount of the offer and send the owner a Notice of Just Compensation (the full amount of the determined value). This Notice establishes the definite date for relocation benefits eligibility for all persons with legal residency, including non-residential occupants.

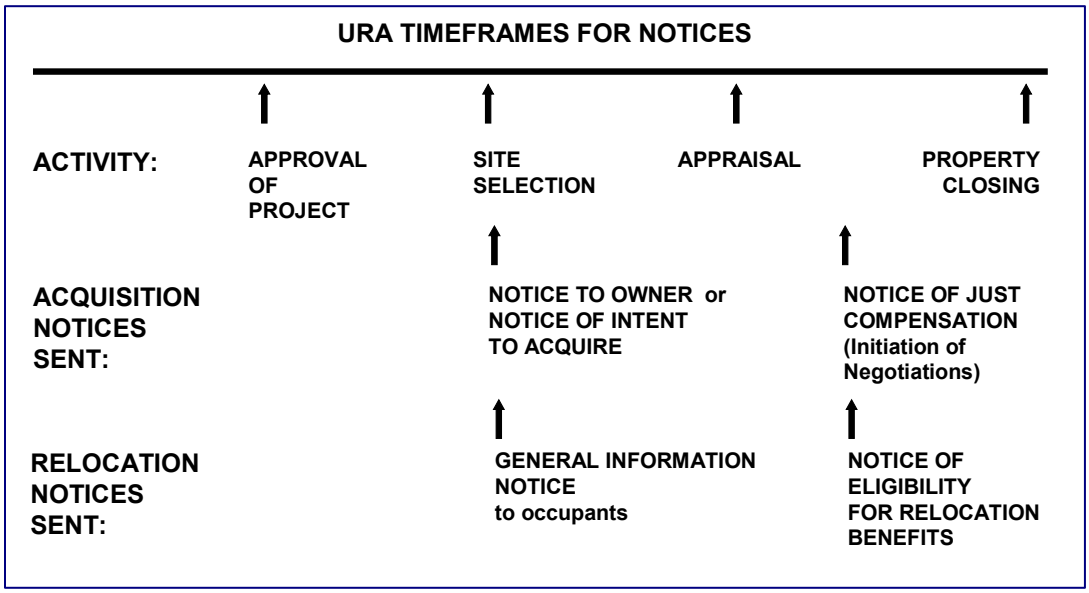
Timing of URA Coverage

It is important for grantees to know that the timing of an acquisition can trigger URA requirements. Regardless of the source of funds, **any** acquisition of property made by a state agency, on or after the date of submission of the KCDBG application for financing of an activity using that property, is subject to the URA.

49 CFR 24.6

- ✓ If an acquisition took place prior to application submission, it can be subject to the URA if DLG finds clear evidence that the purchase was done in anticipation of obtaining KCDBG funds for an activity.
- ✓ The URA also applies if an agency has reimbursed itself for the acquisition with non-federal funds (i.e., general funds) if the project's end result is a federally-assisted project.

The chart below highlights the timing of required notices. Further information on these notices follows:



Notice to Owner

The Notice to Owner should be sent as soon as feasible after a site is selected. See Attachment 9-5 for a Sample Notice to Owner, This Notice:

Handbook 1378,
Chapter 5, Paragraph 5-4 A
Attachment 9-5:
Sample Notice to Owner
49 CFR 24.102(b)

- ✓ Expresses the agency's initial interest in acquiring the property.
- ✓ Informs the owner that the agency must conduct an appraisal of the property to establish fair market value, and that the owner has the right to accompany the appraiser.
- ✓ States that the owner will be offered fair market value (just compensation) and what costs will also be covered.
- ✓ Informs the owner about the protections provided by the URA.

Handbook 1378,
Chapter 5, Paragraph 5-4 A

The grantee should also send HUD's brochure (HUD Form 1041-CPD) entitled, "When a Public Agency Acquires Your Property." Refer to Attachment 9-6 of this chapter or download it from the DLG web site. The booklet explains the basic protections afforded the property owner by law.

Attachment 9-6:
"When a Public Agency Acquires Your Property" brochure

To avoid triggering eligibility for relocation benefits at this time, the Notice to Owner should advise all occupants not to move. The Notice only informs the property owner of the grantee's initial interest in acquiring their property, but it is not a commitment to provide relocation benefits at this point. The following chapter deals with relocation and covers this Notice in detail.

Handbook 1378,
Chapters 2 and 5,
Paragraph 2-3 H and 5-4 A

Notice of Intent to Acquire

Some grantees choose to send a Notice of Intent to Acquire instead of a Notice to Owner. A Notice of Intent to Acquire (Attachment 9-7) must contain all the information included in a Notice to Owner, but would also state that the agency does intend to acquire the property, rather than expressing a preliminary statement of interest. The Notice should advise all occupants not to move.

Attachment 9-7:
Sample Notice of Intent of Acquire

Grantees should be aware that this Notice triggers eligibility for relocation benefits by occupants and there is the risk that occupants might move prior to the establishment and written offer of just compensation. Therefore, grantees should exercise caution if they choose to send a Notice of Intent to Acquire.

Handbook 1378,
Chapter 2 Paragraph 2-3 G
49 CFR 24.203 (2)(d)

Basis for the Determination of Just Compensation

The written offer to the owner contains the just compensation and summary statement and is sent after an appraisal is complete and the agency has determined just compensation.

Attachment 9-8:
Sample Statement of the Basis for the Determination of Just Compensation

Once this amount has been determined, this written offer should be delivered promptly. A sample is provided as Attachment 9-8.

Handbook 1378,
Chapter 5, Paragraph 5-4 L(4)
49 CFR 24.102 (d)

- ✓ The delivery date of this written offer constitutes the date that triggers relocation eligibility related to the acquisition.
- ✓ This written offer must include an offer for the full amount of the just compensation.
- ✓ A statement must be included that summarizes the basis for the offer. This summary statement should provide:
  - A statement of the amount offered as just compensation,
  - A description and location of the property to be acquired, and
  - Identification of the buildings, structures, equipment, and fixtures that are included in the offer.

49 CFR 24.102 (e)

NOTICE OF INTENT NOT TO ACQUIRE

If the grantee decides not to buy or condemn a property at any time after the Notice of Intent to Acquire or Notice to Owner has been sent to the property owner, the grantee must send written notification, "The Notice of Intent Not to Acquire" to the owner and any tenants occupying the property. This written notice must be sent within 10 days of the decision not to acquire. Sending this notice will assist in keeping all affected persons informed of the grantee's actions. DLG provides a sample Notice of Intent Not to Acquire (See Attachment 9-9). The grantee should document the reason(s) for deciding against acquiring the property.

49 CFR 24.5

Attachment 9-9:
Sample Notice of Intent
Not to Acquire

Administering Notices

Notices should be sent by certified or registered mail, return receipt requested, or hand delivered by agency staff. Grantees must document receipt of the notices by the owner or occupant. If the owner or occupant does not read or understand English, the grantee must provide translations and assistance. Each notice must give the name and telephone number of agency staff that may be contacted for further information.

After confirming the receipt of the appropriate notices by the owner or occupant, the grantee should enter the proposed acquisition in the Site Acquisition Chart (see Attachment 9-10).

Attachment 9-10:
Sample Site Acquisition Chart

This chart provides information on:

- ✓ Number of parcels;
- ✓ Property dimensions;
- ✓ Source of title;
- ✓ Owners;
- ✓ Number of houses, businesses, vacant lots, owners and tenants; and
- ✓ The amount paid.

Use of this chart reduces time, duplication of effort, and facilitates state and local review.

Appraisals

For acquisitions requiring the estimation of fair market value, the URA requires only one appraisal and a review of this appraisal by a qualified person. The following sections describe the contents of an appraisal and appraiser qualifications.

If an acquisition is complex, potentially controversial (as with an unwilling seller or a conflict of interest involving a public official) or likely has a high value, DLG recommends that two appraisals, at a minimum, be obtained. These appraisals will be invaluable during negotiations and in court.

Waiver Valuation

An appraisal is not required under two circumstances: (1) when a property is being donated and owner has waived his/her rights; or (2) when a property has a value estimated at $10,000 or less.

Handbook 1378, Chapter 5,
Paragraph 5-4 E

If an agency determines that a formal appraisal is not required, then the valuation process used is called a waiver valuation.

49 CFR 24.102(c)(2)

- ✓ The determination that a property has a value less than $10,000 must be based on a review of available data by someone who has sufficient understanding of the local real estate market. This decision must be documented in the project file.

49 CFR 24.102(2)(ii)(B)
49 CFR 24.2(a)(33)

A waiver valuation is not appropriate when the following situations arise:

- ✓ The use of eminent domain is anticipated;
- ✓ The anticipated value of the proposed acquisition is expected to exceed $10,000;
- ✓ Possible damages to the remainder property exist;
- ✓ Questions on highest and best use exist;
- ✓ The valuation problem is complex; or
- ✓ Hazardous material/waste may be present.

Handbook 1378, Chapter 5, Paragraph 5-4 E (1)

If the agency acquiring a property offers the property owner the option of having the property appraised, and the owner chooses to have an appraisal, the agency shall obtain an appraisal and not use the waiver valuation method described above.

Easements

As outlined above, a grantee must obtain an appraisal for any property, including easements, estimated to be worth more than $10,000. For easements worth less than $10,000, the grantee can use the Short Form Appraisal Report for Easement Takings. This form, which is Attachment 9-11, summarizes the information that the appraiser grantee must have on file to document the estimated value of the property.

Attachment 9-11: Short Form for Easement Valuation (Sample)

If an owner chooses to donate the property for the easement, the grantee must document that the owner has acknowledged he/she has a right to the involuntary acquisition process, including appraisal, and that he/she is choosing to waive his/her rights under this process. Use Attachment 9-3 for this purpose.

Appraiser Qualifications

For properties estimated to be worth more than $10,000, an appraisal must be conducted. There are several minimum requirements for appraisers, including:

- ✓ An appraiser must hold a Kentucky appraiser's license. A copy of the license must be included in the acquisition or procurement file.
- ✓ A fee appraiser must be state licensed or certified in accordance with title XI of the Financial Institutions Reform Recover and Enforcement Act (FIRREA) of 1989.

49 CFR 24.103(d)(2)

- ✓ Appraisers, or persons performing the waiver valuation, must not have any interest—either direct or indirect—with the owner or property they are to review. This would be a conflict of interest.

49 CFR 24.102(n)(1)

- ✓ Grantees must select Kentucky licensed appraisers using proper procurement procedures. A list of Certified Real Estate Appraisers in the State of Kentucky can be found on the following Web site: http://oop.ky.gov/ .
- ✓ No person shall attempt to unduly influence or coerce an appraiser or waiver valuation preparer regarding any valuation or other aspect of an appraisal.

- ✓ Persons functioning as negotiators may not supervise nor formally evaluate the performance of any appraiser or waiver valuator. (49 CFR 24.102(n)(2))

  49 CFR 24.102(n)(2)

- ✓ No appraiser may negotiate on the agency's behalf if he or she performed the appraisal, review or waiver valuation, on the property. There is an exception for properties valued at $10,000 or less

  49 CFR 24.102 (n)(3)

Contracting for an Appraisal

In order to procure an appraiser, the grantee should request statements of qualifications from a number of local appraisers, review those qualifications, and employ only qualified appraisers. (See Chapter 4: Procurement for more information on procurement of professional services.)

Chapter 4: Procurement

The grantee must execute a professional services contract with an independent appraiser. **The contract must include a detailed scope of services that the appraiser will perform**. See Attachment 9-12 Guide for Preparing Appraisal Scope of Work. Payment for the appraiser's services, or waiver valuation, must not be based on the amount of the resulting property value.

Attachment 9-12:
Guide for Preparing Appraisal Scope of Work

Appraisal Process & Criteria

Appraisals must meet nationally/state-recognized industry standards. The appraiser may not use race, color, religion, or the ethnic characteristics of a neighborhood in estimating the value of residential property. The contract must also specify the content requirements of the appraisal report. (See Attachment 9-13 for a sample, while not updated, still is valid.)

49 CFR 24.103

The grantee or the appraiser must invite the property owner in writing to accompany the appraiser during inspection of the property. This notice should be given before the appraisal is undertaken. A copy of the notice should be placed in the property acquisition file along with evidence of receipt by the owner. (See Attachment 9-14 for sample notice.)

Attachment 9-13:
Sample Agreement for Appraisal Services

Attachment 9-14:
Sample Invitation to Accompany an Appraiser

At a minimum, all appraisals must contain the following:

- ✓ The purpose and function of the appraisal.
- ✓ A statement of the assumptions and limiting conditions affecting the appraisal.
- ✓ An adequate legal description of the property, any remnants not being acquired, and its physical characteristics.
  - This should also include key information such as title information, location, zoning, present use, highest and best use, and at least a five-year sales history of the property.
- ✓ An explanation of all relevant approaches to value.

Handbook 1378,
Chapter 5, Paragraph 5-4 J(11)

- If sales data are sufficient, the appraiser should rely solely on the market approach.
- If more than one method is used, the text should reconcile the various approaches to value and support the conclusions.

✓ A description of comparable sales.

✓ A final statement of the value of the real property.

- For partial acquisitions, the appraisal should also give a statement of the value of damages and benefits to the remaining property.

✓ The effective date of the valuation appraisal.

✓ A signature and certification of the appraiser.

Review of Appraisal

After the initial appraisal is conducted, a review must be made by a Kentucky licensed appraiser under written contract. The review must be written, signed and dated. (See Attachment 9-15 for a sample Review of Appraisal document.)

Attachment 9-15:
Sample Review of Appraisal

The review appraiser must examine all appraisals to check that the appraisal meets all applicable requirements, and to evaluate the initial appraiser's documentation, analysis, and soundness of opinion.

49 CFR 24.104

If the review appraiser does not approve or accept an appraisal, it may be necessary to seek a second full appraisal. If the review appraiser does not agree with the original appraisal and it is not practical to do a second appraisal, the review appraiser may re-evaluate the original appraisal amount.

Establishing Just Compensation

After a review of the appraisal, the grantee must establish just compensation and present this in a written offer to the owner.

Just compensation cannot be less than the appraised market value. In determining this amount, the grantee (not the appraiser) may take into account the benefit or detriment that the upcoming project will have on any remaining property at the site.

49 CFR 24.102(d)

If the owner retains or removes any property improvements, (for example, permanent fencing) the salvage value of the improvement should be deducted from the offer of just compensation.

If an entire parcel is not being acquired, and the agency determines that the owner would be left with an uneconomic remnant, the agency must offer to purchase this remnant. An uneconomic remnant is defined as a parcel of real property with little or no value to the owner. An example of this might be a remnant not large enough for future use or without access to a street.

49 CFR 24.102(k)

The grantee must prepare a written Statement of the Basis for the Determination of Just Compensation to be provided to the property owner (see Attachment 9-8). In addition to the initial written purchase offer, this Statement must also include:

- ✓ A legal description and location identification of the property;
- ✓ Interest to be acquired (e.g., fee simple, easement, etc.);
- ✓ An inventory of the buildings, structures, fixtures, etc., that are considered to be a part of the real property;
- ✓ A statement of the amount offered as just compensation;
- ✓ If there are tenant-owned improvements, the amount determined to be just compensation for the improvements and the basis for the amount;
- ✓ If the owner keeps some of the property improvements, the amount determined to be just compensation for these improvements and the basis for the amount;
- ✓ Any purchase option agreement should be attached; and
- ✓ If only a part of the parcel is to be acquired, a statement apportioning just compensation between the actual piece to be acquired and an amount representing damages and benefits to the remaining portion.

Attachment 9-8:
Sample Statement of the Basis for the Determination of Just Compensation

A copy of this Statement should be placed in the property acquisition file.

Negotiating the Purchase

As soon as feasible after establishing just compensation, the grantee must send the owner a Written Offer to Purchase which includes the Statement of the Basis for the Determination of Just Compensation (see the sample provided as Attachment 9-16). As with all notices, receipt must be documented. If the property is occupied by a tenant, owner or business, the grantee must issue a written Notice of Eligibility for Relocation Benefits as soon as possible after the written offer to purchase (also called the "Initiation of Negotiations") is made.

Attachment 9-16:
Sample Written Offer to Purchase

The most recent URA regulations emphasize that the agency should make reasonable efforts to conduct face-to-face negotiations with the owner or the owner's representative. The owner may present relevant information that bears on the determination of value and may suggest modifications to the proposed terms and conditions of the purchase. The agency must give these suggestions full consideration.

49 CFR 24.102(f)

If the owner's information or suggestions would warrant it, the agency may ask the appraiser to update the current appraisal or order another appraisal. If this results in a change in just compensation, the agency must adjust the offer.

Handbook 1378,
Chapter 5, Paragraph 5-4 M
49 CFR 24.106

The owner must be paid for costs to transfer title to the agency. These costs may be advanced instead of reimbursed, and they include recording fees, legal fees, prepayment penalties, and incidental costs.

Documentation of negotiation proceedings should be placed in the project acquisition file. Grantees should be sure to thoroughly document the justification for payment if it is more than the original offer of fair market value.

The grantee must get written pre-approval from DLG if the offer will exceed the amount determined to be fair market value.

Closing the Sale or Condemnation

Before the agency takes possession of the property, the owner must be paid the agreed-upon purchase price. If the agency is taking the property through condemnation, the agency must deposit the full amount of just compensation with the court.

