

# State of Georgia CDBG-CV Applicants' Manual FY2021

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## 42 U.S.C.

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Title 42 - THE PUBLIC HEALTH AND WELFARE

CHAPTER 69 - COMMUNITY DEVELOPMENT

Sec. 5305 - Activities eligible for assistance

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### §5305. Activities eligible for assistance

#### (a) Enumeration of eligible activities

Activities assisted under this chapter may include only—

(1) the acquisition of real property (including air rights, water rights, and other interests therein) which is (A) blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth; (B) appropriate for rehabilitation or conservation activities; (C) appropriate for the preservation or restoration of historic sites, the beautification of urban land, the conservation of open spaces, natural resources, and scenic areas, the provision of recreational opportunities, or the guidance of urban development; (D) to be used for the provision of public works, facilities, and improvements eligible for assistance under this chapter; or (E) to be used for other public purposes;

(2) the acquisition, construction, reconstruction, or installation (including design features and improvements with respect to such construction, reconstruction, or installation that promote energy efficiency) of public works, facilities (except for buildings for the general conduct of government), and site or other improvements;

(3) code enforcement in deteriorated or deteriorating areas in which such enforcement, together with public or private improvements or services to be provided, may be expected to arrest the decline of the area;

(4) clearance, demolition, removal, reconstruction, and rehabilitation (including rehabilitation which promotes energy efficiency) of buildings and improvements (including interim assistance, and financing public or private acquisition for reconstruction or rehabilitation, and reconstruction or rehabilitation, of privately owned properties, and including the renovation of closed school buildings);

(5) special projects directed to the removal of material and architectural barriers which restrict the mobility and accessibility of elderly and handicapped persons;

(6) payments to housing owners for losses of rental income incurred in holding for temporary periods housing units to be utilized for the relocation of individuals and families displaced by activities under this chapter;

(7) disposition (through sale, lease, donation, or otherwise) of any real property acquired pursuant to this chapter or its retention for public purposes;

(8) provision of public services, including but not limited to those concerned with employment, crime prevention, child care, health, drug abuse, education, energy conservation, welfare or recreation needs, if such services have not been provided by the unit of general local government (through funds raised by such unit, or received by such unit from the State in which it is located) during any part of the twelve-month period immediately preceding the date of submission of the statement with respect to which funds are to be made available under this chapter, and which are to be used for such services, unless the Secretary finds that the discontinuation of such services was the result of events not within the control of the unit of general local government, except that not more than 15 per centum of the amount of any assistance to a unit of general local government (or in the case of nonentitled communities not more than 15 per centum statewide) under this chapter including program income may be used for activities under this paragraph unless such unit of general local government used more than 15 percent of the assistance received under this chapter for fiscal year 1982 or fiscal year 1983 for such activities (excluding any assistance received pursuant to Public Law 98–8), in which case such unit of general local government may

use not more than the percentage or amount of such assistance used for such activities for such fiscal year, whichever method of calculation yields the higher amount, except that of any amount of assistance under this chapter (including program income) in each of fiscal years 1993 through 2003 to the City of Los Angeles and County of Los Angeles, each such unit of general government may use not more than 25 percent in each such fiscal year for activities under this paragraph, and except that of any amount of assistance under this chapter (including program income) in each of fiscal years 1999, 2000, and 2001, to the City of Miami, such city may use not more than 25 percent in each fiscal year for activities under this paragraph;

(9) payment of the non-Federal share required in connection with a Federal grant-in-aid program undertaken as part of activities assisted under this chapter;

(10) payment of the cost of completing a project funded under title I of the Housing Act of 1949 [42 U.S.C. 1450 et seq.];

(11) relocation payments and assistance for displaced individuals, families, businesses, organizations, and farm operations, when determined by the grantee to be appropriate;

(12) activities necessary (A) to develop a comprehensive community development plan, and (B) to develop a policy-planning-management capacity so that the recipient of assistance under this chapter may more rationally and effectively (i) determine its needs, (ii) set long-term goals and short-term objectives, (iii) devise programs and activities to meet these goals and objectives, (iv) evaluate the progress of such programs in accomplishing these goals and objectives, and (v) carry out management, coordination, and monitoring of activities necessary for effective planning implementation;

(13) payment of reasonable administrative costs related to establishing and administering federally approved enterprise zones and payment of reasonable administrative costs and carrying charges related to (A) administering the HOME program under title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12721 et seq.]; and (B) the planning and execution of community development and housing activities, including the provision of information and resources to residents of areas in which community development and housing activities are to be concentrated with respect to the planning and execution of such activities, and including the carrying out of activities as described in section 701(e) of the Housing Act of 1954 <sup>1</sup> on August 12, 1981;

(14) provision of assistance including loans (both interim and long-term) and grants for activities which are carried out by public or private nonprofit entities, including (A) acquisition of real property; (B) acquisition, construction, reconstruction, rehabilitation, or installation of (i) public facilities (except for buildings for the general conduct of government), site improvements, and utilities, and (ii) commercial or industrial buildings or structures and other commercial or industrial real property improvements; and (C) planning;

(15) assistance to neighborhood-based nonprofit organizations, local development corporations, nonprofit organizations serving the development needs of the communities in nonentitlement areas, or entities organized under section 681(d) <sup>1</sup> of title 15 to carry out a neighborhood revitalization or community economic development or energy conservation project in furtherance of the objectives of section 5301(c) of this title, and assistance to neighborhood-based nonprofit organizations, or other private or public nonprofit organizations, for the purpose of assisting, as part of neighborhood revitalization or other community development, the development of shared housing opportunities (other than by construction of new facilities) in which elderly families (as defined in section 1437a(b)(3) of this title) benefit as a result of living in a dwelling in which the facilities are shared with others in a manner that effectively and efficiently meets the housing needs of the residents and thereby reduces their cost of housing;

(16) activities necessary to the development of energy use strategies related to a recipient's development goals, to assure that those goals are achieved with maximum energy efficiency, including items such as—

(A) an analysis of the manner in, and the extent to, which energy conservation objectives will be integrated into local government operations, purchasing and service delivery, capital improvements budgeting, waste management, district heating and cooling, land use planning

and zoning, and traffic control, parking, and public transportation functions; and

(B) a statement of the actions the recipient will take to foster energy conservation and the use of renewable energy resources in the private sector, including the enactment and enforcement of local codes and ordinances to encourage or mandate energy conservation or use of renewable energy resources, financial and other assistance to be provided (principally for the benefit of low- and moderate-income persons) to make energy conserving improvements to residential structures, and any other proposed energy conservation activities;

(17) provision of assistance to private, for-profit entities, when the assistance is appropriate to carry out an economic development project (that shall minimize, to the extent practicable, displacement of existing businesses and jobs in neighborhoods) that—

(A) creates or retains jobs for low- and moderate-income persons;

(B) prevents or eliminates slums and blight;

(C) meets urgent needs;

(D) creates or retains businesses owned by community residents;

(E) assists businesses that provide goods or services needed by, and affordable to, low- and moderate-income residents; or

(F) provides technical assistance to promote any of the activities under subparagraphs (A) through (E);

(18) the rehabilitation or development of housing assisted under section 1437o<sup>2</sup> of this title;

(19) provision of technical assistance to public or nonprofit entities to increase the capacity of such entities to carry out eligible neighborhood revitalization or economic development activities, which assistance shall not be considered a planning cost as defined in paragraph (12) or administrative cost as defined in paragraph (13);

(20) housing services, such as housing counseling in connection with tenant-based rental assistance and affordable housing projects assisted under title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12721 et seq.], energy auditing, preparation of work specifications, loan processing, inspections, tenant selection, management of tenant-based rental assistance, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in housing activities assisted under title II of the Cranston-Gonzalez National Affordable Housing Act;

(21) provision of assistance by recipients under this chapter to institutions of higher education having a demonstrated capacity to carry out eligible activities under this subsection for carrying out such activities;

(22) provision of assistance to public and private organizations, agencies, and other entities (including nonprofit and for-profit entities) to enable such entities to facilitate economic development by—

(A) providing credit (including providing direct loans and loan guarantees, establishing revolving loan funds, and facilitating peer lending programs) for the establishment, stabilization, and expansion of microenterprises;

(B) providing technical assistance, advice, and business support services (including assistance, advice, and support relating to developing business plans, securing funding, conducting marketing, and otherwise engaging in microenterprise activities) to owners of microenterprises and persons developing microenterprises; and

(C) providing general support (such as peer support programs and counseling) to owners of microenterprises and persons developing microenterprises;

(23) activities necessary to make essential repairs and to pay operating expenses necessary to maintain the habitability of housing units acquired through tax foreclosure proceedings in order to prevent abandonment and deterioration of such housing in primarily low- and moderate-income neighborhoods;

(24)<sup>3</sup> the construction or improvement of tornado-safe shelters for residents of manufactured

housing, and the provision of assistance (including loans and grants) to nonprofit and for-profit entities (including owners of manufactured housing parks) for such construction or improvement, except that—

(A) a shelter assisted with amounts provided pursuant to this paragraph may be located only in a neighborhood (including a manufactured housing park) that—

(i) contains not less than 20 manufactured housing units that are within such proximity to the shelter that the shelter is available to the residents of such units in the event of a tornado;

(ii) consists predominantly of persons of low and moderate income; and

(iii) is located within a State in which a tornado has occurred during the fiscal year for which the amounts to be used under this paragraph were made available or any of the 3 preceding fiscal years, as determined by the Secretary after consultation with the Administrator of the Federal Emergency Management Agency;

(B) such a shelter shall comply with standards for construction and safety as the Secretary, after consultation with the Administrator of the Federal Emergency Management Agency, shall provide to ensure protection from tornadoes;

(C) such a shelter shall be of a size sufficient to accommodate, at a single time, all occupants of manufactured housing units located within the neighborhood in which the shelter is located; and

(D) amounts may not be used for a shelter as provided under this paragraph unless there is located, within the neighborhood in which the shelter is located (or, in the case of a shelter located in a manufactured housing park, within 1,500 feet of such park), a warning siren that is operated in accordance with such local, regional, or national disaster warning programs or systems as the Secretary, after consultation with the Administrator of the Federal Emergency Management Agency, considers appropriate to ensure adequate notice of occupants of manufactured housing located in such neighborhood or park of a tornado; and

(24) <sup>3</sup> provision of direct assistance to facilitate and expand homeownership among persons of low and moderate income (except that such assistance shall not be considered a public service for purposes of paragraph (8)) by using such assistance to—

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

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

(C) acquire guarantees for mortgage financing obtained by low- and moderate-income homebuyers from private lenders (except that amounts received under this chapter may not be used under this subparagraph to directly guarantee such mortgage financing and grantees under this chapter may not directly provide such guarantees);

(D) provide up to 50 percent of any downpayment required from low- or moderate-income homebuyer; or

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

(25) lead-based paint hazard evaluation and reduction, as defined in section 4851b of this title.

**(b) Reimbursement of Secretary for administrative services connected with rehabilitation of properties**

Upon the request of the recipient of assistance under this chapter, the Secretary may agree to perform administrative services on a reimbursable basis on behalf of such recipient in connection with loans or grants for the rehabilitation of properties as authorized under subsection (a)(4) of this section.

**(c) Activities benefiting persons of low and moderate income**

(1) In any case in which an assisted activity described in paragraph (14) or (17) of subsection (a)

of this section is identified as principally benefiting persons of low and moderate income, such activity shall—

- (A) be carried out in a neighborhood consisting predominately of persons of low and moderate income and provide services for such persons; or
- (B) involve facilities designed for use predominately by persons of low and moderate income; or
- (C) involve employment of persons, a majority of whom are persons of low and moderate income.

(2)(A) In any case in which an assisted activity described in subsection (a) of this section is designed to serve an area generally and is clearly designed to meet identified needs of persons of low and moderate income in such area, such activity shall be considered to principally benefit persons of low and moderate income if (i) not less than 51 percent of the residents of such area are persons of low and moderate income; (ii) in any metropolitan city or urban county, the area served by such activity is within the highest quartile of all areas within the jurisdiction of such city or county in terms of the degree of concentration of persons of low and moderate income; or (iii) the assistance for such activity is limited to paying assessments (including any charge made as a condition of obtaining access) levied against properties owned and occupied by persons of low and moderate income to recover the capital cost for a public improvement.

(B) The requirements of subparagraph (A) do not prevent the use of assistance under this chapter for the development, establishment, and operation for not to exceed 2 years after its establishment of a uniform emergency telephone number system if the Secretary determines that—

- (i) such system will contribute substantially to the safety of the residents of the area served by such system;
- (ii) not less than 51 percent of the use of the system will be by persons of low and moderate income; and
- (iii) other Federal funds received by the grantee are not available for the development, establishment, and operation of such system due to the insufficiency of the amount of such funds, the restrictions on the use of such funds, or the prior commitment of such funds for other purposes by the grantee.

The percentage of the cost of the development, establishment, and operation of such a system that may be paid from assistance under this chapter and that is considered to benefit low and moderate income persons is the percentage of the population to be served that is made up of persons of low and moderate income.

(3) Any assisted activity under this chapter that involves the acquisition or rehabilitation of property to provide housing shall be considered to benefit persons of low and moderate income only to the extent such housing will, upon completion, be occupied by such persons.

(4) For the purposes of subsection (c)(1)(C) of this section—

- (A) if an employee resides in, or the assisted activity through which he or she is employed, is located in a census tract that meets the Federal enterprise zone eligibility criteria, the employee shall be presumed to be a person of low- or moderate-income; or
- (B) if an employee resides in a census tract where not less than 70 percent of the residents have incomes at or below 80 percent of the area median, the employee shall be presumed to be a person of low or moderate income.

#### **(d) Training program**

The Secretary shall implement, using funds recaptured pursuant to section 5318(o) of this title, an on-going education and training program for officers and employees of the Department, especially officers and employees of area and other field offices of the Department, who are responsible for monitoring and administering activities pursuant to paragraphs (14), (15), and (17) of subsection (a) of this section for the purpose of ensuring that (A) such personnel possess a thorough understanding of such activities; and (B) regulations and guidelines are implemented in a consistent fashion.

#### **(e) Guidelines for evaluating and selecting economic development projects**

**(1) Establishment**

The Secretary shall establish, by regulation, guidelines to assist grant recipients under this chapter to evaluate and select activities described in subsection (a)(14), (15), and (17) of this section for assistance with grant amounts. The Secretary shall not base a determination of eligibility of the use of funds under this chapter for such assistance solely on the basis that the recipient fails to achieve one or more of the guidelines' objectives as stated in paragraph (2).

**(2) Project costs and financial requirements**

The guidelines established under this subsection shall include the following objectives:

- (A) The project costs of such activities are reasonable.
- (B) To the extent practicable, reasonable financial support has been committed for such activities from non-Federal sources prior to disbursement of Federal funds.
- (C) To the extent practicable, any grant amounts to be provided for such activities do not substantially reduce the amount of non-Federal financial support for the activity.
- (D) Such activities are financially feasible.
- (E) To the extent practicable, such activities provide not more than a reasonable return on investment to the owner.
- (F) To the extent practicable, grant amounts used for the costs of such activities are disbursed on a pro rata basis with amounts from other sources.

**(3) Public benefit**

The guidelines established under this subsection shall provide that the public benefit provided by the activity is appropriate relative to the amount of assistance provided with grant amounts under this chapter.

**(f) Assistance to for-profit entities**

In any case in which an activity described in paragraph (17) of subsection (a) of this section is provided assistance such assistance shall not be limited to activities for which no other forms of assistance are available or could not be accomplished but for that assistance.

**(g) Microenterprise and small business program requirements**

In developing program requirements and providing assistance pursuant to paragraph (17) of subsection (a) of this section to a microenterprise or small business, the Secretary shall—

- (1) take into account the special needs and limitations arising from the size of the entity; and
- (2) not consider training, technical assistance, or other support services costs provided to small businesses or microenterprises or to grantees and subgrantees to develop the capacity to provide such assistance, as a planning cost pursuant to subsection (a)(12) of this section or an administrative cost pursuant to subsection (a)(13) of this section.

**(h) Prohibition on use of assistance for employment relocation activities**

Notwithstanding any other provision of law, no amount from a grant under section 5306 of this title made in fiscal year 1999 or any succeeding fiscal year may be used to assist directly in the relocation of any industrial or commercial plant, facility, or operation, from 1 area to another area, if the relocation is likely to result in a significant loss of employment in the labor market area from which the relocation occurs.

(Pub. L. 93–383, title I, §105, Aug. 22, 1974, 88 Stat. 641; Pub. L. 94–375, §15(b), Aug. 3, 1976, 90 Stat. 1076; Pub. L. 95–128, title I, §105, Oct. 12, 1977, 91 Stat. 1116; Pub. L. 95–557, title I, §103(e), Oct. 31, 1978, 92 Stat. 2084; Pub. L. 96–399, title I, §104(c)–(e), Oct. 8, 1980, 94 Stat. 1616–1618; Pub. L. 97–35, title III, §§303(a), 309(e)–(g), Aug. 13, 1981, 95 Stat. 387, 396; Pub. L. 98–181, title I, §105(a), (b)(1), (c)–(e), title III, §302(a), Nov. 30, 1983, 97 Stat. 1163, 1164, 1206; Pub. L. 98–479, title I, §101(a)(8), (9)(A), Oct. 17, 1984, 98 Stat. 2219; Pub. L. 100–242, title V, §§504, 510, 511, Feb. 5, 1988, 101 Stat. 1925, 1929; Pub. L. 100–404, title I, Aug. 19, 1988, 102 Stat. 1019; Pub. L. 101–625, title IX, §§907, 908, Nov. 28, 1990, 104 Stat. 4387, 4389; Pub. L. 102–550, title VIII, §§805, 806(a), (b), (c), 807(a), (b)(3), (c)(1), (d)–(f), 809, title X, §1012(f), Oct. 28, 1992, 106 Stat. 3846, 3847, 3849, 3850, 3905; Pub. L. 103–195, §2(a), Dec. 14, 1993, 107 Stat.

2297; Pub. L. 103–233, title II, §207, Apr. 11, 1994, 108 Stat. 365; Pub. L. 104–134, title I, §101(e) [title II, §225], Apr. 26, 1996, 110 Stat. 1321–257, 1321–291; renumbered title I, Pub. L. 104–140, §1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 104–204, title II, §220, Sept. 26, 1996, 110 Stat. 2906; Pub. L. 105–276, title II, §§218, 232, title V, §§588, 596(a), Oct. 21, 1998, 112 Stat. 2487, 2492, 2651, 2659; Pub. L. 106–377, §1(a)(1) [title II, §224], Oct. 27, 2000, 114 Stat. 1441, 1441A–30; Pub. L. 107–116, title VI, §631, Jan. 10, 2002, 115 Stat. 2227; Pub. L. 108–146, §2, Dec. 3, 2003, 117 Stat. 1883; Pub. L. 109–295, title VI, §612(c), Oct. 4, 2006, 120 Stat. 1410.)

#### REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b), (c)(2), (3), and (e)(1), (3), was in the original “this title”, meaning title I of Pub. L. 93–383, Aug. 22, 1974, 88 Stat. 633, which is classified principally to this chapter. For complete classification of title I to the Code, see Tables.

Public Law 98–8, referred to in subsec. (a)(8), is Pub. L. 98–8, Mar. 24, 1983, 97 Stat. 13. Provisions of that Act relating to assistance under this chapter are not classified to the Code. For complete classification of this Act to the Code, see Tables.

The Housing Act of 1949, referred to in subsec. (a)(10), is act July 15, 1949, ch. 338, 63 Stat. 413. Title I of the Housing Act of 1949 was classified generally to subchapter II (§1450 et seq.) of chapter 8A of this title, and was omitted from the Code pursuant to section 5316 of this title which terminated authority to make grants and loans under such title I after Jan. 1, 1975. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

The Cranston-Gonzalez National Affordable Housing Act, referred to in subsec. (a)(13)(A), (20), is Pub. L. 101–625, Nov. 28, 1990, 104 Stat. 4079. Title II of the Act, known as the HOME Investment Partnerships Act, is classified principally to subchapter II (§12721 et seq.) of chapter 130 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 12701 of this title and Tables.

Section 701(e) of the Housing Act of 1954, referred to in subsec. (a)(13)(B), is section 701(e) of act Aug. 2, 1954, ch. 649, 68 Stat. 640, which was classified to section 461(e) of former Title 40, Public Buildings, Property, and Works, and was repealed by Pub. L. 97–35, title III, §313(b), Aug. 13, 1981, 95 Stat. 398.

