# Kentucky CDBG Grant Administrator Certification Training

TEAM KENTUCKY®

DEPARTMENT FOR LOCAL GOVERNMENT

# Welcome!

- Welcome from DLG
- DLG Staff Introductions
- Your trainers:
  - Jennifer Miller
  - Les Warner
  - Kathryn Au

# Polling Questions

1. How familiar are you with the CDBG program requirements?
   - I am brand new – its all new to me
   - I have some knowledge of CDBG but need to learn more to be certified
   - I feel comfortable with the CBDG regulations but need to be certified

# Polling Questions

2. Anyone feeling anxious about taking the certification exam?
   - I have heard the test in hard – already feeling test anxiety
   - How hard can this be – I heard the test is open book
   - No problem – bring it on!

# Introductions

- Name
- Agency
- Anything you want to offer about your current role

# Training Overview


- Prepare you to administer a KCDBG grant!
  - Increase knowledge of key CDBG & other rules & requirements
  - Help you become familiar with DLG-specific KCDBG requirements & processes
  - Prepare you for the KCDBG administrators' exam (more to follow)
  - Prerequisite for the CDBG-DR Certification

# Course Materials

- Agenda
- KCDBG Handbook
- Trainer slides
- Test (Friday)

# Logistics

- Timing of breaks & lunch
- Please silence all electronic devices
- End of day quiz will review key topics from the day's materials
- Go ahead and ask the question – others are probably wondering the same thing

# KCDBG Certified Grant Administrator Program - Background

Who?

- All KCDBG grants administrators in KY
- Certification goes with individual not employer

How?

- Training plus exam
- Continuing training for certified administrators

Why?

- Opportunity for administrators to gain knowledge
- Ensures all administrators have basic level of capacity

# Grants Administrator Exam

- The exam:
  - Must get 75% correct to pass
  - Open book (and you can use your own notes)
  - Variety of question types
- Exam results provided within approximately 90 days
- Can review your test after all exams are scored at DLG offices upon appointment

# Test Preparation

- Listen carefully to trainers & take notes
- Review the related chapters in the handbook & flag important points/pages to review later
- Review topics covered each day in the evening
- Pay attention to attachments & locations of info & documents throughout the Handbook
- Prepare a summary or similar document of your own

# Handbook

- The following are VERY IMPORTANT for you to learn to navigate:
  - Table of contents
  - List of attachments
  - Glossary & acronyms

# Glossary - Key Terms

- Key terms used in this training:
  - HUD
  - DLG
  - KCDBG
  - Grantee
  - Beneficiary
  - Low-income, low & moderate-income
  - ERR

# Chapter 1: Project Administration

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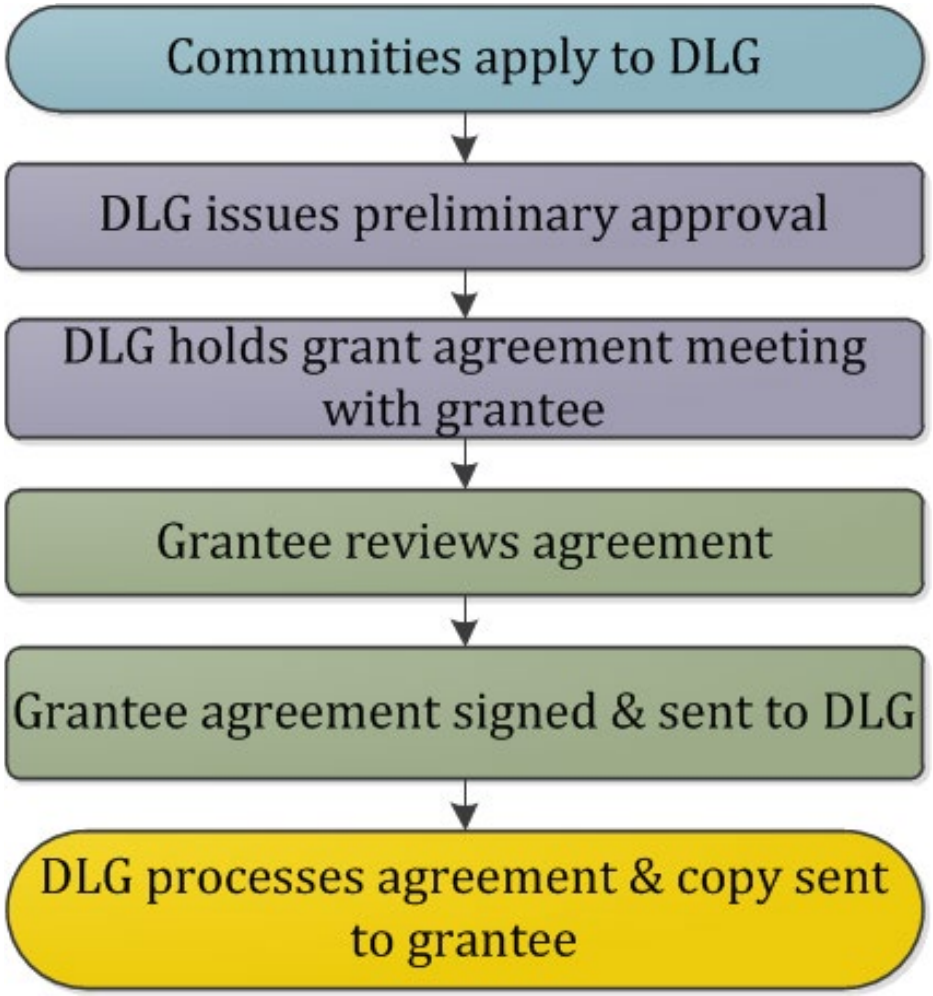
# Grant Award Procedures



# Evidentiary Materials

- Before spending KCDBG funds, approval of evidentiary materials required:
  - Environmental review documents & tear sheets
  - Firm commitments for other funds
  - Approval of Budget Ordinance
  - Anti-Displacement and Relocation Assistance Plan
  - Copy of approved KCDBG procurement code
  - Authorized Signature Form
  - Electronic Transfer of Funds Form

# Evidentiary Materials

- Fair Housing Resolution
- Section 504 Evaluation & Plan
- Policy of Non-discrimination
- Applicant/Recipient Disclosure/Update Form
- Cost overrun resolution
- State Clearinghouse assurance & comments
- Legally binding commitments
- Fully executed grant agreement
- Other documents (e.g., leases), as required

- Submit Request for Release of Funds

# Citizen Participation

- At least two public hearings required
  1. Needs assessment prior to application
  2. Review of performance at close-out
- Provide notices of hearings
  - Publish in newspaper of largest bona fide paid circulation at least 7-21 days prior to the hearing
  - Also distribute to public
  - Use sample in the Attachments
- Conduct hearings
  - Hearings must be held at a time and place convenient for the citizens of the project area
  - Have to accommodate non-English speaking residents if applicable
  - Facility must be accessible to persons with disabilities
- Summarize & respond to comments

# Grievance Procedures

- Must develop a complaint & grievance procedure
- Respond to complaints within 15 working days
- If DLG receives complaint:
  - Send to grantee
  - Grantee must respond within 15 working days, where practical
  - Send copy of resolution letter to DLG

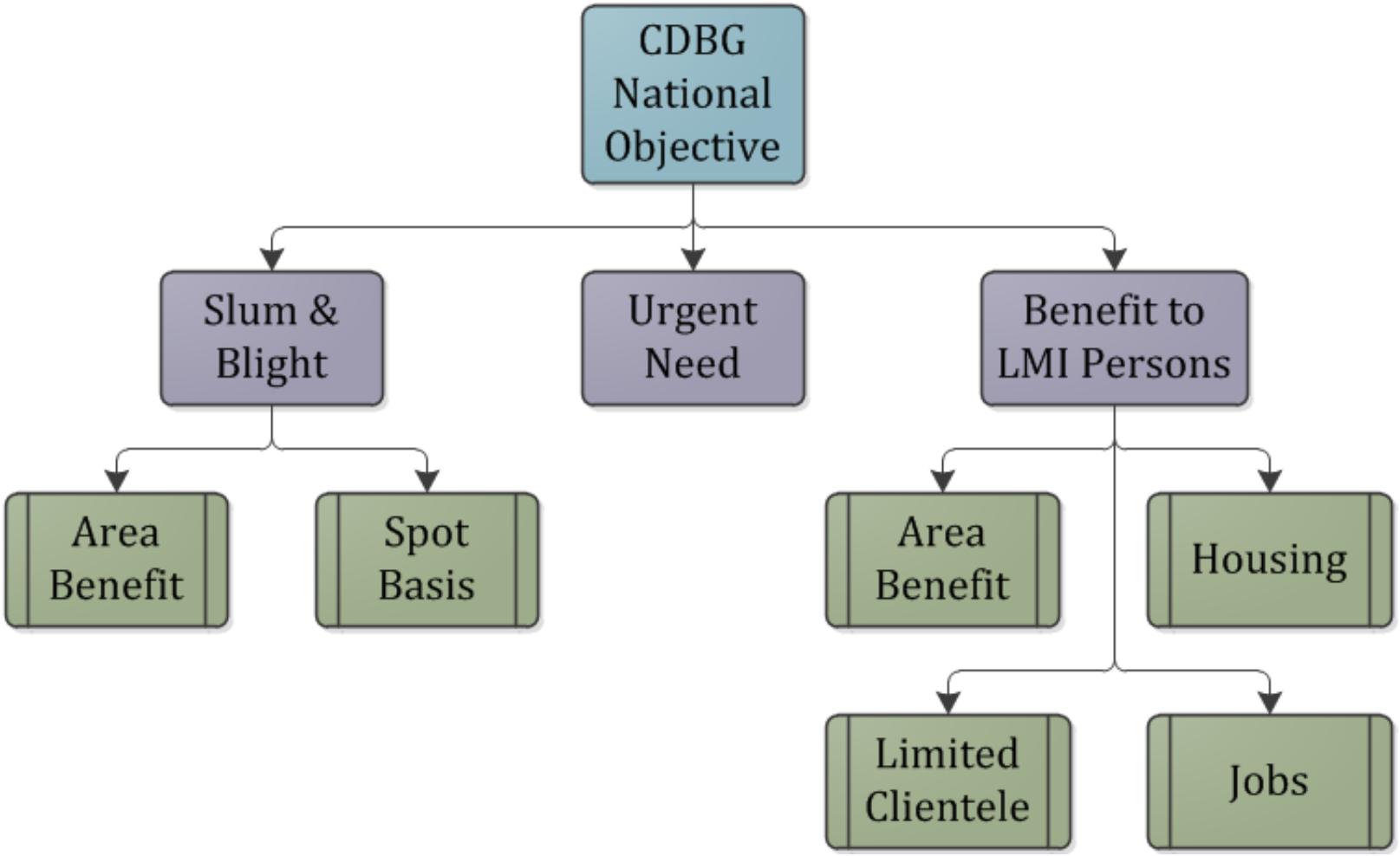
# Conflict of Interest

- Conflict of interest (COI) prohibited in procurement of goods & services, determining of beneficiaries
- Persons covered may not gain financial benefit/interest, including:
  - Employee, agent, consultant, officer, elected official, appointed official
  - Grantee or subrecipient
  - Themselves or family/business ties

# CDBG National Objectives

- All CDBG activities must meet one of the following national objectives:
  - Benefit to low- and moderate-income persons (i.e., at or below 80% of area median income)
  - Aid in prevention/elimination of slums or blight
  - Meet an urgent need
- DLG determines at application, but project must comply throughout its duration

# Meeting a National Objective



# Record Keeping

- Critical to establish good record keeping system
  - Shows compliance and documents progress
  - Grantee responsible for files – if ADD going to keep files, need to be available to public
- Maintain files for at least 5 years after project close-out
  - Keep personal information (e.g., social security #s) in secure locations & control access

***See list of suggested files in Chapter 1 and all of the topic chapters of the Handbook***

# Chapter 2
# Environmental Review

# Environmental Review Intro

- Environmental review is required before any funds are committed (see 58.22)
- Environmental review is a process of looking at project for impact on environment and notifying appropriate agencies & public of findings before a project begins
- The grantee is considered the "responsible entity" and is responsible for review & compliance with applicable requirements

# Environmental Regulations & Terms

**Applicable Regulations**

- 24 CFR Part 58
- Numerous related statutes/authorities (see 58.5 and 58.6), including 24 CFR Part 51 and 55

**Terminology**

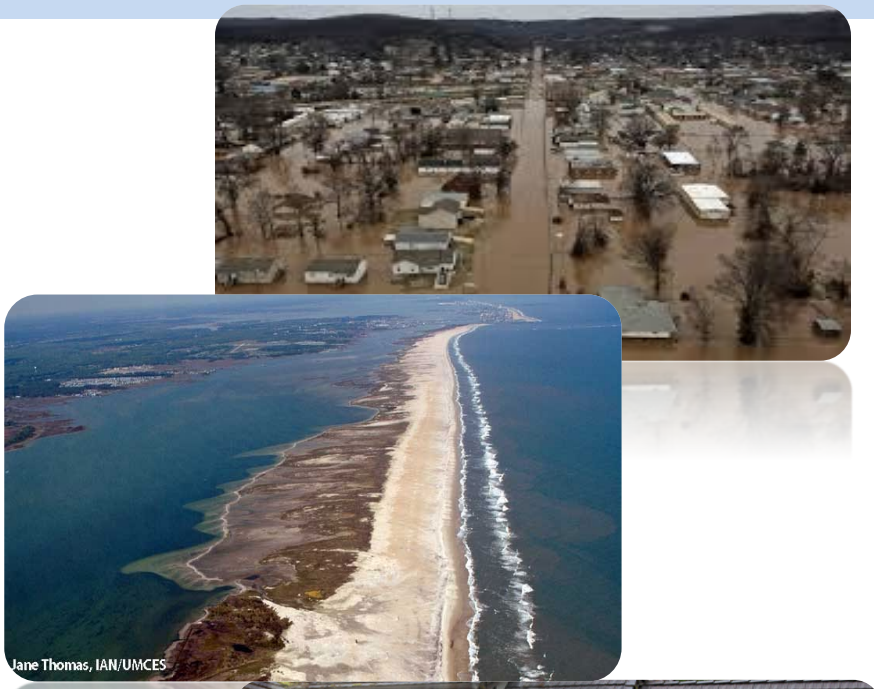
- Responsible Entity (RE) = State CDBG grantee
- Funding Agency = DLG
- ECO/CEO/CO = more in a minute
- ERR = environmental review record

# Related Laws and Authorities
# 24 CFR Part 58.5

- Historic Properties
- Floodplain Management & Wetland Protection
- Coastal Zone Management
- Sole Source Aquifers
- Endangered Species
- Wild & Scenic Rivers
- Air Quality
- Farmlands Protection
- HUD Environmental Standards

# Other Requirements
# 24 CFR Part 58.6

- Flood Insurance
- Coastal Barriers
- Runway Clear Zones




*These requirements apply to **ALL** projects

# Getting Started

- Environmental Certifying Officer (ECO) *may* complete the review, but it is typically prepared by a consultant or other staff
- However, the Chief Executive Officer (CEO) of the grantee/RE is legally responsible for environmental compliance
  - CEO signs off on review & environmental certifications or designates formally in writing another person to sign
  - This role is known as the Certifying Officer (CO)

# Limitations on activities pending clearance (58.22)

- Activities that have physical impacts or that limit the choice of alternatives cannot be undertaken with any funds prior to obtaining clearance
  - Includes ground clearance, acquisition of property, new construction, rehab, demolition, etc.
  - Includes HUD funds as well as non-HUD funds
- Some non-legally binding agreements or options OK if they contain stipulations on enviro clearance – check with State before proceeding
- Do not go out to bid on any choice-limiting activities until the environmental review is complete

# Limitations on activities pending clearance (58.22)

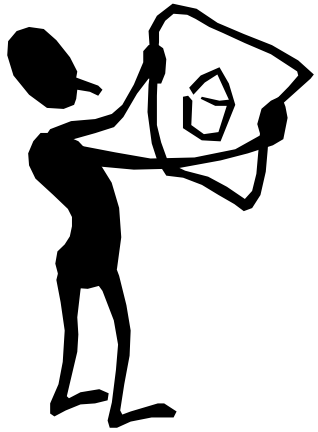
- ✓ Does not apply to undertakings or commitments of non-federal funds before a project participant has applied for HUD funding.
- ✓ A party may begin a project in good faith as a **private project** and is not precluded from later deciding to apply for federal assistance.
- ✓ However, when the party applies for federal assistance, it will need to cease further choice-limiting actions on the project until the environmental review process is complete.