Handbook 1378, Chapter 5, Paragraph 5-4 I

Willing Seller—No Condemnation Action Taken:

If negotiations are successful in an involuntary acquisition, a contract for sale must be prepared and executed, and transfer documents secured. If payment exceeds the market value, and the grantee failed to obtain pre-approval of the amount from DLG the acquisition file must include a written justification of the amount paid. DLG will review these justifications carefully to ensure they are reasonable, and if the payment is determined to be unjustified, the payment will be disallowed.

49 CFR 24.102(j)

At the conclusion of settlement, the grantee must give the owner a Statement of Settlement Costs (see Attachment 9-17), which identifies all settlement costs regardless of whether they are paid at, before, or after closing, and must clearly separate charges paid by the owner. The Statement of Settlement Costs must be dated and certified as true and correct by the closing attorney or person handling the transaction. DLG requires that grantees must also obtain a copy of the cancelled check to document receipt for the purchase price,

Attachment 9-17: Sample Statement of Settlement Costs

Condemnation Procedures

If negotiations are unsuccessful, condemnation proceedings may be initiated. Condemnation is a legal action and must be carried out by a city/county attorney and the city/county governing body should authorize the proceeding by resolution.

Copies of surveys and maps of the subject property must be filed and recorded in the applicable county office. Condemnation proceedings can then be initiated in the Circuit Court of the county in which the property is located. The grantee must deposit the amount determined to be just compensation in escrow with the court.

The petition filed in Circuit Court must include:

- ✓ Detailed project narrative sufficient to support the use of eminent domain.
- ✓ A legal description of the property being sought and its current and proposed use.
- ✓ An application to the court to appoint commissioners to award the amount of compensation the owner of the property is entitled to receive.

The court will appoint three qualified commissioners to visit the property and establish its fair market value. Within 15 days of their appointment, the commissioners will return a written report to the court establishing fair market value. At this time, the court will issue a summons to the owner, which states the amount the commissioners establish as the fair market value.

The owner has 20 days from the date he or she receives the summons to respond. If the owner does not respond during this period, the court will enter an interlocutory judgment that sets the amount of compensation and conveys title. The owner can file an exception to the interlocutory judgment within 30 days from the date the judgment was entered.

All exceptions relating to compensation will be determined by jury trial in the Circuit Court. The jury will set the amount of compensation. The owner can appeal the Circuit Court judgment to the Court of Appeals.

The city/county must pay the owner's court costs as well as its own court costs. If the process moves into appeal, the amount of compensation will be the amount established by the highest court.

Appeals

Grantees must promptly review all appeals in accordance with the requirements of applicable laws and the URA. Grantees must develop written procedures to resolve disputes relating to their acquisition, relocation, and demolition activities. These written procedures must be communicated to all potentially affected parties prior to the initiation of negotiations. (Refer to Chapter 1: Project Administration for information on grievance procedures.)

49 CFR 24.10

Chapter 1: Project Administration

Who May Appeal

Any person, family, or business directly affected by the acquisition and/or relocation activities undertaken by a grantee may appeal. All appeals must be in writing and must be directed to the chief executive officer of the grantee and the highest official of the administering agency undertaking the acquisition, relocation or demolition activity. A protestor must exhaust all administrative remedies as outlined in the grantee's written procedures prior to pursuing judicial review.

Basis for Appeals

Any person, family, or business that feels that the grantee failed to properly consider his or her written request for financial or other assistance must file a written appeal with the agency personnel identified within 60 days of the date of receipt of the administering agency's written determination denying assistance.

Review of Appeals

The grantee shall designate a Review Officer to hear the appeal. The Review Officer shall be the chief administrative officer of the unit of local government or his/her designee, provided neither was directly involved in the activity for which the appeal was filed. The grantee shall consider all pertinent justification and other material submitted by the person and all other available information that is needed to ensure a fair and full review of the appeal.

49 CFR 24.10 (e)(f)(g)(h)

Promptly after receipt of all information submitted by a person in support of an appeal, the grantee shall make a written determination on the appeal, including an explanation of the basis on which the decision was made and notify the person appealing a grantee's decision.

If the appeal is denied, the grantee must advise the person of his or her right to seek judicial review of the grantee's decision.

Section 9-E. Record Keeping

The grantee must establish an acquisition program file, which contains:

- ✓ Urban Renewal/Development Plan,
- ✓ Statement of qualifications of appraisers,
- ✓ Appraisal contracts, and
- ✓ Copies of public solicitations for voluntary acquisitions.

The grantee must establish a file for each property to be acquired, and include copies of all notices and proof of receipt, along with other acquisition documents. A checklist should be kept in each acquisition file to help track the process (see Attachment 9-18).

Attachment 9-18:
Real Property Acquisition Checklist

Some suggested items to include in acquisition files are:

- ✓ Signed Waiver Donation Form (if voluntary donation)
- ✓ All appropriate notices and copy of "When a Public Agency Acquires Your Property"
- ✓ Evidence that a competitive process was utilized in selecting appraisers
- ✓ Appraisal contracts
- ✓ Appraisal and Review Appraisal Report
- ✓ Map and photos for all improved properties
- ✓ Evidence and date of personal contacts with property owner
- ✓ Evidence that the property owner was invited to accompany the appraiser
- ✓ Evidence that the appraisal was reviewed by council and just compensation established
- ✓ Written Offer to Purchase and Summary Statement of the Basis for the Offer of Just Compensation
- ✓ Evidence that the items sent to property owners were mailed certified or registered mail, return receipt requested
- ✓ Written acceptance or rejection of offer to purchase
- ✓ Written evidence of negotiation (if applicable)
- ✓ Copy of cancelled checks
- ✓ Summary Statement of Settlement Costs
- ✓ Copy of the executed and recorded deed

At the close of the acquisition, the grantee should review the project acquisition file to ensure that it contains all required documentation. Files must be kept for at least five years after full project close-out.

Replacement Housing Assistance for 90-Day Homeowners

Only homeowner-occupants who were in residency for 90 days prior to an offer to purchase their home ("ION") **USING INVOLUNTARY ACQUISITION are eligible for a replacement housing payment as "displaced persons." If homeowners were in occupancy for less than 90 days prior to the ION, they are protected by the URA as "displaced persons" but the calculation method is different.**

49 CFR 24.401

Note: **If an owner occupies a property acquired using voluntary acquisition requirements, they are NOT eligible for relocation benefits. See Chapter 8 for details on calculating the RHP for displaced homeowners.**

Chapter 10: Housing

Introduction

Like all other aspects of the KCDBG Program, there are a variety of ways that grantees may use KCDBG funds for housing activities that serve low- and moderate-income households (LMI). However, the majority of grantees in Kentucky will administer housing programs as discussed in this chapter.

This chapter is presented in two parts. Part I provides information pertaining to the implementation of voluntary homeowner rehabilitation programs. Part II reviews involuntary programs, which are programs that involve the acquisition of property through the use of eminent domain in neighborhood revitalization areas. Involuntary programs may also involve other activities such as demolition, rehabilitation, homebuyer assistance, rental housing, etc.

PART I: HOUSING REHABILITATION (VOLUNTARY) PROGRAMS

This part of the Housing Chapter reviews traditional housing rehabilitation activities (also called Voluntary Programs) and provides a step-by-step process for implementing housing rehabilitation programs in compliance with applicable rules and requirements.

Section 10-A. Eligible Activities and National Objectives

The most common type of single-family housing activity undertaken with KCDBG funds is the homeowner rehabilitation program. CDBG-funded homeowner rehab programs assist low- and moderate-income persons that voluntarily apply to the program and are determined to be eligible to bring their homes up to, at a minimum, the International Code Council (ICC) Property Maintenance Code. If the activity is a reconstruction project (due to the condition of the home), the unit must meet the Kentucky Residential Code (KRC) .

Guide to National Objectives and Eligible Activities for State CDBG Program may be downloaded from the HUD Exchange website at:
https://www.hudexchange.info/resource/2179/guide-national-objectives-eligible-activities-state-cdbg-programs/

Housing units are typically owner-occupied single-family structures. However, there are some variations to traditional rehabilitation that involve other CDBG-eligible activities, including:

- ✓ **Demolition and Reconstruction (Rehabilitation).** KCDBG funds may be used for demolition and reconstruction. Reconstruction is the rebuilding of a structure on the same site in substantially the same manner, and is considered a rehabilitation activity. Deviations from the original design (such as the addition of another room) may be permitted for reasons of safety, occupancy, zoning, etc. Note, however, that adding rooms may constitute new construction . Contact DLG for specific questions if reconstruction is anticipated. Reconstruction of residential structures would also permit replacing an existing substandard unit of manufactured housing with a new or standard unit of manufactured housing, or a “stick built” structure if manufactured housing is not allowed under existing zoning.
- ✓ **Conversion.** The cost of converting an existing non-residential structure to residential use by an eligible household or for eligible households is allowed as a rehabilitation activity. KCDBG funds may also be used to rehabilitate rental housing under certain conditions. (Refer to page 20 of this Chapter for guidance that is specific to rental housing rehabilitation.)

- ✓ **Connections to water/sewer lines and septic systems.** The costs of connecting existing residential structures to water distribution lines or local sewer lines and payment of connection fees are eligible costs. The upgrading or replacement of an existing substandard septic system is also an eligible cost as part of a rehabilitation project, if providing a service lateral is cost prohibitive. Grantees should work with the local health department to determine the criteria for a substandard septic system. Connections to water/sewer lines and replacement or upgrading of septic systems cannot be stand-alone activities. These activities must be completed in conjunction with the rehabilitation of the unit and the unit must be brought up to the International Code Council (ICC) Property Maintenance Code or, if reconstruction, the Kentucky Residential Code (KRC).

- ✓ **Homeowner Maintenance/Life Skills Education.** Providing education courses to homeowners on various topics such as home maintenance, budget counseling and other life skills is eligible if provided to assisted households as part of a KCDBG funded housing rehabilitation or homebuyer program. If counseling services are provided, DLG requires the grantee to complete the Counseling Report-Homeowner Maintenance/Life Skills Education form (Attachment 10-1).

Attachment 10-1: Counseling Report-Homeowner Maintenance/Life Skills Education Form

Grantees are responsible for publicly announcing housing rehabilitation programs, including funding availability and that the power of eminent domain will not be used under the program. The grantee should also develop and publicize its rating and ranking criteria for beneficiary selection. It is up to the unit of local government to determine what their community's priorities will be based on their community's needs, which should then result in the establishment of the rating and ranking criteria and the points that will be associated with each. (A sample rating and ranking criteria is provided as Attachment 2 to this chapter.) Grantees should make such announcements by placing an advertisement in a newspaper or periodical of general circulation for their citizens and by undertaking additional actions to reach LMI persons (e.g., distribution at a grocery store, church, etc.).

Attachment 10-2: Sample Rating and Ranking Advertisement and Criteria for Voluntary Programs

Ineligible Activities

The general rule is that any activity not specifically authorized under the CDBG regulations is ineligible to be assisted with KCDBG funds. The regulations stipulate that the following activities may not be assisted with CDBG funds:

- ✓ New housing construction except under certain conditions. Certain types of nonprofit organizations that are undertaking certain kinds of activities may be allowed to utilize CDBG funds for new construction. The conditions under which this may occur are discussed in Section 10-E of this Chapter.

24 CFR 570.204(c)

- ✓ Income payments, which are defined as grants to an individual or family that are used to provide basic levels of food, shelter (i.e., payment for rent, mortgage and/or utilities) or clothing;
- ✓ Luxury or non-standard items, such as swimming pools, Jacuzzis, high-end appliances, window air conditioners, washers and dryers, etc.; and
- ✓ Labor time for sweat equity may not be paid out to recipients of rehabilitation assistance.

Meeting a National Objective

All CDBG-funded activities must not only be eligible, but also meet a national objective. Housing rehabilitation activities must result in permanent, residential housing that will be occupied by low-and moderate-income (LMI) households upon completion.

24 CFR 570.483(b)(3)

Occupancy of housing shall be based on the household income of all household members including earned income for members over 18 years of age and unearned income for all household members.

Housing income eligibility uses the following rules:

- ✓ Each single-family unit rehabilitated with KCDBG funds must be occupied by a LMI household.
- ✓ If the structure contains two dwelling units, at least one unit must be occupied by a LMI household.
- ✓ For properties with more than two units, at least 51% of the units must be occupied by LMI households.

Guide to National Objectives and Eligible Activities for State CDBG Program may be downloaded from the HUD Exchange website at:

https://www.hudexchange.info/resource/2179/guide-national-objectives-eligible-activities-state-cdbg-programs/

Earned versus Unearned Income Example:

While the income **earned** by a household member under the age of 18 such as wages from a local fast-food restaurant would not be counted as a part of the total household income, **unearned** income such as SSI benefits paid on behalf of a disabled minor would be included in the calculation of household income.

For more information on documenting households as LMI, grantees should refer to the section regarding applicant eligibility later in this Chapter.

If a grantee is undertaking a housing activity that does not benefit LMI households, see Part II Involuntary Programs to determine if it is an eligible activity and how to document compliance with another national objective.

Section 10-B. Program Guidelines

KCDBG funded housing rehabilitation programs must be consistent with the grant agreement requirements. Any significant variation requires approval from DLG. The grantee must develop program guidelines covering the procedural requirements of its rehabilitation program and administer the guidelines uniformly.

These guidelines should be specific to the project and well defined as to what the grantee requires of the property owner in return for providing the assistance. Guidelines should generally contain the following key elements:

- ✓ Types of financial assistance,
- ✓ Applicant eligibility,
- ✓ Property eligibility,
- ✓ Property standards,
- ✓ Contracting requirements,

- ✓ Relocation requirements,
- ✓ Grievance procedures, and
- ✓ Maintenance agreements.

Each of these topics is discussed in more detail below. In addition, sample Program Guidelines are provided as Attachment 10-3.

Attachment 10-3:
Sample Program Guidelines

The program guidelines should be developed by local agency staff. Guidelines should be written in plain language and made available to all potential applicants to the rehabilitation program.

The guidelines should be adopted by the local governing body in order to meet KRS Chapter 99 (for establishing public purpose to use KCDBG funds for private use). The guidelines should always include a clause describing the process by which they can be changed. If the local governing body passes special policies that change the adopted guidelines, these changes must also be approved by the governing body as an addendum to the guidelines. Each page of the adopted guidelines and addendum must be initialed by eligible participants and kept in their file.

All applicants initially selected to participate in the project are potential applicants until re-verification of income can prove they are low and moderate-income based on the applicable HUD income limits. This re-verification should not be done until KCDBG funds are made available. Once income re-verification identifies the eligible applicants, the program guidelines should be presented to the applicant household prior to commencing work on their properties. The grantee should ensure that the property owner has initialed each page and signed the last page of the guidelines for potential issues/complaints that may occur while providing them with assistance.

Applicants who choose not to comply with the grantee's guidelines can choose not to participate in the "voluntary" rehabilitation project.

Types of Financial Assistance

There are two types of financial assistance that can be provided in housing rehabilitation programs—grants and loans—and within each category there are numerous variations. DLG allows grantees the flexibility to determine which type of financial assistance to use depending upon local program design.

- ✓ **Grants.** Grantees can use KCDBG funds to make outright grants to eligible households to cover the cost of rehabilitation of homes. Grants do not have to be paid back and normally come with no restrictions or further obligations by the recipient to the grantee. Many grantees will provide grants for the cost of temporary relocation or lead hazard removal. (NOTE that grants are the only allowed form of assistance under involuntary programs. Refer to Part II of this chapter for more information.)
- ✓ **Loans.** A loan is a sum of money lent to a borrower. The use of loans to rehabilitation recipients may enable the grantee to recover all or a portion of the original financial assistance for use in accomplishing additional housing rehabilitation. Loans also provide the recipient with security on the property that is not possible when funds are provided as a grant.
  - Loan programs are self-perpetuating when loan proceeds are used to provide other loans. Repayments from housing rehabilitation loans made with KCDBG funds are considered

Chapter 3: Financial Management

program income and are to be expended according to DLG requirements. (See Chapter 3: Financial Management for more information.)

There are three basic types of loan programs that may be established:

- ✓ **Forgivable loans.** A forgivable loan resembles a grant in that if the present owner retains the property for a certain period (usually a minimum period of five years), no repayment is required. The forgivable loan is instituted through the use of a mortgage and often accompanied by a promissory note (See Attachments 10-4 and 10-5). Each year the owner retains ownership and resides in the home a certain percentage of the loan amount is forgiven as if it were a grant. Should the owner continue as owner-occupant of the home until the term of the note expires, the owner pays nothing and has no conditions on the disposition of the property. Should the property be sold, vacated or its use changed prior to the expiration of the note, the owner owes the grantee whatever balance remains on the note. Mortgages and promissory notes must be recorded at the County Clerk's Office.

  Attachment 10-4: Sample Real Estate Mortgage
  Attachment 10-5: Sample Promissory Note

- ✓ **Deferred loans.** A deferred loan is a loan made to an eligible homeowner that does not require repayment for a specified number of years or until the property is sold, at which time the remaining prorated balance would become due. This prorated value may be due to the depreciation of the rehabilitation work. DLG recommends a deferment period of five years. Grantees often use deferred loans to provide assistance to households that are currently unable to afford loan repayments. Funds received by the grantee for repayment of a deferred loan may be recycled for additional housing rehabilitation when repaid. This must be in accordance with the Grantee's revolving loan fund policy. (Refer to Chapter 3: Financial Management for additional guidance on revolving loan funds.) The deferred loan is instituted through the use of a mortgage and often accompanied by a promissory note.