Section 681(d) of title 15, referred to in subsec. (a)(15), was repealed by Pub. L. 104–208, div. D, title II, §208(b)(3)(A), Sept. 30, 1996, 110 Stat. 3009–742.

Section 1437*o* of this title, referred to in subsec. (a)(18), was repealed by Pub. L. 101–625, title II, §289(b), Nov. 28, 1990, 104 Stat. 4128.

#### CODIFICATION

In subsec. (a)(13), “August 12, 1981” substituted for “the date prior to the date of enactment of the Housing and Community Development Amendments of 1981”.

#### AMENDMENTS

**2003**—Subsec. (a)(22). Pub. L. 108–146, §2(1), which directed amendment of par. (22) by striking out “and” at end, could not be executed because that word had been previously stricken.

Subsec. (a)(23). Pub. L. 108–146, §2(2), which directed amendment of par. (23) by substituting a semicolon for period at end, could not be executed because par. (23) did not have a period at end.

Subsec. (a)(24). Pub. L. 108–146, §2(2), added par. (24) relating to tornado-safe shelters.

**2002**—Subsec. (a)(8). Pub. L. 107–116 substituted “through 2003” for “through 2001”.

**2000**—Subsec. (a)(8). Pub. L. 106–377 substituted “1993 through 2001 to the City of Los Angeles” for “1993 through 2000 to the City of Los Angeles”.

**1998**—Subsec. (a)(8). Pub. L. 105–276, §596(a), which directed the substitution of “2000” for “1998”, was executed by substituting “2000” for “1999”, to reflect the probable intent of Congress and the amendment by Pub. L. 105–276, §218, see below.

Pub. L. 105–276, §232, substituted “each of fiscal years 1999, 2000, and 2001, to the City of Miami, such city may use not more than 25 percent in each fiscal year for activities under this paragraph;” for “fiscal year 1994 to the City of Pittsburgh, Pennsylvania, such city may use not more than 20 percent in each such fiscal year for activities under this paragraph;”.

Pub. L. 105–276, §218, substituted “1999” for “1998”.

Subsec. (h). Pub. L. 105–276, §588, added subsec. (h).

**1996**—Subsec. (a)(4). Pub. L. 104–134, §101[(e)] [title II, §225(1)], inserted “reconstruction,” after “removal,” and substituted “acquisition for reconstruction or rehabilitation, and reconstruction or



rehabilitation” for “acquisition for rehabilitation, and rehabilitation”.

Subsec. (a)(8). Pub. L. 104–204 substituted “through 1998” for “through 1997”.

Subsec. (a)(13). Pub. L. 104–134, §101(e) [title II, §225(2)], struck out “and” at end.

Subsec. (a)(19). Pub. L. 104–134, §101(e) [title II, §225(3), (6)], redesignated par. (20) as (19) and struck out former par. (19) which read as follows: “provision of assistance to facilitate substantial reconstruction of housing owned and occupied by low and moderate income persons (A) where the need for the reconstruction was not determinable until after rehabilitation under this section had already commenced, or (B) where the reconstruction is part of a neighborhood rehabilitation effort and the grantee (i) determines the housing is not suitable for rehabilitation, and (ii) demonstrates to the satisfaction of the Secretary that the cost of substantial reconstruction is significantly less than the cost of new construction and less than the fair market value of the property after substantial reconstruction;”.

Subsec. (a)(20). Pub. L. 104–134, §101(e) [title II, §225(6)], redesignated par. (21) relating to housing services as (20). Former par. (20) redesignated (19).

Subsec. (a)(21). Pub. L. 104–134, §101(e) [title II, §225(6)], redesignated par. (22) as (21). Former par. (21), relating to housing services, redesignated (20). Another former par. (21), relating to lead-based paint hazard evaluation and reduction, redesignated (25).

Subsec. (a)(22). Pub. L. 104–134, §101(e) [title II, §225(6)], redesignated par. (23) as (22). Former par. (22) redesignated (21).

Subsec. (a)(23). Pub. L. 104–134, §101(e) [title II, §225(4), (6)], redesignated par. (24) as (23) and struck out “and” at end. Former par. (23) redesignated (22).

Subsec. (a)(24). Pub. L. 104–134, §101(e) [title II, §225(5), (6)], redesignated par. (25) as (24) and substituted “; and” for period at end. Former par. (24) redesignated (23).

Subsec. (a)(25). Pub. L. 104–134, §101(e) [title II, §225(7)], redesignated par. (21) relating to lead-based paint hazard evaluation and reduction as (25). Former par. (25) redesignated (24).

**1994**—Subsec. (a)(13). Pub. L. 103–233, §207(a), inserted cl. (A) and designated provisions after cl. (A) as cl. (B).

Subsec. (a)(21). Pub. L. 103–233, §207(b), inserted “in connection with tenant-based rental assistance and affordable housing projects assisted under title II of the Cranston-Gonzalez National Affordable Housing Act” after “housing counseling” and substituted “assisted under title II of the Cranston-Gonzalez National Affordable Housing Act” for “authorized under this section, or under title II of the Cranston-Gonzalez National Affordable Housing Act, except that activities under this paragraph shall be subject to any limitation on administrative expenses imposed by any law”.

**1993**—Subsec. (a)(8). Pub. L. 103–195 struck out “and” after “higher amount,” and inserted before semicolon at end “, and except that of any amount of assistance under this chapter (including program income) in fiscal year 1994 to the City of Pittsburgh, Pennsylvania, such city may use not more than 20 percent in each such fiscal year for activities under this paragraph”.

**1992**—Subsec. (a)(3). Pub. L. 102–550, §807(e), substituted “public or private improvements or” for “public improvements and”.

Subsec. (a)(8). Pub. L. 102–550, §807(a)(1), inserted before semicolon at end “, and except that of any amount of assistance under this chapter (including program income) in each of fiscal years 1993 through 1997 to the City of Los Angeles and County of Los Angeles, each such unit of general government may use not more than 25 percent in each such fiscal year for activities under this paragraph”.

Subsec. (a)(13). Pub. L. 102–550, §809, inserted “payment of reasonable administrative costs related to establishing and administering federally approved enterprise zones and” after “(13)”.

Subsec. (a)(14). Pub. L. 102–550, §807(d), inserted “provision of assistance including loans (both interim and long-term) and grants for” before “activities”.

Subsec. (a)(15). Pub. L. 102–550, §807(f), inserted “nonprofit organizations serving the development needs of the communities in nonentitlement areas,” after “corporations,”.

Subsec. (a)(20). Pub. L. 102–550, §807(a)(2)–(4), added par. (20) and redesignated former par. (20) as (25).

Subsec. (a)(21). Pub. L. 102–550, §1012(f), added par. (21) relating to lead-based paint hazard evaluation and reduction.

Pub. L. 102–550, §807(a)(2)–(4), added par. (21) relating to housing services.

Subsec. (a)(22). Pub. L. 102–550, §807(a)(2)–(4), added par. (22).

Subsec. (a)(23) to (25). Pub. L. 102–550, §807(b)(3), amended directory language of Pub. L. 101–625, §907(b)(2). See 1990 Amendment note below.

Pub. L. 102–550, §807(a)(2)–(4), added pars. (23) and (24) and redesignated former par. (20) as (25).

Subsec. (c)(4). Pub. L. 102–550, §806(e), added par. (4).

Subsec. (d). Pub. L. 102–550, §805, added subsec. (d).

Subsec. (e). Pub. L. 102–550, §806(a), added subsec. (e).

Subsec. (f). Pub. L. 102–550, §806(b), added subsec. (f).

Subsec. (g). Pub. L. 102–550, §807(c)(1), added subsec. (g).

**1990**—Subsec. (a)(8). Pub. L. 101–625, §908, inserted “(or in the case of nonentitled communities not more than 15 per centum statewide)” after “assistance to a unit of general local government” and “including program income” before “may be used for activities”.

Subsec. (a)(17). Pub. L. 101–625, §907(a), amended par. (17) generally. Prior to amendment, par. (17) read as follows: “provision of assistance to private, for-profit entities, when the assistance is necessary or appropriate to carry out an economic development project;”.

Subsec. (a)(20). Pub. L. 101–625, §907(b)(1), added par. (20).

Subsec. (a)(23) to (25). Pub. L. 101–625, §907(b)(2), as amended by Pub. L. 102–550, §807(b)(3), directed the amendment of subsec. (a) by inserting “and” at end of par. (23), substituting a period for “; and” at end of par. (24), and striking out par. (25). This amendment was not executed pursuant to Pub. L. 104–204 which provided that subsec. (a)(25) shall continue to be effective and the termination and conforming provisions of section 907(b)(2) of Pub. L. 101–625 shall not be effective. See Effective Date of 1990 Amendments note below.

**1988**—Subsec. (a)(15). Pub. L. 100–242, §504(a), substituted “assistance” for “grants” in two places.

Subsec. (a)(16). Pub. L. 100–242, §504(b), amended par. (16) generally, revising and restating as subpars. (A) and (B) provisions of former subpars. (A) to (I).

Subsec. (a)(19). Pub. L. 100–242, §510, added par. (19).

Subsec. (c)(2). Pub. L. 100–242, §511, designated existing provision as subpar. (A), redesignated subpars. (A) and (B) as cls. (i) and (ii), respectively, and added subpar. (B).

Subsec. (c)(2)(A)(iii). Pub. L. 100–404 added cl. (iii).

**1984**—Subsec. (a)(8). Pub. L. 98–479, §101(a)(8)(A), inserted “fiscal year 1982 or”.

Subsec. (a)(15). Pub. L. 98–479, §101(a)(8)(B), substituted “and” for “including” before “grants to neighborhood-based nonprofit organizations”.

Subsec. (c)(2)(B). Pub. L. 98–479, §101(a)(9)(A), substituted “in any metropolitan city or urban county, the area served by such activity is within the highest quartile of all areas within the jurisdiction of such city or county in terms of the degree of concentration of persons of low and moderate income” for “in any jurisdiction having no areas meeting the requirements of subparagraph (A), the area served by such activity has a larger proportion of persons of low and moderate income than not less than 75 percent of the other areas in the jurisdiction of the recipient”.

**1983**—Subsec. (a)(2). Pub. L. 98–181, §105(a), amended par. (2) generally, inserting exception for buildings for the general conduct of government, and striking out provisions which enumerated types of public works, facilities, and site or other improvements, including neighborhood facilities, centers for the handicapped, senior centers, historic properties, etc.

Subsec. (a)(8). Pub. L. 98–181, §105(b)(1), substituted “not more than 15 per centum” for “not more than 10 per centum” and inserted at the end thereof “unless such unit of general local government used more than 15 percent of the assistance received under this chapter for fiscal year 1983 for such activities (excluding any assistance received pursuant to Public Law 98–8), in which case such unit of general local government may use not more than the percentage or amount of such assistance used for such activities for such fiscal year, whichever method of calculation yields the higher amount”.

Subsec. (a)(14). Pub. L. 98–181, §105(c), substituted “public facilities (except for buildings for the general conduct of government)” for “public facilities”.

Subsec. (a)(15). Pub. L. 98–181, §105(d), inserted provision for assistance for shared housing facilities for elderly families, as defined in section 1437a(b)(3) of this title.

Subsec. (a)(18). Pub. L. 98–181, §302(a), added par. (18).

Subsec. (c). Pub. L. 98–181, §105(e), added subsec. (c).

**1981**—Subsec. (a). Pub. L. 97–35, §309(f)(1), in provisions preceding par. (1) substituted provisions relating to activities eligible for assistance for provisions relating to activities of a Community Development Program eligible for assistance.

Subsec. (a)(6). Pub. L. 97–35, §309(f)(2), struck out “program” after “displaced by”.

Subsec. (a)(8). Pub. L. 97–35, §303(a)(1), added new par. (8) which generally revised and restructured provisions relating to provision of public services if such services have not been provided by the relevant unit of local government or State in which such unit is located, and limited amount of assistance under this

paragraph to not more than 10 per centum of the amount of any assistance to a unit of general local government under this chapter.

Subsec. (a)(9). Pub. L. 97–35, §309(f)(3), substituted “activities assisted under this chapter” for “Community Development Program”.

Subsec. (a)(11). Pub. L. 97–35, §309(f)(4), struck out “to the community development program” after “appropriate”.

Subsec. (a)(13). Pub. L. 97–35, §303(a)(2), inserted reference to the carrying out of activities as described in section 701(e) of the Housing Act of 1954 on Aug. 12, 1981.

Subsec. (a)(14). Pub. L. 97–35, §309(f)(5), substituted “which are carried out by public or private non-profit entities” for “(as specifically described in the application submitted pursuant to section 5304 of this title) which are carried out by public or private non-profit entities when such activities are necessary or appropriate to meeting the needs and objectives of the community development plan described in section 5304(a)(1) of this title”.

Subsec. (a)(15). Pub. L. 97–35, §309(f)(6), struck out “(as specifically described in the application submitted pursuant to section 5304 of this title)” after “conservation project”.

Subsec. (a)(17). Pub. L. 97–35, §303(a)(5), added par. (17).

Subsec. (b). Pub. L. 97–35, §309(g), substituted “assistance” for “a grant”.

**1980**—Subsec. (a)(2). Pub. L. 96–399, §104(c)(1), inserted provisions respecting design features and improvements, power generation and distribution facilities, park, etc., facilities, and recycling and conversion facilities.

Subsec. (a)(4). Pub. L. 96–399, §104(c)(2), (d), inserted provisions respecting rehabilitation which promotes energy efficiency and the renovation of closed school buildings.

Subsec. (a)(8). Pub. L. 96–399, §104(c)(3), inserted reference to energy conservation.

Subsec. (a)(14). Pub. L. 96–399, §104(c)(5), (e)(1), inserted provision respecting the application pursuant to section 5304 of this title.

Subsec. (a)(15). Pub. L. 96–399, §104(c)(4), (5), (e)(2), inserted provisions respecting energy conservation, and the application submitted pursuant to section 5304 of this title.

Subsec. (a)(16). Pub. L. 96–399, §104(c)(5), added par. (16).

**1978**—Subsec. (a)(11). Pub. L. 95–557 inserted “displaced” after “payments and assistance for” and substituted “when determined by the grantee to be appropriate to the community development program” for “displaced by activities assisted under this chapter”.

**1977**—Subsec. (a). Pub. L. 95–128, §105(a), inserted in introductory text description of activities covered including the words “These activities”.

Subsec. (a)(4). Pub. L. 95–128, §105(b), substituted “(including interim assistance, and financing public or private acquisition for rehabilitation, and rehabilitation, of privately owned properties)” for “(including interim assistance and financing rehabilitation of privately owned properties when incidental to other activities)”.

Subsec. (a)(8). Pub. L. 95–128, §105(c), struck out from cl. (A) “economic development,” before “crime prevention” and authorized the program to provide public services only if such services have not been provided by the unit of general local government during any part of the twelve-month period preceding the date of application submission for funds to be made available under this chapter, and to be utilized for such services, unless the Secretary finds that the discontinuation of such services was the result of events not within the control of the applicant.

Subsec. (a)(14), (15). Pub. L. 95–128, §105(d), added pars. (14) and (15).

**1976**—Subsec. (a)(2). Pub. L. 94–375 inserted “centers for the handicapped,” after “neighborhood facilities,”.

#### CHANGE OF NAME

“Administrator of the Federal Emergency Management Agency” substituted for “Director of the Federal Emergency Management Agency” in subsec. (a)(24)(A)(iii), (B), (D) on authority of section 612(c) of Pub. L. 109–295, set out as a note under section 313 of Title 6, Domestic Security. Any reference to the Administrator of the Federal Emergency Management Agency in title VI of Pub. L. 109–295 or an amendment by title VI to be considered to refer and apply to the Director of the Federal Emergency Management Agency until Mar. 31, 2007, see section 612(f)(2) of Pub. L. 109–295, set out as a note under section 313 of Title 6.

#### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–116 effective Sept. 30, 2001, see section 603 of Pub. L. 107–116, set out as a note under section 1715n of Title 12, Banks and Banking.

#### **EFFECTIVE DATE OF 1998 AMENDMENT**

Amendment by title V of Pub. L. 105–276 effective and applicable beginning upon Oct. 1, 1999, except as otherwise provided, with provision that Secretary may implement amendment before such date, except to extent that such amendment provides otherwise, and with savings provision, see section 503 of Pub. L. 105–276, set out as a note under section 1437 of this title.

Pub. L. 105–276, title V, §596(b), Oct. 21, 1998, 112 Stat. 2659, provided that: “The amendment made by this section [amending this section] is made on, and shall apply beginning upon, the date of the enactment of this Act [Oct. 21, 1998].”

#### **EFFECTIVE DATE OF 1994 AMENDMENT**

Amendment by Pub. L. 103–233 applicable with respect to any amounts made available to carry out subchapter II (§12721 et seq.) of chapter 130 of this title after Apr. 11, 1994, and any amounts made available to carry out that subchapter before that date that remain uncommitted on that date, with Secretary to issue any regulations necessary to carry out such amendment not later than end of 45-day period beginning on that date, see section 209 of Pub. L. 103–233, set out as a note under section 5301 of this title.

#### **EFFECTIVE DATE OF 1990 AMENDMENTS**

Title II of Pub. L. 104–204, Sept. 26, 1996, 110 Stat. 2882, 2887, provided in part: “That for fiscal year 1997 and thereafter, section 105(a)(25) of such Act [section 105(a)(25) [now (24)] of Pub. L. 93–383, classified to subsec. (a)(24) of this section], shall continue to be effective and the termination and conforming provisions of section 907(b)(2) of the Cranston-Gonzalez National Affordable Housing Act [Pub. L. 101–625, set out below] shall not be effective”.

Section 101(e) [title II] of Pub. L. 104–134, Apr. 26, 1996, 110 Stat. 1321–257, 1321–265, 1321–272, provided in part: “That section 105(a)(25) of such Act [section 105(a)(25) [now (24)] of Pub. L. 93–383, classified to subsec. (a)(24) of this section], as added by section 907(b)(1) of the Cranston-Gonzalez National Affordable Housing Act [Pub. L. 101–625], shall continue to be effective after September 30, 1995, notwithstanding section 907(b)(2) of such Act [set out below]”.

Pub. L. 104–120, §3(a), Mar. 28, 1996, 110 Stat. 835, provided that: “Notwithstanding the amendments made by section 907(b)(2) of the Cranston-Gonzalez National Affordable Housing Act [Pub. L. 101–625, set out below], section 105(a)(25) of the Housing and Community Development Act of 1974 [subsec. (a) (25) [now (24)] of this section], as in existence on September 30, 1995, shall apply to the use of assistance made available under title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.] during fiscal year 1996.”

Amendment by section 907(b)(2) of Pub. L. 101–625, as amended by Pub. L. 102–550, title VIII, §807(b)(1), (2), Oct. 28, 1992, 106 Stat. 3849, effective “October 1, 1994 (or October 1, 1995, if the Secretary determines that such later date is necessary to continue to provide homeownership assistance until homeownership assistance is available under title II of the Cranston-Gonzalez National Affordable Housing Act [42 U.S.C. 12721 et seq.]”. [Date extended by Secretary to Oct. 1, 1995, see 59 F.R. 49954, Sept. 30, 1994.]

#### **EFFECTIVE DATE OF 1984 AMENDMENT**

Section 101(a)(9)(B) of Pub. L. 98–479 provided that: “The amendment made by subparagraph (A) [amending this section] shall take effect upon the enactment of this Act [Oct. 17, 1984] and shall be implemented through an interim instruction issued by the Secretary of Housing and Urban Development. Not later than June 1, 1985, the Secretary of Housing and Urban Development shall issue a final regulation regarding the provisions of such amendment.”

#### **EFFECTIVE DATE OF 1983 AMENDMENT**

Amendment by Pub. L. 98–181 applicable only to funds available for fiscal year 1984 and thereafter, see section 110(b) of Pub. L. 98–181, as amended, set out as a note under section 5316 of this title.

#### **EFFECTIVE DATE OF 1981 AMENDMENT**

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 371 of Pub. L. 97–35, set out as an Effective Date note under section 3701 of Title 12, Banks and Banking.

#### **EFFECTIVE DATE OF 1978 AMENDMENT**

Amendment by Pub. L. 95–557 effective Oct. 1, 1978, see section 104 of Pub. L. 95–557, set out as a note under section 1709 of Title 12, Banks and Banking.