# Steps in the Environmental Review Process

- Define the project
- Aggregation
- Determine level of review
- Conduct the review
- Public notice process
- Release of funds

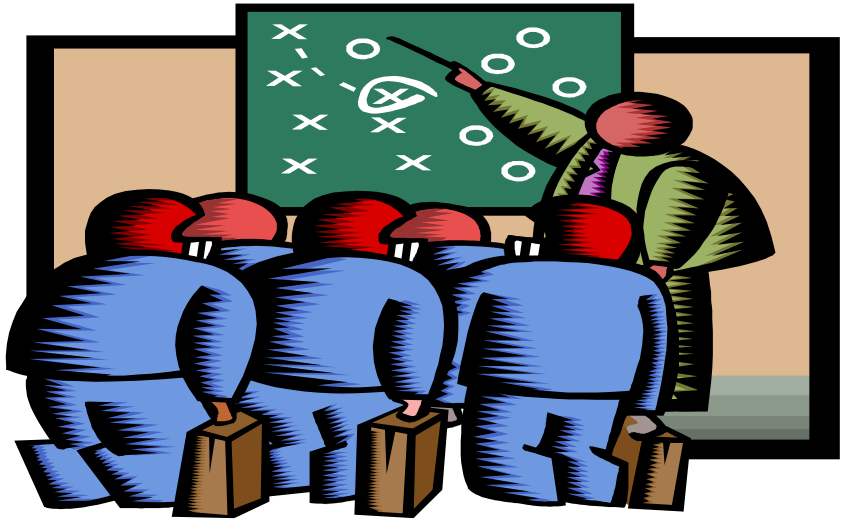
# Step 1 - Define the Project

- Describe activities in writing
- Include *all* activities and funding sources (HUD and non-HUD)
- Timeframe (1-5 years)
- Include maps with site boundary *clearly* marked



# Step 2 - Aggregation 58.32

*Must group together and evaluate as a single project all individual activities that are related on a geographical or functional basis…*



# Step 3 – Determine Level of Review

- Determine the level of review required for the project:
  - Exempt (58.34(a))
  - Categorically excluded
    - Not Subject to 58.5 (CENST)(58.35(b))
    - Subject to 58.5 (CEST)(58.35(a))
  - Requires Environmental Assessment (EA)
  - Requires Environmental Impact Statement (EIS)
  - If more than one activity or classification, go with most stringent level of review

# Step 4 – Conduct the Review

- RE must set up an environmental review record (ERR) that contains (58.38):
  - Description of the project & each of the activities comprising the project
  - Evaluation of the effects of the project/activities on the human environment
  - Documents compliance with applicable statutes & authorities in 58.5 and 58.6 including any mitigation activities
  - Records the written determinations/other review findings required by 24 CFR Part 58
  - Documents public notice(s) and comments

# ER Forms and Notices

- Grantees/REs must use the required HUD forms & checklists
- Sample notices are also included & must be utilized when required
- Refer to Chapter 2 attachments as well as HUD Exchange at: https://www.hudexchange.info/programs/environmental-review/

# Exempt Activities – 58.34

- Activity is exempt when it is highly unlikely to impact the environment
  - Studies, plans & admin costs
  - Public service activities with no physical impact
  - Other examples in Chapter 2
- Steps:
  - Document that the activity is exempt and in compliance with 58.6 (Attachment 2-1)
  - Send *Finding of Exemption* to DLG with Evidentiary Materials (Attachment 1-1)
  - No public notice required; however, cannot spend funds until approval from DLG received

# Categorically Excluded Activities *Not* Subject to 58.5 – 58.35(b)

- Similar to exempt activities with no physical impact - still subject to 58.6 laws and authorities
  - Supportive services & operating costs
  - Housing services (e.g., foreclosure prevention)
  - ED activities not linked to construction or expansion of operations (e.g., equipment purchase, inventory financing, interest subsidy)
  - Financial assistance to homebuyers for purchase
  - Housing pre-development costs that have no physical impact (fees)
  - Same requirements as exempt activities

# Categorically Excluded Activities <u>Subject</u> to 58.5 – 58.35(a)

- CEST activities aren't subject to NEPA but <u>are subject to</u> 24 CFR Part 58.5 ***and*** 58.6
  - Improvements to existing public facilities (not including buildings) without change in use, size or capacity (> 20%)
  - Special projects for the removal of architectural barriers
  - Rehab of buildings under certain conditions
  - "Individual actions" on 1-to-4 family dwellings or on scattered site units
  - Acquisition (or disposition) only if property retained for same use
  - See regulation details at 58.35(a)

# Categorically Excluded Activities Subject to 58.5 (CEST)

- Procedures include:
  - Complete the CEST form & document
    - Use Handbook Attachment 2-2
    - Review Clearinghouse comments on historic properties. If required, send letter & checklist to the state historic preservation office (SHPO) – see Attachment 2-3a and b
    - If significant ground disturbance, carry out tribal consultation using Attachment 2-4
    - If applicable, follow special procedures for projects in floodplains &/or for projects with wetlands
    - If no compliance is triggered for any 58.5 requirements, project can convert to an Exemption and no public notice required
  - Make a Finding of Categorical Exclusion; if no compliance or mitigation triggered, the project 'converts to exempt'

# Floodplains & Wetlands – 24 CFR Part 55

- For projects located in a floodplain or wetland, the 8-Step process may be required (see exceptions in 55.12 and 55.13)
- Some projects may also only require the abbreviated 5-step process (See 55.14)
  - Disposition of properties
  - Repair & rehab under limited circumstances
  - Refer to p. 2-11
- If wetlands involved, follow 8-step process
- See p. 2-15 and 2-17

# 8-Step Decision Making Process

- **Step 1: Determine** if the project is located in a floodplain or wetland or could affect either
- **Step 2: Publish an early notice** of the proposal to consider an action in the floodplain and/or wetland
- **Step 3:** Evaluate **practicable alternatives**
- **Step 4: Identify the potential impacts** associated with occupancy and modification of the floodplain
- **Step 5: Design or modify** the action to minimize adverse impacts and preserve the beneficial values of the floodplain
- **Step 6: Reevaluate** whether the proposed action is practicable
- **Step 7: Publish a final notice of decision**
- **Step 8: Implement** proposed action & mitigation

5-step process omits steps 2, 3, and 7

# Environmental Assessments

- If project not exempt or categorically excluded, environmental assessment (EA) required
- Complete full Environmental Assessment form including Statutory Checklist & NEPA checklist
  - Includes compliance with **all** 58.5 and 58.6 laws (SHPO and tribal consultation, floodplains/wetlands, endangered species, among others
  - Includes compliance with NEPA EA factors (more in a minute)
  - All areas of the checklists must be backed up by documentation from appropriate sources
- **RE** makes final determination: project does/does not significantly impact the environment

# NEPA Environmental Assessment Factors

## EA Factors Categories:

- **Land Development**
- **Community Facilities and Services**
- **Natural Features**
- **Socioeconomic**

**See HUD Exchange for EA Factors Guidance:**

- **https://www.hudexchange.info/resource/3306/environmental-assessment-factors-guidance/**

# Environmental Impact Statement

- Required for projects supporting development of over 2,500 housing units
- If grantee determines there will be a significant impact on the environment, an environmental impact statement (EIS) required
- Can also be required for projects with Unacceptable Noise Levels
- This is very rare!
- Contact DLG as soon as possible if EIS appears to be necessary

# Step 5 – Public Notice Requirements

- **Exempt and CENST** - Not required
- **CEST** with no 58.5 compliance – Not required
- **CEST** with 58.5 compliance required - must complete the Notice of Intent to Request a Release of Funds (NOI/RROF)
- **EA –** Requires the completion of a Combined Notice which includes the Finding of No Significant Impact (FONSI) and NOI/RROF
- DLG allows publication or posting

# Categorically Excluded Activities Subject to 58.5

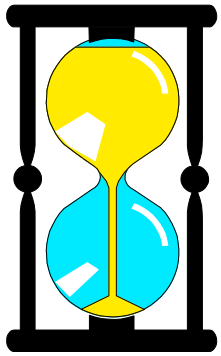
- If compliance triggered:
  - Publish & distribute Notice of Intent to Request a Release of Funds (NOI/RROF)
    - Allow 7-day comment period from publication date (10 days if posting)
  - Submit Finding form, Request for Evidentiary Materials and Release of Funds & Environmental Certification
    - Include copy of tear sheet from newspaper & distribution list

# Environmental Assessments

- If no significant impact:
  - Publish Combined/Concurrent Notice of Finding of No Significant Impact (FONSI) & Notice of Intent to Request Release of Funds (NOIRROF)
  - Also, distribute notices to appropriate parties (list in Att.)
  - Allow 15 days for public comments if the notice is published (18 days if posting)
  - Send Environmental Certification, Request for Approval of Evidentiary Materials & Release of Funds to DLG 16 days after publication of notice
    - DLG must hold the request for a 15-day comment period from receipt before approving

# Example: Timing for 15-day Comment

| S | M | T | W | T | F | S |
|---|---|---|---|---|---|---|
| | | | 1 - **Pub** | **2** | **3** | **4** |
| **5** | **6** | **7** | **8** | **9** | **10** | **11** |
| **12** | **13** | **14** | **15** | **16** | 17 - **RROF** | 18 |
| 19 | 20 | 21 | 22 | 23 | 24 | 25 |
| 26 | 27 | 28 | 29 | 30 | 31 | |



# Step 6 – Release of Funds

- ✓ If no valid objections, RE will receive a release of funds from the State.
- ✓ Valid objections include: Certification not signed by CO; RE failed to make a FONSI/FOSI or other applicable written determination; RE omitted steps in process; committed funds before the ROF; another federal agency objects (see 58.75 for details).
- ✓ Project is not officially released until notification is received.

# Part 58 Flow Chart

# Re-evaluation of Findings – 58.47

- If a project changes, a re-evaluation of the environmental findings may be necessary
- It is critical to determine if the original findings are still valid AND data/info upon which they were based still current
  - If still valid, complete a re-evaluation determination & send to DLG
  - If not still valid, a new environmental review must be completed

# Questions

# Chapter 3: Financial Management

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# What is Financial Management?

- Constant process of tracking finances & safeguarding financial assets
- Requirements pertain to:
  - Accounting systems & internal controls
  - Procurement (details in the following chapter)
  - Allowability & allocability of costs
  - Audits
  - Safeguarding of personally identifiable info
- We will also discuss the use of program income

# Applicable Requirements

- 24 CFR Part 570 (CDBG regs)
- 2 CFR Part 200 (Omni Circular)

- Local governments also subject to any applicable KRS requirements

# Establishing a Financial Management System

- Financial management system must ensure accurate, appropriate, effective, timely & honest use of funds
  - Internal controls in place
  - Documentation available
  - Financial reports complete
  - Audits conducted on time and accurately

# Financial Management System Fundamental Requirements

- Record all financial transactions
- Relate expenditures to allowable activities
- Ensure compliance with applicable laws, rules & regulations

# Internal Controls

- Internal controls means people, procedures and processes that provide oversight & safeguarding of cash, property & other assets
  - For example, grantees must ensure a separation of duties to eliminate opportunities for fraud
- Critical elements include procedures, formal job duties/responsibilities, checks and balances within systems

# Accounting Records

- Records should sufficiently identify source and application of funds
- Minimally, a system & the records must:
  - Identify transactions
  - Provide for budgetary control
- Done through cash receipts & disbursement journals & ledgers & charts of accounts

# Budget Controls

- Report expenditures by approved activity
- Maintain budget balances for each approved activity
  - Expenses accrued
  - Obligations incurred but not paid out

# Source Documents

- Records must be supported by source documents
  - Explain basis of costs incurred
  - Show actual dates of expenditure
  - Examples: cancelled checks, paid bills/invoices, signed requests for payments, payroll & timesheets, purchase orders, etc.

# Receipt Procedures

- KCDBG funds, program income, other project funds
- Key procedures include:
  - Adequately safeguard project receipts incl. bonding for persons involved
  - Deposit all project receipts into proper account
  - Record all receipts in accounting system (cash receipts journal)

# Bank Accounts

- Maintain non-interest bearing bank account for CDBG funds
  - No excessive cash (over $5,000 for more than 5 days)
- Program income and revolving funds should be kept in separate (interest bearing) accounts
  - Interest must be returned to DLG & then to Treasury

# Required Forms

- Authorized Signature Form
  - Designates authority to sign grant documents and reports
  - CEO of jurisdiction must sign the form
  - Only the person(s) on form can sign requests for payment
- Direct Electronic Transfer of Funds Form
  - Designates bank & account number for deposit of funds

# Allowable Costs

- Need to establish policies & procedures to determine:
  - Cost reasonableness
  - Allowability of costs
  - Allocability of costs
- In accordance with the CDBG regs, 2 CFR 200 AND only as authorized in the grant agreement with DLG

# Administrative Costs

- Actual costs associated with general implementation of the CDBG grant
- Document all admin costs charged
  - Signed timesheets, purchase orders, invoices, receipts

# Matching Funds

- Grant agreement contains amount of required match
- Document expenditure of matching funds in records

# Asset Management

- Real Property
  - Maintain a Real Property Inventory that is updated bi-annually
  - Timeframe to meet National Objective applies
- Personal Property
  - Fixed assets ledger
  - Procedures to prevent loss, damage, theft
- Maintain record of disposition for any type of property
- CDBG "change of use" provision applies to real property acquired using >$150K in KCDBG funds
  - Must continue to meet a National Objective for at least 5 years from purchase or funds must be repaid

# Funds Earned from CDBG Funds -- Definitions

- Program Income
  - Gross income received by a grantee and subrecipients
  - Reported on next draw request and expended first
  - Subject to CDBG & other Federal regulations
- Miscellaneous Revenue:
  - Funds that are NOT considered program income
  - Do not retain federal identity
  - Have minimal conditions on use