  Chapter 3: Financial Management

- ✓ **Amortizing loans.** Amortizing loans are loans that require payment and that have a set interest rate and term. Grantees may provide loans at a single interest rate, or establish a sliding scale in which the interest rate is related to a household's income or ability to pay. The term of the loan is also at the discretion of the grantee. All loans may be made for the same term or terms may be adjusted depending upon the size of the loan and the borrower's ability to pay (e.g., larger loans having longer terms). The amortizing loan is instituted through the use of a mortgage and often accompanied by a promissory note.

There are several techniques or practices that can be used by grantees in loan programs to leverage funds:

- ✓ **Write-downs or principal interest subsidy.** A write down, also commonly referred to as a principal or interest subsidy, is a mechanism in which rehabilitation is financed by a loan from another source such as a private lender, but the amount repaid by the property owner is partially subsidized, or offset by the inclusion of grant funds. The amount of write down is predicated on the owner's ability to pay. KCDBG funds may be used to pay the write down either as a grant or forgivable loan. The remaining amount is loaned to the owner and is amortized by monthly payments. The loan portion of the write down may be provided by a bank or other private or public funding sources.

- ✓ **Loan leveraging.** Loan leveraging is the practice of using KCDBG funds along with funds from private lending institutions. Having other entities involved in the financing of a project will leverage KCDBG dollars. Loan leveraging programs often require staff with financial background and lending experience.

Tip: **It is important for grantees to be aware that for voluntary rehabilitation programs, DLG requires a minimum of a five-year primary residency requirement for all recipients. Therefore the grantee should use a mechanism such as a covenant or lien recorded on the property to ensure that this requirement is enforceable.**

A grantee should design its programs so that financial assistance is affordable to recipients. It is generally assumed that a household can afford to pay up to 25 to 30 percent of their gross monthly income for housing costs. The guidelines should clearly explain how ability to pay will be calculated (specifically what percent of household income will be used). If a household's ability to pay is zero, a forgivable payment loan may be the most appropriate option. Regardless of the percentage amount chosen, the determination must be used consistently across the program for all recipients.

Applicant Eligibility

Program guidelines should specify who is eligible for the program, the types of assistance for which they are eligible, and the amount of assistance available. The types and amounts of assistance available should be based on household and tenure characteristics and ability to pay and should be consistent across a grantee's program.

Determining Household Income

DLG requires that applicants conduct an initial threshold determination of household income prior to grant application to DLG. The income determination must be conducted using the current fiscal year Section 8 Median Income Limits for the applicants' county. These limits are posted on DLG's website. However, once funds have been awarded, but before providing any assistance, the grantee must conduct a detailed income verification of all applicants. DLG requires all grantees to follow the Part 5 (Section 8) method of calculating annual household income.

24 CFR Part 5

The Part 5 (Section 8) definition of annual income is the gross amount of income of all adult household members that is anticipated to be received during the coming 12-month period. This income definition is used by a variety of federal affordable housing programs including Section 8, Home Investment Partnerships Program (HOME), Public Housing and the Low Income Housing Tax Credit (LIHTC) Program.

24 CFR Part 5 provides a comprehensive list of the types of income that are included and excluded from the calculation of annual gross income. Income from assets is also recognized as part of annual income under the Section 8 definition. The following steps should be taken to determine household income for the purpose of determining eligibility for KCDBG housing assistance:

- ✓ **Step 1:** Ask questions of the household regarding annual income and income from assets. Follow the rules pertaining to what types of income to include and exclude.

- ✓ **Step 2:** Gather appropriate documentation such as wage statements, interest statements, third-party verifications, etc. (Grantees should use Attachment 10-6: Sample Applicant Release to Obtain Verification of Income form.) Note: While verification from other agencies and employers is considered appropriate, self-certification of income by the household is not sufficient for housing activities.

Attachment 10-6:
Sample Applicant Release to Obtain Verification of Income

- ✓ **Step 3**: Calculate total household income by adding up the information obtained. Use Attachment 10-7: Sample Part 5 (Section 8) Annual Household Income Calculation Form.
- ✓ **Step 4:** Compare the total household income to the HUD income limits for that household's size. Income limits are provided by DLG and can be found on HUD or DLG's website. Determine if eligible for assistance.

Attachment 10-7:
Sample Part 5 (Section 8) Annual Household Income Calculation Form

- ✓ **Step 5:** Place the income calculation, determination and back-up documentation in the appropriate files.

Details and forms used for calculating household income for rehabilitation projects are provided in the "Technical Guide for Determining Income and Allowances" and an Income Calculator for CDBG is available for use on the HUD Exchange website: https://www.hudexchange.info/incomecalculator/.

Grantees should consult Chapter 1: Project Administration "Conflict of Interest and Disclosure" and complete Attachment 1-4 "Section 102 Disclosure Report" to disclose any conflict of interest associated with the project.

Property Eligibility

Eligible units for rehabilitation must be substandard and occupied by LMI households (households whose income is below 80 percent of the area median income as provided by HUD annually). Grantees must identify and document the major deficiencies that qualify the unit as substandard. The unit must be owned by the applicant and be the primary residence of the applicant. The grantee must receive and document proof of ownership from the recipient. A family or individual owns the property if that family or person:

- ✓ Has fee simple title to the property;
- ✓ Maintains a 99-year leasehold interest in the property;
- ✓ Has a recorded life estate agreement; or
- ✓ Owns or has a membership in a cooperative or mutual housing project that constitutes homeownership under state law.

DLG requires the grantee to conduct a title-search to determine the applicant is the rightful owner of the property. The title search will also allow grantees to learn if there are any outstanding liens on the property. All tax liens must be cleared before assistance can be provided to the applicant.

Since DLG has a minimum five-year residency requirement for all recipients, it is recommended that grantees have recipients sign a certification that the property is and will remain their primary residence. This five-year residency requirement should also be clearly stated in the agreement between the recipient and the grantee and recorded in a lien or covenant.

Homeowners must also have current insurance and maintain insurance over the period of CDBG assistance for a property to be eligible for rehabilitation with KCDBG funds. The grantee should be listed on the policy as an additional party or loss payee to obtain notification of insurance coverage or changes to the policy.

Conflict of Interest

KCDBG grantees and subrecipients must comply with procurement requirements found as outlined in Chapter 4 and with other state and local applicable conflict-of-interest provisions.

Chapter 4: Procurement

If a grantee believes there may be a potential conflict of interest with a property or applicant, the grantee should refer to Chapter 1: Project Administration and/or contact DLG for further guidance.

Chapter 1: Project Administration

Property Standards

The rehabilitation program guidelines should specify the property standard that units must meet after rehabilitation is complete. Grantees must meet all local housing codes and occupancy standards for their rehabilitation program. At a minimum, the grantee must adopt the International Code Council (ICC) Property Maintenance Code. All new construction and reconstruction projects must meet Kentucky Residential Code.

Information regarding the International Code Council (ICC) Property Maintenance Code may be found at www.iccsafe.org/

The Kentucky Residential Code may be found at https://dhbc.ky.gov/Documents/2018%20Kentucky%20Residential%20Code%20-

The guidelines should clearly state both the eligible and ineligible improvements. Key rules in this area include:

- ✓ Any improvement needed to bring the unit to code or which will result in energy conservation should be specified as an eligible improvement.
- ✓ Exterior painting or siding should also be eligible, depending on local weather conditions.
- ✓ General property improvements—carports, window air conditioning, den additions, etc., are generally ineligible.

24 CFR 570.487(c)

To comply with HUD's Lead Safe Housing Rule (LSHR), rehabilitation to all units built prior to 1978 must follow prescribed rehabilitation practices and pass final clearance before approval of payment to the contractor. Tenants may be required to vacate the unit and not allowed to re-occupancy unit until an acceptable clearance test is achieved. See Section 10-C of this Chapter for more information on compliance with LSHR.

Contracting Requirements

The contract for homeowner rehabilitation recipients must always be between the property owner and contractor. The grantee or subrecipient may act on the homeowner's behalf if the owner voluntarily delegates this authority to them and signs an authorization form (Attachment 10-8). The grantee remains responsible for monitoring contractor compliance with payments and all other program requirements.

Attachment 10-8: Sample Homeowner Authorization for Agency to Act as Agent

GSA's List of Parties Excluded from Federal Procurement or Nonprocurement Programs on the SAM website: https://sam.gov/portal/SAM/##11

Grantees are required to ensure that contractors receiving work funded by KCDBG have not been excluded from participation in Federal programs before contracts are awarded. To do this, the grantee must check the website at System for Award Management at https://www.sam.gov/. The search of the excluded party's website must be completed prior to signing the construction contract and a printout documenting the search should be placed in the file documentation.

The guidelines should also specify contracting procedures that govern the conduct of work, such as those relating to change orders, dispute resolution, and acceptance of work. The grantee should assume final authority for sign-off on completion of work in the event of a dispute between the owner and contractor. See Chapter 5: Contracting for more information.

Chapter 5: Contracting

Relocation Requirements

As described in Chapter 8: Relocation, Displacement and One-for-One Replacement, federal relocation requirements generally do not apply to homeowner rehabilitation programs since participation is voluntary and usually does not involve permanent displacement. However, if the owner's home is a two- to four-unit structure with rental units, the tenants are covered by the Uniform Relocation Act (URA) and possibly by Section 104(d) of the Housing and Community Development Act. 24 CFR Part 42 are the regulations that implement Section 104(d) of the Housing and Community Development Act. See Chapter 8: Relocation, Displacement and One-for-One Replacement for more information.

Chapter 8:
Relocation, Displacement and One-for-One Replacement

24 CFR Part 42

In addition, the LSHR states that temporary relocation may be required if lead hazard reduction work is performed. The grantee is not obligated to provide financial assistance for an owner occupant; however, it must ensure the family is relocated to a suitable, decent, safe and similarly accessible dwelling unit that does not have lead-based paint hazards. See Chapter 8 and 24 CFR 35.1345 for more information.

Chapter 8:
Relocation, Displacement and One-for-One Replacement
24 CFR 35.1345

For all other situations, grantees are permitted (but not required) to relocate homeowner households temporarily while work is being completed. (For example, if rehabilitation work requires shutting off heat or plumbing for some period of time, temporary relocation may be appropriate.) In these cases, the grantees must meet several requirements:

- ✓ Grantees must have a written policy on eligibility and level of relocation benefits, known as an Optional Relocation Policy, so that benefits are distributed in a fair, nondiscriminatory manner.
- ✓ Residents who are relocated temporarily must be offered a dwelling that is suitable, safe, sanitary and lead safe. However, the unit does not have to be comparable. All other conditions of the move must be reasonable.

Grievance Procedures

Grievances are a part of every rehabilitation program. The best prevention is to conduct frequent on-site inspections of the work, and stop work when there are problems until the problems are corrected.

Also grantees should make efforts to ensure recipients are well informed about the contract work, have initialed and signed-off on the work write-up, and have a copy of the program guidelines that include the grantee's grievance procedure. Refer to Chapter 1: Project Administration for more information on grievances. A sample Grievance Procedures is provided as Attachment 10-9.

Chapter 1: Project Administration
Attachment 10-9:
Sample Grievance procedures

Maintenance Agreements

Each recipient under a voluntary program is required to agree to maintain their property for the term of the financial assistance. Maintenance of the property should be examined by the grantee throughout the term of financial assistance.

The grantee should reserve the right to take any appropriate action necessary to ensure that the rehabilitated property is maintained, which may include requiring an early payback of financial assistance. Therefore, the rehabilitation guidelines should detail the maintenance standards and procedures for enforcement.

Tip: **The maintenance provisions apply only to Voluntary Programs. Grantees implementing Involuntary Programs may not place maintenance restrictions on assisted properties. (Refer to Part II of this chapter for more information on Involuntary Programs.)**

Section 10-C. Implementing Housing Rehabilitation

Determining Staffing

In staffing a rehabilitation program, it is helpful to understand the specific skills and duties that will be needed. Some of the key elements include:

- ✓ **Finance Staff.** Staff is required for marketing the program, processing applications, completing income verifications, and ensuring that all KCDBG requirements are met for the project. General knowledge of mortgage lending is also helpful.
- ✓ **Rehabilitation Staff.** Staff is required for performing work write-ups and inspections. Qualifications may include a certification and considerable knowledge and/or experience in various aspects of housing construction, considerable inspection experience in government funded rehabilitation programs or in residential construction management, or certified in the completion of recognized building codes and/or rehabilitation standards training programs. These skills are found in experienced contractors, building inspectors, architects, etc., familiar with rehabilitation.

Marketing

In order to ensure a sufficient pool of qualified applicants, program staff should develop marketing procedures and materials (e.g., ads, flyers, etc.).

Marketing procedures should assure that the program is marketed and available to the full range of potential applicants, including those least likely to apply. These procedures should address the following:

- ✓ Use of equal opportunity language in advertisements and literature;
- ✓ Grantee waiver of eminent domain in advertisements and literature;

- ✓ Literature that is understandable to applicants, including key information available in other languages;
- ✓ A schedule and plans to ensure that advertising or other outreach efforts reach potential applicants at places they frequent;
- ✓ Lists of the places and/or personal contacts where program information is distributed such as churches, laundry mats, service providers, parks, etc.; and
- ✓ Accessible facilities such as the ability to accommodate people with disabilities and the completion of an accessibility self-assessment.

Screening Applicants

Applicants must be screened to determine income, property ownership and any other applicable criteria, as may be specified in the guidelines.

- ✓ The screening process is initially done through using DLG's Rehabilitation Household Survey. Re-verification of income using the Part 5 (Section 8) definition of income is required before providing direct benefit if the household is receiving more than $1,000. A sample CDBG Rehabilitation Assistance Application (Attachment 10-10) or another application format, at a minimum, must contain the following information:

  Attachment 10-10:
  Sample CDBG Rehabilitation Assistance Application

  - Name of the owner and address of the property.
  - Signature of the owner and the date.
  - Number of persons (adults and children) in the occupant household and their ages.
  - Sufficient information concerning the occupant's household income.
  - The grantee should also verify that property taxes are current and in the case of an existing mortgage, that principle and interest payments are current and the mortgage is not in a delinquent or fail status.
  - Sufficient information to show that the occupant meets the grantee's program eligibility criteria, including household income.
  - Verification of the above-referenced information.

- ✓ The interview is also a good time to give the applicant a copy of the pamphlet "Protect Your Family from Lead in Your Home" (Attachment 10-11). The grantee must document using a Verification of Receiving the Lead-Based Paint Pamphlet form (Attachment 10-12) that the pamphlet was provided to the applicant before any work may begin. The pamphlet can also be downloaded from DLG's website. If the house is reconstructed, it is not required that the applicants be given the Lead Based Paint Pamphlet. The file should, however, be documented that the project is exempt from the Lead Safe Housing Rule since it is a reconstructed property.

  Attachment 10-11:
  "Protect Your Family from Lead in Your Home" Pamphlet

  Attachment 10-12:
  Verification of Receiving the Lead-Based Paint Pamphlet form

The information collected is confidential and should be treated as such. Applicant's permission to obtain and verify any personal information must always be granted.

Tip: **Detailed income documentation must be performed. See Section 10-B: Determining Household Income in this Chapter for more guidance.**

Performing Work Write-Ups and Cost Estimates

A very thorough inspection of the property must be conducted to determine the type and cost of work necessary to bring the property into compliance with International Code Council (ICC) Property Maintenance Code (for rehabilitation) or the Kentucky Residential Code (for reconstruction). After the inspection, the work to be done should be written down. This is termed a work write-up. At this stage, the items must be estimated in terms of cost, a process to produce a cost estimate. These write-ups are usually done on a room-by-room basis. Some grantees with experienced staff have blank forms the housing inspector completes. If the staff is inexperienced, they may need detailed check-off forms that list virtually every possible deficiency. The housing inspector checks for each one and specifies action needed to remedy the problem. It is better to err on the side of caution. A Sample Work-Write up and Cost Estimate Form are provided as Attachment 10-13.

Attachment 10-13:
Sample Work-Write Up
and Cost Estimate Form

For reconstruction, DLG requires the use of Kentucky Housing Corporation's (KHC) Specifications for New Homes (incorporating Minimum Design Standards and Universal Design Standards, if applicable). These specifications are available on the KHC website.

Kentucky Housing Corporation's
(KHC) Specifications for New
Homes
http://www.kyhousing.org

If a home was constructed prior to 1978, the Lead Safe Housing Rule (LSHR) applies. Therefore, there will need to be two work write-ups -- one initial and a final work write-up. The initial work write-up must specify all the work to be done to bring the building to standard. The final write-up should include all work necessary to comply with applicable lead hazard reduction requirements (see the following sub-section of this chapter, Pre-1978 Properties and Lead Hazard Reduction, for guidance).

In addition, historic properties (those more than 50 years old and/or listed or eligible for inclusion on a national, state or local historic register) are required to follow the Secretary of Interior's Standards for Rehabilitation (also referred to as the Section 106 requirements). During the environmental review process, grantees must consult the State Historic Preservation Officer (SHPO) for guidance for historic properties, which may require a Memorandum of Agreement or documentation approved by the SHPO. Grantees must then ensure the requirements stipulated by the SHPO be incorporated into the work write-up and cost estimate. Release of KCDBG funds cannot be obtained until the grantee receives SHPO concurrence. Refer to Chapter 2: Environmental Review for detailed guidance.