#### **EFFECTIVE DATE OF 1977 AMENDMENT**

Amendment by Pub. L. 95–128 effective Oct. 1, 1977, see section 114 of Pub. L. 95–128, set out as a note under section 5301 of this title.

#### **NON-FEDERAL COST SHARING OF ARMY CORPS OF ENGINEERS PROJECTS**

Pub. L. 105–276, title II, Oct. 21, 1998, 112 Stat. 2478, provided in part that: “For any fiscal year, of the amounts made available as emergency funds under the heading ‘Community Development Block Grants Fund’ and notwithstanding any other provision of law, not more than \$250,000 may be used for the non-Federal cost-share of any project funded by the Secretary of the Army through the Corps of Engineers.”

#### **BROWNFIELDS PROJECTS AS ELIGIBLE CDBG ACTIVITY**

Pub. L. 105–276, title II, §205, Oct. 21, 1998, 112 Stat. 2484, provided that: “For fiscal years 1998, 1999, and all fiscal years thereafter, States and entitlement communities may use funds allocated under the community development block grants program under title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.] for environmental cleanup and economic development activities related to Brownfields projects in conjunction with the appropriate environmental regulatory agencies, as if such activities were eligible under section 105(a) of such Act [42 U.S.C. 5305(a)].”

Similar provisions were contained in the following prior appropriation act:

Pub. L. 105–65, title II, §209, Oct. 27, 1997, 111 Stat. 1366.

#### **GAO STUDY OF USE OF GRANTS FOR ECONOMIC DEVELOPMENT PROJECTS**

Section 806(c) of Pub. L. 102–550 directed Comptroller General to conduct a study of use of grant amounts under this chapter for activities described in paragraphs (14), (15), and (17) of subsec. (a) of this section, including an evaluation of whether the activities for which such amounts are being used under such paragraphs further the goals and objectives of such program, as established in section 5301 of this title, and directed Comptroller General to submit a report to Congress regarding the findings of the study and recommendations not later than the expiration of the 18-month period beginning on Oct. 28, 1992.

#### **ENHANCING JOB QUALITY; REPORT TO CONGRESS**

Section 806(d) of Pub. L. 102–550 directed Comptroller General, not later than 1 year after Oct. 28, 1992, to submit to Congress a report on types and quality of jobs created or retained through assistance provided pursuant to this chapter and the extent to which projects and activities assisted under this chapter enhance the upward mobility and future earning capacity of low- and moderate-income persons who are benefited by such projects and activities.

#### **REPORT TO CONGRESS ON EFFECTIVENESS OF ASSISTANCE IN PROMOTING DEVELOPMENT OF MICROENTERPRISES**

Section 807(c)(4) of Pub. L. 102–550 directed Secretary, not later than 18 months after Oct. 28, 1992, to submit to Congress a report on effectiveness of assistance provided through this chapter in promoting development of microenterprises, including a review of any statutory or regulatory provision that impedes development of microenterprises.

#### **COMMUNITY INVESTMENT CORPORATION DEMONSTRATION**

Section 853 of Pub. L. 102–550 provided for establishment of a demonstration program to develop ways to improve access to capital for initiatives which would benefit specific targeted geographic areas and to test new models for bringing credit and investment capital to low-income persons in targeted geographic areas, using depository institution holding companies and eligible local nonprofit organizations selected by Secretary of Housing and Urban Development to provide capital assistance, grants, and training under direction of an advisory board. Funds for the program were authorized for fiscal years 1993 and 1994 to remain available until expended.

#### **WAIVER OF LIMITATION ON AMOUNT OF FUNDS WHICH MAY BE USED IN FISCAL YEARS 1982, 1983, AND 1984 FOR PUBLIC SERVICE ACTIVITIES**

Section 303(b) of Pub. L. 97–35, as amended Pub. L. 98–181, title I, §105(b)(2), Nov. 30, 1983, 97 Stat. 1164, authorized Secretary, in fiscal years 1982 and 1983, to waive the limitation on amount of funds which could be used for public services activities under subsec. (a)(8) of this section, in the case of a unit of general local government which, during fiscal year 1981, allocated more than 10 per centum of funds

received under this chapter for such activities.

<sup>1</sup> *See References in Text note below.*

<sup>2</sup> *See References in Text note below.*

<sup>3</sup> *So in original. Two pars. (24) have been enacted.*

U.S. DEPARTMENT OF HUD  
STATE:GEORGIA

----- 2020 ADJUSTED HOME INCOME LIMITS -----

PROGRAM	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
<b>Albany, GA MSA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Athens-Clarke County, GA MSA</b>								
30% LIMITS	13800	15800	17750	19700	21300	22900	24450	26050
VERY LOW INCOME	23000	26250	29550	32800	35450	38050	40700	43300
60% LIMITS	27600	31500	35460	39360	42540	45660	48840	51960
LOW INCOME	36750	42000	47250	52500	56700	60900	65100	69300
<b>Atlanta-Sandy Springs-Roswell, GA HUD Metro</b>								
30% LIMITS	17400	19850	22350	24800	26800	28800	30800	32750
VERY LOW INCOME	28950	33100	37250	41350	44700	48000	51300	54600
60% LIMITS	34740	39720	44700	49620	53640	57600	61560	65520
LOW INCOME	46350	52950	59550	66150	71450	76750	82050	87350
<b>Butts County, GA HUD Metro FMR Area</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Haralson County, GA HUD Metro FMR Area</b>								
30% LIMITS	12050	13800	15500	17200	18600	20000	21350	22750
VERY LOW INCOME	20100	22950	25800	28650	30950	33250	35550	37850
60% LIMITS	24120	27540	30960	34380	37140	39900	42660	45420
LOW INCOME	32100	36700	41300	45850	49550	53200	56900	60550
<b>Lamar County, GA HUD Metro FMR Area</b>								
30% LIMITS	12050	13800	15500	17200	18600	20000	21350	22750
VERY LOW INCOME	20100	22950	25800	28650	30950	33250	35550	37850
60% LIMITS	24120	27540	30960	34380	37140	39900	42660	45420
LOW INCOME	32100	36700	41300	45850	49550	53200	56900	60550
<b>Meriwether County, GA HUD Metro FMR Area</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750

U.S. DEPARTMENT OF HUD  
STATE:GEORGIA

----- 2020 ADJUSTED HOME INCOME LIMITS -----

PROGRAM	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
<b>Morgan County, GA HUD Metro FMR Area</b>								
30% LIMITS	14150	16200	18200	20200	21850	23450	25050	26700
VERY LOW INCOME	23600	26950	30300	33650	36350	39050	41750	44450
60% LIMITS	28320	32340	36360	40380	43620	46860	50100	53340
LOW INCOME	37700	43100	48500	53850	58200	62500	66800	71100
<b>Augusta-Richmond County, GA-SC HUD Metro FM</b>								
30% LIMITS	13850	15800	17800	19750	21350	22950	24500	26100
VERY LOW INCOME	23100	26400	29700	32950	35600	38250	40900	43500
60% LIMITS	27720	31680	35640	39540	42720	45900	49080	52200
LOW INCOME	36900	42200	47450	52700	56950	61150	65350	69600
<b>Lincoln County, GA HUD Metro FMR Area</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Brunswick, GA MSA</b>								
30% LIMITS	13200	15050	16950	18800	20350	21850	23350	24850
VERY LOW INCOME	21950	25050	28200	31300	33850	36350	38850	41350
60% LIMITS	26340	30060	33840	37560	40620	43620	46620	49620
LOW INCOME	35050	40050	45050	50050	54100	58100	62100	66100
<b>Chattanooga, TN-GA MSA</b>								
30% LIMITS	15300	17450	19650	21800	23550	25300	27050	28800
VERY LOW INCOME	25450	29050	32700	36300	39250	42150	45050	47950
60% LIMITS	30540	34860	39240	43560	47100	50580	54060	57540
LOW INCOME	40700	46500	52300	58100	62750	67400	72050	76700
<b>Columbus, GA-AL MSA</b>								
30% LIMITS	13100	15000	16850	18700	20200	21700	23200	24700
VERY LOW INCOME	21850	24950	28050	31150	33650	36150	38650	41150
60% LIMITS	26220	29940	33660	37380	40380	43380	46380	49380
LOW INCOME	34900	39900	44900	49850	53850	57850	61850	65850
<b>Dalton, GA HUD Metro FMR Area</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750



U.S. DEPARTMENT OF HUD  
STATE:GEORGIA

----- 2020 ADJUSTED HOME INCOME LIMITS -----

PROGRAM	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
<b>Murray County, GA HUD Metro FMR Area</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Gainesville, GA MSA</b>								
30% LIMITS	15200	17350	19500	21650	23400	25150	26850	28600
VERY LOW INCOME	25250	28850	32450	36050	38950	41850	44750	47600
60% LIMITS	30300	34620	38940	43260	46740	50220	53700	57120
LOW INCOME	40400	46150	51900	57650	62300	66900	71500	76100
<b>Hinesville, GA HUD Metro FMR Area</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Long County, GA HUD Metro FMR Area</b>								
30% LIMITS	12450	14200	16000	17750	19200	20600	22050	23450
VERY LOW INCOME	20700	23650	26600	29550	31950	34300	36650	39050
60% LIMITS	24840	28380	31920	35460	38340	41160	43980	46860
LOW INCOME	33150	37850	42600	47300	51100	54900	58700	62450
<b>Macon-Bibb County, GA HUD Metro FMR Area</b>								
30% LIMITS	12250	14000	15750	17450	18850	20250	21650	23050
VERY LOW INCOME	20350	23250	26150	29050	31400	33700	36050	38350
60% LIMITS	24420	27900	31380	34860	37680	40440	43260	46020
LOW INCOME	32550	37200	41850	46500	50250	53950	57700	61400
<b>Monroe County, GA HUD Metro FMR Area</b>								
30% LIMITS	14500	16550	18600	20650	22350	24000	25650	27300
VERY LOW INCOME	24100	27550	31000	34400	37200	39950	42700	45450
60% LIMITS	28920	33060	37200	41280	44640	47940	51240	54540
LOW INCOME	38550	44050	49550	55050	59500	63900	68300	72700
<b>Rome, GA MSA</b>								
30% LIMITS	12350	14100	15850	17600	19050	20450	21850	23250
VERY LOW INCOME	20550	23500	26450	29350	31700	34050	36400	38750
60% LIMITS	24660	28200	31740	35220	38040	40860	43680	46500
LOW INCOME	32900	37600	42300	46950	50750	54500	58250	62000

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----- 2020 ADJUSTED HOME INCOME LIMITS -----

PROGRAM	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
<b>Savannah, GA MSA</b>								
30% LIMITS	15150	17300	19450	21600	23350	25100	26800	28550
VERY LOW INCOME	25200	28800	32400	36000	38900	41800	44650	47550
60% LIMITS	30240	34560	38880	43200	46680	50160	53580	57060
LOW INCOME	40350	46100	51850	57600	62250	66850	71450	76050
<b>Valdosta, GA MSA</b>								
30% LIMITS	11650	13300	14950	16600	17950	19300	20600	21950
VERY LOW INCOME	19400	22200	24950	27700	29950	32150	34350	36600
60% LIMITS	23280	26640	29940	33240	35940	38580	41220	43920
LOW INCOME	31050	35450	39900	44300	47850	51400	54950	58500
<b>Warner Robins, GA HUD Metro FMR Area</b>								
30% LIMITS	14750	16850	18950	21050	22750	24450	26150	27800
VERY LOW INCOME	24550	28050	31550	35050	37900	40700	43500	46300
60% LIMITS	29460	33660	37860	42060	45480	48840	52200	55560
LOW INCOME	39300	44900	50500	56100	60600	65100	69600	74100
<b>Peach County, GA HUD Metro FMR Area</b>								
30% LIMITS	12500	14300	16100	17850	19300	20750	22150	23600
VERY LOW INCOME	20850	23800	26800	29750	32150	34550	36900	39300
60% LIMITS	25020	28560	32160	35700	38580	41460	44280	47160
LOW INCOME	33350	38100	42850	47600	51450	55250	59050	62850
<b>Pulaski County, GA HUD Metro FMR Area</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Appling County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Atkinson County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750

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----- 2020 ADJUSTED HOME INCOME LIMITS -----

PROGRAM	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
<b>Bacon County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Baldwin County, GA</b>								
30% LIMITS	11550	13200	14850	16450	17800	19100	20400	21750
VERY LOW INCOME	19250	22000	24750	27450	29650	31850	34050	36250
60% LIMITS	23100	26400	29700	32940	35580	38220	40860	43500
LOW INCOME	30750	35150	39550	43900	47450	50950	54450	57950
<b>Banks County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Ben Hill County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Berrien County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Bleckley County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Bulloch County, GA</b>								
30% LIMITS	11550	13200	14850	16450	17800	19100	20400	21750
VERY LOW INCOME	19250	22000	24750	27450	29650	31850	34050	36250
60% LIMITS	23100	26400	29700	32940	35580	38220	40860	43500
LOW INCOME	30750	35150	39550	43900	47450	50950	54450	57950

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----- 2020 ADJUSTED HOME INCOME LIMITS -----

PROGRAM	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
<b>Calhoun County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Camden County, GA</b>								
30% LIMITS	13250	15150	17050	18900	20450	21950	23450	24950
VERY LOW INCOME	22050	25200	28350	31500	34050	36550	39100	41600
60% LIMITS	26460	30240	34020	37800	40860	43860	46920	49920
LOW INCOME	35300	40350	45400	50400	54450	58500	62500	66550
<b>Candler County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Charlton County, GA</b>								
30% LIMITS	12150	13850	15600	17300	18700	20100	21500	22850
VERY LOW INCOME	20200	23100	26000	28850	31200	33500	35800	38100
60% LIMITS	24240	27720	31200	34620	37440	40200	42960	45720
LOW INCOME	32350	36950	41550	46150	49850	53550	57250	60950
<b>Chattooga County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Clay County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Clinch County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750

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----- 2020 ADJUSTED HOME INCOME LIMITS -----

PROGRAM	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
<b>Coffee County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Colquitt County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Cook County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Crisp County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Decatur County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Dodge County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Dooly County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750

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----- 2020 ADJUSTED HOME INCOME LIMITS -----

PROGRAM	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
<b>Early County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Elbert County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Emanuel County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Evans County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Fannin County, GA</b>								
30% LIMITS	12150	13900	15650	17350	18750	20150	21550	22950
VERY LOW INCOME	20300	23200	26100	28950	31300	33600	35900	38250
60% LIMITS	24360	27840	31320	34740	37560	40320	43080	45900
LOW INCOME	32450	37050	41700	46300	50050	53750	57450	61150
<b>Franklin County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Gilmer County, GA</b>								
30% LIMITS	12250	14000	15750	17500	18900	20300	21700	23100
VERY LOW INCOME	20450	23400	26300	29200	31550	33900	36250	38550
60% LIMITS	24540	28080	31560	35040	37860	40680	43500	46260
LOW INCOME	32700	37400	42050	46700	50450	54200	57950	61650

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----- 2020 ADJUSTED HOME INCOME LIMITS -----

PROGRAM	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
<b>Glascocock County, GA</b>								
30% LIMITS	12550	14350	16150	17900	19350	20800	22200	23650
VERY LOW INCOME	20900	23850	26850	29800	32200	34600	37000	39350
60% LIMITS	25080	28620	32220	35760	38640	41520	44400	47220
LOW INCOME	33400	38200	42950	47700	51550	55350	59150	63000
<b>Gordon County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Grady County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Greene County, GA</b>								
30% LIMITS	13150	15000	16900	18750	20250	21750	23250	24750
VERY LOW INCOME	21900	25000	28150	31250	33750	36250	38750	41250
60% LIMITS	26280	30000	33780	37500	40500	43500	46500	49500
LOW INCOME	35000	40000	45000	49950	53950	57950	61950	65950
<b>Habersham County, GA</b>								
30% LIMITS	12200	13950	15700	17400	18800	20200	21600	23000
VERY LOW INCOME	20300	23200	26100	29000	31350	33650	36000	38300
60% LIMITS	24360	27840	31320	34800	37620	40380	43200	45960
LOW INCOME	32500	37150	41800	46400	50150	53850	57550	61250
<b>Hancock County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Hart County, GA</b>								
30% LIMITS	11650	13300	14950	16600	17950	19300	20600	21950
VERY LOW INCOME	19400	22150	24900	27650	29900	32100	34300	36500
60% LIMITS	23280	26580	29880	33180	35880	38520	41160	43800
LOW INCOME	31000	35400	39850	44250	47800	51350	54900	58450

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----- 2020 ADJUSTED HOME INCOME LIMITS -----

PROGRAM	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
<b>Irwin County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Jackson County, GA</b>								
30% LIMITS	15200	17350	19500	21650	23400	25150	26850	28600
VERY LOW INCOME	25300	28900	32500	36100	39000	41900	44800	47700
60% LIMITS	30360	34680	39000	43320	46800	50280	53760	57240
LOW INCOME	40450	46200	52000	57750	62400	67000	71650	76250
<b>Jeff Davis County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Jefferson County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Jenkins County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Johnson County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Laurens County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750



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----- 2020 ADJUSTED HOME INCOME LIMITS -----

PROGRAM	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
<b>Lumpkin County, GA</b>								
30% LIMITS	12600	14400	16200	17950	19400	20850	22300	23700
VERY LOW INCOME	20950	23950	26950	29900	32300	34700	37100	39500
60% LIMITS	25140	28740	32340	35880	38760	41640	44520	47400
LOW INCOME	33500	38300	43100	47850	51700	55550	59350	63200
<b>Macon County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Miller County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Mitchell County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Montgomery County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Pierce County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Polk County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750

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----- 2020 ADJUSTED HOME INCOME LIMITS -----

PROGRAM	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
<b>Putnam County, GA</b>								
30% LIMITS	12800	14600	16450	18250	19750	21200	22650	24100
VERY LOW INCOME	21350	24400	27450	30450	32900	35350	37800	40200
60% LIMITS	25620	29280	32940	36540	39480	42420	45360	48240
LOW INCOME	34100	39000	43850	48700	52600	56500	60400	64300
<b>Quitman County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Rabun County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Randolph County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Schley County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Screven County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Seminole County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750

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----- 2020 ADJUSTED HOME INCOME LIMITS -----

PROGRAM	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
<b>Stephens County, GA</b>								
30% LIMITS	12150	13900	15650	17350	18750	20150	21550	22950
VERY LOW INCOME	20300	23200	26100	28950	31300	33600	35900	38250
60% LIMITS	24360	27840	31320	34740	37560	40320	43080	45900
LOW INCOME	32450	37050	41700	46300	50050	53750	57450	61150
<b>Stewart County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Sumter County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Talbot County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Taliaferro County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Tattnall County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Taylor County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750

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----- 2020 ADJUSTED HOME INCOME LIMITS -----

PROGRAM	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
<b>Telfair County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Thomas County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Tift County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Toombs County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Towns County, GA</b>								
30% LIMITS	11550	13200	14850	16450	17800	19100	20400	21750
VERY LOW INCOME	19250	22000	24750	27450	29650	31850	34050	36250
60% LIMITS	23100	26400	29700	32940	35580	38220	40860	43500
LOW INCOME	30750	35150	39550	43900	47450	50950	54450	57950
<b>Treutlen County, GA</b>								
30% LIMITS	11800	13450	15150	16800	18150	19500	20850	22200
VERY LOW INCOME	19600	22400	25200	28000	30250	32500	34750	37000
60% LIMITS	23520	26880	30240	33600	36300	39000	41700	44400
LOW INCOME	31400	35850	40350	44800	48400	52000	55600	59150
<b>Troup County, GA</b>								
30% LIMITS	12450	14200	16000	17750	19200	20600	22050	23450
VERY LOW INCOME	20700	23650	26600	29550	31950	34300	36650	39050
60% LIMITS	24840	28380	31920	35460	38340	41160	43980	46860
LOW INCOME	33150	37850	42600	47300	51100	54900	58700	62450

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----- 2020 ADJUSTED HOME INCOME LIMITS -----

PROGRAM	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
Turner County, GA								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
Union County, GA								
30% LIMITS	12450	14200	16000	17750	19200	20600	22050	23450
VERY LOW INCOME	20750	23700	26650	29600	32000	34350	36750	39100
60% LIMITS	24900	28440	31980	35520	38400	41220	44100	46920
LOW INCOME	33150	37900	42650	47350	51150	54950	58750	62550
Upson County, GA								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
Ware County, GA								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
Warren County, GA								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
Washington County, GA								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
Wayne County, GA								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750

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----- 2020 ADJUSTED HOME INCOME LIMITS -----

PROGRAM	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
<b>Webster County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Wheeler County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>White County, GA</b>								
30% LIMITS	11650	13300	14950	16600	17950	19300	20600	21950
VERY LOW INCOME	19400	22150	24900	27650	29900	32100	34300	36500
60% LIMITS	23280	26580	29880	33180	35880	38520	41160	43800
LOW INCOME	31000	35400	39850	44250	47800	51350	54900	58450
<b>Wilcox County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Wilkes County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750
<b>Wilkinson County, GA</b>								
30% LIMITS	11500	13150	14800	16400	17750	19050	20350	21650
VERY LOW INCOME	19150	21900	24650	27350	29550	31750	33950	36150
60% LIMITS	22980	26280	29580	32820	35460	38100	40740	43380
LOW INCOME	30650	35000	39400	43750	47250	50750	54250	57750

## Acceptable Sample Income Survey Methodology

### INTRODUCTION

This Guide was prepared to assist Community Development Block Grant applicants in developing an acceptable and accurate sample income survey for area benefit projects; such as water and sewer lines, drainage improvements and other infrastructure projects. The purpose of an income survey is to document that a geographic area will meet CDBG program requirements related to low- and moderate-income benefit. The use of an unacceptable survey method to document low and moderate-income benefit may result in an unfunded CDBG application.