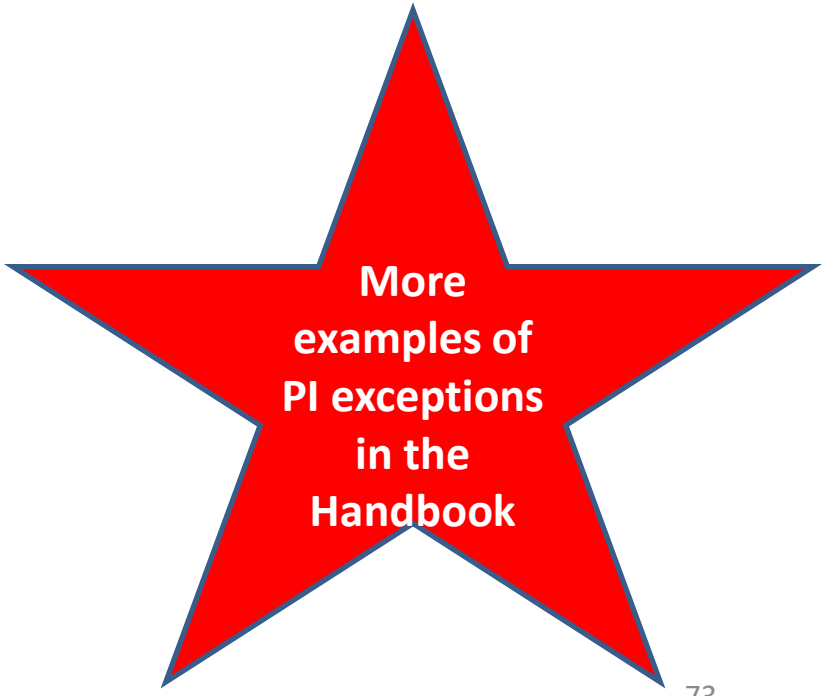
# Program Income (PI)

- Program income includes:
  - Proceeds from disposition, rental, lease of property or equipment or use or rental of equipment
  - Payments of principal & interest on loans
  - Interest on revolving loan funds
  - Interest on recaptured funds pending disposition
  - Special assessment income
- More examples in the Handbook

# PI Exceptions

- Total funds earned from CDBG expenditures that total less than $35,000 in a single year

- Funds earned from activities carried out by certain types of subrecipients (Section 105(a)(15) organizations) namely LDAs



# What are Revolving Funds?

- Program income placed in separate fund established to carry out specific activities
- These activities, in turn, generate payments to fund for use in carrying out such activities
- Typically established for housing rehab or ED activities
- Payments to the RF are considered program income
- RF triggers other Federal requirements

# Revolving Fund Guidelines

- Written guidelines & DLG approval required
- Guidelines should address:
  - RF Goals and Objectives
  - Eligibility Requirements
  - Loan Review, Selection & Approval
  - RF Operations and Management
- Sample guidelines provided in Handbook
- Also applies to subrecipients

# Use of Program Income

- Program income
  - Use for eligible CDBG activities
  - Must be expended prior to drawing additional CDBG funds
  - Subject to CDBG & other Federal regulations
- A grantee may expend up to 20% of PI for administration

# Approval for Use Requests

- PI or misc. revenue must be used before requesting additional KCDBG dollars
- Must request approval to expend PI
  - Submit to DLG an Approval for Use Request and related certifications (Attachment 3-5)
  - DLG will review the request
- Submit a written request to DLG regarding expending misc. revenue

# Reporting on PI & Revolving Funds

- Repayment Report – Program Income/Miscellaneous Revenue Report
  - Submit twice a year @ June 30 & December 31
  - Report in Attachment 3-6
- Grantee is responsible for providing subrecipient information to DLG

# Payment Procedures

- Key payment procedures:
  - Establish deadline for submission of invoices and vouchers
  - Request only amount of funds needed to pay immediate obligations
  - Submit Requests for Payment to DLG by 3rd and 18th of each month
  - Complete separate requests for separate grants

# Request for Payment Completion Form

- Five sections:
  - General (grant #, etc.)
  - Part I: Status of Funds
  - Part II: Cash Requirements
  - Part III: Project Status
  - Certification


- Part 1 reports program income received since last draw

# Federal Audit Requirements

- Federal requirements dictate a Single Audit must be conducted for grantees & subrecipients that expend more than $1,000,000 in annual Federal awards
  - Federal awards not limited to CDBG
  - Auditor that conducts the audit & the report auditor produces must meet applicable standards in 2 CFR 200

# The Audit Report

- Audit reports be issued upon completion of the audit
- Audit report includes:
  - Report on internal controls & compliance with laws/regs
  - Opinions on expenditures, financial statements and compliance
  - Schedule of findings & questioned costs
  - Summary of results

# Federal Audit Submission Requirements

- **Submission is responsibility of grantee**
- Federal requirements:
  - Audit must be completed within 9 months of the end of FY
  - Submit within 30 days of the report or March 31, whichever is earlier) to the Federal Audit Clearinghouse
  - Send a copy to DLG Office of Federal Grants
  - Federal rules require making copies available upon request

# State Audit Requirements

- KRS 91A.040 applies to audits for cities - generally, all cities must have an annual audit performed by March 10 each year except:
  - Cities with populations < 3,000 must:
    - Every even year, complete KRS financial statement by October 1
    - Every even year, complete a two-year audit by April 1
  - Cities that expend < $75,000 & have no long term general obligation or revenue debt are not required to have an audit but must complete the KRS financial statement
- Counties are subject to KRS 64.810 and are required to have an audit done after the end of each fiscal year

# State Audit Publication & Submission Requirements

- City audits must be completed by March 10 immediately following the close of a fiscal year
  - Must publish an ad RE: the audit within 30 days of its presentation to the City legislative body
  - Must submit e-copy to DLG Cities & Special Districts Branch and Federal Grants
- County audits are performed by State Auditors; completed within a reasonable time frame as determined by the APA (KRS 43.070)
  - Report must go to the Governor, Attorney General, State Librarian, County Attorney and DLG
  - Fiscal Court or County official must send report to newspaper & transmittal letter must be published

# Chapter 4: Procurement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# Procurement

- Procurement must be conducted in accordance with 2 CFR 200.318 & KCDBG Procurement Code (Att. 4-1)
- Key principles:
  - Ensure full and open competition
  - Utilize standard processes based on the type of $ amount of the procurement
  - Have a code of conduct governing performance of officers, employees, agents to avoid conflicts of interest or fraud
  - Undertake efforts to use M/WBEs & meet Section 3 & EEO requirements

# M/WBE Requirements for Procurement

- Must take affirmative action to contract with M/WBEs
- Outreach can be done a number of different ways:
  - Include criteria/additional points for increased participation
  - Set aside a percentage of KCDBG funds to be awarded
  - Require prime contractors to solicit bids, outreach, etc.
  - Divide up work into smaller tasks to increase participation
  - Combine efforts with Section 3 efforts (next slides)
- PTAC can be a resource

# Section 3 - Requirements

- Section 3 is HUD reg aimed at increasing economic opportunities for low-income residents & businesses in areas where HUD funds expended
  - Applicable to grantee when project funded with >$200,000 HUD funding
  - Section 3 only applies to housing construction, housing rehabilitation, and other public construction
- If applicable, must demonstrate efforts to reach quantitative in Section 3 regs:
  - 25% of labor hours completed by qualified Section 3 workers
  - 15% of labor hours completed by qualified Targeted Section 3 workers

# Defining a Section 3 Worker

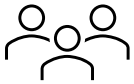
A Section 3 Worker is any worker who **currently fits**, or **when hired within the past five years** fit, at least one of the following categories, as documented:

- A low or very low-income worker

OR

- Employed by a Section 3 business concern

OR



- A Youthbuild participant

# Targeted Section 3 Worker

Targeted Section 3 Worker is:

- 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
  - A YouthBuild participant

# Redefining Section 3 Business Concerns

A Section 3 business is:

- 51% or more owned and controlled by low or very-low income persons

OR

- Over 75% of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers

OR

- 51% or more owned and controlled by current residents of public housing or Section 8-assisted housing

# Service Area as Defined in 24 CFR 75.5

A. *Service Area* = an area within one mile of the Section 3 project

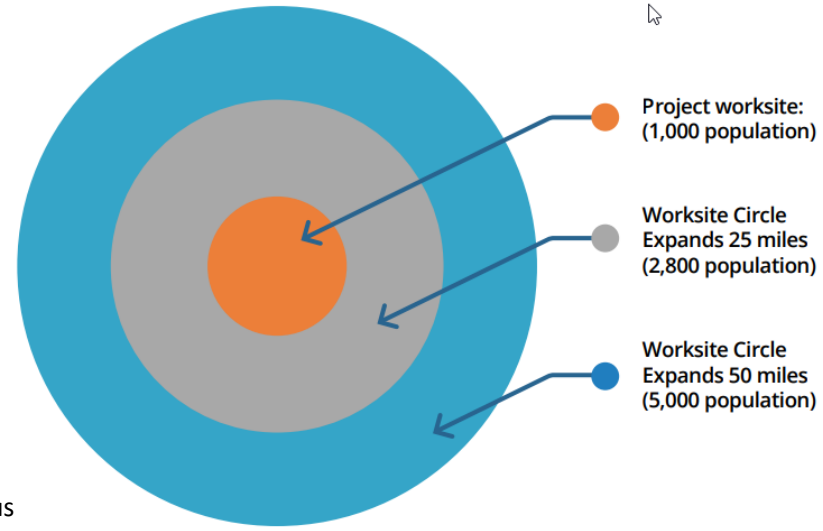
*HCD*

**OR**

B. 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.

*According to the most recent U.S. Census



# Reporting For Compliance with Benchmarks

Benchmarks:

-25% Labor hours completed by Section 3 Workers

-5% Labor hours completed by Targeted Section 3 workers

- Reporting Data

# Section 3 – Qualitative Efforts

- Outreach can be done a number of different ways:
  - Directly to local businesses through associations, chambers of commerce, etc.
  - Combine efforts with M/WBE outreach
  - Hold meetings, distribute information in the area
  - Post employment/training opportunities at local workforce centers & similar organizations

# Section 3 – Basic Duties

- Grantee must develop and submit a **Section 3 Action Plan**
  - Outlines commitment & actions that will be carried out
- **Section 3 language & forms** must be in bid & contract documents
- Section 3 outcomes will be reported on semi-annual report (Attachment 4-10) and at closeout

# Conflict of Interest

- CDBG regs, 2 CFR 200 and KRS govern conflict of interest (COI)
  - Persons covered include: employees, agents, consultants, officers or elected/appointed officials of state, local government &/or subrecipient
- Prohibited conflicts:
  - Persons with CDBG responsibilities, decision-making power or information may NOT:
    - Obtain a financial interest or benefit from CDBG activity
    - Have any interest in contract or subcontract
  - Also applies to family members & business ties
  - Applies during tenure & 1 year after

# Conflict of Interest

- Separation of duties is primary way to eliminate opportunities for fraud or COI
  - Person tasked with ordering goods or managing procurement should be different from the person receiving goods/awarding contracts AND the person pay for goods/services
- Any potential COIs should be brought to the attention of DLG as soon as identified

# Methods of Procurement

- Select 1 of 4 procurement methods based product/service procured
  - Small purchase procedures
  - Competitive sealed bids
  - Competitive negotiation
  - Non-competitive negotiation (sole source)

# Small Purchase Procedures

- Purchases for goods & services < $50:
  - Make efforts to obtain lowest and best price
  - No written records are required
- Purchases for goods & services under $40,000:
  - Obtain quotes from adequate # of sources
  - Maintain documentation
  - Award lowest responsive, responsible source
  - Prepare & sign contract

# Competitive Sealed Bids


- Use for KCDBG-funded construction work over $40,000
- Requirements:
  - Do not bid prior to environmental clearance
  - Initiated by publishing invitation for bids (IFB)
  - Publicly open bids at published date & time
  - All bids must be tabulated & reviewed
  - Award firm-fixed-price contracts with formalized terms & scope

# Competitive Sealed Bid: Pre-Bid Requirements

- Bid package must include:
  - Clear and accurate description of technical requirements
  - Plans & specs stamped by a KY-certified architect or engineer
  - Include labor standards requirements & Section 3, EEO and other laws & requirements

# Competitive Sealed Bid: Steps in the Process

- Step 1: Establish Contract Procurement File
- Step 2: Bid the Contract
  - Prepare bid package
    - Clear and accurate description of technical requirements
    - Plans & specs stamped by a KY-certified architect or engineer
    - Incl. labor standards requirements & Section 3, EEO and other laws & requirements
    - Consider deductible alternates

# Competitive Sealed Bid: Steps in the Process (cont.)

- Step 2 (cont'd.)
  - Solicit bids by public advertising
    - Bids over $30,000 must advertise at least once, 7 to 21 days before opened
  - Send copy to Small Business Services Division
  - Utilize PTAC for M/WBE outreach
- Step 3: Issue Addenda
  - Send any addenda to all bidders at least 72 hours of bid opening
  - Addenda issued less than 72 hours prior to bid opening require opening extended by at least 1 week
- Step 4: Confirm Wage Rates
  - Contact DLG 9 days before bid opening ("Nine-Day Call")
  - More later in the Labor Standards Module

# Competitive Sealed Bid: Steps in the Process (cont.)

- Step 5: Open Bids
  - Log all bids received
    - Keep all bids sealed until bid opening
  - Read bids aloud during bid opening meeting
  - Determine apparent low bidder
  - Keep detailed minutes of the opening
  - Keep copies of all bids in files

# Competitive Sealed Bid: Additional Considerations

- Bid Overages
  - Lowest bid received may exceed amount allocated for project
  - Limited options are available:
    - Reject all bids, revise scope & specs and issue revised IFB to public
    - Provide difference needed from other (non-CDBG) funding sources
    - Conduct competitive negotiations with ALL bidders allowing 7 days for revised proposals & award contract to lowest bidder

# Competitive Sealed Bid: Additional Considerations

- Deductible alternates:
  - When using deductible alternatives grantee must specify method & order used to apply alternatives & determine lowest bid
  - Lack of clear and precise procedures can cause delays & bidder disputes
  - DLG recommends grantees work with their attorney

# Competitive Sealed Bid: Procuring Construction Services

- Step 6: Award Contract
  - Award contract to lowest responsible and responsive bidder
  - If award exceeds 90 days, reconfirm wage rates with DLG
  - If not awarded to lowest bidder, prepare written statement explaining rationale