Kentucky Heritage Council State
Historic Preservation Officer
http://heritage.ky.gov/

Pre-1978 Properties and Lead Hazard Reduction

All units in a project assisted with KCDBG funds must comply with 24 CFR Part 35, which implements Title X of the Housing and Community Development Act of 1992, also referred to as the Lead Safe Housing Rule (LSHR). This regulation has been in effect since September 15, 2000, and Subpart J applies to rehabilitation projects. A briefing packet that explains more about HUD's Lead Safe Housing Rule is provided as Attachment 10-14.

Chapter 2: Environmental Review

24 CFR Part 35

Attachment 10-14:
Lead Safe Housing Rule Briefing Packet

The applicability of the requirements for Subpart J depends on the level of assistance provided for a project. This level of assistance is determined by taking the lower of:

- ✓ The per unit rehabilitation hard costs (regardless of source of funds), or
- ✓ The per unit amount of federal assistance (regardless of the use of the funds).

Some rehabilitation work performed in pre-1978 units may be exempt from following the lead safe housing rule such as:

- ✓ Properties found not to have lead-based paint during current testing and earlier testing that meets the requirements of prior evaluations.
- ✓ Properties where all lead-based paint has been identified and removed using approved methods; and
- ✓ Rehabilitation that does not disturb paint.

Grantees should refer to the Lead Safe Housing Requirements Screening Worksheet Parts 1-4 (Attachment 10-15) and 24 CFR 35.115 and 35.165 for more information regarding exemptions.

Attachment 10-15:
Sample Lead Safe Housing Requirements Screening Worksheet Parts 1-4
24 CFR 35.115 and 35.165

Evaluation Method

After the initial work write-up is complete, the rehabilitation specialist must determine which lead evaluation activity must be followed. The evaluation activity required depends on the level of assistance (see above for the definition of the level of assistance):

- ✓ < $5,000. Paint testing of surfaces to be disturbed must be completed. Paint testing must be conducted by a certified paint inspector or risk assessor.
- ✓ $5,000-$25,000. A risk assessment must be performed of the entire unit. A risk assessment must be conducted by a certified risk assessor.
- ✓ > $25,000. A risk assessment must be performed of the entire unit. A risk assessment must be conducted by a certified risk assessor.

Grantees should be aware that there are additional rules for the type of work that is performed depending on the intent of the work. See the combined HUD-EPA Notice and Guidance (Attachment 10-16) for more information.

Attachment 10-16:
HUD-EPA Notice and Guidance
http://portal.hud.gov/hudportal/documents/huddoc?id=20264_abateguidance.pdf

Notification

Results of the paint test and risk assessment must be provided in a Notice of Lead Hazard Evaluation to the homeowner within 15 days of the grantee receiving them. The person performing the evaluation may be able to assist the grantee in completing the form. It is important for the homeowner to know that, under the LSHR, they must disclose any knowledge of lead in the home to any future buyers of the property. A sample Notice of Lead Hazard Evaluation is provided as Attachment 10-17.

Attachment 10-17:
Sample Notice of Lead Hazard Evaluation

Grantees also have the option to presume there is lead in the unit rather than paint testing or risk assessments. If the grantee utilizes the presumption of lead option, the scope of work must address all painted surfaces. Grantees should note that this approach may raise the cost of the work as non-lead surfaces will be required to be treated as if they contained lead. Also, if the presumption method is followed, a "Notice of Presumption" must be provided to the homeowner within 15 days of performing the initial inspection. A sample Notice of Presumption is provided as Attachment 10-18.

Attachment 10-18:
Sample Notice of Presumption

Finalizing the Work Write-Up

If the paint testing or risk assessment shows there are no lead hazards, then traditional rehabilitation practices may be followed.

If there are lead hazards found in the home then the following lead hazard reduction activities must be followed based on the amount of assistance and incorporated into the work write-up.

- ✓ < $5,000. Repair surfaces to be disturbed using safe work practices and trained workers.
- ✓ $5,000-$25,000. Perform interim controls using safe work practices and trained workers. If presumption occurred, perform standard treatments using safe work practices and trained workers.
- ✓ > $25,000. Perform abatement using safe work practices and certified abatement supervisor and certified workers.

For more information about repair, interim controls, standard treatments, abatement and the types of training or certification required for personnel performing the work, please see the Briefing Packet on the LSHR (Attachment 10-14).

Attachment 10-14:
Lead Safe Housing Rule Briefing Packet

The work write-up must be revised to incorporate the appropriate lead hazard reduction work and methods required to perform the work. Once the work write-up has been finalized, the cost estimate tells whether or not the work can be done within the average loan limits and the owner's ability to repay.

The person preparing cost estimates should be familiar with the current rates for materials and labor and be able to estimate accurately the time required to complete each task. Good, reliable cost estimates are critical. Since costs change rapidly, it is important that cost estimates be used as soon as possible.

Executing Agreements with Beneficiaries

The grantee must enter into a formal written agreement with the applicant for the amount of the assistance made available (regardless of whether the assistance is in the form of a grant or loan). A Sample Rehabilitation Granting Agreement is provided as Attachment 10-19.

Attachment 10-19:
Sample Rehabilitation Granting Agreement

- ✓ This agreement needs to be signed by the homeowner, prior to the start of work, and represents the official financial obligating instrument between the homeowner and the grantee.
- ✓ At a minimum, this agreement shall certify the legal owner of the property, the type of assistance (i.e., whether a grant or loan or combination), as well as outline all conditions associated with the assistance.
- ✓ Conditions of the agreement may include a monthly payment schedule if applicable, a minimum five year primary residency requirement, hazard insurance and property maintenance requirements, death of the applicant, conversion, transfer or sale of the property rehabilitated, and any other conditions that, if violated, may result in a reimbursement of funds by the applicant. To ensure adequate insurance coverage for the KCDBG lien position grantees may require hazard insurance to be maintained at a level adequate to protect the KCDBG lien.

If assistance takes the form of a loan, the grantee must also utilize a recorded mortgage to secure the amount of the federal investment. A sample Real Estate Mortgage is provided as Attachment 10-4.

Attachment 10-4:
Sample Real Estate Mortgage

Following approval, grantees should meet with the applicant to review the proposed scope of work to be undertaken. DLG requires the applicant to initial each page and sign the last page of work items, thereby attesting to the fact that the applicant was made aware of the improvements to be made to the property. The homeowner should also receive all proper notices and information about lead-based paint. It is also important to finalize any temporary relocation plans and set a schedule for the work.

Contracting for Rehabilitation

Developing and implementing effective contracting procedures is one of the most critical tasks in a housing rehabilitation program. Four key elements involved in the contracting process are covered in the following discussion: recruiting contractors, bidding procedures, preparing the contract, and contract award and monitoring.

Recruiting Contractors

It is often difficult to recruit contractors if there are only relatively small jobs for repairing homes in poor condition. The grantee should identify possible contractors and attempt to interest them in program participation. The yellow pages of the telephone book, the Chamber of Commerce, the Small and Minority Business Division of the Kentucky Cabinet for Economic Development, KYPATC (see Chapter 4: Procurement), conversations with construction materials suppliers, and word of mouth are all information resources to aid in developing a contractors list. Certified lead-based paint contractors may also be found on the

Small and Minority Business Division of the Kentucky Cabinet for Economic Development
http://www.thinkkentucky.com/

Kentucky Health Department's website:
https://chfs.ky.gov/agencies/dph/Pages/default.aspx

State of Kentucky's Health Department website at https://chfs.ky.gov/agencies/dph/Pages/default.aspx .

To promote the participation of small contractors, the grantee may attempt to eliminate procedural barriers and provide technical assistance. Some grantees have:

- ✓ Waived bonding requirements and developed alternative ways to protect property owners (i.e., requiring a letter of credit from a financial institution).
- ✓ Provided technical assistance such as:
  - Financial management assistance;
  - Talking to local suppliers about credit extension to rehabilitation contractors;
  - Asking local financial institutions to extend lines of credit; and
  - Allowing progress payments after completion and inspection of a certain percentage of work.

In addition, grantees must ensure that they are using trained and certified workers to perform work in compliance with the lead safe housing rule.

Bidding Procedures

Bidding procedures need to be developed by grantees. Grantees must demonstrate that bids were let in a fair, unbiased manner and that efforts were made to solicit bids from small, minority and woman owned businesses. Below are some guidelines to include in bidding procedures.

Chapter 5: Contracting

- ✓ Bids may be advertised in the newspaper, through public notice or radio and by contacting an already approved list of contractors.
- ✓ Advertising at the start of the program and establishing a list of contractors interested in bidding for jobs throughout the duration of the program is acceptable.
- ✓ At least three contractors should be encouraged to bid on each job.
- ✓ Grantees are required to check GSA's List of Parties Excluded from Federal Procurement before awarding a bid and must check this list when bids are received.
- ✓ Each contractor must provide proof of liability insurance in an amount deemed reasonable by the grantee. (DLG strongly recommends a minimum of $100,000.) The liability insurance shall be maintained during the life of the contract.

List of Parties Excluded from Federal Procurement can be found at https://sam.gov/portal/SAM/##11

- ✓ Each contractor must provide evidence of workers compensation insurance at a level in conformance with state law for all employees at the job site and shall require subcontractors to provide evidence of the same.
- ✓ Contractors must submit documentation that shows they are qualified to perform lead work such as:
  - Proof they attended a safe work practices training session (for jobs involving safe work practices).
  - Copies of the Kentucky certification for abatement supervisor and workers (for jobs involving abatement).

Any solicitation for bids by the grantee should include:

- ✓ Location for bid document pick up and submission;
- ✓ Address of unit to be rehabilitated;
- ✓ Time the unit is open for inspection; and
- ✓ Time and place for bid opening.

DLG requires that minutes from the bid opening be taken. The minutes should include names of all present at the meeting, a list of all bids received and the amounts bid for the work.

Bids need to be reviewed for cost reasonableness. Grantees should be wary of bids above or below 15 percent of the cost estimate. Grantees should not award to the low bidder if the contractor has a backlog of incomplete rehabilitation jobs or a history of poor performance. Grantees are advised to impose a cap of two rehabilitation jobs per contractor at any given time, unless the contractor can clearly demonstrate capacity to handle more than that. This cap should be clearly outlined in the policies and procedures.

Tip: **Housing contracts are executed between the Homeowner and Contractor, the main purpose for bidding is to establish a reasonable low-bid price. The homeowner makes the final decision for selection of the contractor.**

Preparing the Contract

The contract for rehabilitation must be a two-party contract between the homeowner and the contractor. The grantee or subrecipient may act on behalf of the homeowner if the homeowner delegates this responsibility (Attachment 10-8). The grantee remains responsible for monitoring contractor compliance with payments and all other program requirements.

Attachment 10-8:
Sample Homeowner Authorization for Agency to Act as Agent for Homeowner

- ✓ Key federal provisions which apply to all rehabilitation contracts are:
  - Lead Based Paint clause, and
  - Conflict of Interest clause.

Davis-Bacon and other labor standard provisions do not apply unless the rehabilitation involves a structure with eight or more units.

Within the contract, the grantee should require the contractor to:

Chapter 5: Contracting

- ✓ Obtain and pay for all necessary permits and licenses;
- ✓ Perform all work in conformance with the International Code Council (ICC) Property Maintenance Code whether or not covered by the specifications and drawings;
- ✓ Keep the premises clean and orderly during repairs and remove all debris at the completion of work;
- ✓ Obtain written consent from the grantee and the homeowner for changes to specifications;

- ✓ Comply with all required rehabilitation practices for the lead safe housing rule;
- ✓ CDBG funded rehabilitation projects that exceed $200,000 in funding will trigger Section 3 requirements which will need to be included in the contract language;
- ✓ Obtain written consent prior to sub-contracting;
- ✓ Provisions for termination and for non-performance;
- ✓ Pay for all lead-based paint clearance tests of the unit and continue work until the unit passes clearance; and provide each of the required notices to owners and tenants;
- ✓ Warrant the work for one year from final acceptance.

Attachment 10-20:
Sample Contract Package for Rehabilitation

DLG requires that grantees attach a copy of the work write-up to the contract. A Sample Contract Package for Rehabilitation is provided as Attachment 10-20.

Contract Award and Monitoring

Following award of the contract, the contract package must be executed by all parties. The homeowner must sign the contract and initial each page and sign the last page of the work write-up. A Notice to Proceed should be issued promptly to the contractor, specifying the time period within which the work should begin and when the work should be completed. A sample Notice to Proceed is provided as Attachment 10-21.

Attachment 10-21:
Sample Notice to Proceed

It is good practice to hold a pre-construction conference to clarify the responsibilities of all parties. A sample Pre-Construction Conference Checklist that can be used at such a conference is provided as Attachment 10-22.

Attachment 10-22:
Sample Pre-Construction Conference Checklist

Inspections

Systematic thorough inspections by the rehabilitation inspector are critical to successful housing rehabilitation. (DLG strongly recommends the grantee contract with a certified building inspector to provide quality inspections.)

- ✓ Inspections should be conducted frequently and should be formally documented in the files.
- ✓ Periodic interim inspections of the rehabilitation construction will be made by the grantee throughout the contract period.
  - These inspections will be conducted to assure compliance with the contract standards for workmanship and materials, to detect any unauthorized deviations and to identify necessary changes to the contract work in its early stages.
  - Interim inspection reports must be prepared and signed by the grantee representative, rehabilitation inspector, contractor and owner.

- ✓ Inspection and approval of completed work must be conducted by the grantee prior to the contractor's request for partial or final payment. The owner's approval of the work is also required when payment is requested. A sample copy of the Notice of Acceptance of Work is provided as Attachment 10-23.

  Attachment 10-23: Sample Notice of Acceptance of Work

  - The grantee has the authorization to override an owner's decision and accept the work in accordance with grievance procedures if an owner makes unreasonable requests/demands and the contractor has satisfied all the requirements of the grantee.

- ✓ A final inspection of the work must be performed prior to final payment to the contractor in order for the project to be considered complete. A sample copy of Certification of Inspection is provided as Attachment 10-24. It is important for grantees to realize that this final inspection of the work is not the last inspection of the project. DLG requires a follow-up inspection be performed 60 days after project completion as referenced in follow-up inspection listed at the end of this section.

  Attachment 10-24: Sample Certification of Inspection

Change Orders

Any additions to, deletions from, or changes in the rehabilitation contract work, time, or price must be approved in a written change order request before the additional work is started. (Refer to Attachment 10-25 for a sample.)

Attachment 10-25: Sample Change Order Request

- ✓ The change order must be executed by the owner and the contractor and approved by the rehabilitation inspector and the grantee. Change orders may be used to add items of work that are essential to complete the original work and were not evident until after the work started.
- ✓ The contractor shall not be authorized to perform any work outside the scope of the original contract without a written and properly executed change order.

Clearance

If the rehabilitation job had any lead hazard reduction work performed, a clearance of the unit must be passed before re-occupancy.

- ✓ A clearance examination involves a visual assessment and dust testing to determine if the unit or worksite is safe for occupancy.
- ✓ Clearance must be performed by a certified risk assessor, certified lead-based paint inspector or certified lead sampling technician.
- ✓ Clearance cannot be performed by the same contractor who performed the work. It must be a separate party.

The clearance test cannot be performed until one hour after the final cleaning of the unit. Results of the clearance test must be incorporated into a "Notice of Lead Hazard Reduction Activities" by the grantee. This notice must be provided to the homeowner within 15 days of the clearance test. A sample

Attachment 10-26: Sample Notice of Lead Hazard Reduction Activities

Notice of Lead Hazard Reduction Activities is provided as Attachment 10-26.

Grantees must be aware that if the unit fails the clearance test the unit cannot be reoccupied. The contractor will need to re-clean and another clearance test must be performed.

Once the unit has passed the clearance test, the final invoice may be processed.

Final Documentation

Grantees should have the contractor sign an affidavit for Contract Termination and Release of Lien Form (Attachment 10-27) and provide warranty documents, and subcontractors release of lien waivers before final payout. After which, the Notice of Acceptance of Work (Attachment 10-23) may be issued to the contractor. A Project Benefit Profile by Person and by Household must also be completed (Attachment 10-28).

Attachment 10-27:
Sample Contract Termination and Release of Lien Form

Attachment 10-23:
Sample Notice of Acceptance of Work

Attachment 10-28:
Project Benefit Profile by Person and by Household

Follow-Up Inspection

It is DLG's policy that the grantee performs a follow-up inspection of the property 60 days after job completion (Attachment 10-29). This inspection allows the grantee to see if there are any problems with the job. If problems have occurred, the grantee should assist the property owner to obtain corrective action according to the warranty.

Attachment 10-29:
Sample Certification of 60 Day Follow-up Inspection

Section 10-D. Record Keeping

It is important for the grantee to maintain complete files and record keeping of the work they are performing and the units being rehabilitated. A Rehabilitation Program File Checklist (Attachment 10-30) should be in the front of each project file. In addition to the items listed in the rehabilitation program checklist, general files including the following should also be set up and maintained:

Attachment 10-30:
Sample Rehabilitation Program File Checklist

- ✓ Local rehabilitation policies and procedures;
- ✓ Documentation of marketing and outreach efforts;
- ✓ Pending applications;
- ✓ Disqualified applicants; and
- ✓ Evidence of contractor participation.