Special Note for Revitalization Area Strategy (RAS): The Methodology outlined in this Guide may also be used to perform a survey in order determine the number of households in Poverty as an alternative to using American Community Survey (ACS) data. One of the “Threshold” requirements for eligibility for RAS is that the RAS area is located in a census block group (or groups) with 20% or greater poverty. DCA recognizes that current census data, as determined through the ACS system, may have a high margin of error due to the survey sample sizes used, especially in rural areas. As such, DCA will, allow a community to complete a survey of the Census Block Group(s) they wish to consider for an RAS Area as an alternative to use of the data available through ACS. **For RAS, the entire Block Group(s) must be surveyed.** The methodology description in the manual below refers to surveying the Target Areas for CDBG; however, for RAS, the ENTIRE block group must be surveyed to meet the eligibility criteria. Use of the Random Sample methodology described below is recommended.

Generally, the CDBG program performs surveys using the Area Median Income in order to establish that a project will meet the National Objective of assisting Low- and Moderate-Income households. For RAS designation, the Census Poverty Guidelines are used. Unlike AMI, the Poverty Guideline income amounts do not change depending on location (except for Alaska and Hawaii) and in order to determine the number of households in poverty, the following table is used to determine a household in poverty:

**2019 POVERTY GUIDELINES FOR THE 48 CONTIGUOUS STATES AND THE DISTRICT OF COLUMBIA**

PERSONS IN FAMILY/HOUSEHOLD	POVERTY GUIDELINE
1	\$12,490
2	\$16,910
3	\$21,330
4	\$25,750
5	\$30,170
6	\$34,590
7	\$39,010
8	\$43,430

For families/households with more than 8 persons, add \$4,420 for each additional person.

This data is updated each year (usually in January) so BE SURE TO USE THE MOST CURRENT DATA AVAILABLE.

Please see the DCA publication CDBG Revitalization Area Strategies Applicants’ Manual for additional information regarding RAS.

Generally, a survey of all area residents benefitting from the CDBG project is the preferred method. However, sometimes the CDBG project benefit area is too large to survey everyone in a reasonable period of time. In these cases, a sample survey may be appropriate. The purpose of a sample survey is to ask questions of a portion of the population to make estimates about the entire population. Asking proper questions of a randomly drawn sample of adequate size (known as a scientifically accurate sample), may provide a reasonably high degree of accuracy of the overall estimates.

In the survey that is discussed here, we are limiting the emphasis to the determination of a single threshold criteria - whether at least 70 percent of the persons living in a target area have low or moderate incomes (for RAS, please see the “Special Note” section above). It is important to note, however, that sound CDBG planning would also use a survey to determine other area needs related to housing, public facilities, jobs, education, social service, Limited English Proficiency (LEP) etc., as well as gauge the willingness of area residents to participate in possible programs.

This Guide is divided into six sections, each of which discusses a different step in administering the sample survey. In order to obtain accurate results, it is necessary to complete each step properly.

**STEP 1: SELECTING THE SURVEY METHOD**

Any type of survey that fulfills criteria discussed below can be used to determine whether an area qualifies as low and moderate income. The most commonly used surveys are:

- Telephone surveys;



- Door to door surveys; and
- Mail surveys.

For CDBG planning, however, "door-to-door" or an equivalent form of one-on-one survey will usually yield the best results.

Door-to door surveys involve a little more work than telephone or mail surveys. The interviewers must go outside, knock on doors, and do the "leg work" necessary to obtain interviews. In small areas, this type of survey may be the best because you can define the target area by its geographic boundaries, observe area needs, and develop procedures for sampling - so that no list of the families in the area is needed beforehand.

**STEP 2: DEVELOPING A QUESTIONNAIRE**

It is important that all of the individuals interviewed are asked exactly the same questions and that their responses are recorded correctly. To ensure this, you need a written questionnaire and you need to have your interviewers write down on each questionnaire the exact responses of each respondent. Each question should be clear, written in simple language, and convey only one meaning. It is usually best to test a draft questionnaire on a few people to ensure that they understand the questions.

Experience has shown that many individuals are reluctant to provide their exact family income. For area benefit projects, this type of exact income level is not needed. The central question discussed here is whether the family being interviewed has an income that is below or above the established low and moderate-income level for families of the same size.

One method to obtain this information in door-to-door interviewing is to carry a set of cards; one card each for the family sizes to be considered. On each card should be written the figure for low and moderate-income level for a family of that size. For example:

**TABLE 1  
ILLUSTRATIONS OF  
INCOME CARDS**

Card Numbers	Persons in Family	Low/Mod Income Level *
1	1	\$14,500
2	2	\$16,500
3	3	\$18,650
4	4	\$20,700
5	5	\$22,000
6	6	\$23,300
7	7	\$24,600
8	8	\$25,900

**\*Be sure to use current limits (For RAS be sure the cards reflect Poverty Guideline levels).**

The interviewer should ask the respondent their family size (those living in the household), show the appropriate card, and ask if the family income is above or below the amount shown.

Another alternative is for the survey questionnaire to show the same information with a question asking if the family's income is above or below the limit. See the sample survey form at the end of this Guide for an example.

In some situations, the person being interviewed may not know the family's annual income. In this case, it will be necessary for the interviewer to obtain basic income data for specific pay periods, apply appropriate multipliers, and add estimated annual income from all family members to project a yearly income.

An adequate questionnaire must be able to provide answers to at least the following two questions: (A sample is included at the end of this Guidebook.)

1. How many people live here in your family?
2. What is the annual gross family income from all sources?

While the necessary questions are brief and simple, there are some additional factors to take into account when designing the questionnaire.

First, the questions used cannot be "loaded" or biased. The interviewer may not imply that the neighborhood will benefit or receive CDBG funding if respondents say that they have low incomes. The questions must be designed to determine truthfully and accurately whether respondents have low and moderate incomes.

It is permissible to state the reason for the survey is to gather information in support of funding for a State CDBG program application.

Second, bear in mind that questions about income are personal. Many people are suspicious or reluctant to answer questions about their incomes--especially if they do not see the reason for the question. A good way to address this is to put questions about income at the end of a somewhat longer questionnaire that relates to other community development matters. In this instance, a local agency can use the questionnaire to gather some information on what the neighborhood sees as important needs or to gather feedback on some policy or project. At the end of such a questionnaire, it may be possible to discreetly ask income questions. If this option is chosen, however, it should be noted that an excessively lengthy questionnaire might cause respondents to become disinterested. The ideal survey length would probably be less than ten minutes, although certainly a longer questionnaire could be developed, if necessary.

Of course, it is possible to ask only the critical questions on income and family size. You may know best how people in your community would respond to such questions. With a proper introduction, which identifies the need for the information, you may generate an adequate level of response.

### **STEP 3: SELECTING THE SAMPLE**

In selecting a sample of families to interview, there are a series of steps that must be taken for the results to be accurate and acceptable. First, you must define the group whose characteristics you are trying to estimate. Then you must determine how many families in that group must be sampled in order to estimate the overall characteristics accurately. Next you must make some allowances for families who, for whatever reason, you will not be able to interview. And finally, you must select the families to be interviewed. This section discusses each of these steps.

**Defining the Universe.** In sampling, the large group whose characteristics you seek to estimate from a sample is known as the universe. For purposes of the CDBG program, your universe will be all the families living in the area that is to be served by a CDBG-funded project. For RAS, the entire block group or groups must be surveyed. You will need to know how many families live in the "universe".

When you have defined your universe, you next need a method of identifying the individual members of that area so that you can sample them. Ideally, for a given neighborhood, you would have a list of every address in the neighborhood benefit area. Then you would devise a procedure to select the persons you want to interview.

For larger areas, it may not be practical to go door-to-door. In this case, obtaining a list of addresses in the CDBG target area may be necessary. City indexes, if available, comprehensive, and up-to-date, usually provide the best source of household information suitable for sampling. Tax rolls may identify addresses in an area, however, keep in mind that they identify property owners, whereas you are interested in identifying residents. Also, since tax rolls generally identify building addresses, in the case of apartment buildings, you must identify the individual residential housing units.

**How big a sample?** After you have defined your universe and identified a method for identifying individual families in the universe, you must next determine how many families to select. Note that this is a critical step for insuring accuracy. Too small a sample may lead to your CDBG application being denied funding - use Table 2 to determine how many families you need to interview.

Note that Table 2 provides the minimum sample size based on the size of the population universe. It is acceptable to use larger samples but only if all families are chosen in the same manner.

**Unreachables and Other Non-Response:** It is important to note that the sample sizes suggested in Table 2 indicate the number of interviews needed, and not necessarily the size of the sample you need to draw. Be aware that some families may not be home during the time you are interviewing, some may refuse to be interviewed, some may terminate the

interview before you finish, and some may complete the interview but fail to provide an answer to the question on income level. In order to be considered an adequate survey response, the interview must be conducted, and you must obtain complete and accurate information on the respondent's income level.

(NOTE: Table 3 suggests some of the usual expected survey response rates based on the type of survey.)

As an example: Based on Table 2 & 3, if your CDBG target area consisted of a 400-family neighborhood, you would need to conduct 250 interviews. When conducting a door-to-door survey, you would anticipate a 75% to 90% Rate of Response. As such, you should anticipate interviewing between 278 and 333 families (250 divided by 75% or 90%).

<b>Number of Families in the Universe</b>	<b>Minimum Sample Size</b>
55 or less	50
56 - 63	55
64 - 70	60
71 - 77	65
78 - 87	70
88 - 99	80
100 - 115	90
116 - 133	100
134 - 153	110
154 - 180	120
181 - 238	150
239 - 308	170
309 - 398	200
399 - 650	250
657 - 1200	300
1201 - 2700	350
2701 or more	400

<b>Survey Type</b>	<b>Expected Rate of Response</b>
Mail	25-50%
Mail, with letter follow-up	50-60%

Mail, with telephone follow-up	50-80%
Telephone	75-90%
Door-to-Door	75-90%

**Selecting the Sample:** In sampling, you are looking at a portion of everyone in a group and making inferences about the whole group. For those inferences to be most accurate, everyone who is in the group should have an equal chance of being included in the sample.

For example, random number generators (available online) will provide you with a sample that ensures everyone in the target area has an equal chance of being included in the survey. In using a random number generator, assign sequential numbers to your universe (see section “*Defining Your Universe*”, above). Then, enter into the random number generator the universe size and the desired number of random numbers to generate (as determined by the sample size and expected response rate calculations). The resulting list will tell you which numbers to draw from your list (Universe). ***CDBG or RAS applicants, when conducting less than a 100% survey, must use a random number generator to conduct a random survey.***

#### **STEP 4: CONDUCTING THE SURVEY**

To carry out the survey, you have to reproduce sufficient questionnaires, recruit and train interviewers, schedule the interviewing, and develop procedures for editing, tabulating, and analyzing the results.

**Publicity.** To promote participation, it is worthwhile to arrange some advance notice. A notice in a local newspaper or announcements at churches or civic organizations can let people living in your target area know that you will be conducting a survey. If you let people know in advance how, when, and why you will contact them, usually they are more willing to cooperate.

As with all aspects of the survey, any publicity must be worded so that it does not bias the results. For example, it is acceptable to note the community is applying for a State CDBG grant and, as part of the application, the community has to provide the State with residents’ current income estimates. It is not appropriate to say, however, that in order for the community to receive the desired CDBG grant funding, a survey must be conducted to show that most of the target area residents have low and moderate incomes.

**Interviewers.** Anyone who is willing to follow the established procedures can serve as an interviewer. Volunteers from local community groups serve well. Also, schools or colleges doing courses on civics, public policy, or survey research frequently may be persuaded to assist in the effort as a mean of providing students with practical experience.

**Contact and Follow-Up.** Interviewers should attempt to contact respondents at a time when they are most likely to get a high rate of response. Door-to-door interviews should be conducted early in the evening (especially before dark) or on weekends. Repeated efforts, at varying times, should be made to reach anyone missed in the initial sample.

Interviewers should avoid selecting a time or method that will yield biased results. For example, interviewing only during the day from Monday to Friday will probably miss working families. Since these families may have higher incomes than other families in the survey target area, this timing may lead to the biased results of finding a high proportion of low- and moderate-income families.

When making contact with a member of the family being surveyed, the interviewer first has to determine that the person being interviewed is knowledgeable and competent to answer the survey questions. The interviewer should ask to speak to the head of the household. If it is absolutely necessary, the interviewer may conduct an interview with other resident adults or children (of at least high school age). The interviewer should determine that the children to be interviewed are mature and competent and can provide accurate information.

As part of the questionnaire, the interviewer should develop a standard introduction, identify the purpose of the survey, and request the participation of the respondent. Also, noting the expected duration of the interview will let respondents know that the burden to them will be minimal.

The interviewer should emphasize to respondents that their answers will be kept confidential and the interviewer should do their best to maintain this confidentiality. Usually, the respondent's name, address and telephone number appear only on a cover sheet -- never on a survey form. Each survey form and cover sheet can be coded in order to match the survey to its cover, if needed. The purpose of the confidentiality is to protect, as much as possible, a survey respondents' private income information.

### **The Interview.**

Interviewers should read the questions exactly as they are written. If the respondent does not understand the question or gives an unresponsive answer, it usually is best for the interviewer to repeat the question. Questions should be read in the order in which they are written. The respondent's answer should be recorded immediately, as they are provided. At the end of the interview, and before proceeding to the next interview, the interviewer should always do a quick edit of the questionnaire to be sure that they have completed every answer correctly.

**NOTE:** There may be an important exception to reading the questions in the exact order. Should it appear the respondent is about to terminate the interview, the interviewer should immediately try to get an answer to the critical household income question.

**Editing.** Interviewers should turn their completed surveys in to the person who will tabulate and analyze them. That person should review each survey to ensure that is complete and

unambiguous. Questions or errors that are found should be referred to the interviewer for clarification. Note that editing is an ongoing process. Even after you have started to tabulate or analyze the data, you may come across errors, which you need to correct.

## **STEP 5: DETERMINING THE RESULTS**

After the data has been collected and edited, adding up the numbers will reveal the results. It is useful to think of this in two parts: (1) tabulating the responses from the questionnaires and calculating an estimated proportion of low- and moderate-income persons; and (2) determining the accuracy of the estimate. The first of these parts can be taken care of by completing the low- and moderate-income worksheet, which appears below.

**Tabulation.** For ease of processing, software such as Excel may be helpful. Regardless of how the data is processed and tabulated, you should be able to complete Part A of the low- and moderate-income worksheet. The worksheet provides an easy way to summarize survey results. Survey data is entered in Part A, calculations based on the data go in Part B, and Part C is an example with instructions. Further, completion of the worksheet may assist in providing information required on DCA Form 6.

## LOW- AND MODERATE-INCOME SURVEY WORKSHEET

### PART A. INFORMATION CONTAINED IN YOUR SURVEY

1. Enter the estimated total number of families in the target area. 1. \_\_\_\_\_
2. Enter the total number of families interviewed. 2. \_\_\_\_\_
3. Enter the total number of low- and moderate-income families interviewed. 3. \_\_\_\_\_
4. Enter the total number of persons living in the low- and moderate income families interviewed. 4. \_\_\_\_\_
5. Enter the total number of non-low and moderate-income families interviewed. 5. \_\_\_\_\_
6. Enter the total number of persons living in the non-low and moderate families. 6. \_\_\_\_\_

### PART B. CALCULATIONS BASED ON DATA CONTAINED IN YOUR SURVEY

7. Divide Line 4 by Line 3. (This is the average size of the low-mod family you interviewed) 7. \_\_\_\_\_
8. Divide Line 6 by Line 5. (This is the average size of non-low-mod family you interviewed) 8. \_\_\_\_\_
9. Divide Line 3 by Line 2. (This is the proportion of families interviewed that have low and moderate incomes) 9. \_\_\_\_\_
10. Divide Line 5 by Line 2. (This is the proportion of families interviewed that do not have low and moderate incomes) 10. \_\_\_\_\_
11. Multiply Line 1 by Line 9. (This is the estimate of the total number of low-mod families in your target area) 11. \_\_\_\_\_
12. Multiply Line 1 by Line 10. (This is the estimate of the total number of non-low-mod families in your target area.) 12. \_\_\_\_\_
13. Multiply Line 7 by Line 11. (This is the estimate of the total number of low-mod persons in your target area.) 13. \_\_\_\_\_
14. Multiply Line 8 by Line 12. (This is the estimate of the total number of non-low-mod persons in your target area.) 14. \_\_\_\_\_
15. Add Line 13 and Line 14. (This is the estimate of the total number of persons in your target area) 15. \_\_\_\_\_



16. Divide Line 13 by Line 15, and multiply the resulting decimal by 100. 16. \_\_\_\_\_  
**{This is the estimated percentage of persons in your target area who have low and moderate incomes.}**

### **PART C. INSTRUCTION AND EXPLANATIONS**

1. The number that goes on Line 1 is something you needed to know before drawing your sample. In the course of your survey, you may have refined your original estimate. On Line 1, you should enter your current best estimate of the total number of families in the area.

2. For the number of families interviewed, you want the total number of interviews with complete and accurate information on the income.

3. When you are completing Part A, be sure that the answers are logical. For example, the number of Line 4 cannot be smaller than the number on Line 3 (because every family must have at least one person). Similarly, the number on Line 6 cannot be less than the number on Line 5. Also note that the number on Line 3 plus the number on Line 5 should equal the number on Line 2 -- every family is either low and moderate income or it is not.

4. Some examples for Part B: For purposes of illustration, assume that you estimated that the target area contained 650 families (Line 1). Assume that you interviewed 250 families (Line 2), of whom 130 had low and moderate incomes (Line 3). These low and moderate income families contained 450 persons (Line 4). The 120 families with incomes above the low and moderate income level (Line 5) contained 400 persons (Line 6). You would complete Part B as follows:

Line 7. If the families you interviewed contained 450 low-mod persons in 130 families, the number on Line 7 would be about 3.46 ( $450/130$ ).

Line 8. If the families you interviewed contained 400 non-low-mod persons in 120 families, the number on Line 8 would be about 3.33 ( $400/120$ ).

Line 9. If you interviewed a total of 250 families, 130 of which had low and moderate incomes, the number on Line 9 would be about .52 ( $130/250$ ).

Line 10. If 120 of the 250 families you interviewed did not have low and moderate incomes, the number on line 10 would be about .48 ( $120/250$ ).

Line 11. If your target area contained an estimated 650 families, and you interviewed 250, of which 130 had low and moderate incomes, the number on Line 11 would be about 338 ( $650 \times .52$ ).

Line 12. Continuing with the example, Line 12 would be about 312 ( $650 \times .48$ ).

Line 13. 3.46 persons per low-mod family times 338 low-mod families--line 13 would be about 1,169.

Line 14. 3.33 persons per non-low-mod family times 312 non-low-mod families-- Line 14 would be about 1,039.