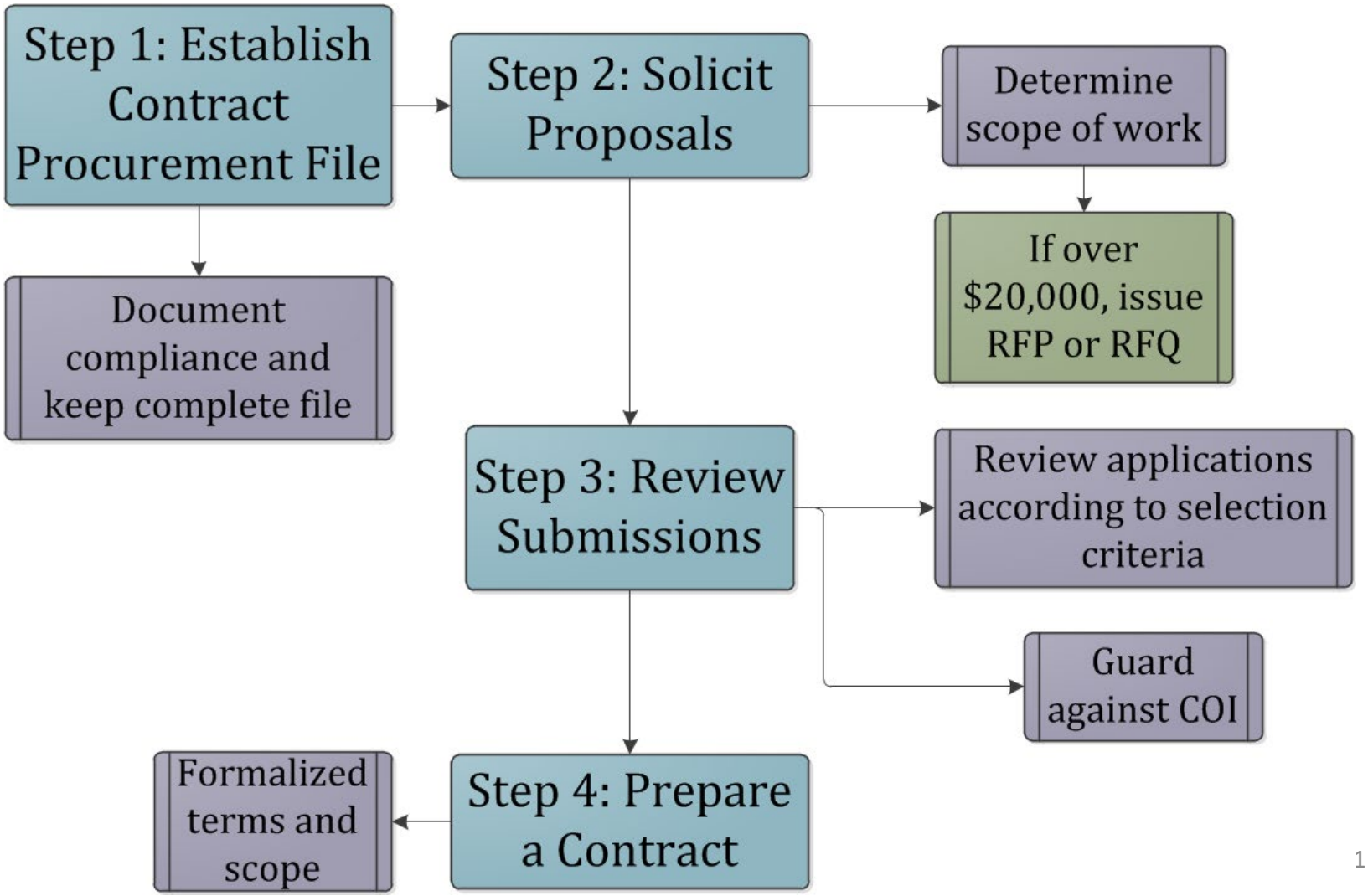
# Competitive Negotiation

- Used for services where selection based on factors other than cost
  - Architectural, engineering, planning, admin or consulting services
- Only fixed-price or hourly contracts allowed
- Initiated by publishing RFP or RFQ
  - RFP/RFQ should clearly state evaluation factors/criteria

# Competitive Negotiation: The RFP/RFQ Process

- Advertise RFP/RFQ and distribute to qualified firms
- Review and rank using selection criteria
- Select firm based on factors, offer/price
- Maintain documentation
- Formalize contract and terms
- Notify those who were unsuccessful

# Competitive Negotiation



# Non-Competitive Negotiation

- Also referred to as sole source
- Only allowed under certain circumstances!
  - For example, an emergency situation such as something that might arise due to a natural disaster
- Requirements:
  - Receive authorization from DLG to use
  - Conduct negotiations regarding scope and price
  - Prepare and sign contract

# Other Procurement Issues

- If using local funding for front-end costs, Federal procurement requirements do not apply provided that CDBG will not be used to reimburse later for those costs
- Private sector entities not subject to 2CFR 200 provisions (e.g., a business receiving a CDBG loan for equipment) but costs must be reasonable
- Contractors may not “borrow” tax exempt status from Grantee when purchasing equipment/supplies
- Grantees cautioned against making purchases for contractor to save sales tax
- Can be very costly to rectify

# Conflict of Interest

- Exceptions
  - Upon the written request of the recipient, DLG may review and on a case-by-case basis, allow an exception
  - The following must be submitted to DLG:
    - A public disclosure of the conflict,
    - A certification the affected person has withdrawn from responsibilities with respect to situation; and
    - An opinion of the local government's attorney that the exception would not violate State or local law

# Chapter 5: Contracting

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# Contracting

- After goods & services have been procured, develop legal instruments to establish contractual obligations
- DLG advanced approval of contracts not required
  - DLG will review contracts during monitoring visits
  - Grantees are advised to seek legal counsel

# General Contract Contents

- Administrative Provisions
- Scope of Services
- Method of Compensation
  - Must include a “not to exceed” clause
- Terms and Conditions
  - Terms & conditions between DLG and grantee should be reflected

# Specific Contract Contents

- Special Conditions
  - Including provisions mandated by State and Federal law (e.g., labor, Section 3, Equal Opportunity)
- Specific Provisions dependent on:
  - Whether contract is for construction or non-construction services
  - The dollar value of the contract
  - Applicable laws & requirements

# Contract Provisions

**Construction Contracts**

- Contracts Document Guide (available on DLG website)
- Neither cost-plus-percentage nor percentage-of-construction cost methods are allowed
- Grantees must keep full, bound copy of executed contract for review by DLG

**Non-Construction Contracts**

- Contract for Professional Services (Attachments 5-1 and 5-2)
- Neither cost-plus-percentage nor percentage-of-construction cost methods are allowed

# Excluded Parties

- Contracts cannot be awarded to any party on the Excluded Parties List System (EPLS)
- Covers all contractors & subcontractors
- Document files for each firm being awarded funds
- Must use the System for Awards Management (SAM), which manages EPLS:
- Must use the System for Awards Management (SAM),https://www.sam.gov
- Document the SAM check in the files

# Bonding Requirements

- Bid guarantee of 5% required from each bidder
- Under KY law, contracts over $100,000 require:
  - Performance bonds for 100% of contract value
  - Payment bonds for 100% of original contract price
- Federal bonding requirements triggered at contracts valued at >$100,000

# Subrecipient Agreements

**Subrecipient is:**

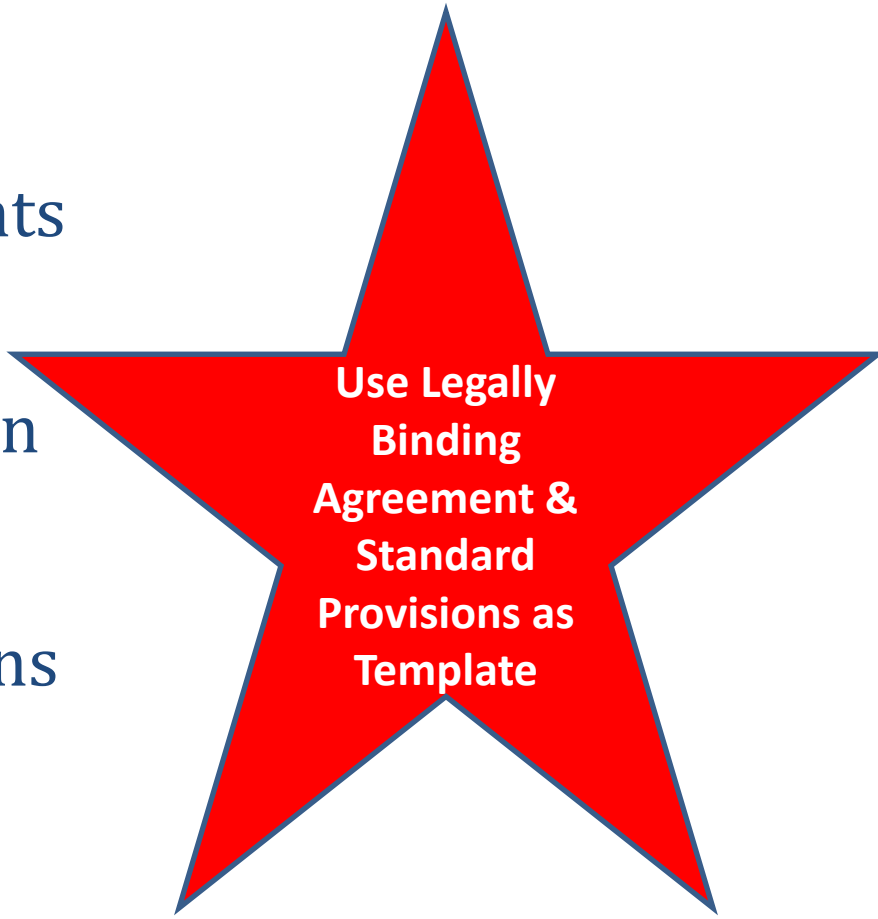
- Public or private nonprofit entity administering eligible activities on behalf of grantee

**Subrecipient is not:**

- Procured contractor
- Homeowner/landlord receiving rehabilitation assistance
- Entity receiving relocation benefits
- Business with economic development loan
- Public agency (dept./div) of the grantee

# Subrecipient Agreement Requirements

- Scope of Work
- Records and Reporting
- Program Income
- Administrative Requirements
- Conditions for Religious Organizations
- Suspension and Termination
- **Reversion of Assets**
- Cessation of Subrecipient
- Standard Contract Provisions
- Program requirements
- Disposition



# Intergovernmental & Cooperative Agreements

- **Intergovernmental** – Two units of government jointly apply
- **Cooperative** – One unit applies but another unit will own, operate or maintain

# Contract Reporting

- **Contract/Subcontract Activity Report (HUD 2516 in Att.) must be submitted annually to DLG by September 15th**
  - Due to HUD at end of Federal fiscal year (DLG will send reminder)
  - Only report on contracts & subcontracts executed during reporting period
  - If no activity or contracting complete, indicate that on the form

# Chapter 6: Labor Standards and Construction Management

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# Federal Labor Wage and Payment Laws

- In addition to minimum wage requirements, the following apply to CDBG:
  - **Davis Bacon** (D-B) requires that workers must receive "prevailing" wages (more to come on this)
  - **Copeland Anti-Kickback Act**:
    - Workers must be paid weekly
    - Only permissible deductions (outlined in the law) allowed (some require written authorization from the employee)

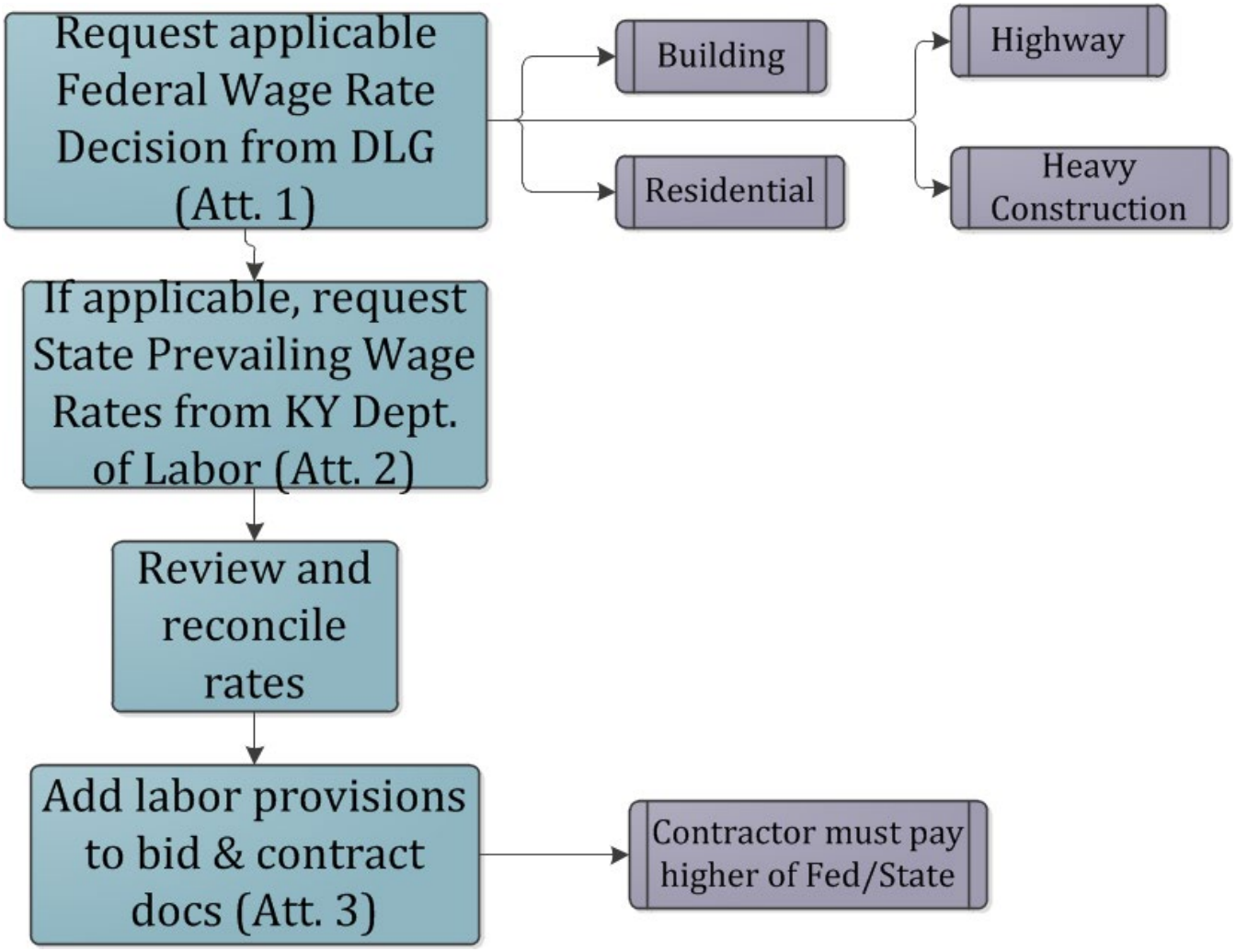
# Applicability of Requirements

- Davis-Bacon & Copeland applies to:
  - All construction activities greater than $2,000
  - Residential rehab projects of 8 or more units
  - Some water/sewer extensions (check w/ DLG)
- Special consideration for:
  - Installation costs of equipment if costs incidental & certain type of work
  - Demo only (NO construction planned)
    - Check with DLG in these cases

# Fed & State Overtime

- **Contract Work Hours and Safety Standards Act (CWHSSA)** requires overtime pay for workers on construction contracts > $100,000 that work more than 40 hrs/week
- **KRS 337.285** requires overtime be paid to workers for hours over 40/week