PART II: INVOLUNTARY PROGRAMS

Sometimes a grantee may decide to exercise its right of eminent domain to acquire property to help revitalize an area. When this occurs, these projects are referred to as involuntary projects. These projects are primarily carried out in neighborhood revitalization areas. Grantees should work with DLG staff to determine if their proposed project will need to follow the Involuntary Program guidelines or if it can be completed within the Voluntary Program requirements.

Neighborhood revitalization areas should be concentrated enough that the KCDBG assistance will result in a resolution of all or most of the housing needs in the targeted area and a significant visual and physical impact. The revitalization areas must also be designated as a slum and/or blighted area under the Kentucky Urban Renewal and Redevelopment Law (KRS Chapter 99). There are a number of different activities that may be undertaken within these areas; however, certain program and other federal requirements (such as the Uniform Relocation Act (URA)) will apply to involuntary activities.

KRS Chapter 99

Tip: **If the grantee chooses the project area(s) with the intent to use eminent domain, the project is considered involuntary even if a recipient agrees to be a part of the project and fully cooperates. Therefore, all URA requirements must be followed.**

Section 10-E. Eligible Activities and National Objectives

There are several activities eligible under KCDBG that help to support the revitalization of slum or blighted areas and the development of affordable housing. These activities include:

- ✓ **Acquisition.** Acquisition of property is generally eligible under CDBG (provided the rules detailed in Chapter 9: Acquisition are adhered to).

Chapter 9: Acquisition

  - Grantees may use KCDBG funds to assist private individuals and non-profits with the acquisition of property for the purpose of rehabilitation. After rehabilitation to applicable standards, the property may be used or sold for low- and moderate-income residential purposes.
  - Grantees may also use KCDBG funds to acquire housing units, as long as the units are not newly constructed, and sell them for residential purposes. The CDBG regulations do not limit the amount of write-down to the buyer. The amount of write-down should be appropriate for the level of needed assistance and reasonable in relationship to the level of participation. Acquired property may be donated to purchasers; however, grantees should analyze the situation to avoid giving windfall profits to purchasers. If buyers are not LMI, prior approval from DLG is required.
  - Grantees may acquire property to be used for LMI housing and donate or resell it at a lower price to nonprofit housing organizations to be used for LMI housing.

Tip: **The number of units eventually constructed or rehabilitated on CDBG-assisted property may trigger the Davis Bacon labor standards requirements (see Chapter 6: Labor Standards and Construction Management or contact DLG for more information).**

Chapter 6: Labor Standards and Construction Management

- ✓ **Conversion.** The cost of converting an existing non-residential structure to residential use by eligible households is allowed as a rehabilitation activity.
- ✓ **Demolition and Reconstruction (Rehabilitation).** KCDBG funds may be used for demolition and reconstruction. Reconstruction is the rebuilding of a structure on the same site in substantially the same manner. Reconstruction is considered a rehabilitation activity. Deviations from the original design (such as the addition of another room) may be permitted for reasons of safety or for practicality. A reconstructed unit need not contain the same number of rooms as the unit it replaces. (Note, however, that adding rooms may constitute new construction. Contact DLG for specific questions.) Reconstruction of residential structures also permits replacing an existing substandard unit of manufactured housing with a new or standard unit of manufactured housing or a "stick built" structure if manufactured housing is not allowed under existing zoning in the community.
- ✓ **Demolition and Clearance of Sites.** Grantees may clear a site to be used for housing. Clearance of toxic contaminants from property to be used for new construction of housing is also eligible. For all demolition and clearance activities, grantees must propose a plan with the end use lasting for at least five years.
- ✓ **Disposition Costs.** The costs of disposition of real property, acquired with CDBG funds, which will be used for new construction of housing is an eligible activity to support new housing.
- ✓ **Multifamily Rehabilitation.** Rehabilitation of multifamily rental units is an eligible activity under the KCDBG Program. At least 51 percent of units must be occupied by LMI households at affordable rents.
- ✓ **New Housing Construction.** Generally, new construction of housing is not eligible under the KCDBG program. However, the regulations allow for certain "eligible subrecipients" to carry out this activity on behalf of the grantee.

  24 CFR 570.204(c)

  - **Eligible nonprofits and groups.** The eligible subrecipients include neighborhood-based nonprofit organizations (NBOs), nonprofit organizations serving the development needs of communities in non-entitlement areas, section 301(d) Small Business Investment Companies (SBICs), and local development corporations (LDCs).
  - **Regulatory Documentation.** These nonprofit development organizations must meet the definition outlined in Section 5305(a)(15) of the Housing and Community Development Act and comply with conditions outlined in the Grant Agreement to be considered to undertake such activities.

    HCDA Section 5305(a)(15)
  - **Activities to be performed:** These organizations must be undertaking a neighborhood revitalization, community economic development or energy conservation project in order to use CDBG for new construction. And, the grantee must determine that the project is necessary or appropriate to achieve its community development objectives.

Tip: **New housing construction carried out by an eligible nonprofit must be part of a larger effort to revitalize the neighborhood (i.e., a plan for the community's revitalization efforts based on a comprehensive plan, not just for the sake of the CDBG project).**

- ✓ **Single Family Owner and Rental Rehabilitation.** Using KCDBG funds to assist low- and moderate-income persons to bring their homes up to, at a minimum, the International Code Council (ICC) Property Maintenance Code is an eligible activity. Rehabilitation of investor-owned, single-family rental units is also an eligible activity. Rents must be affordable for a period of five years. The maximum amount of rent charged may not exceed HUD's Fair Market Rent during the five-year period.

Access HUD Fair Market Rents from the HUD User website at: http://www.huduser.org/datasets/fmr.html.

Below are a number of activities that may be combined with the housing activities listed above to achieve neighborhood revitalization objectives.

- ✓ **Infrastructure Improvements.** The construction of publicly-owned water, sewer, streets and drainage facilities is eligible as a public facilities activity.
- ✓ **Site Improvements.** Grantees may improve publicly-owned sites for housing. Using KCDBG funds for improvements to a site after disposition to a private developer is eligible only if carried out by an eligible subrecipient (as discussed previously), in which case the activity must be for neighborhood revitalization, community economic development, or energy conservation, and the recipient must determine that it is necessary or appropriate to achieve community development objectives.

Ineligible Activities

The general rule is that any activity not specifically authorized under the CDBG regulations is ineligible to be assisted with KCDBG funds. The regulations stipulate that the following activities may not be assisted with CDBG funds:

- ✓ New housing construction except under certain conditions. Certain types of nonprofit organizations that are undertaking certain kinds of activities may be allowed to utilize CDBG funds for new construction. The conditions under which this may occur are discussed in Section 10-E of this Chapter.

24 CFR 570.204(c)

- ✓ Income payments, which are defined as grants to an individual or family that are used to provide basic levels of food, shelter (i.e., payment for rent, mortgage and/or utilities) or clothing;
- ✓ Luxury items, such as swimming pools, Jacuzzis, high-end appliances, window air conditioners, washers and dryers, etc.; and
- ✓ Labor time for sweat equity may not be paid out to recipients of rehabilitation assistance.

Meeting a National Objective

As discussed in Chapter 1: Project Administration, all funded projects must meet a national objective. At the time of funding, the grantee must document which national objective a project will meet.

Chapter 1: Project Administration

There are several different national objectives the grantee can use to satisfy this requirement. Housing is considered a direct benefit activity and each household in a single-family unit must be LMI, while one of two units in a duplex must be LMI and 51% of three or more unit properties must be LMI. To document the housing national objective, see the section entitled Applicant Eligibility in Part 1 of this Chapter.

However, other housing related activities related to neighborhood revitalization may be eligible to receive KCDBG assistance if the area has been designated as a slum and/or blighted area. If a grantee is using the slum/blight national objective, it must complete an Order of Municipal Resolution that states the project is slum and/or blighted and follow the criteria in KRS Chapter 99.

KRS 99.340

Under the Kentucky Urban Renewal and Redevelopment Law (KRS Chapter 99), the following definitions apply:

- ✓ A slum area is an area in which at least one-fourth of all buildings or a predominance of improvements are:
  - Unsafe or unfit to occupy due to dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation/light/sanitation/open space, high density of population, overcrowding;
  - Conducive to ill health, transmission of disease, infant mortality, juvenile delinquency or crime;
  - Injuriously affect the entire area; or
  - Constitute a public menace to the public health, safety and welfare.
- ✓ A slum area may include lands, structures, or improvements in which acquisition is necessary to assure the proper clearance and redevelopment of the entire area and to prevent the spread or recurrence of slum conditions thereby protecting the public health, safety and welfare.
- ✓ A blighted area is an area where, due to various reasons (predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, submergence of lots by water or other unsanitary or unsafe conditions, deterioration of site improvements, diversity of ownership, tax delinquency, defective or unusual conditions of title, improper subdivision or obsolete platting), the development of predominantly housing units is being prevented.

Where the activity being carried out with KCDBG funds in a slum and/or blighted area is housing, two additional criteria must be met:

- ✓ Each building must be considered substandard under local definition; and
- ✓ All deficiencies making the building substandard must be corrected before less critical work on the building may be undertaken.

If a grantee determines the project will meet the definition of a slum and/or blighted area, then it must complete a Development Plan to set a foundation for eminent domain and to establish the area's redevelopment plans (See Attachment 10-31 for a sample). This is a plan for acquisition of properties, demolition of removal, rehabilitation or historic preservation of structures and improvements, relocation of displaced, resale of improved land and designation of specific uses permitted in redevelopment of new sites. It must be prepared in accordance with KRS Chapter 99 and all federal regulations in the Housing and Community Development Act of 1974.

Attachment 10-31: Sample Development Plan

Grantees will need to do a Development Plan if one of the following occurs:

KRS 99.360
KRS 99.420
KRS 99.450

- ✓ Public funds on private property (KRS 99.360) (i.e.: KCDBG funds used to rehabilitate an individual's home);
- ✓ Public purpose is required in order to condemn a property (KRS 99.420); or
- ✓ Grantee owns land and wants to sell surplus property (KRS 99.450).

Tip: **If land will be sold at less than fair market value to promote affordable housing for LMI families, resale of property must be identified as a public purpose in the Development Plan (KRS 99.450). Refer to the sample Short Form Development Plan for Voluntary Rehabilitation/Reconstruction (Attachment 10-32) for guidance.**

Attachment 10-32: Sample Short Form Development Plan for Voluntary Rehabilitation/Reconstruction

While grantees may assist non-LMI households under these conditions, only health and safety issues may be addressed for these properties. For example, roof problems, unsafe wiring and inadequate plumbing could be addressed with KCDBG funds. Rehabilitation activities for more cosmetic purposes such as painting or carpeting are not eligible KCDBG expenditures for over income residents.

Section 10-F. Implementing Involuntary Programs

In addition to the Development Plan and acquisition and relocation requirements under the URA, there are other administrative requirements that grantees administering involuntary programs must follow.

Most of these requirements are discussed in Part I: Housing Rehabilitation; therefore, they will not be repeated here. As a brief reference, grantees undertaking involuntary housing activities must comply with the following sections of Part I of this chapter:

- ✓ Section 10-B:
  - Program Guidelines
  - Applicant Eligibility (Note: income eligibility does not apply to URA. Knowledge of income is required to establish LMI status and relocation benefits.);
  - Property Eligibility;
  - Conflict of Interest;
  - Property Standards;
  - Contracting Requirements; and
  - Grievance Procedures (which must be provided to all residents in the designated Development target area.)
- ✓ Section 10-C:

- Determining Staffing;
- Pre-1978 Properties and Lead Hazard Reduction;
- Lead-Based Paint Requirements;
- Work Write-Ups and Cost Estimates;
- Recruiting Contractors;
- Bidding Procedures;
- Preparing the Contract; and
- Contract Award and Monitoring.

✓ Section 10-D: Record keeping (Note: Individual case files are required for all activities benefiting a recipient, i.e. acquisition, relocation, clearance, etc.).

Grantees with specific questions or concerns about these or other requirements should contact DLG for assistance.

Additional Requirements for Rental Housing Rehabilitation Projects

In addition to the requirements discussed in the previous sections, there are a number of other requirements that must be met when administering a rental housing rehabilitation program.

Meeting a National Objective

As with all CDBG-funded activities, rental housing that is rehabilitated or built with CDBG funds must meet a national objective. Specifically:

✓ For rental properties that are single family, the tenant must be LMI.

✓ For rental properties with two units, at least one unit must be LMI.

✓ For properties with more than two units, at least 51 percent of the units must be occupied by LMI households.

Rental units must be occupied by LMI persons at affordable rents (as defined by DLG) for a period of five years. The maximum amount of rent charged may not exceed the HUD Fair Market Rent (FMR) during the five-year period. Fair market rents by area and bedroom size can be accessed from the HUD User web site at http://www.huduser.org/datasets/fmr.html

Access Fair Market Rents from the HUD User website at https://www.huduser.gov/portal/datasets/fmr.html

Installation of Broadband Infrastructure in Multi-Family Housing

In December 2016, HUD published new regulations requiring the installation of broadband infrastructure at the time of new construction or substantial rehab of HUD-funded multifamily housing, including CDBG-funded multifamily housing with more than four rental units. This requirement will apply to projects for which funds are obligated by a state grantee on or after July 18, 2017.

Broadband infrastructure is defined as cables, fiber optics, wiring or other permanent, including wireless, infrastructure in each dwelling unit meeting the Federal Communications Commission's

definition. Substantial rehab is defined as work on the electrical system with estimated costs equal to or greater than 75% of the cost of replacing the entire electrical system, or when the estimated cost of the rehab is equal to or greater than 75% of the total estimated cost of replacing the multifamily rental housing after the rehab is complete. Some exceptions are allowed when:

- ✓ The location of the new construction or substantial rehab makes installation of broadband infrastructure infeasible;
- ✓ The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or an undue financial burden; or
- ✓ The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

Financial Assistance

Financial assistance may be provided as a grant or loan to the property owner for an eligible project (e.g., the rehabilitation of a multi-unit housing complex). The assistance must be conditioned upon the requirement to make 51% of the units available for five years at rents affordable to lower income tenants (as discussed above).

Davis Bacon Wage Determination

Davis Bacon wage determination applies if a grantee expects to rehabilitate a structure with eight or more units. Grantees are advised to contact DLG very early for guidance. There are a number of preplanning documents that must be completed and reviewed before going to bid and entering into a contract. See Chapter 5: Contracting for more information.

Chapter 5: Contracting

Relocation

The Uniform Relocation Act applies to all projects in which tenants are living in a multi-unit structure. Proper notices, services and payments must be provided to tenants as applicable. See Chapter 8: Relocation, Displacement and One-for-One Replacement for more information.

Chapter 8:
Relocation, Displacement, and
One-for-One Replacement

Chapter 11: Economic Development

Introduction

This chapter provides information and requirements governing the use of KCDBG funds for economic development activities. It specifically discusses the eligible activities and national objective documentation, legal agreements, and public benefit standards mandated for economic development projects. It also briefly addresses the other types of implementation requirements that may accompany an economic development project.

Section 11-A. Eligible Activities and National Objectives

Economic development projects involve activities that are designed to create new jobs, retain existing employment opportunities, stimulate private investment, and revitalize or facilitate the growth and diversification of the local economy. In DLG's economic development program, there are three emphases:

42 U.S.C. 5305(a)
and 24 CFR 570.482

- ✓ Working with small commercial businesses with less than 5 employees with technical assistance and financial support to grow a locally based economy in a new fashion;
- ✓ Expanding employment opportunities for persons from low- and moderate-income families through assistance to industrial or commercial clients by creating and/or retaining jobs; and
- ✓ Benefiting low- and moderate-income families through other means such as job training and support services.

Eligible Activities

The CDBG statute and regulations recognize five key ways that economic development may be undertaken:

- ✓ **Special economic development undertaken by/for public and nonprofit entities.** These are economic development projects undertaken by nonprofit entities and grantees (public entities). These activities are typically funded under DLG's Traditional Economic Development Program. DLG's Non-Traditional Economic Development Program may provide funds for related support services such as job training, childcare, peer support, counseling, and transportation.
- ✓ **Economic development undertaken by neighborhood-based and other nonprofit organizations.** These are activities designed to assist in neighborhood revitalization or community economic development and are carried out by certain types of organizations. These activities are funded under DLG's Traditional and Non-Traditional Economic Development Programs. The types of organizations eligible to carry out activities under this part include the following:
  - Neighborhood-based nonprofit organizations;
  - Local development corporations;
  - Nonprofit organizations serving the development needs of non-entitlement areas (e.g., development districts); and
  - Entities organized under section 301(d) of the Small Business Investment Act of 1958.

In addition to the requirement that the organization be eligible as one of the organizational types listed above, the entity must be carrying out neighborhood revitalization or community economic development projects.

- ✓ **Special economic development undertaken by for-profit entities.** These are economic development projects undertaken by for-profit entities. These activities are typically funded under DLG's Traditional Economic Development Program.

All of the activities above are subject to requirements related to the public benefit test generated due to the expenditure of KCDBG funds. See Section B of this chapter for a further discussion of these requirements.

Additional economic development activities that are also eligible under the KCDBG program include:

- ✓ **Microenterprise development.** These are activities designed to foster the development, support, and expansion of microenterprise businesses. A microenterprise is defined as a commercial enterprise that has five or fewer employees, one or more of whom owns the enterprise.