Line 15. Total low-mod persons (1,169) plus total non-low-mod persons (1,039)-- Line 15 would be about 2,208 estimated total persons

Line 16. 1,169 low-mod persons divided by 2,208 total persons yields about .5294. Multiplied by 100, this gives an estimate that about 52.94 percent of the residents have low and moderate incomes.

**Analysis.** The estimate you reach for the proportion of the residents who have low and moderate incomes will be just that--an estimate. If you have done everything right, including random selections of the required number of families, the estimate should be reasonably accurate. If, using the procedures specified here you come up with an estimate of 75 percent or more of the residents of the target area having low or moderate incomes, you can be sure that at least 70 percent of the residents actually have low or moderate incomes. You can skip over this section, and go down to STEP 6.

On the other hand, if your estimate is less than 70 percent, the presumption is that the area is ineligible as a target area. This section, and in fact, the remainder of this guide, probably will not be of much use to you.

This section intended for use by those whose survey results indicate that somewhere between 70 and 74 percent of the residents of the target area have low and moderate incomes. If your estimates were in the 70-74 percent range, there is less certainty than if you came up with a higher proportion. The closer your estimate is to 70 percent, the less certain you become that the area is an eligible low- and moderate-income target area.

There are a couple of additional analyses you can make to help determine the extent to which your estimate of the proportion of the low- and moderate-income residents is correct. First, compare the average size of the low- and moderate-income families in your sample with the average size of above low- and moderate-income families. The closer those figures are to each other, the more confident you can be in your estimate. Thus, if you estimate that 62 percent of the residents have low and moderate incomes and you found in your sample that both low- and moderate-income families and those above low- and moderate-income families had an average size of 3.4 people, you can be pretty sure that it is a low- and moderate-income area.

A second simple calculation is to arrange your data into a table such as that outlined below as Table D. This table enables you to compare the distribution of family sizes of families with low and moderate incomes with those that are above low and moderate income.

In completing Table D, you would count the number of low- and moderate-income families in your survey that had just one person in the family. You would enter this figure under "number" across from "one." You would proceed to enter the number of low- and moderate-income families with two persons, with three persons, and so forth through the "nine or more" category. Adding up all entries in this column, you enter the sum across from "total", which will be the total number of low and moderate income families from which you obtained

interviews. Then, considering families that are above low and moderate income, you follow the same procedure to complete the "number" column for them. For each income group, dividing the number of one person families by the total number of families in that income group and multiply it by 100, yields the percent of that group that are in one-person families. You should fill in the "percent" columns using this procedure. Each of the percent columns should total to 100 or so allowing for rounding errors.

Table D				
Number of Persons in the Family	Families with Low and Moderate Incomes		Families with Above Low and Moderate Incomes	
	Number	Percent	Number	Percent
1				
2				
3				
4				
5				
6				
7				
8				
<u>9 or more</u>	_____	_____	_____	_____
		100%		100%

When you have filled Table 4 with your data, compare the percentages of the low- and moderate-income respondents with the percentages of the above low- and moderate-income respondents for each family size. The closer the distribution, the greater the degree of confidence you can have in your estimate of the proportion of persons with low and moderate incomes. For example, if among your low- and moderate-income group, 10 percent have one person, 40 percent have two persons, and 50 percent have three persons, and among your above low- and moderate-income group 12 percent have one person, 41 percent have two persons, and 47 percent have three persons, you would have a great deal of confidence in you estimate.

Consider a scenario where you estimate that 61% of the residents have low and moderate incomes. You examine the distribution of family sizes according to Table 4 and find that in your sample 100% of your low- and moderate-income group had just one person and 100% of your above low- and moderate-income group had nine or more persons. (Yes, this would be a strange neighborhood.) This distribution would make it probable that your sample was badly distributed in favor of large above-lower income families and that, without the sample error, the actual distribution in the target area is that at least 60% of the residents had low and moderate incomes.

After completing data collection, non-respondents should be briefly analyzed to determine that they were reasonably random. For example, you may want to tabulate the rate of response

by street or block in the target area to see whether there are notable gaps in the coverage of your survey. You may want to examine the racial or ethnic background of your respondents and compare them with what you supposed the distribution to be. If you do not detect any major gaps in the coverage of your sample or any probable patterns in the characteristics of your non-respondents, you can be more certain of the accuracy of your estimate.

## **STEP 6: DOCUMENTING YOUR EFFORT**

The result of your survey should, with a high degree of accuracy, determine whether your target area is predominately low and moderate income. Program auditors or evaluators may want to review the procedures and data used to determine that the target area qualifies under the CDBG program regulations. Therefore, maintaining and carefully documenting the survey is important. The following discusses maintaining and documenting survey results:

1. Keep the completed surveys. This will show you actually conducted the survey and that the proper questions were asked.

Each survey should have a cover sheet containing respondent information such as name, address, and telephone number. When the survey is complete, the cover sheets can be separated from the questionnaires. When separated from the survey cover sheets, the questionnaires will document the survey work while maintaining the respondents' privacy.

Saving the cover sheets separately from the surveys provides a record of who was contacted. If subsequent verification is required, the cover sheet will provide survey respondent contact information. This contact information may be used to verify the respondents were, in fact, contacted on such-and-such a date by such-and-such a person to discuss matters related to community development. The privacy of their responses remains protected by this procedure.

2. Keep a list of the family sample universe and a list of the actual families sampled. This might be one list with the sampled families being checked once if they were sampled, and checked twice if they were interviewed. Replacement families should be noted, too. There should be some written documentation about the method used to select families from the universe list. Note that this is different from keeping just the cover sheets, since it documents not just who was interviewed, but also who was not interviewed and how interviewees were selected.

If a door-to-door sample was conducted without starting from a universe list, the procedures used to select the sample should be recorded, including the instructions provided to interviewers for replacing sampled families not available.

3. Retain the data analysis and tabulation. Maintain and backup all survey data to external sources (independent hard drives, flash drives, etc.). Also, maintain any hard copy information related to the surveys and survey tabulation.

## **OVERVIEW OF STEPS IN A SAMPLE SURVEY**

#### STEP 1: Selecting the Type of Survey

- a. Decide whether it is best to conduct a telephone, door-to-door, or other types of survey. Be sure to consider available staff size, sample size required, and the means available for identifying families to interview.

#### STEP 2: Developing a Questionnaire

- a. Write your questionnaire. Remember to keep the language simple. Avoid bias-do not encourage particular answers. Include other questions, if you like, but make sure the survey does not take too long.
- b. Develop a standard introduction for your interviewers to use in approaching the respondents.

#### STEP 3: Selecting the Sample

- a. Define your universe. What is the area or population for which you are trying to estimate the portions of persons who have low and moderate incomes.
- b. Identify a procedure for identifying individual families in the target area. Obtain a complete list of residents, addresses, telephone numbers, or identify a procedure for selecting from all of the homes in the area.
- c. Determine the number of interviews you need to achieve an acceptable level of accuracy
- d. Select your sample using a random number generator. Make sure you can add families to replace refusals. Make sure that the entire universe is covered-that is, that you have not excluded certain areas or groups of people.

#### STEP 4: Conducting the Survey

- a. Select and train your interviewers. Make sure they are very comfortable with the questionnaire. Make sure they know the importance of randomness and how to select and replace individual families.
- b. Make contact with the sample. Write or phone and let them know you are coming. Or just knock on doors, if this is the procedure you select.
- c. Try again (and again) where contact has not resulted in an interview.
- d. Replace families you have written off as "unreachable."

#### STEP 5: Determine the Results

- a. Complete the Low and Moderate Income Worksheet. What is your estimated percent low and-moderate income residents? If your results are between 70 and 75 percent does your data give you any reason to think that this is an over-estimation?

#### STEP 6: Documenting Your Efforts

- a. Save the completed questionnaires, preferably in a form that does not identify the respondents.
- b. Save a list of the respondents, preferably in a form that does not identify their responses.
- c. Save a list of your sampling procedures, this includes you universe list, your original sample, your replacements, your sampling method, and your replacement method.
- d. Save your data.

**HOUSEHOLD SURVEY FOR PROPOSED  
COMMUNITY DEVELOPMENT BLOCK  
GRANT**

Household Survey # \_\_\_\_\_  
Interviewer \_\_\_\_\_  
Date \_\_\_\_\_

The Insert the City/County Name is conducting this survey to obtain information necessary to apply for a Georgia Community Development Block Grant to assist with water system improvements to replace old, deteriorating mains to improve water quality. It is extremely important to the success of this application that you complete the following survey. **All information collected are kept strictly confidential.** If you have questions concerning this survey, please contact \_\_\_\_\_.

Household Racial and Ethnic Information		
Racial/Ethnic Group	Number of Persons	Hispanic Origin (Y/N)
White		
Black/African American		
Asian		
American Indian/Alaskan Native		
Native Hawaiian/Other Pacific Islander		
American Indian/Alaskan Native & White		
Asian & White		
Black/African American & White		
American Indian/Alaskan Native & Black/African American		
Other Multi-Racial		
<b>TOTAL PERSONS SERVED</b>		

For purposes of determining benefit to low and moderate-income persons, we need to know the total gross household income. (On the line that represents the total number of people living in the residence, please circle the income range that best represents the household income.)

Add the appropriate CDBG Income Limits based on the project location.

# in Household	<=30%	>30% and <=50%	>50% and <=80%	80%>
1	\$11,000 or less	\$11,001-\$18,250	\$18,251-\$29,200	\$29,201 or more
2	\$12,550 or less	\$12,551-\$20,850	\$20,851-\$25,020	\$25,021 or more
3	\$14,100 or less	\$14,101-\$23,450	\$23,451-\$28,140	\$28,141 or more
4	\$15,650 or less	\$15,651-\$26,050	\$26,051-\$31,260	\$31,261 or more
5	\$16,950 or less	\$16,951-\$28,150	\$28,151-\$33,780	\$33,781 or more
6	\$18,200 or less	\$18,201-\$30,250	\$30,251-\$36,300	\$36,301 or more
7	\$19,450 or less	\$19,451-\$32,350	\$32,351-\$38,820	\$38,821 or more
8	\$20,700 or less	\$20,701-\$34,400	\$34,401-\$41,280	\$41,281 or more

**Family Makeup:**

- Enter the number of adult and children household residents \_\_\_\_\_ Adults \_\_\_\_\_ Children under 18
- Enter the number of elderly or handicapped household residents \_\_\_\_\_ Elderly \_\_\_\_\_ Handicapped
- Indicate with an "X" if the head of household is female \_\_\_\_\_ YES \_\_\_\_\_ NO
- Do you have Limited English Proficiency? \_\_\_\_\_ YES \_\_\_\_\_ NO

I certify that my household size and household income indicated above are correct.

Signature: \_\_\_\_\_ Printed Name: \_\_\_\_\_

**Thank you for completing this survey. The information will assist in applying for a Community Development Block Grant and be kept absolutely confidential and does not obligate you in any way.**

## ELECTRONIC CODE OF FEDERAL REGULATIONS

**e-CFR data is current as of November 14, 2019**[Title 24](#) → [Subtitle B](#) → [Chapter V](#) → [Subchapter C](#) → [Part 570](#)

Title 24: Housing and Urban Development

**PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS****Subpart I—State Community Development Block Grant Program****§570.483 Criteria for national objectives.**

(a) *General.* The following criteria shall be used to determine whether a CDBG assisted activity complies with one or more of the national objectives as required to section 104(b)(3) of the Act. (HUD is willing to consider a waiver of these requirements in accordance with §570.480(b)).

(b) *Activities benefiting low and moderate income persons.* An activity will be considered to address the objective of benefiting low and moderate income persons if it meets one of the criteria in paragraph (b) of this section, unless there is substantial evidence to the contrary. In assessing any such evidence, the full range of direct effects of the assisted activity will be considered. The activities, when taken as a whole, must not benefit moderate income persons to the exclusion of low income persons:

(1) *Area benefit activities.* (i) An activity, the benefits of which are available to all the residents in a particular area, where at least 51 percent of the residents are low and moderate income persons. Such an area need not be coterminous with census tracts or other officially recognized boundaries but must be the entire area served by the activity. Units of general local government may, at the discretion of the state, use either HUD-provided data comparing census data with appropriate low and moderate income levels or survey data that is methodologically sound. An activity that serves an area that is not primarily residential in character shall not qualify under this criterion.

(ii) An activity, where the assistance is to a public improvement that provides benefits to all the residents of an area, that is limited to paying special assessments levied against residential properties owned and occupied by persons of low and moderate income.

(iii)(A) An activity to develop, establish and operate (not to exceed two years after establishment), a uniform emergency telephone number system serving an area having less than 51 percent of low and moderate income residents, when the system has not been made operational before the receipt of CDBG funds, provided a prior written determination is obtained from HUD. HUD's determination will be based upon certifications by the State that:

(1) The system will contribute significantly to the safety of the residents of the area. The unit of general local government must provide the state a list of jurisdictions and unincorporated areas to be served by the system and a list of the emergency services that will participate in the emergency telephone number system;

(2) At least 51 percent of the use of the system will be by low and moderate income persons. The state's certification may be based upon information which identifies the total number of calls actually received over the preceding twelve-month period for each of the emergency services to be covered by the emergency telephone number system and relates those calls to the geographic segment (expressed as nearly as possible in terms of census tracts, enumeration districts, block groups, or combinations thereof that are contained within the segment) of the service area from which the calls were generated. In analyzing this data to meet the requirements of this section, the state will assume that the distribution of income among callers generally reflects the income characteristics of the general population residing in the same geographic area where the callers reside. Alternatively, the state's certification may be based upon other data, agreed to by HUD and the state, which shows that over the preceding twelve-month period the users of all the services to be included in the emergency telephone number system consisted of at least 51 percent low and moderate income persons.

(3) Other federal funds received by the unit of general local government are insufficient or unavailable for a uniform emergency telephone number system. The unit of general local government must submit a statement explaining whether the problem is caused by the insufficiency of the amount of such funds, the restrictions on the use of such funds, or the prior commitment of such funds for other purposes by the unit of general local government.

(4) The percentage of the total costs of the system paid for by CDBG funds does not exceed the percentage of low and moderate income persons in the service area of the system. The unit of general local government must include a description of the boundaries of the service area of the system; the census tracts or enumeration districts within the boundaries; the total number of persons and the total number of low and moderate income persons in each census tract or enumeration district, and the percentage of low and moderate income persons in the service area; and the total cost of the system.

(B) The certifications of the state must be submitted along with a brief statement describing the factual basis upon which the certifications were made.

(iv) Activities meeting the requirements of paragraph (e)(4)(i) of this section may be considered to qualify under paragraph (b)(1) of this section.

(v) HUD will consider activities meeting the requirements of paragraph (e)(5)(i) of this section to qualify under paragraph (b)(1) of this section, provided that the area covered by the strategy meets one of the following criteria:

(A) The area is in a Federally-designated Empowerment Zone or Enterprise Community;

(B) The area is primarily residential and contains a percentage of low and moderate income residents that is no less than 70 percent;

(C) All of the census tracts (or block numbering areas) in the area have poverty rates of at least 20 percent, at least 90 percent of the census tracts (or block numbering areas) in the area have poverty rates of at least 25 percent, and the area is primarily residential. (If only part of a census tract or block numbering area is included in a strategy area, the poverty rate shall be computed for those block groups (or any part thereof) which are included in the strategy area.)

(D) Upon request by the State, HUD may grant exceptions to the 70 percent low and moderate income or 25 percent poverty minimum thresholds on a case-by-case basis. In no case, however, may a strategy area have both a percentage of low and moderate income residents less than 51 percent and a poverty rate less than 20 percent.

(2) *Limited clientele activities.* (i) An activity which benefits a limited clientele, at least 51 percent of whom are low and moderate income persons. The following kinds of activities may not qualify under paragraph (b)(2) of this section:

(A) Activities, the benefits of which are available to all the residents of an area;

(B) Activities involving the acquisition, construction or rehabilitation of property for housing; or

(C) Activities where the benefit to low- and moderate-income persons to be considered is the creation or retention of jobs, except as provided in paragraph (b)(2)(v) of this section.

(ii) To qualify under paragraph (b)(2) of this section, the activity must meet one or the following tests:

(A) It must benefit a clientele who are generally presumed to be principally low and moderate income persons. Activities that exclusively serve a group of persons in any one or a combination of the following categories may be presumed to benefit persons, 51 percent of whom are low and moderate income: abused children, battered spouses, elderly persons, adults meeting the Bureau of the Census' Current Population Reports definition of "severely disabled," homeless persons, illiterate adults, persons living with AIDS, and migrant farm workers; or

(B) It must require information on family size and income so that it is evident that at least 51 percent of the clientele are persons whose family income does not exceed the low and moderate income limit; or

(C) It must have income eligibility requirements which limit the activity exclusively to low and moderate income persons; or

(D) It must be of such a nature, and be in such a location, that it may be concluded that the activity's clientele will primarily be low and moderate income persons.

(iii) An activity that serves to remove material or architectural barriers to the mobility or accessibility of elderly persons or of adults meeting the Bureau of the Census' Current Population Reports definition of "severely disabled" will be presumed to qualify under this criterion if it is restricted, to the extent practicable, to the removal of such barriers by assisting:

(A) The reconstruction of a public facility or improvement, or portion thereof, that does not qualify under §570.483(b)(1);

(B) The rehabilitation of a privately owned nonresidential building or improvement that does not qualify under §570.483(b)(1) or (4); or

(C) The rehabilitation of the common areas of a residential structure that contains more than one dwelling unit and that does not qualify under §570.483(b)(3).



(iv) A microenterprise assistance activity (carried out in accordance with the provisions of section 105(a)(23) of the Act or §570.482(c) and limited to microenterprises) with respect to those owners of microenterprises and persons developing microenterprises assisted under the activity who are low- and moderate-income persons. For purposes of this paragraph, persons determined to be low and moderate income may be presumed to continue to qualify as such for up to a three-year period.

(v) An activity designed to provide job training and placement and/or other employment support services, including, but not limited to, peer support programs, counseling, child care, transportation, and other similar services, in which the percentage of low- and moderate-income persons assisted is less than 51 percent may qualify under this paragraph in the following limited circumstances:

(A) In such cases where such training or provision of supportive services is an integrally-related component of a larger project, the only use of CDBG assistance for the project is to provide the job training and/or supportive services; and

(B) The proportion of the total cost of the project borne by CDBG funds is no greater than the proportion of the total number of persons assisted who are low or moderate income.

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

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

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

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

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

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

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

(4) *Job creation or retention activities.* (i) An activity designed to create permanent jobs where at least 51 percent of the jobs, computed on a full time equivalent basis, involve the employment of low and moderate income persons. For an activity that creates jobs, the unit of general local government must document that at least 51 percent of the jobs will be held by, or will be made available to low and moderate income persons.

(ii) For an activity that retains jobs, the unit of general local government must document that the jobs would actually be lost without the CDBG assistance and that either or both of the following conditions apply with respect to at least 51 percent of the jobs at the time the CDBG assistance is provided: The job is known to be held by a low or moderate income person; or the job can reasonably be expected to turn over within the following two years and that it will be filled by, or that steps will be taken to ensure that it is made available to, a low or moderate income person upon turnover.

(iii) Jobs will be considered to be available to low and moderate income persons for these purposes only if:

(A) Special skills that can only be acquired with substantial training or work experience or education beyond high school

are not a prerequisite to fill such jobs, or the business agrees to hire unqualified persons and provide training; and

(B) The unit of general local government and the assisted business take actions to ensure that low and moderate income persons receive first consideration for filling such jobs.

(iv) For purposes of determining whether a job is held by or made available to a low- or moderate-income person, the person may be presumed to be a low- or moderate-income person if:

(A) He/she resides within a census tract (or block numbering area) that either:

(1) Meets the requirements of paragraph (b)(4)(v) of this section; or

(2) Has at least 70 percent of its residents who are low- and moderate-income persons; or

(B) The assisted business is located within a census tract (or block numbering area) that meets the requirements of paragraph (b)(4)(v) of this section and the job under consideration is to be located within that census tract.

(v) A census tract (or block numbering area) qualifies for the presumptions permitted under paragraphs (b)(4)(iv) (A)(1) and (B) of this section if it is either part of a Federally-designated Empowerment Zone or Enterprise Community or meets the following criteria:

(A) It has a poverty rate of at least 20 percent as determined by the most recently available decennial census information;

(B) It does not include any portion of a central business district, as this term is used in the most recent Census of Retail Trade, unless the tract has a poverty rate of at least 30 percent as determined by the most recently available decennial census information; and

(C) It evidences pervasive poverty and general distress by meeting at least one of the following standards:

(1) All block groups in the census tract have poverty rates of at least 20 percent;

(2) The specific activity being undertaken is located in a block group that has a poverty rate of at least 20 percent; or

(3) Upon the written request of the recipient, HUD determines that the census tract exhibits other objectively determinable signs of general distress such as high incidence of crime, narcotics use, homelessness, abandoned housing, and deteriorated infrastructure or substantial population decline.