# Steps for Bid & Contract Documents



# Pre-Construction Conference

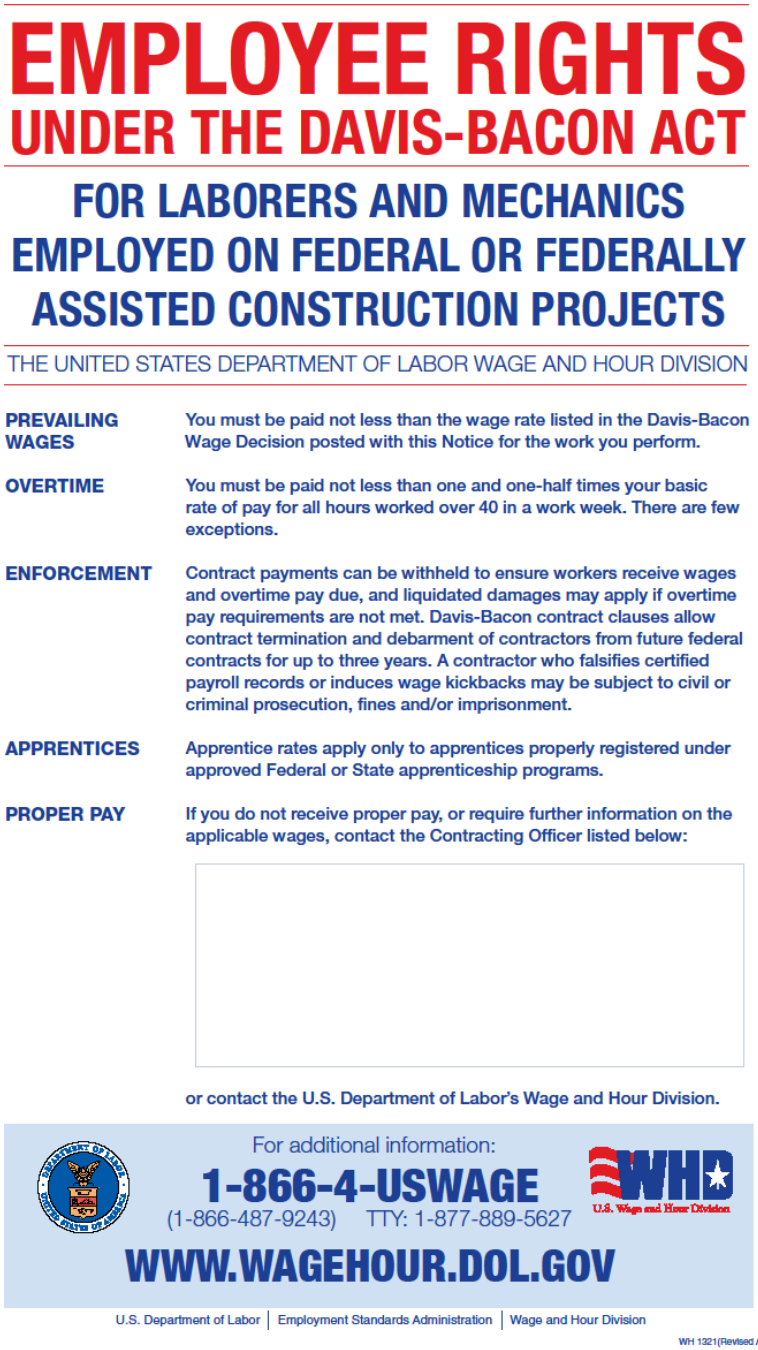
- Provides venue to explain contractual requirements and performance schedules
- Not required by Federal labor laws, but STRONGLY recommended
- Outline of conference provided in Att.
  - Review applicable requirements on labor, equal opportunity, etc.
  - Contractor should fill out Contractor Employee Breakdown Form (in Att.)
  - Get contractor's Federal ID No.
- Take minutes and document in file

# Notice to Proceed

- After execution of contract & pre-construction conference, issue a Notice to Proceed
- The Notice to Proceed establishes the construction start date & completion date and provides a basis for assessing damages if work is not completed in accordance with the contract timeline

# Required Posters

- Must have D-B poster at the site of work in prominent & accessible place
- Other posters to hang:
  - Notice to All Employees Working on Federal or Federally Financed Construction Projects
  - Safety and Health Protection on the Job
  - Equal Employment Opportunity is the Law



**EMPLOYEE RIGHTS**
**UNDER THE DAVIS-BACON ACT**

**FOR LABORERS AND MECHANICS EMPLOYED ON FEDERAL OR FEDERALLY ASSISTED CONSTRUCTION PROJECTS**

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

**PREVAILING WAGES** You must be paid not less than the wage rate listed in the Davis-Bacon Wage Decision posted with this Notice for the work you perform.

**OVERTIME** You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 40 in a work week. There are few exceptions.

**ENFORCEMENT** Contract payments can be withheld to ensure workers receive wages and overtime pay due, and liquidated damages may apply if overtime pay requirements are not met. Davis-Bacon contract clauses allow contract termination and debarment of contractors from future federal contracts for up to three years. A contractor who falsifies certified payroll records or induces wage kickbacks may be subject to civil or criminal prosecution, fines and/or imprisonment.

**APPRENTICES** Apprentice rates apply only to apprentices properly registered under approved Federal or State apprenticeship programs.

**PROPER PAY** If you do not receive proper pay, or require further information on the applicable wages, contact the Contracting Officer listed below:

or contact the U.S. Department of Labor's Wage and Hour Division.

For additional information:

**1-866-4-USWAGE**

(1-866-487-9243) TTY: 1-877-889-5627

**WWW.WAGEHOUR.DOL.GOV**

U.S. Department of Labor | Employment Standards Administration | Wage and Hour Division

WH 1321(Revised April 2009)

# Labor Standards - Payroll Review

- Payroll reports required to be submitted to grantee within 7-11 working days of end of pay period
  - Payroll form is Att. 12
  - Must include signed Certification of Compliance (Att. 13)
- Grantee must review payrolls
  - Refer to Payroll Falsification Indicators (Att. 11) for guidance
  - Also look at classifications & pay, overtime and deductions
  - Only permissible deductions allowed

# Labor Standards – Employee Interviews

- Report possible discrepancies or falsifications to DLG
- Grantees required to conduct periodic job site interviews with workers
  - See Att. 14 for Record of Interview Form (HUD 11)
- DLG encourages *representative sampling* for interviews
  - At least 10% of workers on-site
  - At least one person in each job classification
  - Employees from both the prime and subcontractor should be interviewed
- Compare to payroll forms

# Labor Standards – Employee Interviews (cont.)

- Interview Protocols:
  - On-site & one-on-one
  - Observe duties & tools used before initiating interviews
  - Key info:
    - Full name & address
    - Hours worked, classification, hourly rate & deductions from pay
  - Ask if the worker has any complaints or questions
  - Spanish version of forms available
- Compare interview forms to payrolls & sign forms
- Resolve any issues with prime contractor

# Other Labor Compliance Items

- If errors on payrolls, get corrected payrolls & statements of compliance
- If underpayment of wages or non-payment of overtime, ensure workers are paid restitution & get corrected payrolls & statements of compliance
  - If workers cannot be found, contractor must escrow funds
  - Complete forms/reports & document in files

# Equal Employment Opportunity

- Need to get Contractor Employee Breakdown Form completed by contractor
  - Demographic info. on workers
- Visit site to check for required labor & equal opportunity posters (in Attachments)
- Document monitoring in EEO compliance files

# Review & Payments

- Progress payments may be approved if:
  - Supported by written inspection reports
  - Complying with labor standards and equal opportunity requirements as verified through interviews, reports & forms
- Retainage not required, but 10% standard (other funders may require)

# Change Orders


- Changes in work happen, but must be documented in writing
  - Must be prepared by construction inspector or architect
  - Must be accompanied by supporting documentation
  - Must be approved by grantee prior to execution by contractor
- **If change orders will cumulatively exceed 20% of original contract, contact DLG for prior approval**

# Final Payments

- Occurs when contractor certifies completion and requests final payment
  - Grantee (or architect/engineer) must conduct final inspection
  - Need to ensure total compliance with labor, EEO & other requirements BEFORE paying
- Within 30 days of acceptance of work and submission of clear lien certificate, grantee can release retainage

# Documentation

- Grantees must document the oversight actions they've taken to ensure compliance with applicable rules
- Review Construction Oversight Checklist (Att. 6-14) for a list of required documents
- Use various other forms provided as applicable

# Build America, Buy America Act

- Infrastructure Projects - Requires all iron and steel, construction materials, and manufactured products be produced in United States
- Known as “Buy America Preference” (BAP)
- Infrastructure Investment and Jobs Act, Pub. L. 117-58 and 2 CFR 184

# What is Infrastructure?

- **Infrastructure includes construction, alteration, maintenance of:**
- Roads, highways, and bridges
- Public transportation
- Dams, ports, harbors, and other maritime facilities
- Intercity passenger and freight railroads
- Freight and intermodal facilities
- Airports

•Water systems, including drinking water and wastewater systems
• Electrical transmission facilities and systems
• Utilities
• Broadband infrastructure
• Buildings and real property*
• Structures, facilities, and equipment that generate, transport, and distribute energy including electric vehicle charging

# BABA Phased Implementation

**CDBG Effective Dates**

- Iron & Steel Nov 15, 2022
- Specifically listed construction materials FY24 Appropriations
- Not listed construction materials, Manufactured products FY25 Appropriations

# Iron & Steel Materials

as defined in 2 CFR 184.3

means articles, materials, or supplies that consist wholly or predominantly of iron or steel, or a combination of both

All manufacturing, initial melting through application of coatings, must occur in United States

# Construction Materials

**Specifically listed:**

- Non-ferrous metals
- Lumber
- Composite building materials
- Plastic and polymer-base pipe and tub

**Not Listed materials:**

- All other plastic- and polymer-based materials
- Glass
- Fiber optic cables
- Engineered wood
- Drywall

# Manufactured Products

As defined in 2 CFR 184.3 and including articles, materials, or supplies that have been:

- Processed into a specific form and shape; or
- Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies

Notes:

- Items classified as other BABA material types are not also manufactured products
- Items classified as manufactured products can include other BABA material types

# Section 70917(c) Materials

Defined in 2 CFR 184.3

Means cement and cementitious materials; aggregates such as stone, sand, or gravel, or aggregate binding agents or additives

# BABA & HUD General Waivers

- HUD General Waivers still in effect:
  - Phased Implementation
  - Exigent Circumstances
  - Small Grants and De Minimis
- If any of the conditions met, BAP requirements may be waived for the project or portion of the project
- No formal request to HUD required
- Maintain documentation in files

# Exigent Circumstances

- Project must be completed immediately to protect life, ensure safety, or prevent destruction of property, the BAP does not apply
- Waiver period through November 23, 2027
- Example:

A CDBG-funded mixed use development is damaged by a burst hot water pipe in the middle of winter. They need to repair the damaged structure is of immediate concern to protect the life, safety, and property of the residents of the housing portion of the development.

# De Minimis and Small Grants

- Total project cost does not exceed the simplified acquisition threshold value ($250,000), BAP does not apply

**OR**

- The BAP can be waived for a portion of the materials covered in a project if the cost of those materials comprises no more than 5% of the total cost of covered materials used in the project (not to exceed $1 million).
- Waiver period through November 23, 2027

# Project-Specific Waivers

- Public Interest – BAP would be inconsistent with the public interest
- Nonavailability – Covered products are not produced in the US in sufficient and reasonably available quantities
- Unreasonable Costs – Inclusion of domestically-produced covered products would increase the cost of the project by more than 25%

# BABA Contracting Requirements

Ensure BAP requirements are included in terms and conditions for:

- Bid documents
- Subrecipient agreements
- Contracts
- Subawards
- Purchase orders

# BABA Contracting Requirements

- Use the same language from HUD executed grant agreements
- Amend existing agreements or other awards if BABA language was not included
- Maintain documentation of these executed agreements for files

# BABA Documenting Compliance

- Project budget specifying total project cost and cost of Covered Materials
- Procurement list(s) of Covered Materials
  - Type of material
  - Product or material
  - Federal Financial Assistance (FFA) Source & obligation date
  - Cost per unit
  - Total cost of product purchase or contract
  - Manufacturer or vendor
  - U.S. Made verification (Made in USA label, product specifications, vendor or contractor certification)
- Project completion submit HUD BABA Self-Certification

# Chapter 7: Fair Housing and Equal Opportunity


# Applicable Laws

- Fair Housing & Nondiscrimination
  - Title VI Civil Rights Act
  - Fair Housing Act, as amended
  - Section 106 & 109 of the Housing & Community Development Act
  - Age Discrimination Act
  - CDBG regs & policy guidance
- Accessibility: Fair Housing Act & Section 504
- Equal Employment: Equal Employment Act & Executive Order 11246

# Overview

- No person shall be subjected to discrimination because of:
  - Race/Ethnicity
  - Color
  - Religion
  - Sex
  - Disability
  - Familial Status
  - National Origin
- Referred to as the “protected classes”

# Limited English Proficiency (LEP)

- Title VI bans discrimination on the basis of race, color or national origin
  - Includes the failure to ensure those who have LEP can effectively participate in, or benefit from, KCDBG programs
- Must do a 4-factor analysis and plan based on analysis created by DLG (called LAP)
  - KCDBG grantees will use 4-factor analysis prior to release of funds.

# Fair Housing Requirements

- Fair Housing requirements apply to the **locality as a whole -- not just the CDBG-funded project**
- Goals:
  - Maximize housing choice
  - Lessen racial, ethnic & economic concentrations of housing
  - Facilitate desegregation & racially inclusive patterns of occupancy/public facilities
  - ***Affirmatively further* fair housing**

# Fair Housing & Accessibility

- Grantees must ensure the following:
  - Access to programs and projects are free from discrimination
  - Fair housing & EEO posters are in prominent locations
  - Taking affirmative action to overcome previous discrimination
  - Complete Title VI Self Survey & Statement of Assurance
  - Use of EEO checklist & adoption of procedures

# Required Fair Housing Activities

- Must pass a fair housing resolution and publish in newspaper/post in prominent locations prior to release of funds

**AND**

- Must undertake one or more fair housing activities each year, like:
  - Disseminate information
  - Do outreach

# Fair Housing Activities

- Review the State's Analysis of Impediments (AI), which identifies impediments to fair housing & actions that can be taken in KY
- Design marketing campaigns to reach those least likely to apply
- Other examples of possible activities are in the Handbook

# Fair Housing & Accessibility

- Fair Housing Act also requires:
  - Accessible public & common areas
  - Doors wide enough to allow wheelchair access
  - Adaptable design

# Section 504 Basics

- Section 504 -- HUD specific regs on accessibility -- makes it unlawful to discriminate based on disability
- Covered disabilities include: mobility, visual, hearing & cognitive
- See sample 504 Checklist
- Self-Evaluation and Transition Plan required as part of evidentiary materials

# Handicapped Accessibility

- Section 504 requires:
  - Program accessibility (incl. office space where application intake occurs)
  - Accessible communications (phone etc.)
  - Physical accessibility in housing (more on next slide)

# Application of 504 to Housing

- New construction of multi-family (5+ units) & substantial rehab of multi-family rental w/ 15+ units where rehab costs = >75% of the replacement cost must:
  - Have 5% of units that are accessible for persons with mobility impairments
  - Have an additional 2% of units that are accessible for persons with hearing/vision impairments

# Section 504 & Non-Housing Activities

- CDBG funded facilities must be able to be approached, entered & used by persons with disabilities
  - Entrances/exits
  - Meeting rooms
  - Restrooms
- Ensure facilities used for public meetings & interaction with public are accessible or make accommodations

# Section 504 Additional Requirements for Grantees with 15+ Employees

- 504 coordinator must be designated
- Must adopt 504 grievance procedures
- Notify participants, beneficiaries & employees of nondiscrimination policy
- Ensure accessible design & construction
- Conduct a self-evaluation
- Ensure nondiscrimination in employment

# Employment & Contracting

- Governed by Section 504, etc.
- Grantees must:
  - Review employment procedures and marketing materials to ensure EEO language and logos used
  - Develop and maintain employment data by race, ethnicity & gender categories
    - Local Government Workforce Analysis Form – annual or biennial reporting required based on agency side
  - Demonstrate reasonable accommodations for those with disabilities on the job and in the workforce

# Complaints

- Citizens may file complains regarding discrimination
  - Filed with FHEO
  - May file in Federal court
- Informal resolution encouraged
- Proactive approach, compliance with requirements helps to avoid

# Chapter 8: Relocation



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# Overview – Applicable Regulations