  24 CFR Part 570.482(c)

  - Eligible microenterprise activities include the provision of:
    - One-on-one and classroom technical assistance, advice, and business services to owners of microenterprises and persons developing microenterprises;
    - General support to owners of microenterprises and persons developing microenterprises;
    - Training and technical assistance or other support services to increase the capacity of grantees or subrecipients to carry out microenterprise activities using performance based measures; and
    - Loans and other assistance to persons owning or developing a microenterprise. A "person developing a microenterprise" refers to a person who has expressed an interest and who is, or after an initial screening process is expected to be, actively working toward developing a business, which will be a microenterprise at the time it is formed.

- ✓ **Public facilities.** These are public works activities, typically infrastructure that support economic development endeavors. These activities involve the acquisition, construction, reconstruction, or installation (including design features and improvements that promote energy efficiency) of public works or facilities (except for buildings for the general conduct of government), and site or other improvements.

Ineligible Activities

In 2006, HUD published a final rule on the prohibition of using CDBG funds for "job pirating" activities—activities in which a community offers CDBG assistance to businesses to move existing operations from another community to its own.

The prohibition applies to projects that involve the following:

- ✓ The funding will assist in the relocation of a plant, a facility or operation; and
- ✓ The relocation is likely to result in a significant loss of jobs (anything more than 500 jobs or .1 percent job loss to a local area between 25-500 jobs) in the area from which relocation occurs.

Any recipient of CDBG funds used to relocate a business must sign a written agreement including: a statement of intent of relocating from one labor market area to another and the number of jobs that

will be relocated to each labor market area; a certification from the business that none of the relocations will result in a significant job loss; and a provision for reimbursement should the provided assistance result in a relocation prohibited by the regulation. Furthermore, all jobs targeted for transfer should be in place at the new location within three years.

This prohibition does not apply to assisting a business that starts a new operation in a new location that is unrelated to current operations and then later reduces operations. This prohibition also does not affect non-profits that do business assistance. Activities that involve the Uniform Relocation Assistance and Real Property Acquisition Act (URA) or assistance to microenterprises are also exempt from this rule. Finally, the prohibition does not apply to businesses that purchase property or equipment in one area and then move to another location.

Grantees should consult with DLG to ensure that "job pirating" activities are not funded with CDBG.

Meeting a National Objective

As discussed in Chapter 1: Project Administration, projects must not only be eligible under the CDBG rules, but they must also meet a national objective. DLG makes initial determinations regarding eligibility and national objective compliance at the time grant applications are reviewed; however, grantees with approved projects must maintain documentation to show that the national objective requirements were actually met by the completion of each project.

Chapter 1: Project Administration

There are three national objectives with the primary one being benefit to low- and moderate-income persons (LMI). Within the LMI national objective, there are four categories and the one typically used for economic development projects is job creation and retention. Other LMI options that could be used are discussed at the end of this section.

42 U.S.C. 5305(c)(1)

LMI Job Creation/Retention

A job creation/retention activity is one that creates or retains permanent jobs, of which 51 percent or more are held by persons from low- and moderate-income families.

24 CFR 570.483(b)(4)

- ✓ For job creation activities, the grantee and the assisted business(es) must document that permanent jobs have been *created*, and that at least 51 percent of the jobs, computed on a full-time equivalent (FTE) basis, involve the employment of low- and moderate-income persons.
- ✓ In order to consider jobs *retained* as a result of CDBG assistance, there must be clear and objective evidence that permanent jobs will be lost without CDBG assistance. For these purposes, "clear and objective" evidence that jobs will be lost would include:
  - Evidence that the business has issued a notice to affected employees or made a public announcement to that effect, and/or
  - Analysis of relevant financial records convincingly shows that the business is likely to have to cut back employment in the near future without the planned intervention.
- ✓ Further, to meet the LMI jobs national objective, 51 percent or more of the retained jobs must either:
  - Be known to be held by LMI persons at the time CDBG assistance is provided, and/or

- The job can reasonably be expected to turn over within the following two years and that it will be filled by an LMI person upon turnover.

In addition, job creation and retention activities trigger the Community Planning and Development (CPD) Outcome Performance Measurement System. Specifically, additional data collection and reporting is required regarding the job classifications, the number of jobs with health care benefits and, for job creation only, the number of persons served who were formerly unemployed immediately prior to holding the job.

A prior written commitment to hire or retain LMI persons must be on file for each assisted business. The business must also provide a hiring plan that details the number of jobs to be created/retained, the number of jobs held or to be filled by LMI persons, a description of the job, any special skills or training required and the timetable for hiring. The plan must indicate who will be responsible for hiring, collecting required data, and training to be provided.

As a general rule, each assisted business shall be considered individually for purposes of determining if at least 51 percent of the jobs created or retained will be for LMI persons. However, when CDBG funds are used to acquire, develop or improve real property (e.g., an industrial park), the 51 percent requirement may be met by measuring jobs in the aggregate for all the businesses that locate on the property as a direct result of the CDBG assistance.

When counting jobs, the following policies apply:

- ✓ Part-time jobs must be converted to full-time equivalents (calculated on the basis of 2,000 hours per year).
- ✓ Only permanent jobs may be counted.
- ✓ Transferred jobs (those that involve one employee moving from one location to another) may not be counted.
- ✓ Seasonal jobs may be counted only if the season is long enough for the job to be considered the employee's principal occupation.
- ✓ Jobs indirectly created or retained by an assisted activity may not be counted.

Tip: **The documentation required for demonstrating compliance with the job creation/retention national objective is different for jobs/businesses located in areas meeting certain poverty levels and for employees living in those areas. Contact DLG or review the Guide to National Objectives and Eligible Activities for State CDBG Programs for more information.**

Guide to National Objectives and Eligible Activities for State CDBG Programs
https://www.hudexchange.info/resource/2179/guide-national-objectives-eligible-activities-state-cdbg-programs/

The grantee is required to monitor the progress of the assisted business in fulfilling the hiring and LMI job requirements. The business should maintain employee surveys and Equal Employment Opportunity (EEO) information, along with payrolls or employee lists from each phase in a business's hiring plan, to document compliance with KCDBG requirements. It is recommended that these records be maintained separately from a business's individual personnel records and reported to the grantee on a regular basis.

The business must continue to collect income verifications and other required information for all applicants and employees until they reach the number of jobs promised in the hiring plan and the jobs are monitored or verified by DLG. The form to collect and document this information is provided as Attachment 11-1. When all jobs have been created or retained, DLG may monitor the hiring and LMI job documentation at the business. The business must maintain KCDBG records for a period of five years after the recipient's final grant close-out has been completed.

Attachment 11-1:
Employee Survey Form

Attachment 11-2: Employee Characteristics Summarization

Other LMI Options

Another national objective used for economic development is low- and moderate-income area benefit. This national objective may be used when the activity will benefit a LMI area. For example, if the grantee is funding a grocery store in a neighborhood that is at least 51 percent LMI, that project may qualify under the area benefit national objective. If this national objective is used, the grantee must document the service area of business and then demonstrate through Census or survey data that at least 51 percent of the residents are LMI.

Microenterprise activities may be undertaken under the low-and moderate-income limited clientele national objective only if the owner of the business is LMI (i.e., has income at or below 80 percent of the area median income). In these cases, the grantee must document the income of the business owner. (The business employees may be non-LMI.)

Some Non-Traditional Economic Development projects support LMI workers with job training and placement or other support services such as peer support, counseling, childcare, and transportation. This could also include public/service facilities in support of economic development activities. This type of project may qualify under the low- and moderate-income limited clientele national objective. To meet this national objective, generally, at least 51 percent of the persons benefiting from the activity must be low- and moderate-income. For additional ways to meet the LMI limited clientele national objective, contact DLG.

Finally, economic development projects may occasionally be undertaken under the slum and blight national objective. Use of this national objective is limited and will be reviewed by DLG on a case-by-case basis.

Section 11-B. Agreements, Loan/Lease Documents, Security Requirements and Closings

Legally Binding Agreements

Economic development projects must involve a Legally Binding Agreement to further detail the minimum requirements of each respective party involved in the project. A sample agreement is provided as Attachment 11-3.

Attachment 11-3:
Sample Legally Binding Agreement

In some instances, the grantee may be passing the grant through a third party entity such as a subrecipient or a Local Development Authority (LDA). In those projects, an agreement must also be entered into with the third party entity. A tri-party agreement can be used in those instances among the grantee, the company or participating party, and the third party. A subrecipient or LDA is a nonprofit or public entity (other than the grantee) that is selected to play one or more roles in the project.

The grantee has some latitude in negotiating the best arrangement possible with the subrecipient or LDA and the assisted business provided they are within the confines of the grant agreement. The grantee must also develop specific procedures and requirements necessary to guarantee its security.

There are basically three requirements of a Legally Binding Agreement. It must set forth:

- ✓ Basic activities as established in Exhibits A, B and C of the grant agreement;
- ✓ Provisions required in Section 7 of the grant agreement and any other applicable provisions; and
- ✓ A statement that the agreement is contingent upon release of funds thereby avoiding any environmental review concerns.

When entering into an agreement with a business, a resolution establishing the authority of person(s) to enter into the legally binding agreement on behalf of the business must be attached to the agreement. A sample resolution is provided in Attachment 11-4.

Attachment 11-4:
Sample Resolution of Authority

The opinion of the grantee's legal counsel must accompany all legal documents. The certification to be used for this purpose is provided as Attachment 11-5. The grantee's legal counsel opinions may be combined into one document but must be clearly applicable to all legal documents. At a minimum, legal counsel must certify the authority of each party to sign, state that the document constitutes a valid and legally enforceable contract under the laws of the Commonwealth, and indicate that all documents are in conformance with the grant agreement.

Attachment 11-5:
Sample Certification of Legally Binding Agreements and Loan/Lease Documents

Loan/Lease Documents

The Legally Binding Agreement does not incorporate a loan/lease agreement that provides the financial terms of a project and any other special conditions. Therefore, loans/leases must be executed by separate agreement and must be submitted to DLG as part of the evidentiary materials at the grant agreement stage of the process.

Loan/lease documents must contain:

- ✓ Rate and term of loan/lease;
- ✓ Payment terms, default provisions;
- ✓ Any special conditions attached to the loan/leases;
- ✓ Any other provisions deemed appropriate by legal counsel; and
- ✓ A call provision allowing collection of CDBG funds for failure to meet job projections.

Grantees should be aware that there are several different types of leases. An operating lease is a traditional lease whereby the party leasing the property (lessee) from the owner of the property (lessor) pays the lessor a fee for use of the property. A capital lease allows the lessee to record the property as an asset because of certain conditions of the lease (e.g., ownership of the property will transfer to the lessee at the end of the lease term). A lease-purchase agreement is a lease agreement for the lease, use, and ultimate purchase of industrial equipment by the lessee with CDBG funds. The payment of the CDBG

funds will go to the lessor. A sample lease-purchase agreement is provided as Attachment 11-6 to this chapter.

As stated previously, the opinion of the grantee's legal counsel must accompany all legal documents (use Attachment 11-5). In addition, loan/lease documents must be filed with the county clerk.

Attachment 11-6:
Sample Lease-Purchase Agreement

Attachment 11-5:
Certification of Legally Binding Agreements

Security

Security for the loan is a very serious matter that can cause numerous problems if not done properly. An important consideration is that the loan be secured as soundly as possible and that the repayment schedule and payment procedures are understood clearly by both the debtor and the grantee. The bank or attorney should be able to produce a repayment (amortization) schedule with principle and interest clearly delineated. Grantees should follow the grant agreement in terms of monthly and annual repayment requirements.

The security documents must describe property to be mortgaged or offered for lien in as much detail as available and clearly identify the position for which security is offered.

- ✓ Mortgages against real property must contain, at a minimum:
  - A legal description of the property,
  - Certification of ownership, and
  - Identification of any claims against the property.
- ✓ Equipment liens must contain the same information as mortgages except that the legal description is to include the make, model number, and serial number of each item of equipment being used as security.

Security agreements must be filed with the county clerk and other appropriate local or state agencies.

Loan Closings

If the economic development project involves a loan to a business, a loan closing must be held to execute the required documents. At loan closing, promissory notes, loan agreements, mortgages, or other appropriate documents must be signed. Signed security documents must be immediately recorded unless specific collateral cannot be identified by serial number or model number (such as equipment not yet delivered). In such instances, alternate security must be approved by DLG prior to the draw of funds.

Documents must be prepared by an attorney and be accompanied by certification containing at a minimum, the following information:

- ✓ Real Property Transfer
  - Title indicating the property is free and clear for transfer as offered;
  - Any deed limitations, covenants, or restrictions applicable to the property;
- ✓ Security Documents
  - Certification that property records have been researched;

- Certification that the collateral position(s) required is available; and
- Certification that the KCDBG loan is not subordinated below the level required by the grant agreement.

DLG must be notified in advance of the grantee's intent to close a loan. All required evidence and documents must be submitted with the request for payment. At that time, the grantee must declare a tentative closing date. Since Automated Clearing House (ACH) transfers occur on the 15th and 30th of the month, loan closings should be held on these dates or within a five day period after these dates of the month. DLG staff may attend loan closings to verify that documents are signed and filed.

A desk closing can be conducted if all legal documents are signed, filed, and submitted to DLG prior to the release of funds. All security documents must be recorded in the county courthouse to assure proper lien filing. This includes lease documents, especially those that are to be capitalized.

Section 11-C. Public Benefit

The CDBG Statute and regulations require that activities undertaken under the Traditional Economic Development and Non-Traditional Economic Development Programs have a financial analysis conducted in accordance with HUD and DLG guidelines to determine the feasibility and viability of the project and parties involved. Information would be submitted as a part of the application package and will be reviewed by DLG.

42 U.S.C. 5305(a)(14)—(17) and 570.482(e) and (f)

Tip: **Applicants should <u>not</u> negotiate the final loan terms with the third party for-profit business. Consult with DLG before negotiating. Any pre-negotiated terms are subject to change by DLG.**

There are two types of requirements related to public benefit. First, there are requirements related to the ratio and use of public and private funds (underwriting) and second, there are requirements related to the jobs or goods and services benefits of the KCDBG-funded activity. Each of these is described below.

Ratio and Use of Public and Private Funds

The Federal CDBG regulations contain Guidelines and Objectives for Evaluating Project Costs and Financial Requirements. These guidelines are designed to assist grantees in underwriting economic development projects and in determining which projects are financially viable and will result in the most efficient use of CDBG funds.

24 U.S.C 570 Appendix A—Guidelines and Objectives for Evaluating Project Costs and Financial Requirements.

The use of the guidelines provided as an appendix to the Federal CDBG regulations at 24 CFR Part 570 is required. In other words, grantees must use either the guidelines provided in the regulations or an equivalent set of guidelines.

There are several underwriting criteria that grantees should follow. Each of these criteria is discussed below.

Leverage and Use of KCDBG Funds

Under the KCDBG Program, the impact of CDBG must be maximized and the use of the KCDBG funds must be reasonable. In general, the grantee should clearly establish that there is a need for the investment of public resources.

DLG requires that to demonstrate the need to use KCDBG funds, the grantee must show that all other public and private sources of funds have been reviewed and applied to the project (as feasible). Typically, projects that are eligible for KCDBG funding have a financing gap once all other sources are analyzed.

A financing gap is determined as follows:

- ✓ **Step 1:** Determine the budget.
- ✓ **Step 2:** Calculate the amount of debt the project can support.
- ✓ **Step 3:** Compute the amount of equity the project can generate or the owner has available.

If the budget is greater than/equal to the sum of debt plus equity, then there is a financing gap. If the budget is less than the sum of debt plus equity, there is no financing gap and, therefore, no need for public investment.

Funding Commitments

Before KCDBG funds are disbursed, ensure that all debt and equity are firmly committed to the project.

All other sources of funds do not have to be in place prior to application. However, the authorization of a KCDBG grant or loan may be made contingent upon conventional financing.

DLG wants to avoid the risk of approving and disbursing funds to finance a portion of the project without sufficient funds from other sources to complete the development.

Reasonable Costs

All costs under the KCDBG program must be reasonable and must demonstrate the efficient and effective use of funds. DLG will review the project budget to ensure that proposed costs are reasonable. Applicants should review this budget prior to submission of the application.

If the budget is overstated, it would be unwise to devote scarce public resources to the project as this surplus usually ends up as an unintended fee to a developer or entrepreneur.

Conversely, if the budget is understated, the quality of the project may be adversely affected which could also reduce income available for debt service. In extreme cases, the project may go unfinished.

Applicants can control these risks in the following ways:

- ✓ Receive project quotes from independent third parties;
- ✓ Cost certify;
- ✓ Compare subject with cost of comparable projects;
- ✓ Use guaranteed contracts, performance bonds or letters of credit; and
- ✓ Use retainages for contractor's fee, developer's fee or leasing reserve.

Reasonable Return

The financial benefit the business receives should approximate a market return. Applicants should review the pro-formas and other information submitted by the third-party business and ensure that return is reasonable. DLG will not fund projects where KCDBG funds are subsidizing an excess return to the business.

Reasonable rates of return will vary by location and project type. Applicants needing guidance on reasonable rates of return are encouraged to contact DLG.

Project Feasibility

KCDBG will review all economic development applications to ensure that projects appear feasible and are likely to succeed. Applicants should conduct a similar analysis prior to submission of the application.