(vi) As a general rule, each assisted business shall be considered to be a separate activity for purposes of determining whether the activity qualifies under this paragraph, except:

(A) In certain cases such as where CDBG funds are used to acquire, develop or improve a real property (e.g., a business incubator or an industrial park) the requirement may be met by measuring jobs in the aggregate for all the businesses that locate on the property, provided the businesses are not otherwise assisted by CDBG funds.

(B) Where CDBG funds are used to pay for the staff and overhead costs of an entity specified in section 105(a)(15) of the Act making loans to businesses exclusively from non-CDBG funds, this requirement may be met by aggregating the jobs created by all of the businesses receiving loans during any one-year period.

(C) Where CDBG funds are used by a recipient or subrecipient to provide technical assistance to businesses, this requirement may be met by aggregating the jobs created or retained by all of the businesses receiving technical assistance during any one-year period.

(D) Where CDBG funds are used for activities meeting the criteria listed at §570.482(f)(3)(v), this requirement may be met by aggregating the jobs created or retained by all businesses for which CDBG assistance is obligated for such activities during any one-year period, except as provided at paragraph (e)(6) of this section.

(E) Where CDBG funds are used by a Community Development Financial Institution to carry out activities for the purpose of creating or retaining jobs, this requirement may be met by aggregating the jobs created or retained by all businesses for which CDBG assistance is obligated for such activities during any one-year period, except as provided at paragraph (e)(6) of this section.

(F) Where CDBG funds are used for public facilities or improvements which will result in the creation or retention of jobs by more than one business, this requirement may be met by aggregating the jobs created or retained by all such businesses as a result of the public facility or improvement.

(1) Where the public facility or improvement is undertaken principally for the benefit of one or more particular businesses, but where other businesses might also benefit from the assisted activity, the requirement may be met by aggregating only the

jobs created or retained by those businesses for which the facility/improvement is principally undertaken, provided that the cost (in CDBG funds) for the facility/improvement is less than \$10,000 per permanent full-time equivalent job to be created or retained by those businesses.

(2) In any case where the cost per job to be created or retained (as determined under paragraph (b)(4)(vi)(F)(1) of this section) is \$10,000 or more, the requirement must be met by aggregating the jobs created or retained as a result of the public facility or improvement by all businesses in the service area of the facility/improvement. This aggregation must include businesses which, as a result of the public facility/improvement, locate or expand in the service area of the public facility/improvement between the date the state awards the CDBG funds to the recipient and the date one year after the physical completion of the public facility/improvement. In addition, the assisted activity must comply with the public benefit standards at §570.482(f).

(5) *Planning-only activities.* An activity involving planning (when such activity is the only activity for which the grant to the unit of general local government is given, or if the planning activity is unrelated to any other activity assisted by the grant) if it can be documented that at least 51 percent of the persons who would benefit from implementation of the plan are low and moderate income persons. Any such planning activity for an area or a community composed of persons of whom at least 51 percent are low and moderate income shall be considered to meet this national objective.

(c) *Activities which aid in the prevention or elimination of slums or blight.* Activities meeting one or more of the following criteria, in the absence of substantial evidence to the contrary, will be considered to aid in the prevention or elimination of slums or blight:

(1) *Activities to address slums or blight on an area basis.* An activity will be considered to address prevention or elimination of slums or blight in an area if the state can determine that:

(i) The area, delineated by the unit of general local government, meets a definition of a slum, blighted, deteriorated or deteriorating area under state or local law;

(ii) The area also meets the conditions in either paragraph (c)(1)(ii)(A) or (c)(1)(ii)(B) of this section.

(A) At least 25 percent of properties throughout the area experience one or more of the following conditions:

(1) Physical deterioration of buildings or improvements;

(2) Abandonment of properties;

(3) Chronic high occupancy turnover rates or chronic high vacancy rates in commercial or industrial buildings;

(4) Significant declines in property values or abnormally low property values relative to other areas in the community; or

(5) Known or suspected environmental contamination.

(B) The public improvements throughout the area are in a general state of deterioration.

(iii) The assisted activity addresses one or more of the conditions which contributed to the deterioration of the area. Rehabilitation of residential buildings carried out in an area meeting the above requirements will be considered to address the area's deterioration only where each such building rehabilitated is considered substandard before rehabilitation, and all deficiencies making a building substandard have been eliminated if less critical work on the building is also undertaken. The State shall ensure that the unit of general local government has developed minimum standards for building quality which may take into account local conditions.

(iv) The state keeps records sufficient to document its findings that a project meets the national objective of prevention or elimination of slums and blight. The state must establish definitions of the conditions listed at §570.483(c)(1)(ii)(A) and maintain records to substantiate how the area met the slums or blighted criteria. The designation of an area as slum or blighted under this section is required to be redetermined every 10 years for continued qualification. Documentation must be retained pursuant to the recordkeeping requirements contained at §570.490.

(2) *Activities to address slums or blight on a spot basis.* The following activities can be undertaken on a spot basis to eliminate specific conditions of blight, physical decay, or environmental contamination that are not located in a slum or blighted area: Acquisition; clearance; relocation; historic preservation; remediation of environmentally contaminated properties; or rehabilitation of buildings or improvements. However, rehabilitation must be limited to eliminating those conditions that are detrimental to public health and safety. If acquisition or relocation is undertaken, it must be a precursor to another eligible activity (funded with CDBG or other resources) that directly eliminates the specific conditions of blight or physical decay, or environmental contamination.

(3) *Planning only activities.* An activity involving planning (when the activity is the only activity for which the grant to the unit of general local government is given, or the planning activity is unrelated to any other activity assisted by the grant) if the plans

are for a slum or blighted area, or if all elements of the planning are necessary for and related to an activity which, if funded, would meet one of the other criteria of elimination of slums or blight.

(d) *Activities designed to meet community development needs having a particular urgency.* In the absence of substantial evidence to the contrary, an activity will be considered to address this objective if the unit of general local government certifies, and the state determines, that the activity is designed to alleviate existing conditions which pose a serious and immediate threat to the health or welfare of the community which are of recent origin or which recently became urgent, that the unit of general local government is unable to finance the activity on its own, and that other sources of funding are not available. A condition will generally be considered to be of recent origin if it developed or became urgent within 18 months preceding the certification by the unit of general local government.

(e) *Additional criteria.* (1) In any case where the activity undertaken is a public improvement and the activity is clearly designed to serve a primarily residential area, the activity must meet the requirements of paragraph (b)(1) of this section whether or not the requirements of paragraph (b)(4) of this section are met in order to qualify as benefiting low and moderate income persons.

(2) Where the assisted activity is acquisition of real property, a preliminary determination of whether the activity addresses a national objective may be based on the planned use of the property after acquisition. A final determination shall be based on the actual use of the property, excluding any short-term, temporary use. Where the acquisition is for the purpose of clearance which will eliminate specific conditions of blight or physical decay, the clearance activity shall be considered the actual use of the property. However, any subsequent use or disposition of the cleared property shall be treated as a "change of use" under §570.489(j).

(3) Where the assisted activity is relocation assistance that the unit of general local government is required to provide, the relocation assistance shall be considered to address the same national objective as is addressed by the displacing activity. Where the relocation assistance is voluntary, the unit of general local government may qualify the assistance either on the basis of the national objective addressed by the displacing activity or, if the relocation assistance is to low and moderate income persons, on the basis of the national objective of benefiting low and moderate income persons.

(4) Where CDBG-assisted activities are carried out by a Community Development Financial Institution whose charter limits its investment area to a primarily residential area consisting of at least 51 percent low- and moderate-income persons, the unit of general local government may also elect the following options:

(i) Activities carried out by the Community Development Financial Institution for the purpose of creating or retaining jobs may, at the option of the unit of general local government, be considered to meet the requirements of this paragraph under the criteria at paragraph (b)(1)(iv) of this section in lieu of the criteria at paragraph (b)(4) of this section; and

(ii) All housing activities for which the Community Development Financial Institution obligates CDBG assistance during any one-year period may be considered to be a single structure for purposes of applying the criteria at paragraph (b)(3) of this section.

(5) If the unit of general local government has elected to prepare a community revitalization strategy pursuant to the authority of §91.315(e)(2) of this title, and the State has approved the strategy, the unit of general local government may also elect the following options:

(i) Activities undertaken pursuant to the strategy for the purpose of creating or retaining jobs may, at the option of the grantee, be considered to meet the requirements of paragraph (b) of this section under the criteria at §570.483(b)(1)(v) instead of the criteria at §570.483(b)(4); and

(ii) All housing activities in the area undertaken pursuant to the strategy may be considered to be a single structure for purposes of applying the criteria at paragraph (b)(3) of this section.

(6) If an activity meeting the criteria in §570.482(f)(3)(v) also meets the requirements of either paragraph (e)(4)(i) or (e)(5)(i) of this section, the unit of general local government may elect to qualify the activity either under the area benefit criteria at paragraph (b)(1)(iv) or (v) of this section or under the job aggregation criteria at paragraph (b)(4)(vi)(D) of this section, but not under both. Where an activity may meet the job aggregation criteria at both paragraphs (b)(4)(vi)(D) and (E) of this section, the unit of general local government may elect to qualify the activity under either criterion, but not both.

(f) *Planning and administrative costs.* CDBG funds expended for eligible planning and administrative costs by units of general local government in conjunction with other CDBG assisted activities will be considered to address the national objectives.

[57 FR 53397, Nov. 9, 1992, as amended at 60 FR 1951, Jan. 5, 1995; 60 FR 17445, Apr. 6, 1995; 61 FR 54921, Oct. 22, 1996; 71 FR 30036, May 24, 2006]

# DCA Applicant Form 6

## Georgia Department of Community Affairs CDBG Program

### Low and Moderate Income and Civil Rights Benefit Calculation

Applicant: City of \_\_\_\_\_  
 Original       Amendment, dated: \_\_\_\_\_

1	2	3	4	5	6	7	8
CDBG Activity Number	Total Number of Persons the Activity will serve	Total Number of Minorities the Activity will serve	Total Number of Non-Minorities the Activity will serve	Number of Low and Moderate Income Persons the Activity will serve	Percent of Persons Who have Low and Moderate Incomes	Amount of CDBG Funds requested for the Activity	Amount of CDBG Funds to benefit Low and Moderate Income Persons
P- 03j-01			0		0.00%		\$0.00
Water Improvements	95	71	24	90	94.74%	\$336,650.00	\$318,931.61
			0		0.00%		\$0.00
P-03j-02			0		0.00%		\$0.00
Sewer Improvements	95	71	24	90	94.74%	\$338,350.00	\$320,542.13
			0		0.00%		\$0.00
			0		0.00%		\$0.00
			0		0.00%		\$0.00
			0		0.00%		\$0.00
			0		0.00%		\$0.00
			0		0.00%		\$0.00
			0		0.00%		\$0.00

Describe Methodology. (See Instruction for Required Information. Attach Additional Sheets if needed, and a copy of the Survey Form if one is used.)

The City conducted the LMI surveys during the months of July 2016 - March 2017. The surveys were done during the days, evenings, and by telephone when persons could not be found at home. The target area has 50 homes of which 39 are occupied and 11 are vacant. A 100% survey was completed by the City. See a copy of the income survey sheet and the Grant Total Survey Tally sheet attached to DCA-6. The total low-moderate income benefit for the project is 95%.

**THE FOLLOWING DATA WAS COMPILED FROM THE ACTUAL SURVEY:**

43 Persons were 30% of Median Income	23 Female Head of HH (23.2%)	No Hispanic Persons (0%)
31 Persons were Very Low Income	11 Elderly Persons (11.6%)	
16 Persons were Low-Income	12 Disabled Persons (12.6%)	

**9 TOTAL BENEFIT**      **\$675,000.00**      **\$639,473.72**

$$\frac{\text{Sum of Column 8}}{\text{Sum of Column 7}} \times 100 = \boxed{94.74\%}$$

**Low to Moderate Income Survey Tally Sheet**

**Project Name:** Insert Project Name

**Updated:** Insert Date

**Data Input By:** Insert Name/ Initials

**Surveyed by:** Insert Name/ Initials

**Checked By:** Insert Name/ Initials

Street/ Apt./Route SUBTOTALS	# of HH	HH Srvyd	Not Home	VAC	30% OM Ppl	VLI Ppl	LI Ppl	Total LMI Ppl	Total Non LMI Ppl	LMI HH	Non L/M HH	Asian	Asian/ Black	Asian/ Pacific Island	Asian / WH	Black	Black/ WH	Native Americ an	Native Americ an/Bl ack	Native Americ an/W H	Pacific Island er	White	Other	Hispa nic	Femal e Head of HH	Elderl y	Disabl ed	LEP										
Oak Street Subtotal	1	1	0	0	0	2	0	2	0	1	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	1	0	0	0									
Pine Drive Subtotal	1	1	0	0	0	2	0	2	0	1	0	0	0	0	0	2	0	0	0	0	0	0	0	0	1	0	0	0										
Cherry Street Subtotal	30	24	0	6	21	18	13	52	5	22	2	0	0	0	0	52	0	0	0	0	0	0	5	0	0	13	8	8	0									
MLK Avenue Subtotal	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0									
S 13th Street Subtotal	16	13	0	3	22	9	3	34	0	13	0	0	0	0	0	17	0	0	0	0	0	0	17	0	0	8	3	4	0									
Maple Street Subtotal	2	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0									
<b>GRAND TOTALS</b>	<b>50</b>	<b>39</b>	<b>0</b>	<b>11</b>	<b>43</b>	<b>31</b>	<b>16</b>	<b>90</b>	<b>5</b>	<b>37</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>71</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>24</b>	<b>0</b>	<b>0</b>	<b>23</b>	<b>11</b>	<b>12</b>	<b>0</b>										
		50			90			95		39			95																									
		Total Minority: 71 persons											Total Hispanic: 0 persons																									
<b>TOTAL HOUSES:</b>	<b>50</b>	<b>TOTAL PERSONS:</b>					<b>95</b>																															
<b>TOTAL VACANT:</b>	<b>11</b>	<b>OVERALL % LOW/MOD:</b>					<b>95%</b>																															
<b>TOTAL OCCUPIED:</b>	<b>39</b>	<b>PERCENT SURVEYED:</b>					<b>100%</b>																															
<b>TOTAL HH SURVEYED:</b>	<b>39</b>	<b>TOTAL LOW/MOD PERSONS:</b>					<b>90</b>																															

Racial Breakdown	A	AB	API	AW	B	BW	NA	NAB	NAW	PI	W	O	HISP	FHH	Elderly	Disabl ed	LEP
Percent of Total	0.0%	0.0%	0.0%	0.0%	74.7%	0.0%	0.0%	0.0%	0.0%	0.0%	25.3%	0.0%	0.0%	24.2%	11.6%	12.6%	0.0%

Percentage of Low/Mod households within the target area exceeds 70%.  
Percent of target area surveyed exceeds 90%.



**SERVICE DELIVERY STRATEGY**

**FORM 2: Summary of Service Delivery Arrangements**

**Instructions:**

**Make copies of this form and complete one for each service listed on FORM 1, Section IV.** Use EXACTLY the same service names listed on FORM 1. Answer each question below, attaching additional pages as necessary. If the contact person for this service (listed at the bottom of the page) changes, this should be reported to the Department of Community Affairs.

**COUNTY: SAMPLER COUNTY**

**Service: Housing Revitalization**

1. Check one box that best describes the agreed upon delivery arrangement for this service:

- a.)  Service will be provided countywide (i.e., including all cities and unincorporated areas) by a single service provider. (If this box is checked, identify the government, authority or organization providing the service.):
  
- b.)  Service will be provided only in the unincorporated portion of the county by a single service provider. (If this box is checked, identify the government, authority or organization providing the service.):
  
- c.)  One or more cities will provide this service only within their incorporated boundaries, and the service will not be provided in unincorporated areas. (If this box is checked, identify the government(s), authority or organization providing the service):
  
- d.)  One or more cities will provide this service only within their incorporated boundaries, and the county will provide the service in unincorporated areas. (If this box is checked, identify the government(s), authority or organization providing the service.): **Sampler County, City of Gotham, City of Paradise**
  
- e.)  Other (If this box is checked, attach a legible map delineating the service area of each service provider, and identify the government, authority, or other organization that will provide service within each service area.):

2. In developing this strategy, were overlapping service areas, unnecessary competition and/or duplication of this service identified?

- Yes** (if "Yes," you must attach additional documentation as described, below)
  
- No**

If these conditions will continue under this strategy, attach an explanation for continuing the arrangement (i.e., overlapping but higher levels of service (See O.C.G.A. 36-70-24(1)), overriding benefits of the duplication, or reasons that overlapping service areas or competition cannot be eliminated).

If these conditions will be eliminated under the strategy, attach an implementation schedule listing each step or action that will be taken to eliminate them, the responsible party and the agreed upon deadline for completing it.

## SDS FORM 2, continued

3. List each government or authority that will help to pay for this service and indicate how the service will be funded (e.g., enterprise funds, user fees, general funds, special service district revenues, hotel/motel taxes, franchise taxes, impact fees, bonded indebtedness, etc.).

<i>Local Government or Authority</i>	<i>Funding Method</i>
Sampler County	Grant Funds
Sampler County	Local Property Tax Revenue
City of Gotham	Grant Funds
City of Paradise	Grant Funds

4. How will the strategy change the previous arrangements for providing and/or funding this service within the county?

New Service

5. List any formal service delivery agreements or intergovernmental contracts that will be used to implement the strategy for this service:

<i>Agreement Name</i>	<i>Contracting Parties</i>	<i>Effective and Ending Dates</i>

6. What other mechanisms (if any) will be used to implement the strategy for this service (e.g., ordinances, resolutions, local acts of the General Assembly, rate or fee changes, etc.), and when will they take effect?

Sampler County Urban Development Plan

7. Person completing form: **Jim Gordon, County Planner**  
 Phone number: **404-555-5555**      Date completed: 12-11-2018

8. Is this the person who should be contacted by state agencies when evaluating whether proposed local government projects are consistent with the service delivery strategy?  Yes  No

If not, provide designated contact person(s) and phone number(s) below:  
**BRUCE WAYNE, COUNTY ADMINISTRATOR, 404-555-5554**





**SERVICE DELIVERY STRATEGY**

**FORM 2: Summary of Service Delivery Arrangements**

**Instructions:**

**Make copies of this form and complete one for each service listed on FORM 1, Section IV.** Use EXACTLY the same service names listed on FORM 1. Answer each question below, attaching additional pages as necessary. If the contact person for this service (listed at the bottom of the page) changes, this should be reported to the Department of Community Affairs.

**COUNTY: SAMPLER COUNTY**

**Service: *Water Supply & Distribution***

1. Check one box that best describes the agreed upon delivery arrangement for this service:

- a.)  Service will be provided countywide (i.e., including all cities and unincorporated areas) by a single service provider. (If this box is checked, identify the government, authority or organization providing the service.):
  
- b.)  Service will be provided only in the unincorporated portion of the county by a single service provider. (If this box is checked, identify the government, authority or organization providing the service.):
  
- c.)  One or more cities will provide this service only within their incorporated boundaries, and the service will not be provided in unincorporated areas. (If this box is checked, identify the government(s), authority or organization providing the service):
  
- d.)  One or more cities will provide this service only within their incorporated boundaries, and the county will provide the service in unincorporated areas. (If this box is checked, identify the government(s), authority or organization providing the service.):
  
- e.)  Other (If this box is checked, **attach a legible map delineating the service area of each service provider**, and identify the government, authority, or other organization that will provide service within each service area.): **Sampler County, City of Gotham, City of Paradise**

2. In developing this strategy, were overlapping service areas, unnecessary competition and/or duplication of this service identified?

**Yes** (if "Yes," you must attach additional documentation as described, below)

**No**

If these conditions will continue under this strategy, **attach an explanation for continuing the arrangement** (i.e., overlapping but higher levels of service (See O.C.G.A. 36-70-24(1)), overriding benefits of the duplication, or reasons that overlapping service areas or competition cannot be eliminated).