- 24 CFR Part 570.606 of the CDBG Regulations
- The Uniform Relocation Act (URA)
- Section 104(d)
- HUD Handbook 1378 ( not updated to the new URA regulations)

# Overview of Requirements

- Uniform Relocation Act (URA)
  - Protects persons displaced by Federally-assisted projects
- Section 104(d)
  - Specifies relocation assistance for displaced LMI tenants
  - Requires one-for-one replacement of LMI rental units demolished or converted to another use

# Definitions

- Displaced person
  - Person that moves as a **direct result** of CDBG activity…
  - Due to acquisition, rehabilitation, demolition &
  - Includes households, businesses & nonprofits
- Displaced person for 104(d) is lower income tenant displaced by CDBG conversion or demolition

# URA Definitions

- Direct result:
  - Got notice to vacate
  - Determined to be direct result
  - Missing notices
  - DSS unit not offered
  - Unreasonable terms
  - Change in residential building character to public

# URA Definitions

- Persons not displaced
  - No legal right to occupy the property
  - Has been evicted for good cause
  - Person moves in after a certain point in process and was provided notice
  - Occupied to obtain benefits
  - Retained life estate
  - Determined (with DLG) not to be direct result

# URA Definitions

- Also not displaced
  - Code enforcement if no project
  - Notified will not be displaced
  - Owner occupant with voluntary rehab
  - Alien not lawfully present in US

# URA Definitions

- Initiation of Negotiations (ION)
  - Determines timing of eligibility for relocation assistance
  - Can differ depending on situation
- Project
  - Activity or series of activities funded with CDBG

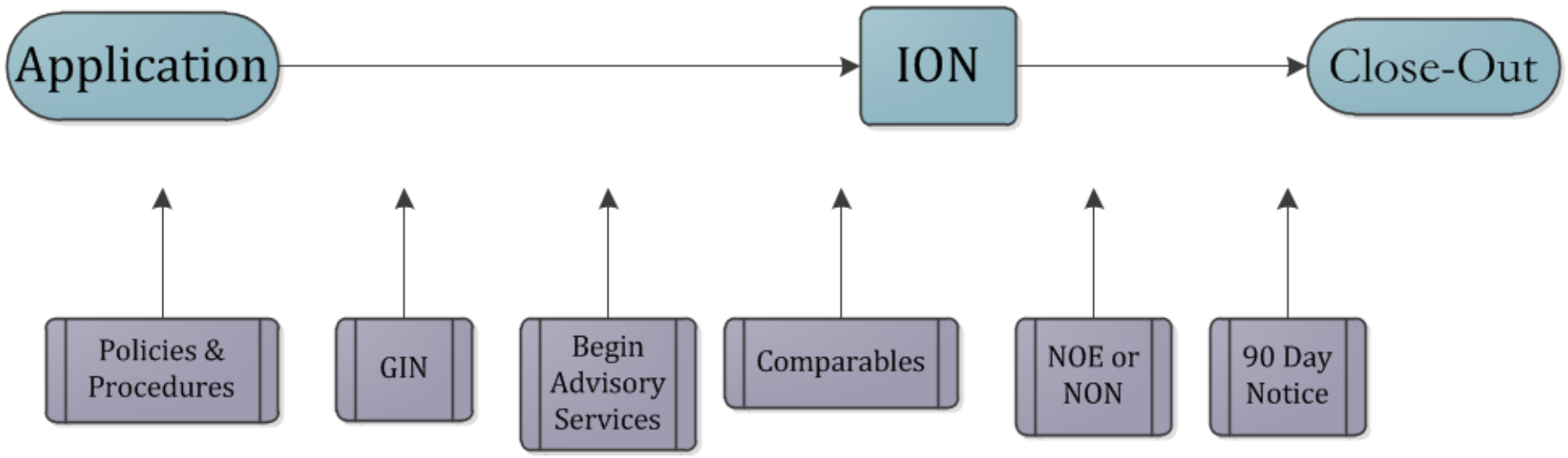
# URA Steps

1. Develop written policies and procedures
2. Send General Information Notice (GIN) at time of application to DLG
3. Provide relocation advisory services
   - Use Household Case Record to collect information
4. Identify comparable replacement unit(s)
   - Decent, safe, sanitary and lead-safe
   - Functionally equivalent to current unit

# URA Steps

5. Calculate the replacement housing payment
6. Send Notice of Nondisplacement or Notice of Eligibility for Relocation Assistance
   - Attach appropriate HUD brochures
   - Includes estimate of RHP
   - Send notice to vacate
7. Pay Moving Expenses

# URA Flow Chart



# Policies & Procedures

- Plan for budget implications
- Paying for relocation
  - Impact on feasibility
  - Public or private funds
- Coordinate actions
- Current rules emphasize planning, especially for business moves

# Policies & Procedures

- **Local plans & policies**
  - Relocation Plan
  - Temporary Relocation Policy
  - Optional Relocation Plan (as applicable; for voluntary housing rehab programs)
  - Plan for one-for-one replacement
- **DLG Review**

# Advisory Services & Notices

- Virtually EVERYONE in a Project
  - Owners and tenants
  - Those displaced
  - Those not displaced
- Different notices serve different purposes
  - Specific project circumstances
  - Specific individual circumstances
- Combining notices is OK, IF information is accurate and timely

# General Information Notice

- **General Information Notice (GIN)**
  - Advise that the project has been proposed
  - Advise "not to move" prematurely
  - Different versions for those who will and will not be displaced
  - HUD Booklet 1042-CPD - *Relocation Assistance to Tenants Displaced from their HOMES*

# Notice of Eligibility

- **Notice of Eligibility**
  - To those displaced explaining assistance
  - Issued at ION
  - Includes:
    - Address of comparable unit
    - A specified amount for replacement housing payment & moving expense
  - HUD Booklet 1042-CPD - *Relocation Assistance to Tenants Displaced from their HOMES*
- Cannot propose or request displaced person to waive his/her rights

# Notice of Nondisplacement

- **Notice of Nondisplacement**
  - For those who will remain (stayers)
  - Issued at ION
  - Offer of suitable, affordable unit and terms and conditions of occupancy

# What Must Relocation Notices Say?

- **Temporary Relocation Notice**
  - "Reasonable" written notice & move
  - Actual moving expenses
  - Identify place
  - Not more than 12 months

# Notice to Move

- **Notice to move**
  - For those displaced
  - Cannot be given before Notice of Eligibility
  - Specify date must vacate or earliest date required

# When and How are Notices Served?

- Grantee is responsible
- “As soon as feasible”
- Personally delivered, or certified/registered mail
- Proof of receipt
- Grantee is responsible!
- See guide forms in handbook

# Other Advisory Services: Information & Counseling

- **Persons provided information on:**
  - Project and scheduling
  - Counseling and referrals
  - Transportation to inspect housing
  - Professional home inspection
  - Fair housing rights
  - Moves outside areas of racial concentration
  - Offer of a comparable unit

# Comparable Units For Displaced Residents

- **Comparable Units are:**
  - Meet local codes/standards (at a minimum, decent, safe & sanitary (DSS))
  - Functionally equivalent
  - Adequate in size
  - Accessible to employment
  - Equal or better location
  - Currently available
  - No unreasonable environmental conditions
  - Affordable

# Unit Standard

- Section 8 HQS OK but local code compliance emphasized
- Unit needs to be:
  - Sound
  - Safe heat/electricity
  - Adequate for household
  - Barrier free, if needed
    - Need to consider other physical disabilities beyond mobility (i.e., hearing, vision, etc.)

# URA Replacement Housing Payments

- Intended to provide affordable housing for a 42-month period
- No limitation on payments

# Replacement Housing Payment

| | |
|---|---|
| $ Old Rent * | $ New Rent |
| $ Ability to Pay ** | $ Comparable |

$ RIGHT - $ LEFT = $

X 42 months = $_____

*Not used for less than 90 day tenant

**Only for low income household

# Example: Replacement Housing Payment

| OLD RENT | NEW RENT |
|---|---|
| $460 | $575 |
| ABILITY TO PAY | COMPARABLE |
| $300 | $525 |

| | | |
|---|---|---|
| $ 525 - $ 300 | = | $ 225 |
| X 42 months | = | $ 9,450 |

# Moving & Related Expenses for Displaced Residents

- Displaced persons are also entitled to assistance for moving expenses
- Three methods:
  - Commercial mover
  - Reimbursement of actual costs
  - Fixed payment based on DOT schedule
- Cannot do residential fixed price self moves based on lower of bids

# Moving Expenses

- **Fixed Allowance**
  - Displaced person chooses
  - Uses DOT schedule
  - Based upon number of rooms
  - See 8-15 and 8-16 for list of eligible and ineligible moving expenses
- **Special rules for…**
  - Congregate sleeping space -- generally limited to $100
  - Homeless persons--no fixed payment, but actuals
  - Public housing tenants
    - If PHA tenant = $50
    - If PHA doesn't move, family chooses actual or fixed

# Lead-Based Paint & Relocation

- Temporary relocation is not required when:
  - Treatment will not disturb LBP or lead-contaminated dust
  - Treatment of interior complete within one period in 8 daytime hours
  - Only building's exterior is treated
  - Treatment completed within 5 calendar days & area sealed

# Temporary Relocation of Tenants

- Conditions must be reasonable
  - Reimburse out-of-pocket expenses
  - Appropriate advisory services
  - Temporary Relocation Notice
  - Temporary unit must be suitable

# Commercial Relocation

- Displaced commercial/non-residential uses entitled to advisory services and financial benefits under URA
- A commercial use is:
  - A for-profit business engaged in any lawful activity
  - A nonprofit organization
  - A farm operation

# Commercial URA Notices

- GIN tailored to situation including:
  - Description of project and caution not to move
  - Description of benefits and advisory services
  - Appeal process
  - HUD brochure
- At ION, notices should include:
  - Effective date of eligibility
  - Description of assistance available and procedures
  - 90-day notice may be sent after ION

# Actual Moving Expenses

- Any displaced business is eligible for actual expenses
  - Necessary, reasonable expenses
  - May include loss or substitute of equipment
  - No upper limit
- May qualify for reestablishment payment (up to $25,000)

# Fixed Payments

- Business may elect fixed payment instead of actual moving & re-establishment expenses
- Applies when business
  - Discontinued operations

    -or-

  - Will suffer from loss of existing patrons

# Fixed Payments

- Amount of payment
  - Net earnings for two-year period prior to year of displacement, then divide in half
  - Minimum is $1,000, maximum is $40,000
- Only one payment when two or more entities are one business

# Section 104(d) for Families

- Applies to LMI persons only
  - Only when 104(d) triggered
  - KCDBG assistance & unit demo/conversion
- Notices similar to URA
- Person can choose URA level of assistance or Section 104(d) assistance

# 104(d) RHP Formula

Comparable

**LESSER**

New Rent

TTP, higher of:
-- 30%
adjusted
-- 10% gross

Left – Right = Monthly RHP
Monthly RHP X 60 Months = RHP Payment

# One-for-One Replacement

- Covered by 104(d)
- Unit must be replaced if:
  - Meets definition of low/moderate dwelling unit, and
  - Occupied or vacant occupiable dwelling unit, and
  - Demolished or converted

# Replacement Units

- Within jurisdiction, preferably within same neighborhood
- For each unit replaced, number of bedrooms replaced must equal number of bedrooms removed
- In standard condition:
  - Rehab units count if under certain circumstances

# Replacement Units

- Replacement units count if provided:
  - Up to one year before grantee's submission
  - Within three years from the beginning of rehab or demolition
  - Must make available before project closed
- Designed to remain affordable for at least 10 years

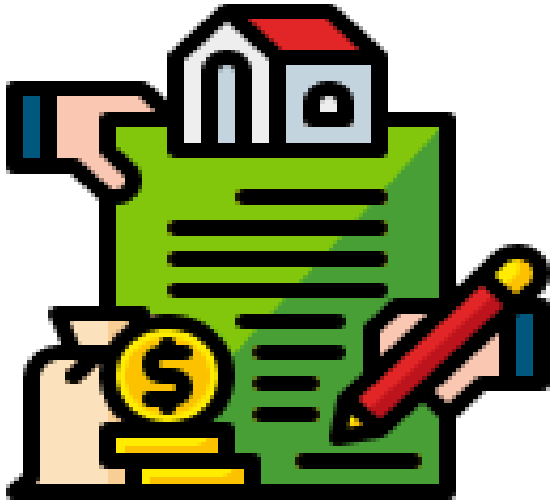
# Grantee Submission Requirements

- Before executing contract, grantees must make public & submit in writing:
  - Description of proposed activity
  - Location & number of units to be removed
  - Location & number of replacement units

# Exceptions

- Demonstrate that affordable housing is already available
- Must be granted before activity begins
- Must submit request for exception directly to DLG & make submission public

# Chapter 9: Acquisition



# When is URA triggered?

- URA triggered when real property is acquired or persons displaced as a direct result of acquisition, demolition & rehab as part of a Federally-funded project
- Applies to government agencies, private organizations & others

# Project Financing & the URA

- URA requirements apply to:
  - Virtually all Federal programs, including CDBG and CDBG-DR
  - Grants, loans & other contributions
- URA may be triggered if federal assistance is in <u>any phase or funding of the project</u>

# Purchase Types

- Applies to wide range of types of purchases:
  - Fee simple title
  - Permanent easements
  - Temporary easements necessary for the project
  - Life estate
  - Long term lease (50 years or more)

# Purchasers

- URA covers purchases by:
  - Grantee
  - Nonprofits with federal assistance
  - For-profits with federal assistance
  - Agent or consultant acting on grantee behalf
  - Homebuyers with federal down payment assistance

# Key Acquisition Terms

- Subpart B of the URA
- Eminent domain & condemnation
- State agency
- Initiation of Negotiations (ION)

# Types of Acquisitions

- Acquisitions are generally known as voluntary or involuntary (aka, subject to Subpart B)
  - In general, transactions where there is the threat of eminent domain are considered involuntary (subject to Subpart B)
- If a transaction is voluntary (not subject to Subpart B), property owners are not eligible for relocation assistance BUT tenants are eligible
  - Tenant relocation eligibility begins at agreement to purchase
  - Grantees can not ask recipients to waive their relocation benefits

# Types of Voluntary Acquisitions

- Three Different Types:
  - Grantee doesn't have eminent domain powers (e.g., nonprofit organization)
  - Purchases from government agency where buyer does not have eminent domain powers over that agency (i.e., local government can't use eminent domain over Federal govt.)
  - Grantee has eminent domain powers but won't use in any circumstance

# Grantee Does Not Have the Power of Eminent Domain

- Must notify the seller:
  - Does not have the power of eminent domain
  - Seller not eligible to receive relocation assistance
  - Estimate of fair market value
    - Appraisal not required, but determination made by someone with knowledge of real estate market
- Send notice before execution of the sales contract
  - If option is secured before applying for funds, entity must allow owner out of sales contract if so inclined

# Grantee Will not Use Eminent Domain

- Grantee must not intend to use its eminent domain powers if sale cannot can be negotiated
- Property cannot be:
  - Specifically required
  - Part of a planned or designated area in which all or substantially all property in area will be purchased
- Private developer acting as agent of grantee is treated as grantee

# Grantee Will not Use Eminent Domain

- Must notify the seller:
  - Grantee will not use the power of eminent domain
  - Seller not eligible to receive relocation assistance
  - Estimate of fair market value
    - Appraisal not required, but determination made by someone with knowledge of real estate market