Once an applicant has established the need for public funds, it must estimate repayment terms. If the terms are too harsh, the survival of the economic development venture is jeopardized. If the terms of repayment are too lenient, the public funds will overly compensate the project. As noted above, financing terms should not be finalized until DLG approves of the project.

KCDBG Funds Disbursed Pro Rata

As a general rule, KCDBG funds should be disbursed proportional to the percentage of the project they fund. For example, if KCDBG funds are 20 percent of the project, KCDBG funds should not exceed 20 percent of the aggregate proceeds disbursed. One exception might be if funds are allocated to acquisition and the property must be purchased first.

Program Income/Miscellaneous Revenue

Economic development activities funded by CDBG typically generate repayments. In some cases, repayments of CDBG are considered program income and subject to all CDBG and related requirements. Certain activities by nonprofit development entities that qualify under Section 105(a)(15) of the CDBG statute are exempt from the program income requirements and thus those funds are considered miscellaneous revenue/LDA proceeds. Both types of funds can be placed in a revolving loan fund if the DLG provisions governing such are met. Refer to Chapter 3: Financial Management for more information on the definition and use of program income, including revolving funds.

24 CFR 570.489
Chapter 3: Financial Management

Public Benefit Standards

When CDBG funds are used for economic development projects under statutory sections 5305(a) (14), (15) and (17), the Federal CDBG rules require the application of specific Public Benefit Standards. The Public Benefit Standards are really a “cost per job” or “cost per goods and services” calculation used to determine if the CDBG financial assistance is appropriate. Use of these standards is mandatory.

The Public Benefit calculation must be done before the economic development activities are undertaken, and is separate from the national objective requirement that 51 percent of the jobs actually created or retained be taken by LMI persons.

The grantee is strongly advised to enter a performance agreement with the business(es) that specifies the hiring commitments and time frames and that holds the business responsible for repayment of any CDBG funds required due to a failure to fulfill CDBG hiring requirements. At its option, DLG may require such a performance agreement as a condition of funding.

There are two types of public benefit standards that the grantee may use. The dollars per job test is available to any economic development project. The goods and services test is available to economic development projects that provide goods and services to a LMI community. When a project both creates jobs and provides goods and services, grantees may document benefit under either option.

Calculating Dollar per Job Public Benefit

The dollar per job public benefit calculation begins by determining the total number of jobs to be created or retained as a result of the activity for each particular business for which the activity is principally being undertaken. When counting jobs within each applicable business for public benefit purposes, include all jobs to be directly created or retained as a result of each economic development activity.

The total "CDBG cost per job" is then calculated by dividing:

- ✓ The total dollar amount of CDBG funds to be spent for the activity, by
- ✓ The total number of permanent jobs created or retained by the business for which the project is principally being undertaken.

Total number of jobs is based upon full-time equivalents (FTEs). For DLG, full-time is based upon 2,000 hours per year. If a permanent, part-time job is created, the grantee must determine the proportion of an FTE that is created. For example, a half time person is .5 FTEs.

It is DLG's policy not to allow grantees to expend more KCDBG than $20,000 per job created or retained.

Public Facilities Projects With Per Job Cost of $10,000 or Less and Job Tracking

Sometimes KCDBG funds are used for public facility activities that are designed to create jobs. An example of this might be a water/sewer line constructed for an industrial park.

24 CFR 570.483(b)(4)(vi)(F)

When the KCDBG cost of the project is $10,000 or less per job, the public benefit standards are not triggered. If the cost exceeds $10,000 per job, the standards are triggered. Note that in addition to the public benefit standards, the national objectives are calculated differently depending on whether the project exceeded $10,000 per job. If this is the case, the grantee is required to complete an assessment plan/restrictive covenant requiring job reporting recorded on properties benefiting from the infrastructure improvement. It must cover any other business for a one-year period.

Calculating Goods and Services Public Benefit

The second option for proving a sufficient public benefit is to show that goods and services are being provided to LMI families in a local service area. Thus, this public benefit option is only provided to those projects where the business will sell goods or services to the public. This generally means that the activity will be retail in nature.

This test is calculated by first determining the number of people living in the service area of the business. The grantee must then determine the portion of those people who are LMI. The grantee then divides the KCDBG expenditure by the total number of LMI people in the service area to obtain an estimate of the KCDBG dollars per LMI person receiving goods or services.

If the KCDBG expenditure per LMI person exceeds $350 per LMI person, the project is generally deemed to have an insufficient public benefit.

Documenting Public Benefit

Public benefit calculations are included as a part of the KCDBG application. However, grantees must maintain files detailing their compliance with these requirements. In general, grantee files should contain:

- ✓ Documentation of the amount of KCDBG funds received;
- ✓ Documentation of the basis for the estimated number of jobs to be created/retained or the number of LMI families in the service area; and
- ✓ Documentation of the calculation showing that the applicable public benefit standard was met.

Section 11-D. Applicability of Other Requirements

Economic development projects funded by DLG are subject to the range of requirements established in the other chapters of this manual. This section briefly highlights how these requirements are applied to economic development activities. For more detail about these requirements, please see the other chapters of this manual.

Project Administration

In general, all of the requirements explained in Chapter 1: Project Administration apply to economic development. Of particular interest for economic development are the submission requirements prior to release of funds. For these projects, in addition to all standard submission items, grantees must submit:

Chapter 1: Project Administration

- ✓ The legally binding commitments between subrecipients or LDA's, participating parties, and the grantee.
- ✓ Loan or lease agreements (as applicable), including the rate and term of loan or lease, payment terms, default provision, and any special conditions. The documents must contain a call provision should the project fail to meet the job requirements or other grant conditions.
- ✓ Security documents (as applicable), including describing the property to be mortgaged and the lien position.
- ✓ Certification by legal counsel for the above documents, including certifying to the authority of each party to sign, that the contract is legally enforceable, and that the documents are in accord with the grant agreement.
- ✓ Grantee Revolving Fund Guidelines (as applicable).

In addition, HUD's performance measurement data collection requirements apply to economic development projects. Specifically, activities qualifying under the job creation and retention national objective must report jobs by job classifications, such as whether the person filling the job were previously unemployed, and whether the job includes health care benefits. The job classifications are provided as Attachment 11-7 to this chapter.

Attachment 11-7:
Job Classifications
for Performance Measurement

Environmental Review

No KCDBG funds for economic development may be committed or drawn down until the environmental review is completed. Grantees must follow all the rules described in Chapter 2: Environmental Review.

Chapter 2:
Environmental Review
24 CFR Part 58

Depending upon the type of economic development project, different levels of environmental review may be required. For example, Non-Traditional projects that provide job training are likely to be exempt from environmental review. On the other hand, Traditional projects where a business will receive funding and where it will construct an industrial facility may require an environmental assessment (EA).

Grantees are encouraged to carefully read Chapter 2 as it applies to their specific project and consult with DLG regarding any questions.

Financial Management

Chapter 3 provides an overview of the financial management requirements. In addition to all of the standard financial requirements, grantees of economic development projects must follow specific procedures pertaining to agreements, leases, loan documents and security. Refer to Section B of this chapter for more information.

Chapter 3: Financial Management

Procurement and Contracting

Certain economic development activities may trigger procurement requirements. For example, if a grantee or a subrecipient/LDA is directly undertaking an economic development construction project, the hiring of that construction contractor is subject to the procurement requirements stated in Chapter 4: Procurement. However, procurement requirements do not apply to private, for-profit entities receiving CDBG assistance though costs must be reviewed to ensure reasonableness and eligibility.

Chapter 4: Procurement
Chapter 5: Contracting

Grantees should also review Chapter 5 to ensure that all contracting provisions are met including ensuring the inclusion of all applicable required provisions in contract documents.

Labor Standards

As noted in Chapter 6: Labor Standards and Construction Management, the federal and state labor standards provisions may be triggered for KCDBG projects. For economic development projects, this will typically occur when there will be construction in the activity. For example, the grantee might provide funds for construction of infrastructure to a facility or to finance purchase of equipment and its installation.

Chapter 6: Labor Standards
and Construction Management

Specifically, Davis Bacon and the Copeland Anti-Kickback Acts will be triggered for any economic development activity where the construction contract exceeds $2,000. When CDBG funds are used in whole or in part to finance equipment, the applicability of wage rates to the installation cost must be determined. An equipment analysis must be completed, in which all items of equipment are included along with an explanation of related installation/modification costs. Please contact DLG if assistance is needed in making this determination.

In addition to these requirements, other related requirements may also apply to the economic development project, including:

- ✓ Section 3;
- ✓ Equal Opportunity;
- ✓ The Contract Work Hours and Safety Standards Act; and
- ✓ Various Kentucky laws.

Grantees are encouraged to carefully read Chapter 6 and consult with DLG to determine if Davis Bacon and other labor standards requirements are triggered for individual economic development activities.

Chapter 6: Labor Standards and Construction Management

Acquisition and Relocation

The Uniform Relocation Assistance and Real Property Acquisition Act (URA) may be triggered for some economic development activities. Chapter 8: Relocation, Displacement, and One-for-One Replacement and Chapter 9: Acquisition discuss these requirements in detail.

The acquisition requirements of the URA may apply to the purchase of sites or properties for economic development activities. If the grantee will use or threaten to use its power of eminent domain, it must comply with the involuntary sales requirements set out in the URA and in Chapter 8 of this manual. These requirements include advisory services, appraisals, review appraisals, and payment of just compensation.

Chapter 8: Relocation, Displacement, and One-for-One Replacement
Chapter 9: Acquisition
HUD Handbook 1378

This involuntary acquisition process is less common for economic development activities. However, it may occur in instances such as when a grantee wishes to undertake commercial revitalization of a specific area and thus will acquire all sites in that area. See Chapter 9 for more detailed information about when the involuntary sales procedures are required.

In the instance when a private entity (such as a business) will buy property or when a grantee is buying property but not under threat of eminent domain, the voluntary sales transaction requirements are used. Under these instances, a voluntary sales notice is submitted to the seller informing him or her that the buyer party either does not have the power of eminent domain (businesses) or will not use its power of eminent domain (grantees) in purchasing the property. See Chapter 9 for more information about voluntary sales.

Relocation can be triggered by economic development activities. See Chapter 8 for more details on relocation requirements.

Fair Housing & Equal Opportunity

The fair housing and equal opportunity requirements described in Chapter 7: Fair Housing and Equal Opportunity apply to economic development projects in the same way that they apply to other types of KCDBG activities. Grantees should ensure compliance with the requirements stated in Chapter 7, as applicable.

Chapter 7: Fair Housing and Equal Opportunity

Amendments and Close-Out

Economic development projects follow the standard DLG requirements for grant amendments. Grantees should review Chapter 12: Amendments and Monitoring for more information on the amendment process.

Chapter 12: Amendments and Monitoring
Chapter 13: Project Closeout

In preparing the Project Completion Report at close-out, there are certain special requirements that apply to economic development projects. These requirements may be found in Chapter 13: Project Closeout.

- ✓ As noted above, the grantee must document jobs created and/or retained if that is the national objective used. It is the grantee's responsibility to determine specific statistical information on those persons benefiting from the project.
- ✓ The grantee must also document the investment of other funds into the project. The investment may include private investment, public investment, and program income. For each area, the grantee will give the source of investment, use, amount per grant agreement, and amount invested to date. Documentation may take the form of loan agreements, construction contracts, invoices, payrolls, cancelled checks, etc. A certification from the company's treasurer and president may also suffice for the documentation.

Chapter 12: Amendments and Monitoring

Introduction

This chapter provides information to KCDBG grantees on amendments to project activities and/or budgets. It will define what is considered an amendment and the process for amending a project. This chapter also discusses the technical assistance and monitoring aspects of the program both in terms of what DLG does as well as grantee responsibilities.

Section 12-A. Project/Budget Amendments

When an Amendment Is Required

A project/budget amendment is defined as a:

24 CFR 570.486(a)(6)

- ✓ Change in the approved budget for a project; and/or
- ✓ Change in the purpose, scope, location or beneficiaries of an activity from what was in the grant application and approved by the state.

Grantees are advised to contact their DLG representative if problems emerge which might lead to project modifications, or if any change is contemplated. Early notification of potential problems will permit DLG to work with the grantee to try to resolve them and to determine which additional CDBG requirements may be triggered should a project amendment be necessary.

Procedures for Project/Budget Amendments

Attachment 12-1:
Request for Project/Budget Amendment Form

Any change to the scope or budget for an approved activity is considered an amendment and requires DLG approval prior to taking effect. A Request for Project/Budget Amendment Form must be completed, signed by the mayor/county judge/executive and submitted to DLG. Additional CDBG and related requirements may also apply depending upon the magnitude of the amendment. (Please refer to the *Project/Budget Amendment Checklist* table later in this section for more information.) Note that DLG will allow for changes necessary for project completion but does not expect the changes to alter the project completion date.

Because grants were selected for funding based on a proposed project, the amendment will be reviewed carefully by DLG, and the grantee will be notified of approval or disapproval. A grantee should never proceed with requested change(s) until it receives written approval from DLG.

Substantial Amendments and Compliance with Additional Requirements

42 U.S.C. 5304(a)(2)(E)
and 24 CFR 570.486(a)(6)

Upon receipt of the Project/Budget Amendment Form, DLG will determine if the proposed change is considered substantial under the CDBG regulations. The determination as to whether an amendment is considered substantial is critical, as it will dictate whether additional CDBG requirements are triggered by the amendment. Substantial amendments are

changes to a project of such a size or magnitude that warrant notification to the public and a review of compliance with other requirements such as environmental review. Examples include a public facility project that was intended to be located in one area of the community but is now proposed to be located on a different site in the community, or a project that was intended to provide jobs that is now proposed to benefit a limited clientele.

DLG will notify the grantee once a determination has been made. If the change is considered substantial, several additional actions must be taken prior to the grantee proceeding with the new activity.

Title 1 of the Housing and Community Development Act requires that significant modifications of the proposed activities meet certain citizen participation requirements. Specifically, citizens must be provided reasonable advance notice of and the opportunity to comment on substantial changes to a CDBG-funded project. This means that grantees must hold a public hearing to inform the public of the proposed change. The hearing must be advertised in a newspaper at least seven days prior to the hearing. Evidence of the advertisement (tear sheet) and attendees to the hearing must be provided to DLG along with the Request for Project/Budget Amendment Form.

One of the first action items if making substantial project changes is to hold a public hearing

Additional requirements may also apply to substantial amendments pertaining to the items listed below. Refer to the *Project/Budget Amendment Checklist* table for more information.

- ✓ Environmental review;
- ✓ Clearinghouse endorsement; and
- ✓ National objective documentation.

Tip: **Contact DLG as early as possible if you think a substantial amendment may be required. DLG can help grantees identify all the additional required actions so they can be completed in a timely manner and not delay the project.**

Project/Budget Amendment Checklist

Item	Action/Requirement
Change in Scope	Activity Amendment.
Beneficiary Update	Complete Benefit Profile form.
Clearinghouse Assurance	If the amendment is considered substantial, changes will have to be submitted to the Clearinghouse for an updated endorsement.
Public Hearing	If the amendment is considered substantial, a public hearing is required. Grantee must advertise the hearing at least 7 days in advance.
National Objectives	All changes must be eligible activities and qualify under a National Objective.
Environmental Review	If the amendment is considered substantial, environmental clearance needs to be updated.
Budget Amendment	Approved before submitting draw request.
Change in Scope	Activity Amendment.

When Projects Cost Less than Planned

As a project nears completion and it becomes apparent that the final project costs will be less than anticipated and budgeted, the grantee must contact DLG regarding the next steps. Grantees should not proceed with additional activities without DLG review and approval.

Section 12-B. Technical Assistance and Monitoring

Overview

It is the goal of DLG to assist and support recipients in complying with applicable state and federal requirements and in implementing their project activities in a timely manner. There are two corollary ways that DLG accomplishes this. First, DLG provides ongoing technical assistance (TA) and training. This occurs in a variety of methods:

- ✓ DLG staff fielding and answering questions;
- ✓ Meetings and site visits with local staff and officials to discuss potential projects and program requirements;
- ✓ Application documents and workshops;
- ✓ Posting of this handbook and other resources on the DLG website; and
- ✓ Regular training sessions for both new and experienced grant administrators.

Monitoring is the other primary mechanism to ensure compliance occurs. As such, it is important that grantees have a clear and common understanding of the monitoring process and procedures. This section provides information on the scope and frequency of monitoring, and roles of the monitoring staff, and the key steps involved in the monitoring process. Grantees may also request assistance from DLG at any time.

Title I outlines the review responsibilities of the state. DLG is required by Title I of the Housing and Community Development Act of 1974, as amended, and 24 CFR Part 570.492 of the State CDBG Regulations to monitor its KCDBG grantees. The review responsibility requires that the state ensure three key areas are in compliance:

42 U.S.C. 5304(e)(2) and 24 CFR 570.492

- ✓ Approved activities are carried out in a timely manner;
- ✓ Activities and certifications are conducted in accordance with the requirements and the primary objectives of Title I and with other applicable laws; and
- ✓ Grantees show a continuing capacity to carry out approved activities in a timely manner.

The Monitoring Process

The monitoring review may be a comprehensive evaluation of all aspects of the program or project for all aspects of compliance or it may be oriented toward assessing compliance in a specific area or areas. The reviews may be conducted at DLG's offices or on-site. The depth and location of the monitoring will depend upon which compliance areas need to be reviewed. Note, however, that a full scope monitoring of all compliance areas should be conducted at least once for each funded activity. Exhibit 1, on page 12-6, illustrates the process in a flow chart.