If these conditions will be eliminated under the strategy, **attach an implementation schedule** listing each step or action that will be taken to eliminate them, the responsible party and the agreed upon deadline for completing it.

## SDS FORM 2, continued

3. List each government or authority that will help to pay for this service and indicate how the service will be funded (e.g., enterprise funds, user fees, general funds, special service district revenues, hotel/motel taxes, franchise taxes, impact fees, bonded indebtedness, etc.).

<i>Local Government or Authority</i>	<i>Funding Method</i>
City of Paradise	Grant Funds
Sampler County	User Fees
City of Paradise	User Fees
City of Gotham	User Fees

4. How will the strategy change the previous arrangements for providing and/or funding this service within the county?

New Service

5. List any formal service delivery agreements or intergovernmental contracts that will be used to implement the strategy for this service:

<i>Agreement Name</i>	<i>Contracting Parties</i>	<i>Effective and Ending Dates</i>
Water/Sewer Agreement	Sampler County, Cities of Paradise & Gotham	1-1-2018 to 12-31-2029

6. What other mechanisms (if any) will be used to implement the strategy for this service (e.g., ordinances, resolutions, local acts of the General Assembly, rate or fee changes, etc.), and when will they take effect?

7. Person completing form: **Jimmy Buffet, County Planner**  
 Phone number: **404-555-5555**      Date completed: 12-11-2018

8. Is this the person who should be contacted by state agencies when evaluating whether proposed local government projects are consistent with the service delivery strategy?  Yes  No

If not, provide designated contact person(s) and phone number(s) below:  
**CARMEN MIRANDA, COUNTY ADMINISTRATOR, 404-555-5554**



**SERVICE DELIVERY STRATEGY**

**FORM 2: Summary of Service Delivery Arrangements**

**Instructions:**

**Make copies of this form and complete one for each service listed on FORM 1, Section IV.** Use EXACTLY the same service names listed on FORM 1. Answer each question below, attaching additional pages as necessary. If the contact person for this service (listed at the bottom of the page) changes, this should be reported to the Department of Community Affairs.

**COUNTY: SAMPLER COUNTY**

**Service: Sewer Service**

1. Check one box that best describes the agreed upon delivery arrangement for this service:

- a.)  Service will be provided countywide (i.e., including all cities and unincorporated areas) by a single service provider. (If this box is checked, identify the government, authority or organization providing the service.):
  
- b.)  Service will be provided only in the unincorporated portion of the county by a single service provider. (If this box is checked, identify the government, authority or organization providing the service.):
  
- c.)  One or more cities will provide this service only within their incorporated boundaries, and the service will not be provided in unincorporated areas. (If this box is checked, identify the government(s), authority or organization providing the service: **City of Gotham, City of Paradise**)
  
- d.)  One or more cities will provide this service only within their incorporated boundaries, and the county will provide the service in unincorporated areas. (If this box is checked, identify the government(s), authority or organization providing the service.):
  
- e.)  Other (If this box is checked, attach a legible map delineating the service area of each service provider, and identify the government, authority, or other organization that will provide service within each service area.):

2. In developing this strategy, were overlapping service areas, unnecessary competition and/or duplication of this service identified?

- Yes** (if "Yes," you must attach additional documentation as described, below)
  
- No**

If these conditions will continue under this strategy, attach an explanation for continuing the arrangement (i.e., overlapping but higher levels of service (See O.C.G.A. 36-70-24(1)), overriding benefits of the duplication, or reasons that overlapping service areas or competition cannot be eliminated).

If these conditions will be eliminated under the strategy, attach an implementation schedule listing each step or action that will be taken to eliminate them, the responsible party and the agreed upon deadline for completing it.

## SDS FORM 2, continued

3. List each government or authority that will help to pay for this service and indicate how the service will be funded (e.g., enterprise funds, user fees, general funds, special service district revenues, hotel/motel taxes, franchise taxes, impact fees, bonded indebtedness, etc.).

<b>Local Government or Authority</b>	<b>Funding Method</b>
City of Gotham	Grant Funds
City of Paradise	User Fees
City of Gotham	User Fees

4. How will the strategy change the previous arrangements for providing and/or funding this service within the county?

New Service

5. List any formal service delivery agreements or intergovernmental contracts that will be used to implement the strategy for this service:

<b>Agreement Name</b>	<b>Contracting Parties</b>	<b>Effective and Ending Dates</b>
Water/Sewer Agreement	Sampler County, Cities of Paradise & Gotham	1-1-2018 to 12-31-2029

6. What other mechanisms (if any) will be used to implement the strategy for this service (e.g., ordinances, resolutions, local acts of the General Assembly, rate or fee changes, etc.), and when will they take effect?

7. Person completing form: **Alfred Pennyworth, County Planner**  
 Phone number: **404-555-5555**      Date completed: 12-11-2018

8. Is this the person who should be contacted by state agencies when evaluating whether proposed local government projects are consistent with the service delivery strategy?  Yes  No

If not, provide designated contact person(s) and phone number(s) below:  
**Ra's al Ghul, COUNTY ADMINISTRATOR, 404-555-5554**

## HUD CDBG Conflict of Interest Regulations

### 24 CFR §570.489 Program administrative requirements.

(g) *Procurement.* When procuring property or services to be paid for in whole or in part with CDBG funds, the State shall follow its procurement policies and procedures. The State shall establish requirements for procurement policies and procedures for units of general local government, based on full and open competition. Methods of procurement (e.g., small purchase, sealed bids/formal advertising, competitive proposals, and noncompetitive proposals) and their applicability shall be specified by the State. Cost plus a percentage of cost and percentage of construction costs methods of contracting shall not be used. The policies and procedures shall also include standards of conduct governing employees engaged in the award or administration of contracts. (Other conflicts of interest are covered by §570.489(h).) The State shall ensure that all purchase orders and contracts include any clauses required by Federal statutes, Executive orders, and implementing regulations. The State shall make subrecipient and contractor determinations in accordance with the standards in 2 CFR 200.330.

(h) *Conflict of interest-(1) Applicability.* (i) In the procurement of supplies, equipment, construction, and services by the States, units of local general governments, and subrecipients, the conflict of interest provisions in paragraph (g) of this section shall apply.

(ii) In all cases not governed by paragraph (g) of this section, this paragraph (h) shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance with CDBG funds by the unit of general local government or its subrecipients, to individuals, businesses and other private entities.

(2) *Conflicts prohibited* Except for eligible administrative or personnel costs, the general rule is that no persons described in paragraph (h)(3) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this subpart or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

(3) *Persons covered* The conflict of interest provisions for paragraph (h)(2) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the State, or of a unit of general local government, or of any designated public agencies, or subrecipients which are receiving CDBG funds.

(4) *Exceptions: Thresholds requirements.* Upon written request by the State, an exception to the provisions of paragraph (h)(2) of this section involving an employee, agent, consultant, officer, or elected official or appointed official of the State may be granted by HUD on a case-by-case basis. In all other cases, the State may grant such an exception upon written request of the unit of general local government provided the State shall fully document its determination in compliance with all requirements of paragraph (h)(4) of this section including the State's position with respect to each factor at paragraph (h)(5) of this section and such documentation shall be available for review by

the public and by HUD. An exception may be granted after it is determined that such an exception will serve to further the purpose of the Act and the effective and efficient administration of the program or project of the State or unit of general local government as appropriate. An exception may be considered only after the State or unit of general local government, as appropriate, has provided the following:

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

(ii) An opinion of the attorney for the State or the unit of general local government, as appropriate, that the interest for which the exception is sought would not violate State or local law.

(5) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the requirements of paragraph (h)(4) of this section have been satisfactorily met, the cumulative effect of the following factors, where applicable, shall be considered:

(i) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project~ which would otherwise not be available;

(ii) Whether an opportunity was provided for open competitive bidding or negotiation;

(iii) Whether the person affected is a member of a group or class of low or moderate income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits '1\$ are being made available or provided to the group or class;

(iv) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted activity in question;

(v) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (h)(3) of this section;

(vi) Whether undue hardship will result either to the State or the unit of general local government or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(vii) Any other relevant considerations.

DCA's Conflict of Interest Guidance  
(Excerpt from 2019 CDBG Recipients' Manual)

**Section 12: Conflict of Interest Prohibition**

The following prohibited Conflicts of Interest (COI) should be avoided:

- 1) When a CDBG Recipient contracts for the procurement of goods and services, the Conflict of Interest provisions in the "Common Rule" (24 CFR 85.36) are applicable. (See Chapter 3, Section 4: Procurement Standards of this Manual.) **These rules prohibit local officials and staff from being a party to any contract assisted with CDBG funds.**
- 2) In addition, the Conflict of Interest prohibition at 24 CFR Part 570.489 (h) (see Appendix 2) is applicable to all CDBG grants and activities. This rule, generally, prohibits elected officials, and staff who are in a position to influence decisions, from receiving any benefit in a CDBG-assisted project. This includes the benefit from living or owning property in a CDBG target area that receives CDBG improvements.

The following summarizes this regulation:

- A. **Conflicts prohibited.** No persons described in paragraph B. below who exercise or have exercised any functions or responsibilities with respect to activities assisted with CDBG funds or who are in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or in the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.
- B. **Persons Covered.** The conflict of interest provisions of paragraph A. above applies to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the state, or of a unit of general local government, or of any designated public agencies, or subrecipients which are receiving or administering CDBG funds.
- C. **Definition of Family or Business Ties.** DCA defines the meaning of the term "family or business ties" as follows:
  - Family: "A group of people related by ancestry or marriage; relatives."
  - Business: "The buying and selling of commodities and services; commerce, trade."
  - Ties: "Something that connects, binds or joins; bond; link."
- D. **Exceptions:** Upon written request, **DCA may grant an exception** to the provisions of paragraph A above, on a case-by-case basis, **before federal funds are expended. Exceptions can only be granted when DCA determines that the exception will serve to further the purposes of the CDBG Program** and the effective and efficient administration of the CDBG program or project. To seek an exception, **a written request for an exception must be submitted** by the Recipient to DCA which:

## DCA's Conflict of Interest Guidance (Excerpt from 2019 CDBG Recipients' Manual)

- Fully discloses the conflict or potential conflict of interest, prior to the unit of government undertaking any action which results or may result in a conflict of interest, real or apparent;
  - Describes how the conflict of interest was publicly disclosed;
  - Includes a map showing the location of any target area property indicated in the potential conflict of interest, if applicable;
  - Includes a written opinion of the local government's attorney that the conflict of interest for which the exception is sought would not violate state or local law; and,
  - Includes a written statement signed by the Chief Elected Official, Authorized Representative, city or county attorney, or by the official designated by the governing body to sign such statement addressing the factors DCA must consider when allowing a prohibited conflict of interest. See item G below for more information on the factors DCA must take into account.
- E. **Public Disclosure:** The request for an exception must include a description of how the conflict of interest was publicly disclosed. DCA requires, at a minimum, that the recipient include a complete description of the COI on the agenda for the public meeting where the COI will be disclosed, that the agenda be posted/advertised as required by law, that the COI be fully disclosed at a public meeting, and that the discussion of the COI be included in the minutes of the meeting. Note that state law requires the agenda to be posted prior to public meetings. The description of the method of disclosure, the public meeting announcement and the minutes of the public meeting must be included with the request for an exception.
- F. **Non-Involvement:** One factor included in DCA's decision to grant a COI exception is whether or not the involved officials have abstained from involvement with the grant. The request for an exception must include an explanation of the extent of involvement of covered persons with any votes or discussion of the grant. Officials should abstain from any involvement as soon as any COI is foreseen.
- G. **Factor to be considered for exceptions:** In determining whether to grant a requested exception after the CDBG Recipient has satisfactorily met the requirement of paragraph D. above, DCA will consider the cumulative effect of the following factors, where applicable:
1. Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;
  2. Whether the person affected is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;



DCA's Conflict of Interest Guidance  
(Excerpt from 2019 CDBG Recipients' Manual)

3. Whether the affected person has withdrawn from his or her function or responsibilities, or the decision-making process with respect to the specific assisted activity in question;
4. Whether the interest or benefit was present before the affected person was in a position as described in paragraph (B) above;
5. Whether undue hardship will result either to the participating jurisdiction or to the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
6. Any other relevant considerations presented to DCA.

H. **Owners and Developers of Housing:** No owner, developer or sponsor of a project assisted with CDBG funds (or officer, employee, agent or consultant of the owner, developer or sponsor) whether private, for profit or non-profit, may occupy a CDBG assisted affordable housing unit in a project. Any exceptions must be approved in advance by DCA and then only when the local government CDBG Recipient can demonstrate to DCA that the exception will serve to further the purposes of the CDBG program.

This provision does not preclude an income-eligible, volunteer/owner participating in the construction of a single-family dwelling unit as part of a self-help homeownership program (e.g. Habitat for Humanity) when the individual is not an official, employee, agent, or consultant of the developer.

***NOTE: If you have any questions regarding who may or may not be covered under the conflict of interest provisions above, please call DCA immediately to discuss such matters prior to entering into contracts or disbursing money.***

## Chapter 2: Major Compliance Requirements and Procedures

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### **Section 1: Applicable Laws and Regulations**

Certain State and Federal laws, as well as regulations and Executive Orders, are applicable in part or in whole to the Community Development Block Grant (CDBG) program. To assist Recipients in meeting applicable requirements, the Department of Community Affairs (DCA) provides guidance in the form of this Manual, on-site technical assistance, and through the sponsorship of workshops and training conferences. To obtain copies of federal publications, requests should be addressed to:

The Superintendent of Documents  
U.S. Government Printing Office  
Washington, D.C. 20402

Many of the specific federal laws, regulations, and Executive Orders pertaining to Housing, Community Development, Fair Housing, Labor, and Environmental regulations are also available on the World Wide Web. A good starting point is [www.hud.gov](http://www.hud.gov) or [www.hudexchange.info/](http://www.hudexchange.info/). Information is also available from:

Code of Federal Regulations: <https://www.ecfr.gov/cgi-bin/ECFR?page=browse>  
Community Connections @ 1-800-998-9999

The applicable laws, regulations and Executive Orders (classified in general by compliance area) include but are not limited to:

#### **General:**

1. The Housing and Community Development Act of 1974, as amended and as implemented by the most current HUD regulations (24 CFR Part 570)
2. Annual Action Plan and State of Georgia CDBG Method of Distribution (MOD) for FFY 2018/2019 Consolidated Funds
3. State Community Development Block Grant Program Regulations (24 CFR Part 570, Subpart I)
4. Title 50, Chapter 18, Article 4, Official Georgia Code, Georgia Open Records Act

#### **Financial Management:**

5. 2 CFR Part 200, Subpart F (formerly Federal OMB Circular A-133)

#### **Civil Rights:**

6. Title VI - Civil Rights Act of 1964 and implementing regulations at 24 CFR Part 1.
7. Section 109 - Title I - Housing and Community Act of 1974 and implementing regulations at 24 CFR Part 6.
8. Title VIII of the Civil Rights Act, 1968 (Fair Housing Act), as amended
9. Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990
10. Executive Order 11246 - Equal Employment Opportunity, as amended by Executive Order

## Excerpt from 2019 CDBG Recipients' Manual

11375, Parts II and III

11. Executive Order 11063 - Equal Employment Opportunity, as amended by Executive Order 12259.
12. Section 3 of the Housing and Development Act of 1968, as amended Section 118 of Title I, Community Development and Housing Act, 1974, and implemented by HUD regulations
13. Georgia Department of Community Affairs Civil Rights Compliance Certification Form
14. Age Discrimination Act of 1975
15. Executive Order 12432: National Priority to Develop Minority and Women Owned Businesses
16. Section 504 of the Rehabilitation Act of 1973 and implementation regulation (24 CFR Part 8)
17. Section 104 of Title I of the Housing and Community Development Act of 1974 and the implementing regulations at 24 CFR Parts 5, 91, 92, 570, 574, 576, and 903

### **Labor Standards:**

18. The Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330), as supplemented by Department of Labor regulations
19. The Davis-Bacon Act (40 U.S.C. 276(a) to (a-7), as supplemented by Department of Labor Regulations
20. The Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations

### **Acquisition/Relocation:**

21. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. (46 U.S.C. 4601) and Regulations at 49 CFR, Part 24
22. Georgia Real Estate Appraiser Licensing and Certification Act (O.C.G.A. Section 43-39-A-1 thru 43-39 A-27)
23. The Georgia Relocation Assistance and Land Acquisition Policy Act of 1973
24. The Georgia Urban Redevelopment Law (OCGA, Section 36-61-1, et. seq.)

### **Housing:**

25. The Truth in Lending Act (Regulation Z)
26. Title I Consumer Protection Act (PL 90321)
27. The Lead Base Paint Poisoning Prevention Act (42 U.S.C. 4831-5 et al) and HUD implementing regulations (24 CFR Part 35)
28. The Residential Lead-Based Paint Hazard Reduction Act of 1993 (PL 102-550).
29. The National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C., 5401 et. seq., as amended)
30. Manufactured Housing Act (O.C.G.A. Sections 8-2-130 and 160 et. seq.)
31. Construction Industry Licensing Board Act (O.C.G.A. Section 43-14-8)
32. Georgia State Uniform Construction Codes Act (O.C.G.A. Section 8-2-21)
33. The Fire Administration Authorization Act of 1992 (PL 102-522)

### **Environmental:**

34. The National Environmental Policy Act (NEPA) of 1969, as amended by Executive Order 11991 of May 24, 1977 and the Council on Environmental Quality's (CEQ) NEPA Regulations, 40 CFR Parts 1500-1508
35. Environmental Review Procedures for the CDBG Program, 24 CFR Part 58

## Excerpt from 2019 CDBG Recipients' Manual

36. The National Historic Preservation Act of 1966, as amended, particularly Section 106
37. Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971
38. The Reservoir Salvage Act of 1960, as amended, particularly Section 3, as amended by the Archeological and Historic Preservation Act of 1974
39. Flood Disaster Protection Act of 1973, as amended
40. Executive Order 11988, Floodplain Management, May 24, 1977
41. Executive Order 11990, Protection of Wetlands, May 24, 1977
42. Georgia Air Quality Act of 1978 (OCGA Section 12-9-1, et. seq.) to regulate air pollution and protect air quality
43. Shore Assistance Act of 1977 (OCGA Section 12-5-230, et. seq.)
44. Georgia Hazardous Waste Management Act (OCGA 12-8-60, et. seq.)
45. Georgia Health Code (OCGA 31-3-1, et. seq.) regulates individual sewerage treatment systems
46. The Coastal Zone Management Act of 1972, as amended
47. The Safe Drinking Water Act of 1974, as amended
48. The Endangered Species Act of 1973, as amended, particularly Section 7
49. The Archeological and Historic Preservation Act of 1974
50. The Coastal Resources Barriers Act of 1982
51. The Wild and Scenic Rivers Act of 1968, as amended
52. The Clean Air Act Amendments of 1970, as amended
53. HUD Environmental Standards (24 CFR, Part 51) Environmental Criteria and Standards
54. Georgia Coastal Marshlands Protection Act of 1970
55. Georgia Groundwater Use Act of 1972 (OCGA Section 12-5-170, et. seq.)
56. Georgia Safe Drinking Water Act of 1977 (OCGA Section 12-7-1, et. seq.)
57. Georgia Erosion and Sedimentation Act of 1975 (OCGA Section 12-7-1, et. seq.)
58. Georgia Solid Waste Management Act (OCGA Section 12-8-20, et. seq.) for collecting garbage or operating a landfill
59. Georgia Water Quality Control Act (OCGA Section 12-5-20, et. seq.)
60. Farmland Protection Policy Act of 1981 (and the regulations at 7CFR Part 658)

### **Other:**

61. Georgia Handicap Accessibility Law (OCGA, Title 30, Chapter 3) concerning handicapped accessibility to public buildings
62. Georgia House Bill 1079 as amended by House Bill 513 (O.C.G.A § 36-91-1 through §36-91-95) Note: DCA has adopted this as the procurement regulation for CDBG
63. OCGA 13-10-90: Contracts for Public Works, Security and Immigration Compliance
64. OCGA 50-36-1: Verification of Lawful Presence within United States
65. Federal Funding Accountability and Transparency Act (FFATA)



**PROGRAMMATIC AGREEMENT  
AMONG THE GEORGIA DEPARTMENT OF COMMUNITY AFFAIRS,  
THE GEORGIA STATE HISTORIC PRESERVATION OFFICE  
AND THE ADVISORY COUNCIL ON HISTORIC PRESERVATION  
FOR THE ADMINISTRATION OF THE STATE OF GEORGIA “SMALL  
CITIES” COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME  
INVESTMENT PARTNERSHIP PROGRAMS**