# Donations


- Owners may voluntarily donate but…
  - Must be fully informed of rights
  - Must acknowledge his or her decision to voluntarily relinquish payments due under URA
    - Get it in writing using the form provided in Handbook
    - Keep documentation in project files

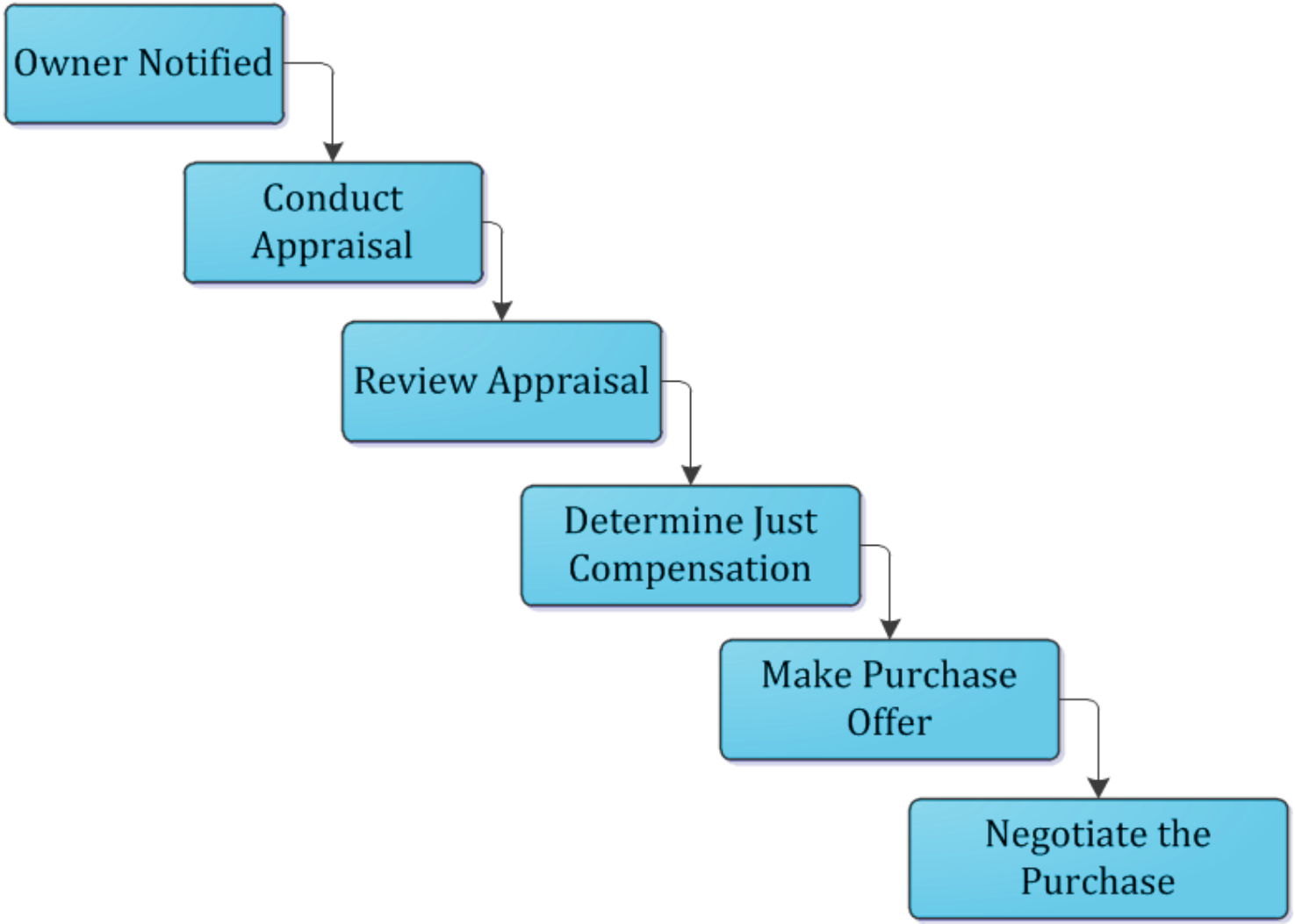
# Involuntary Acquisition

- In an involuntary transaction, grantees must, at a minimum:
  - Provide notices to the owner
    - Must have proof of delivery & retain for files
  - Provide URA notices & guidance to occupants
  - Offer market value for the property (more on this later)
  - Complete the purchase expeditiously

# Involuntary Acquisition

- Eminent domain cannot be used for any acquisition not benefiting the public
  - Generally economic development & related activities cannot utilize eminent domain
  - Check with DLG before proceeding on eminent domain if project is not infrastructure or facility for broad  public use

# Process for Involuntary Acquisition



# Appraiser Qualifications

- Appraiser qualifications:
  - Fee appraisers must be state licensed and FIRREA-certified
  - Must not coerce or influence appraiser
  - Appraiser must not have interest with owner or property - conflict of interest
- Follow procurement rules if using CDBG funds to pay for these services

# Appraisal Process and Criteria

- Must reflect nationally-recognized industry standards
- A scope of work is required for each appraisal
- 1 appraisal required; 2 appraisals recommended for complex or high valued properties
- Owner must be invited to accompany the appraiser

# Review of Appraisals

- Initial appraisal must be checked by a review appraiser
- If initial and review appraiser do not agree, may seek a 2nd appraisal
- If a 2nd appraisal is not feasible, reviewer may alter original amount

# Establish Just Compensation

- Not less than Market Value
- Includes related costs and other interests in property
- Must purchase any uneconomic remnant
- Develop Statement of Basis for the Determination of Just Compensation

# Condemnation

- Used when cannot come to agreement on sale
  - Disagreement with owner on price
  - Title issues
  - Owner disagrees on need for purchase
- Process:
  - Governing body authorizes
  - Copies of surveys and maps filed with office
  - Attorney files with court
  - Deposit just compensation

# Condemnation

- Petition in court:
  - Right to use eminent domain
  - Legal description of property
  - Application to court for commissioners
- Written report in 15 days
- Owner has 20 days to respond
  - Can file an exception
- City/county pays court costs
- Owners may appeal

# Assistance for 90-Day Homeowners

- Pays for replacement housing for 90-day homeowners
  - Use form to calculate assistance
  - Max is $7,200
- If occupied less than 90 days, owner is treated the same as a tenant

# Moving & Related Expenses

- Owner may choose to receive payment for moving and related expenses by:
  - Reimbursement of actual moving and related expenses OR
  - Receipt of fixed payment based upon a Federal schedule

# Chapter 10: Housing

TEAM KENTUCKY®
DEPARTMENT FOR LOCAL GOVERNMENT

# Introduction

- This chapter divided into two parts:
  - Traditional housing rehab programs = Voluntary
  - Involuntary programs which are housing & related activities in slum/blight areas

# Housing Part I

## Voluntary Programs

# Part I: Housing Rehab Activities

- Rehab
- Demolition and reconstruction
  - Rebuilding of structure on same site
  - Replacement of substandard manufactured unit also OK
- Conversion to residential
- Water/sewer line connections
  - Upgrade or replacement of septic systems OK if providing a service lateral cost prohibitive
  - These activities cannot be done by themselves
- Homeowner maintenance/life skills education to participating homeowners

# Ineligible Activities

- Ineligible housing activities:
  - New construction except by certain types of nonprofit carrying out certain kinds of projects
  - Grants for rent, mortgage
  - NO luxury items!
    - Swimming pools
    - Jacuzzis
    - High-end appliances
    - Window air conditioners
    - Washers and dryers

# Meeting a National Objective

- Each project must meet the LMI national objective:
  - Each SF unit must be occupied by LMI household
  - If 2 units, at least one occupied by LMI household
  - For MF structures, at least 51% of units occupied by LMI households

# Program Guidelines & Procedures

- Grantees need to develop guidelines that include:
  - Type of assistance provided
  - Applicant eligibility
  - Property eligibility
  - Property standards
  - Contracting requirements
  - Relocation requirements
  - Grievance procedures
  - Maintenance agreements

# Housing Programs

- Must publicly announce program, including the following elements:
  - Funding available
  - That eminent domain will NOT be used
  - Rating & ranking criteria for selection of beneficiaries

# Types of Assistance

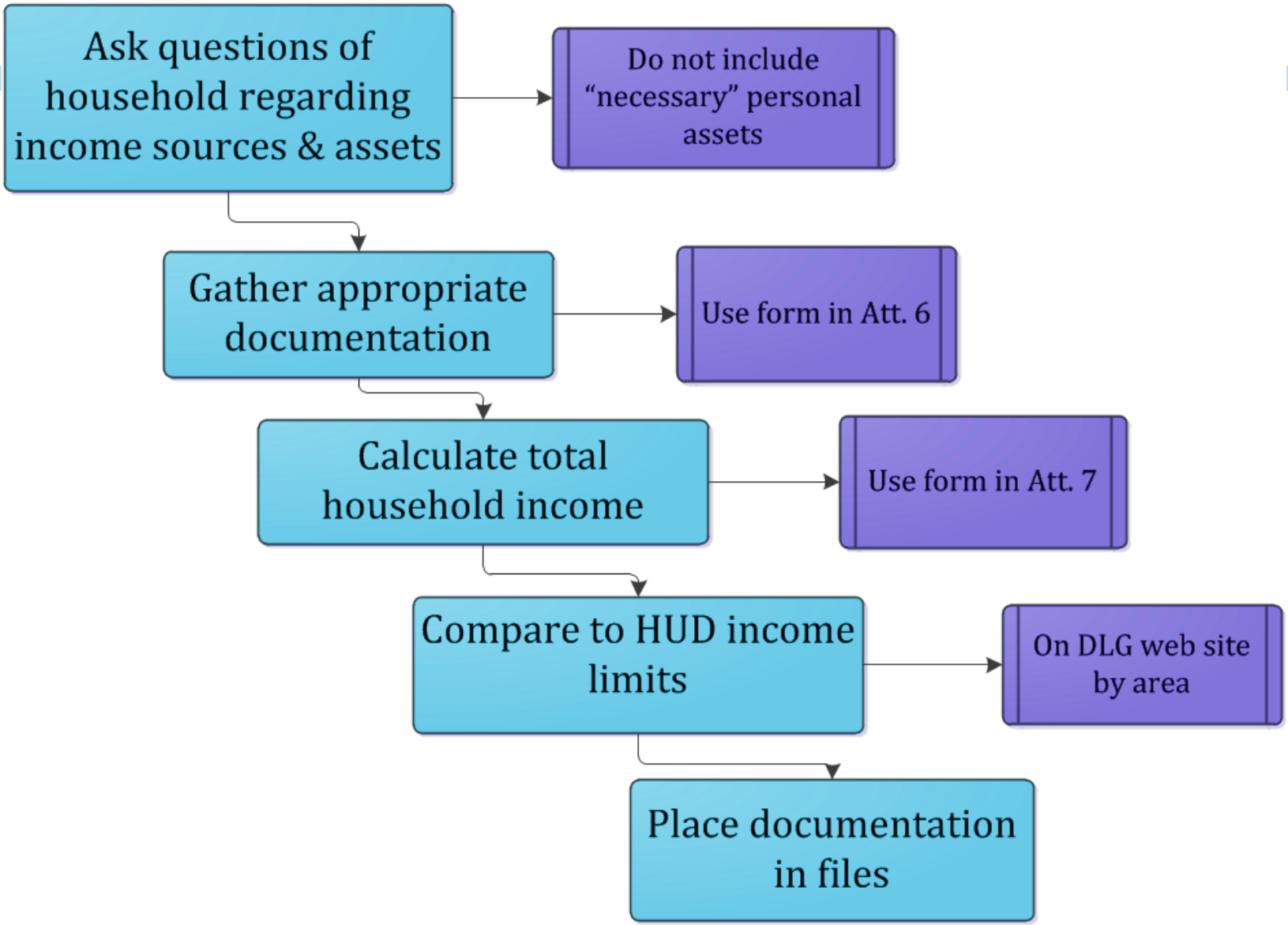
- Grants
- Loans (executed with note & mortgage)
  - Forgivable
  - Deferred
  - Amortizing
  - Loans often combined with:
    - Write down/principal interest subsidy
    - Other loans (leveraging)

# Income Eligibility

- Grantees must document that each household meets income eligibility requirements
  - Section 8 definition of income used for determination
  - Section 8 regulations in 24 CFR Part 5
- Definition means gross amount of income for *all adult household members anticipated to be received in coming 12 months*
- *HUD income calculator can be used to document income calculation*

https://www.hudexchange.info/incomecalculator/

# Income Eligibility - Steps



# Property Eligibility

- Eligible units must be:
  - Occupied by LMI household as primary residence
  - Owned by the recipient (verified by title search)
    - Fee simple title
    - 99-year leasehold
    - Recorded life estate agreement
  - Have all tax liens cleared
  - Be substandard
    - Identify and document deficiencies
- Minimum 5-year residency requirement
  - Insurance must be maintained for that period

# Property Standards

- Guidelines should specify rehab standards that properties must meet
  - Rehab = International Code Council (ICC) Property Maintenance Code at a minimum
  - Reconstruction/new construction = Kentucky Residential Code
- General property improvements typically ineligible
- Lead-based paint hazard reduction rules may apply
  - Provide pamphlet in Att. 12 to all applicants!