Monitoring also provides an opportunity for grantees and/or grants administrators to seek technical assistance in areas of concern or confusion.

Scheduling the Visit

A visit is scheduled in advance. The Chief Executive Officer (CEO) of the grantee, as well as the grant administrator, is notified of the date, time, location and purpose of the review visit in writing.

Entrance Meeting/Interview

Once on-site, the first thing that typically occurs is an entrance meeting/interview. DLG staff will conduct an entrance meeting/interview to state the purpose of the review and outline which files and documentation will be needed during the review. Grantees should be prepared to provide an overview of the project as well as its status and any issues prior to the beginning of the reviews. The DLG staff will also ask about particular concerns or needs regarding the project so that technical assistance can be scheduled, if appropriate.

Monitoring of Files and Other Documentation

Utilizing appropriate checklists, the DLG staff will review the files to determine if all requirements have been met. The primary areas being examined are consistency with the specific terms of the grant agreement and compliance with state and federal requirements.

Record keeping is the most important component of monitoring.

- ✓ Grantee files pertaining to the CDBG project must be orderly and complete.
- ✓ In addition, if files are maintained by or located in another office such as an engineer or clerk, these files should be obtained and available for review.

If there are areas that are discovered during the review that indicate noncompliance with the laws, regulations or other requirements, this may result in a finding. A finding of non-compliance must be remedied. A finding can result in a sanction if corrective action is not taken in a specified manner and/or timeframe. For each finding, DLG must indicate a corrective action, either to correct a past problem or to avoid a future problem, which must be taken by the grantee. A deficiency in program performance not based on a statutory, regulatory, or other program requirement is a concern. Corrective actions are not required for concerns, but DLG may recommend actions to address concerns.

Findings with corrective actions must be outlined in the Monitoring Review Letter. Concerns may also be included. Monitoring letters are discussed further below.

Tip: **Most of the previous chapters include a brief section on monitoring and record keeping as it relates to each topic. Refer to those sections for details on what to expect from monitoring and which files to have on hand for the review.**

Exit Meeting/Interview

At the conclusion of the review, DLG staff may conduct an exit interview with the grantee, if requested or appropriate. The meeting typically includes local officials and the grants administrator and provides a tentative summary of the results of the review. If problems are apparent, including any findings or concerns, the grantee has an opportunity to provide more information or clarification.

The DLG reviewer will also indicate the timeframe in which a monitoring letter will be sent, the process for requiring the grantee to address any findings, and the consequences for not addressing compliance issues in a timely manner.

Finally, the DLG reviewer will discuss any further technical assistance that is requested or needed. It may be needed to make arrangements for such technical assistance to be provided at a later date.

Review Letter and Follow-Up Actions

The grantee will receive a formal review letter giving the results of the review. This letter will generally be within 30 days of the conclusion of the monitoring review; however, a longer time frame may be appropriate based on workload and the complexity of the issues at hand. The letter will:

- ✓ Summarize the area(s) reviewed and performance expectations,
- ✓ Provide a summary and an analysis of what was discovered during the review, and
- ✓ List all findings and recommended corrective actions to resolve the findings and the timeframe in which the corrective actions must be carried out.

The review letter may also include one or more recommendations. These are matters that, if not properly addressed, can become a finding and can ultimately result in sanctions. Recommendations are often used to point out operational or management problems, or patterns of performance that could lead to larger problems later, even if they are not evident at the time of the review. Recommendations may require some form of response on the part of the grantee.

The grantee must respond in writing within 30 days to any findings and recommendations listed in the compliance review letter.

- ✓ The grantee will describe all corrective actions taken or provide new information not reviewed during the visit. The corrective actions must be consistent with the recommendations made by DLG in the monitoring letter.
- ✓ The grantee's Chief Executive Officer must certify that all regulations will be observed in future transactions and provide written assurance that no adverse effects occurred to the project for failure to observe said regulations.

If issues are not resolved, DLG may, as outlined in the CDBG regulations, impose a progressive level of sanctions that include:

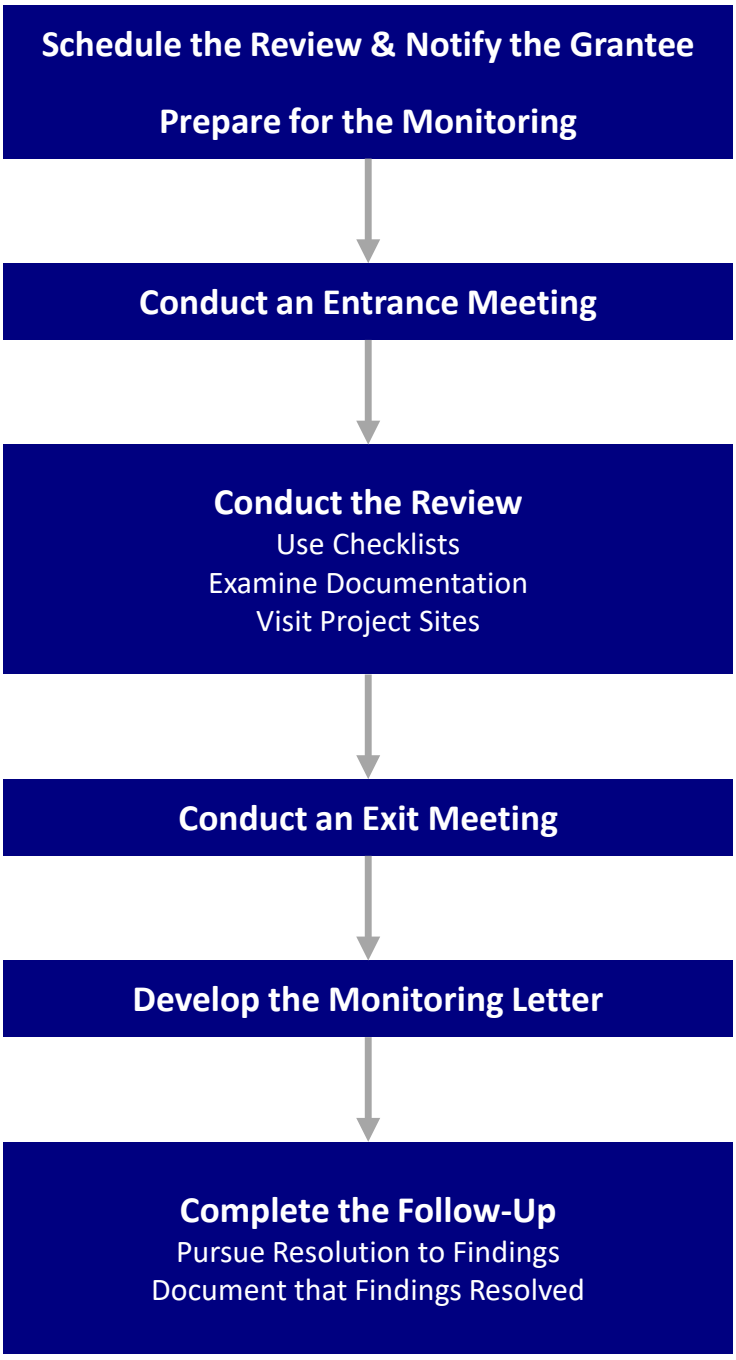
- ✓ Additional reporting,
- ✓ Suspension of funding,
- ✓ Additional special conditions,
- ✓ Return of disallowed expenditures,
- ✓ Termination of the grant, and/or
- ✓ Legal action.

DLG will inform the grantee if the response is sufficient to clear the findings. DLG will provide any assistance necessary during the review or after any findings or concerns are made to ensure that the

project is completed according to the grant agreement and all state and federal rules and regulations. No project will be closed if there are outstanding findings, including audit issues. (Refer to Chapter 13: Project Closeout for more information.)

Chapter 13: Project Closeout

Exhibit 1: KY CDBG Monitoring Process Flow Chart



Grantee Monitoring of Subrecipients

Grantees are responsible and liable for full compliance with all applicable laws, regulations and requirements that come with KCDBG funds. Therefore, when grantees pass on/through KCDBG funds to another entity to carry out a program, the grantee must ensure the subrecipient is carrying out that program in full compliance. The Office of Management and Budget (OMB) guidance issued December 26, 2013 regarding 2 CFR Part 200 (Omni Circular) emphasized the responsibility to manage and monitor subrecipients and to take action when performance and compliance issues arise. The information provided previously in this chapter regarding DLG monitoring and oversight of grantees can also be applied by a grantee at the subrecipient level. Additional guidance is available as indicated in the text box to the right. Grantees should inform DLG of any issues that arise and work collectively towards timely and appropriate resolution.

Chapter 3: Financial Management & HUD Office of Inspector General Integrity Bulletin "Subrecipient Oversight and Monitoring – A Roadmap for Improved Results" (Summer 2016) @ https://www.hudexchange.info/resource/5065/hud-integrity-bulletins/

Chapter 13: Project Closeout

Introduction

As KCDBG grant funds are fully spent and the project is completed, the grantee must begin the process of closing out a project. This chapter provides information to recipients on the project closeout process and requirements. The chapter details the steps to complete each task involved in closeout and provides the forms necessary to do so.

Section 13-A. Overview of the Closeout Process

Upon completion of KCDBG-funded activities, in accordance with program guidelines, the grantee enters project closeout, the final phase in the grant management process. In this phase, the grantee holds a public hearing and submits a final report to verify that KCDBG funds have been properly spent and that the grantee has complied with all applicable rules and requirements during the implementation of its program.

The CDBG closeout process consists of several key steps, including:

- ✓ Conducting a public hearing to inform citizens that the KCDBG grant is complete and will be closed out;
- ✓ Completing and obtaining approval of the Project Completion Report (PCR) and backup documentation; and
- ✓ If applicable, submittal of an audit and resolution of any audit findings.

It is important to note, however, that the closeout process cannot be fully completed until certain other conditions have also been met. These conditions include:

- ✓ A CDBG national objective must have been met;
- ✓ There must be no outstanding compliance review findings on the project;
- ✓ Any real property acquired has been disposed of according to the CDBG requirements and 2 CFR Chapter I and II, Parts 200, 215, 220, 225 and 230; and

2 CFR 200.311 (c) and 200.307(d)

- ✓ All required audits have been approved (refer to Chapter 3: Financial Management and Program Income).

Chapter 3: Financial Management and Program Income

Economic development projects must also have met the necessary job creation/retention and investment requirements. Refer to Chapter 11: Economic Development for more information on job creation/retention and investment requirements.

Chapter 11: Economic Development

Section 13-B. Public Hearing

The grantee must hold a second public hearing prior to project closeout, in accordance with the CDBG citizen participation requirements. (The first public hearing is held before submission of the grant application.)

The purpose of the hearing is to advise citizens of the progress made during the grant and pending closeout of the project. The hearing must be advertised in accordance with state law, which requires notification seven to 21 days prior to the date of the hearing in the newspaper of largest circulation in the jurisdiction. The advertisement must notify the citizens that the grant is nearing closeout and invite them to submit comments. A sample closeout public hearing advertisement is provided as Attachment 13-1 to this chapter.

Attachment 13-1:
Sample Closeout Public Hearing Advertisement

In addition, steps must be taken to:

- ✓ Ensure participation from low- and moderate-income (LMI) persons,
- ✓ Provide handicapped accessibility, and
- ✓ Accommodate non-English speaking people.

The grantee must indicate that all comments from citizens were considered or, if applicable, cite reasons for rejection of comments. The grantee must also file comments and responses in the citizen participation and closeout files (see Chapter 1).

Chapter 1:
Project Administration

Section 13-C. Project Completion Report

All grantees are required to submit a Project Completion Report (PCR) (see Attachment 13-2). This submission signifies that all grant activities are complete, beneficiaries have been served, other funds have been invested and, if applicable, jobs have been created or retained. It also includes information on the applicability and status of audits.

Attachment 13-2:
Project Completion Report

Completing the PCR

Grantees should use the format and instructions provided in this chapter and attachments in completing the PCR. The form is available under Administrative Forms at https://kydlgweb.ky.gov/FederalGrants/CDBG_cities.cfm.

The PCR includes nine parts:

- ✓ **Certification**: This section serves as a cover sheet with space for the grantee to certify compliance with the grant agreement, and for DLG to certify approval of the PCR.
- ✓ **Financial Summary**: Information on each activity, accomplishments, budget, expenditures, unpaid obligations and national objectives must be included in this part of the form. This form also requires information about other funds invested in the project.
  - The investment of other funds must be documented in project files in order to demonstrate that all financial elements of the project have been accomplished.
    - Documentation may take the form of loan agreements, construction contracts, invoices, payrolls, cancelled checks, etc.
    - For economic development projects, a certification from the company's treasurer and president may suffice for the documentation.

- The grantee's accounting system should clearly show the infusion of these funds into the project.

- ✓ **Project Benefit Profile by Person:** This section of the PCR requires information on the beneficiaries of projects by specific demographic and income categories.
- ✓ **Project Benefit Profile by Household:** This part of the PCR is for housing projects only and requires information on beneficiaries of housing projects by specific demographic and income categories. Note that beneficiaries in this case are reported at the household level rather than at the individual level.
- ✓ **Job Creation/Retention**: This matrix requires grantees to report the projection versus actual number of jobs created both overall and for LMI persons specifically. There is also space for the grantee to describe any factors that impacted the actual number of jobs created or retained.
- ✓ **Audit Information:** The audit portion of the PCR requires the grantee to supply information on the amount of CDBG expenditures by fiscal year as well as the total amount of federal awards in each fiscal year and whether an audit is required and has been submitted to the appropriate parties. Refer to Chapter 3: Financial Management for more information on audits.

Chapter 3: Financial Management

- ✓ **Unpaid Costs and Unsettled Third Party Claims:** This part of the PCR requires the grantee to list and explain any unpaid obligations and unsettled third-party claims resulting from the CDBG project.
- ✓ **Housing Unit Address Information:** This portion of the PCR requires that grantees that received KCDBG funds for housing activities provide the addresses of all housing units assisted.
- ✓ **Public Facilities Activities:** This portion of the PCR requires that grantees that received KCDBG funds for public facilities activities to provide a detailed project description including linear feet, pump stations, along with various documents including:

- ✓ **Section 3 Compliance -** This portion of the PCR requires that grantees provide the Section 3 compliance information for projects triggering the Section 3 requirements. Reporting will include the total labor hours for the project, Section 3 labor hours, and Targeted Section 3 labor hours. The grantee will be required to certify that they have followed the prioritization of outreach effort and report qualitative efforts made to comply with the Section 3 requirements.

In addition to the PCR form itself, there are several additional documents that must be submitted with the PCR as part of the closeout process:

- ✓ Evidence of the public hearing including a tear sheet of the notice, copy of the minutes and a copy of the sign-in sheet/list of attendees;
- ✓ Copy of written comments received on the performance of the grantee as well as the grantee's assessment of the comment and a description of any action taken or to be taken in response to the comment;
- ✓ For all projects that have generated or will generate program income, a current Program Income/Miscellaneous Revenue Report. (Refer to Chapter 3 for more information on program income and this report.)

Chapter 3: Financial Management

- ✓ For housing projects that have eliminated LMI housing stock, an updated One-For-One Replacement Summary Grantee Performance Report form (also known as the HUD 4949.4). (Refer also to Chapter 8: Relocation, Displacement and One-for-One Replacement.)

Chapter 8: Relocation, Displacement, and One-for-One Replacement

- ✓ For public facilities additional documents are required in order to closeout public facilities project such as Initiation of Operations, Engineer's Certification of Completion, Contractor's Release of Liens, and Owner's letter of Acceptance.

Chapter 3: Financial Management

Section 13-D. Notice of Completion and Closeout Letter

After reviewing and approving the Project Completion Report, DLG will send the grantee a letter stating that the PCR has been approved. If all other requirements have been fulfilled and the project is ready to be closed, DLG will also issue a Notice of Completion or Closeout Letter to the grantee. Note that a project cannot be closed out if there are any required audits outstanding or unresolved audit findings pertaining to the use of CDBG funds (refer to Chapter 3).

Section 13-E. Record Retention

Once the project has received final closeout, the grantee is required to retain all records pertaining to the project for a minimum of five years from the closeout of the project. Refer to Chapter 1: Project Administration as well as the other chapters of this handbook and the applicable regulations for more information on the records that must be maintained.

Chapter 1: Project Administration

Section 13-F. Change of Use Restrictions

The CDBG regulations contain provisions regarding changing the use of real property within the grantee's control that was acquired or improved, in whole or in part, with $150,000 or more of KCDBG funds. These provisions require that the property be maintained for the original eligible use and continue to meet a national objective for at least five years after grant closeout.

24 CFR 570.489(j)

If the project involved acquisition or improvement of real property using $150,000 or more in KCDBG funds:

- ✓ A grantee may not change the use or planned use of any such property from that for which the acquisition or improvement was made, unless DLG and grantee provide affected citizens with reasonable notice of and opportunity to comment on any proposed change; and
- ✓ The new use of the property must qualify as meeting one of the national objectives and is not a building for the general conduct of government. However, if DLG and the grantee determine, after consultation with affected citizens, that is appropriate to change the use of the property to a use that

does not qualify as meeting a national objective, it may retain or dispose of the property for the changed use if DLG is reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property. Following the reimbursement of the CDBG program, the property no longer is subject to any CDBG requirements.