# Relocation

- URA generally does not apply to voluntary homeowner rehab recipients
  - Does apply to tenants that are renting
- Grantees may provide temporary relocation benefits to owners:
  - Must have written policy/plan
  - Temporary unit they move to must be decent, safe, sanitary and lead-safe

# Housing Rehabilitation Program Implementation

1. Determine staffing
2. Market the program
3. Screen applicants
   - DLG's Rehabilitation Assistance Application (Att. 10)
   - Inform of lead issues (Att. 11 & 12)
   - Income qualification (Att. 6 & 7)

# Implementing Housing Rehabilitation

4. Inspect property
5. Develop write up work & estimate costs (Att. 13)
   - Be sure to conform to any applicable SHPO requirements
   - If home built pre-1978, the lead rules apply
6. Oversee rehab ensuring completion according to standards

# Lead Paint Requirements

- Lead rules generally applies to properties built prior to 1978 (Att. 14)
  - Certain types of rehab work exempt
    - Properties tested & found not to have lead
    - Properties where lead has been removed
    - Rehab won't disturb paint surfaces
- Lead evaluation and treatment depends on the *level of assistance* which is the lower of:
  - Per unit rehabilitation hard costs (all funds) OR
  - Per unit Federal assistance
- Att. 15 provides form to calculate this

# Lead Paint Requirements

- Evaluation activity depends on level of assistance:
  - Less than $5,000 = Paint testing by certified inspector or risk assessor
  - $5,000 to $25,000 = Risk assessment by certified risk assessor
  - More than $25,000 = Risk assessment by certified risk assessor
- Notification:
  - Notice of Lead Hazard Evaluation to homeowner within 15 days of inspection (Att. 18)
  - Alternatively, can presume presence of lead & provide "Notice of Presumption" (Att. 19)

# Lead Paint Requirements

- How to address lead depends upon amount of assistance:
  - <$5k = repair surfaces to be disturbed using safe work practices by trained workers
  - $5k - $25k = interim controls using safe work practices & trained workers
  - >$25k = abatement using safe work practices & certified supervisor & workers

# Lead Paint Requirements

- Clearance must also be performed
  - Do NOT pay final payment to contractor before unit has passed clearance
  - Provide Notice of Lead Hazard Reduction (Att. 26) to property owner within 15 days of unit receiving lead clearance

# Agreements with Property Owners

- Grantee must have formal agreement with recipient
  - Sample rehab agreement in Att. 19
  - Must be signed by owner prior to start of work
  - Must outline all conditions of assistance
  - Also record note & mortgage if assistance provided as a loan

# Bidding

- Homeowner makes final decision but grantee has to ensure cost reasonableness
- Therefore, should generally follow competitive bidding procedures:
  - Develop bid procedures
  - Try to get at least 3 bids
  - Take minutes of bid opening
- Make sure contractors have liability & workers' compensation insurance
- Check for lead certification & training credentials

# Contracting

- Contract must be between the property owner and contractor (See Att. 20)
- Grantee must make sure contractor not debarred &, if required, has applicable lead certifications/training
- Guidelines should specify procedures for:
  - Change orders
  - Dispute resolution

# Construction Management

- Hold pre-construction conference (Att. 22)
- Issue Notice to Proceed (Att. 21)
- During construction:
  - Inspect work before paying contractor (Att. 24)
  - Approve & document all change orders (Att. 25)

# Construction Management

- Upon completion:
  - If applicable, get lead clearance
  - Have homeowner sign Notice of Acceptance of Work upon completion (Att. 23)
  - If applicable, provide Notice of Lead Reduction to homeowner (Att. 26)
  - Have contractor sign Contract Termination & Release of Liens Form (Att. 27)
- Grantee must perform inspection 60 days after completion (Att. 29)

# Housing Part II

# Involuntary Programs

# Housing Part II: Involuntary Programs

- Involuntary program means housing and related activities that together will revitalize a specific area
  - Typically involves eminent domain
  - Area must be designated in accordance with KY Urban Renewal & Redevelopment Law (KRS Chap 99)
- Activities might include:
  - Acquisition
  - Conversion
  - Demolition and reconstruction

# Involuntary Activities

- Demolition and clearance
- Disposition costs
- Multifamily rehab
- New housing construction (by certain subrecipients only)
- Single family owner and rental rehab
- Can be combined with infrastructure/site improvements

# Involuntary - National Objectives

- LMI Housing preferred
  - Same rules apply as to regular rehab
  - Must determine household income within limits
- Slum/blight also allowed if area meets KY & HUD requirements for slum/blight
  - Slum/blight designation allows limited assistance to non-LMI households
  - Order of Municipal Resolution stating that area meets KY law required

# Involuntary – National Objectives

- Urban Renewal/Development Plan required if:
  - Public funds used on private property;
  - Public purpose invoked to condemn a property; or
  - Grantee owns land and wants to sell surplus property
- Att. 31 provides a sample Development Plan
- If land sold at less than FMV, resale must be identified as a public purpose in Plan

# Involuntary vs. Voluntary

- Assistance must be provided in form of a grant
- Single Family units acquired, rehabilitated and then sold must go to LMI buyers unless prior approval from DLG
- Homebuyer units requires a 5-year residency
- Rental units must be occupied by LMI persons at affordable rents (as defined by DLG) for a period of five years
- Maintenance agreement is required
- URA acquisition & relocation rules apply!

# Special Issues for Rental Housing

- If Low/Mod Housing National Objective:
  - 51% of units must be occupied by LMI households

    *at*

  - Affordable rents for minimum of 5 years
    - Rents can't exceed HUD Fair Market Rents (FMRs)
- Labor requirements apply to MF projects with 8 or more units
- Relocation rules apply to any tenants in units

# Involuntary Program Implementation

- Otherwise, same requirements & processes as under Voluntary Programs such as:
  - Program guidelines
  - Applicant & property eligibility
  - Property standards
  - Lead paint evaluation & treatment
  - Contracting & construction management
  - Others (refer to Handbook)

# Chapter 11 Economic Development


# Eligible ED Activities

- ED by/for public & nonprofit entities
- ED by neighborhood-based & other nonprofits
- Special ED by for-profits
- Microenterprise development
- Public facilities that support ED

# Ineligible Activities

- CDBG regulations do not allow "job pirating"
  - CDBG may not be used to relocate a company where job loss is significant
  - Businesses that start new operations in a separate location & then later reduces operations is OK

# Meeting a National Objective

- Projects must be eligible AND meet a national objective
  - DLG makes determinations at application but project must continue to comply with requirements
  - National objective now dictates type of performance measurement data collected

# LMI Job Creation/Retention

- Activity that creates or retains permanent jobs where 51% held by low-mod income persons
- Job creation = permanent jobs are 51% LMI
- Job retention = jobs would be lost without CDBG
  - Must have clear and objective evidence
    - Public notification
    - Financial analysis

# LMI Job Creation/Retention

- Requirements:
  - Prior written commitment and hiring plan from business
  - Monitoring of progress in filling hiring requirements
- Count:
  - Part-time jobs based on FTE
  - Only permanent jobs
  - No transferred or seasonal jobs
- Continue collecting info until hiring is complete

# Other National Objectives

- Low/Mod Area Benefit
  - Activity benefits a LMI area
  - Document service area
- Low/Mod Limited Clientele
  - Microenterprise activities where owner is LMI
  - Document income of business owner
- Low/Mod Limited Clientele in Support of ED
  - Services such as child care and/or job training
  - Document 51% LMI
- Slum/Blight
  - Limited use
  - DLG reviews on case-by-case basis

# Legally Binding Agreements

- All ED projects must have a legally binding agreement
- Details minimum requirements of each party involved in project

# Agreement Requirements

- Three main requirements:
  - Describe basic activities
  - Include provisions required in Section 7 of grant agreement
  - Include statement that agreement is contingent upon release of funds

- Additionally, provide:
  - Resolution of authority
  - Opinion of grantee's legal counsel

# Loan/Lease Documents

- Must be executed by separate agreement
- Should contain:
  - Rate and term of loan/lease
  - Payment terms, default provisions
  - Special conditions
  - Other provisions
  - Call provision
  - Opinion of Legal Counsel
- File with county clerk

# Security

- Key considerations:
  - Describe property to be mortgage/offered in detail
  - Clearly identify position for which security is offered
  - Mortgage to contain:
    - Legal description of property
    - Certification of ownership
    - Identification of claims against the property
  - Equipment liens
    - Model and serial numbers for owned property
  - File with county clerk and/or appropriate state agency

# Loan Closings

- Loan closing required
- Required documents to be prepared:
  - Real property transfer information
  - Security documents
- Notify DLG in advance of intent to close a loan
  - Submit all evidence
  - Declare closing date

# Public Benefit

- Financial analysis required for all Traditional & Non-Traditional ED Projects
- Two requirements
  - Ratio and use of public & private funds (underwriting)
  - Jobs OR goods & services benefit "test" (standards)

# Ratio and Use of Public and Private Funds

- CDBG regulations contain guidelines for evaluating cost & financial requirements
- Designed to assist in underwriting

# Underwriting Criteria

- Leverage & Use of KCDBG Funds
  - Establish need for investment of resources
  - Complete financing analysis
- Funding Commitments
  - Ensure debt & equity are committed
  - Avoid risk of insufficient financing

# Underwriting Criteria

- Reasonable Costs - Review budget for reasonableness and efficient/effective use of funds
- Reasonable Return - Review pro-formas & supporting info. Contact DLG for guidance
- Project Feasibility -Conduct analysis of feasibility; Examine repayment terms
- KCDBG Funds Disbursed Pro Rata -Generally required to disburse CDBG proportional to other funds in the project; Exceptions allowed
- Loan terms
- Repayment Report

# Public Benefit Standards

- Use of standards mandatory
  - Dollars per job test
  - Goods and services test
- Complete calculation before activities begin
  - Separate from National Objective requirement

# Calculating Dollar per Job Benefit

- Calculate total CDBG cost per job:
  - Divide total CDBG dollar amount &
  - Total # of perm jobs created/ retained
  - Based upon FTEs

- **$20,000 cap per job created**

# Calculating Goods and Services Public Benefit

- Calculate if goods/service are being provided to an LMI area
- Calculate by:
  - Determining # of people in service area
  - Determine portion LMI then
  - Divide KCDBG expenditure by total LMI
- **$350 cap per person**

# Public Facilities & ED

- Sometimes KCDBG funds are used for infrastructure for ED purposes
  - EX: water/sewer line into industrial park

- If cost $10,000 or less -standards not triggered

# Documenting Public Benefit

- Include as part of application & maintain files showing compliance
- Files should contain:
  - Document of $ received
  - Documentation of basis of jobs/families
  - Documentation of calculations

# Other Requirements

- Project Administration
  - Five key submission requirements specific to ED
- Other requirements such as:
  - Environmental review
  - Program income
  - Procurement & contracting
  - Acquisition/relocation
  - EEO

# Other Requirements

- Financial Management
  - Standard requirements plus specific procedures related to agreements, leases, loans, security
- Labor Standards
  - Apply, but consider:
    - Use for working capital
    - Equipment analysis

# Chapter 12 Amendments & Monitoring

# Project/Budget Amendments

- Amendment "triggered" when:
  - Change in approved project budget
  - Change in purpose, scope, location or beneficiaries from what was approved (project amendment)
- **Amendments require approval from DLG**
  - Reach out to DLG when anticipated
  - **Do not proceed without DLG approval**
  - Generally, completion date cannot change
- Use the project/budget amendment form to request approval (Attachment 12-1)

# Substantial Amendments

- DLG will determine if change considered "substantial"
- Substantial amendments may result in additional requirements being triggered such as:
  - State Clearinghouse assurance
  - Public hearing (citizen participation)
  - Environmental review re-evaluation or new ER

# When Projects Cost Less than Planned

- If project costs less than anticipated, contact DLG for next steps
  - Do not proceed with additional activities without DLG review and approval
  - As with other types of amendments, may trigger other requirements

# Monitoring

- DLG required by HUD to monitor projects to ensure the following key areas are met:
  - Approved activities carried out in a timely manner
  - Activities conducted in compliance with objectives & requirements of the program
  - Grantee shows continuing capacity to carry out project in a timely manner
- Monitoring can be carried out via review of documents at DLG & on-site visits

# Monitoring Process

- Typical steps in the process:
  - Entrance Meeting
  - Review of files/other documents
    - Staff has checklists that are used to ensure consistency
  - Exit meeting/interview
  - Review letter & follow-up actions
    - Grantee must respond within 30 days
    - No project close-out with outstanding findings
- DLG available to provide technical assistance

# Chapter 13: Project Closeout


TEAM KENTUCKY®
DEPARTMENT FOR LOCAL GOVERNMENT

# Overview

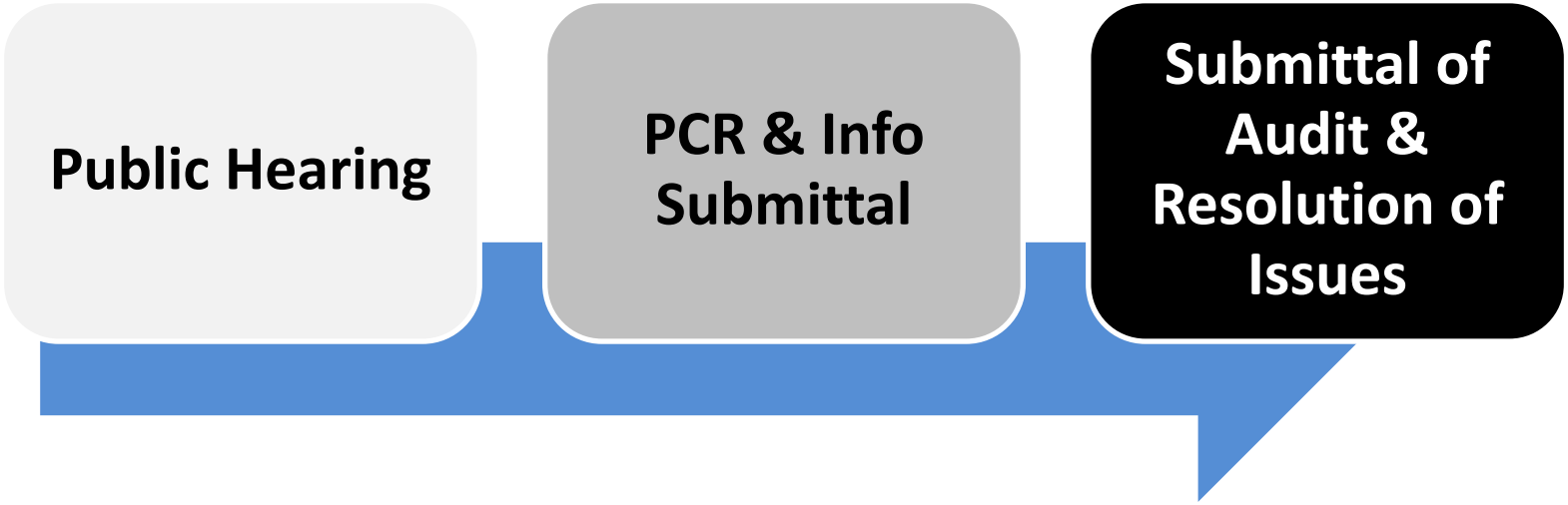
- Close-out is a series of activities that verify CDBG $ properly spent & documented and the grant can be officially closed

- Triggered when grantee has spent 100% of its KCDBG funds and the project is complete

# Close Out Conditions

- Close-out process may not be completed unless/until four conditions are all met:
  - There are no outstanding monitoring findings
  - National objective met
  - Acquired property disposed of
  - Audit requirements satisfied (including resolution of audit findings)

# The Close-out Process



# Close-out Public Hearing

- Purpose of hearing is to advise citizens of project completion & pending close-out
- Hearing must be advertised in newspaper of general circulate at least 7-21 days prior to date of hearing
- Steps must be taken to:
  - Ensure participation by LMI persons
  - Provide accessibility
  - Accommodate non-English speakers.
- Keep record of ad & any comments & responses

# Project Completion Report

- PCR (Att. 13-2) submission required & includes:
  - Certification
  - Financial Summary
  - Project Benefit Profile by Person
  - Project Benefit Profile by Household
  - Job Creation/Retention
  - Audit Information
  - Unpaid Obligations & Unsettled Claims
  - Housing Activity Address Information
  - Public Facilities Information
  - Section 3 Final Report

# Additional Requirements

- Additional documents must be submitted *with* PCR for close-out:
  - Public hearing documentation
  - Copy of comments & responses/actions taken
  - Program Income/Misc. Revenue Report (See Chapter 3)
  - Updated One-for-One Replacement Summary Report (if applicable) (See Chapter 8)

# Close-out Completion

- Two-step completion process:
  1. DLG will send Notice of Completion when PCR & other documents approved
  2. DLG will send a formal Close Out Letter when all requirements met
- Maintain all records for at least 5 yrs after close-out (grantee & other involved parties)

# Change in Use

- "Change in Use" provision applies from date CDBG funds are first spent on the property through 5 years after close-out of the grant that provided funds
- Applies to real property acquired/improved with >$150k of KCDBG $
- The new use has to be approved by DLG & meet a national objective OR pay back fair market value of property attributable to CDBG $ in property
  - This may require a public hearing

# End of Handbook!!!

# Test Preparation

- **Where** the info is in the Handbook – use the ToC and List of Attachments in beginning & in each chapter
- **What**:
  - Basic terms & requirements are
  - Steps/processes involved with key requirements
  - Key attachments (reports, forms that go to DLG) are used for
- **When** things are submitted to DLG

# Questions?