**WHEREAS**, the federal government has created and funded the Small Cities Community Development Block Grant (hereinafter “CDBG”) and HOME Investment Partnership (hereinafter “HOME”) programs in order to stimulate the revitalization of blighted low income neighborhoods and the repair, rehabilitation, and construction of affordable housing targeted to low income individuals and families; and

**WHEREAS**, the Georgia Department of Community Affairs (hereinafter “DCA”) administers the CDBG program on behalf of general local governments with funds allocated by the Department of Housing and Urban Development (hereinafter “HUD”); and

**WHEREAS**, the Georgia Department of Community Affairs (hereinafter “DCA”) administers the HOME program on behalf of general local governments and other eligible recipients with funds allocated by HUD; and

**WHEREAS**, by virtue of the age and significance of many low income neighborhoods, districts, and housing units eligible for CDBG or HOME funds in Georgia, the implementation of the CDBG and HOME programs by DCA may have an effect upon properties included in or eligible for inclusion in the National Register of Historic Places (hereinafter “National Register”) pursuant to Section 800.13 of the regulations, 36 CFR Part 800, implementing Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f (hereinafter Section 106”); and

**WHEREAS**, Pursuant to 24 CFR Part 58, HUD has delegated the responsibility for compliance with the requirements of NEPA and Section 106 to DCA; and

**WHEREAS**, Pursuant to 24 CFR Part 58, DCA delegates its responsibility for compliance with NEPA and Section 106 to general local governments (hereinafter “State Recipients”) which receive program funding from DCA and which enter into agreements with DCA for the administration of these programs; and

**WHEREAS**, in response to the principles set forth in the Advisory Council on Historic Preservation’s (hereinafter “Council”) Policy Statement on Affordable Housing and Historic Preservation (hereinafter “Policy Statement”), DCA, the Georgia State Historic Preservation Office (hereinafter “SHPO”) and the Council have determined that DCA and its State Recipients can more effectively carry out their Section 106 review responsibilities for CDBG and HOME program activities if a programmatic agreement is used to streamline the administrative process, identify CDBG and HOME activities which can be exempted from Section 106 review because they have No Effect on historic properties, and permit greater flexibility when addressing historic properties which have special physical (e.g. lead paint, asbestos) or financial feasibility problems; and

**WHEREAS**, measures taken under this Agreement, while satisfying the requirements of Section 106 for purposes of the programs covered herein, do not automatically meet the requirements set forth in *The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* (hereinafter "the Standards") for purposes of the Federal or State Rehabilitation Tax Incentive Programs or other programs not specifically included in this Agreement; and

**WHEREAS**, for purposes of this Agreement, "Afford Housing" is defined as housing which is either occupied or intended for occupation by owners or renters who are low income and who earn less than 80% of the applicable Median Income with adjustments for family size;

**NOW, THEREFORE**, DCA, SHPO, and the Council agree to enter into a Programmatic Agreement (hereinafter "Agreement") which shall direct the administration of the CDBG and HOME programs primarily for low and moderate-income housing in accordance with the following stipulations in order to take into account the potential effect on historic properties and to satisfy DCA's Section 106 responsibilities for all such individual undertakings of the CDBG and HOME programs:

#### STIPULATIONS

DCA will ensure that the following measures are carried out:

- I. ADMINISTRATION OF THE PROGRAMMATIC AGREEMENT
  - A. DCA shall ensure that State Recipients employ or contract with qualified professionals (hereinafter "Preservation Professional") who meet the *Secretary of Interior's Professional Qualifications Standards* at 36 CFR 61 (hereinafter "Professional Qualification"). The Preservation Professionals will carry out reviews related to their profession that are required under the terms of this Agreement, and DCA shall ensure that such Professionals follow the requirements established in this Agreement;
  - B. State Recipients will notify DCA and the SHPO in writing once their Preservation Professional has been selected, but prior to initiation of the undertaking. The notification shall include the curriculum vitae of the Preservation Professionals qualifications and the address, phone and fax numbers of the State Recipient's primary points of contact for project activities pursuant to this Agreement;
  - C. In order to assist DCA and State Recipients in ensuring that State Recipients employ or contract with qualified Preservation Professionals, and that such professionals follow the requirements established in this Agreement, the SHPO will compile a "List of Qualified Preservation Professionals" (hereinafter "List") who meet the Professional Qualifications. This List will also be compiled using information generated through application of the Recommended Qualifications for

Historic Preservationist (hereinafters “Recommended Qualification”) outlined in Appendix A;

- D. The SHPO will make this List available to State Recipients and other interested parties. In order to assist Preservation Professionals being placed on the List, the SHPO will provide a standard form which will be made available to State Recipients. State Recipients who select a name from the list will be required to only notify DCA and the SHPO of their selection, and no curriculum vitae will need to be submitted. This List will be made available for technical assistance and its use is not required. This List does not constitute an endorsement by DCA or the SHPO of any Preservation Professionals, and may not be exhaustive of all qualified Preservation Professionals;
- E. Should DCA or the State Recipient determine that a State Recipient cannot employ or contract with qualified professionals to carry out reviews pursuant to this Agreement, DCA or the State Recipient shall consult with the SHPO to determine whether alternative arrangements can be made to allow the State Recipient or DCA to complete the review required pursuant to this Agreement. DCA shall notify the Council in writing of any alternative administrative procedures approved by the SHPO. If alternative arrangements cannot be made that meet the intent and terms of this Agreement, the State Recipient shall complete the Section 106 compliance process in accordance with 36 CFR Parts 800.4 through 800.6.
- F. DCA, in consultation with the SHPO and Council, shall plan, develop, and provide technical assistance on an ongoing basis to State Recipients and Preservation Professionals in order to ensure responsible adherence to the terms of this Agreement, including but not limited to: 1) an annual workshop targeted at both program administrators and Preservation Professionals as a prerequisite for program participation by State Recipients, and 2) the development of standardized approaches to the rehabilitation of historic housing for low-to-moderate-income families in cooperation with Georgia entitlement communities and other interested parties;

### **EXEMPT ACTIVITIES**

No review of properties is required if program activities are limited solely to those listed because these activities have a limited potential to affect historic properties;

- A. Properties less than fifty (50) years old;
- B. Rehabilitation (except reconstruction) of previously identified non-contributing building within a SHPO- approved surveyed historic district;



- Incentive
- C. Rehabilitation work to historic properties which is being or has been reviewed by the SHPO for the Federal or State Rehabilitation Programs;
  - D. Community Development activities limited solely to the following:
    - 1) General Community Development Activities which will not involve the alteration of potentially historic properties including;
    - 2) Grants or loans to participants in any Economic Development program funded by CDBG which may be used for working capital, equipment, furniture, fixtures, and debt refinancing, or acquisition of non-historic building for reuse. Such activities shall require SHPO review only if such activities should involve changes to structures which are either listed in or are considered eligible for inclusion in the National Register;
    - 3) Upgrading of existing curbs, sidewalks, streets, utilities, parks, or other public facilities or infrastructure, except where significant historic materials retain their integrity from the historic period and exhibit distinctive materials, methods of construction, or elements of design that would contribute to the character of a National Register-listed or eligible historic district or property;
    - 4) Projects consisting of grants or loans to eligible families or entities to be applied solely to the purchase of residences or businesses;
    - 5) Acquisition of property which is limited to the legal transfer of title with no physical improvements or changes proposed;
    - 6) Demolition of dilapidated secondary structures (garages, sheds, etc.)
    - 7) Rehabilitation of housing units fifty (50) years of age or older which were originally configured as One and Two-family units including:
      - a) All interior improvements and/or changes in floor plans that do not affect or change the appearance of the exterior, when the planned activities involve only interior spaces and other exempt activities, and a reasonable effort is made to conduct all interior and exterior alterations in accordance with guidance provided at Appendix B – (Historic Rehabilitation Guidelines);
      - b) Repair, replacement, or installation of the following systems provided that such work does not affect or change the exterior appearance of street facing elevations of the property and has only minor affect on all other elevations:
        - \* Electrical supply, switch/outlets, and fixtures;
        - \* Plumbing supply, drainage, and fixtures;

- \* HVAC systems;
  
  
  
  
  
  
  
  
  
  
  - \* Smoke, CO, alarms, security lighting or other safety devices;
  
  - \* Electrical or mechanical ventilation systems;
  
  - \* Kitchens, bathrooms, and utility room repairs and/or improvements.
- c) Repainting of exterior surfaces provided that destructive surface preparation treatments, including sandblasting, are not used;
- d) Weatherization or energy conservation activities which do not significantly affect the exterior appearance, especially the front elevation, including:
- \* Attic, floor and wall insulation;
  
  - \* Caulking, weather-stripping, and other air infiltration control measures;
  
  - \* Storm windows or doors, and wooden screen doors which do not harm or obscure historic windows or trim;
  
  - \* Repair and weather-stripping of windows and doors in a manner which does not harm or obscure historic windows or trim;
  
  - \* Underpinning and ventilation of crawlspaces except that underpinning of the front façade shall be accomplished by setting the underpinning material at least 2 inches behind the outer face of piers;
- e) Lead-based Paint Abatement or “Management in Place” activities carried out in accordance with *Preservation Brief #37: Appropriate Methods for Reducing Lead-Paint Hazards in Historic Housing*;
- f) Alterations necessary to comply with the Americans with Disabilities Act (ADA) or to improve handicap accessibility for current or anticipated residents of properties which are carried out in accordance with *Preservation Brief #32: Making Historic Properties Accessible*;
- g) Asbestos siding or roofing materials may be either removed and replaced or encapsulated with new roofing or siding materials

which are compatible, though not necessarily similar, with the basic scale and historic character of the district;

- h) Repairs to or replacement of deteriorated roof materials with either similar materials or with new materials which provide a sense of compatibility with other properties in the district (e.g. metal roofing or architectural shingles may be preferable if financially feasible);
- i) Repair or re-framing of structural roof elements as required to improve the drainage and durability of the roof as long as the appearance of the roof lines visible from the front elevation are not affected;
- j) Repair, replacement, or installation of gutters and down spouts;
- k) Installation of door and/or window locks and/or electronic security apparatus;
- l) Repair or re-pointing of chimneys, brick or other masonry features which are elements of the front elevation with design, materials and pointing to match original and, in cases of severe deterioration, elimination of chimneys above the roof line. When repairs are made, the work shall follow the recommended approaches in *Preservation Brief #2; Re-pointing Mortar Joints in Historic Brick Buildings*;
- m) Removal of “floating” chimneys which lack full ground contact with non-combustible materials;
- n) Repair of foundations and structural elements in a manner that is reasonably compatible with the scale and historic character of the district. Underpinning and ventilation of crawlspaces is permitted and, whenever original brick piers remain in place, shall be accomplished by setting the underpinning material at least 2 inches behind the outer face of piers;
- o) Repair of front porches, ceilings, awnings, floors, rails, columns, cornices and other trim details with new materials used to match the original materials;
- p) Repair of windows, doors, and siding with new materials which match the original in design, color, texture, and material composition;

### III. IDENTIFICATION OF HISTORIC PROPERTIES

If the State Recipient determines that the planned activities are not exempt activities as listed in Stipulation II, then the following steps shall be taken within 30 days:

- A. For each target area or for each program activity, the Preservation Professional shall identify if the subject property or other properties within the area of potential effects are fifty (50) years old or older and evaluate each for eligibility in the National Register of Historic Places. In making this determination, the Preservation Professional shall consult previous surveys of historic properties and/or districts, if any;
- B. At a minimum, the Preservation Professional shall maintain a file on the identification and National Register evaluation of each subject property and on other properties within the area of potential effects. The file shall include the following data used in the determination:
  - 1) Interior and exterior building and neighborhood context photographs per Section 106 keyed to a location map;
  - 2) Information on whether the property and/or district meets the criteria for the National Register inclusion;
  - 3) Information indicating whether the property is contributing or non-contributing as part of a National Register-eligible historic district, or if it is individually eligible for the National Register.
- C. In making a decision concerning the National Register-eligibility of subject properties:
  - 1) The Preservation Professional shall consult with the owner of the property and record such information (owner's knowledge of the past history, age, alterations, etc.) for use by the Preservation Professional.
  - 2) If the property is part of a series of proposed projects in a neighborhood or community, public input must be solicited at a regular or special public hearing called to fulfill the required CDBG and HOME public meeting requirements and in accordance with the Public Participation requirements outlined in Stipulation IX of this Agreement. The State Recipient shall make all public comments regarding identification of historic properties or the history of the district available to the Preservation Professional prior to the Preservation Professional making a decision concerning the eligibility of the subject property.

D. Properties which are determined to be contributing elements of a National Register-listed or eligible historic district shall be subject to further review pursuant to this Agreement;

- E. If the Preservation Professional determines that the subject property does not meet the National Register criteria, then the Preservation Professional shall submit a letter to the State Recipient indicating that there is No Historic Property.

If the extant property is a non-contributing property in either a National Register-listed or eligible historic district, and will be replaced with a new unit, the Preservation Professional shall review the plans and specifications in accordance with Stipulation V.B.4.

- F. If the Preservation Professional needs assistance in determining the eligibility of a property or district for the National Register, or the Preservation Professional and the State Recipient disagree on the eligibility of a property or district, the Preservation Professional shall forward the documentation listed at Stipulation III.B and C. to the SHPO for a thirty (30) day determination of eligibility. If necessary, the State Recipient may obtain a formal determination of eligibility from the Keeper of the National Register in accordance with 36 CFR Part 800.4(c).
- G. Upon the completion of an historic property survey under this Agreement by a Preservation Professional, the results of the survey shall be forwarded to the SHPO for incorporation into the State Historic Resources Inventory.

## **EMERGENCY DEMOLITION**

When emergency demolition of a building is required to eliminate an imminent threat to the health and safety of residents as identified by local or county building inspectors, fire department officials, or other local officials, the State Recipient shall adhere to the following procedures:

- A. The State Recipient shall give the SHPO seven (7) business days to review the property in question, if the nature of the emergency allows. In such cases, the following information shall be forwarded to the SHPO by the State Recipient:
- 1) Identification of the property involved;
  - 2) A clear statement about the nature (structural condition, threat to adjacent properties, etc.) of the emergency;

- 3) Photographs which clearly depict the emergency conditions; and
  - 4) The maximum time-frame allowed by local officials to address the emergency.
- B. If the SHPO determines that the emergency demolition involves a contributing structure which is located in a National Register-listed or eligible historic district or involves a structure which is a National

Register listed or eligible property, the SHPO shall recommend to the State Recipient the appropriate mitigation measures as outlined in Appendix C – *Standard Mitigation Measures for Adverse Effects*. If feasible, the State Recipient shall make every reasonable effort to follow such recommendations.

- C. The Preservation Professional shall maintain records in accordance with Stipulation XIII of this Agreement regarding the emergency undertaking and shall make records available to the public.

## V. **TREATMENT OF HISTORIC PROPERTIES**

If the Preservation Professional determines that the property is a contributing structure which is either listed in the National Register or is eligible for listing in the National Register (or a lot within such a listed or eligible district), prior to the initiation of any work, the State Recipient shall request the Preservation Professional's review of the proposed work. Within thirty (30) days from the receipt of a request from the State Recipient, the Preservation Professional shall review work write-ups or plans and specifications submitted for all proposed activities not listed as exempt in Stipulation II for their effects to historic properties as follows:

### A. Rehabilitation

Whenever the State Recipient is planning to do rehabilitation, prior to the initiation of rehabilitation activities, the Preservation Professional shall review work write-ups or plans and specifications to determine the effects of the proposed activities to historic properties.

### B. New Construction

Whenever the State Recipient is planning to do reconstruction, in-fill construction, new construction, or additions to existing buildings in a National Register-eligible historic district, the Preservation Professional shall:

- 1) Review work write-ups to ensure that all work is compatible with the architecture of the historic district or adjacent historic buildings in terms of set-backs, size, scale, massing, design, color, features, and materials; and is responsive to the recommended approaches

received for new construction set forth in the *Standards* and input through the required public notification process.

- 2) Develop preliminary design plans in consultation with the State Recipient. Final plans and specifications will be submitted to the Preservation Professional for review and comment prior to the initiation of construction activities. If feasible, the State Recipient shall consult with the Preservation Professional to develop a set of

historically compatible model replacement house plans in advance of any planned reconstruction activities which shall be shared with the public during the initial public hearings held.

- C. The State Recipient shall take into account the comments and recommendations made by the Preservation Professional for both rehabilitation and new construction activities in accordance with one of the following findings:
  - 1) The Preservation Professional may issue a finding of No Effect if the planned activities will not alter characteristics of the property, including its location, setting, or use, that may qualify it for inclusion in the National Register, including any activities undertaken which are listed in Stipulation II, Exempt Activities.
  - 2) The Preservation Professional may issue a finding of No Adverse Effect under one of the three following conditions:
    - a) Properties which are transferred, leased, or sold with adequate restrictions or conditions to ensure preservation of the property's significant historic features;
    - b) Properties which will be rehabilitated in accordance with the *Standards* (Houses rehabilitated using the *Standards* meet the intent of this Agreement by definition and are the preferred solution whenever feasible);
    - c) Properties rehabilitated in accordance with the *Standards* which include some of the treatments outlined in Appendix B, Historic Preservation Guidelines, and in the opinion of the Preservation Professional, the overall project will avoid an Adverse Effect through meeting the intent of the *Standards* and Appendix B, given the condition of the building, economic constraints, and current housing requirements.

If, in the judgement of the Preservation Professional, activities initially planned by the State Recipient do not avoid an Adverse Effect but can be reasonably modified to avoid an Adverse Effect, the Preservation Professional may issue a Conditional No Adverse Effect finding indicating required all modifications. Once the State Recipient has addressed the required modifications, the Preservation Professional may issue a No Adverse Effect finding that permits the State Recipient to proceed with the revised activity.

3) The Preservation Professional may issue a finding of Adverse Effect under the following circumstances:

- a) Projects where the Preservation Professional and the State Recipient agree that the proposed activities planned do not meet the intent of the *Standards* to avoid the Adverse Effects, cannot be reasonably modified to meet the intent of the *Standards* as stated in Stipulation C.2.b. and C.2.c. to avoid the Adverse Effects, and the Preservation Professional and the State Recipient agree that the proposed activities are the most feasible solution;
- b) Projects where there is a disagreement about whether the proposed activities meet the intent of the *Standards* to avoid the Adverse Effects;

In the case of Adverse Effect, the Preservation Professional shall issue an Adverse Effect notice to the State Recipient. Such a notice will require the State Recipient to submit the work write-ups or plans and specifications to DCA and the SHPO for their review. If the SHPO does not respond within 21 calendar days from the time of its receipt, the State Recipient may proceed with the project. Projects having Adverse Effects shall require the State Recipient to mitigate the Adverse Effects as outlined in Stipulation X, and propose mitigation in accordance with Appendix C (*Standard Mitigation Measures for Adverse Effects.*)

**VI. SALVAGE OF ARCHITECTURAL ELEMENTS**

Prior to implementation of project activities involving historic properties under this Agreement, the State Recipient shall determine whether or not any architectural elements should be salvaged. If it is determined that such architectural elements exist, the State Recipient shall ensure that such elements are: 1) made available to owners of properties within the district; or 2) may be made available to any other interested party which can be reasonably expected to reuse such materials in the rehabilitation of other historic structures. The State



Recipient shall ensure that such architectural elements are removed in a manner that minimizes damage.

## **VII. TREATMENT OF ARCHEOLOGICAL SITES**

The State Recipient shall notify the SHPO when ground-disturbing activities, to include excavation for footing and foundations, installation of utilities such as sewer, water, storm drains, electrical, gas, leach lines, and septic tanks, are proposed as part of an undertaking and shall comply with the following requirements:

- A. The State Recipient shall request the SHPO's opinion regarding the potential effect of such activities on archaeological properties prior to initiation of project activities. If the SHPO determines that there is a high

probability for the presence of significant archaeological sites or cultural remains within the project area, following the review of background information provided by the State Recipient or a review of state surveys, the State Recipient shall contract a qualified archaeologist to conduct archaeological surveys. The State Recipient shall forward the scope of work for the archeological survey to the SHPO for review and comment.

- B. If the State Recipient and the SHPO determine that there is the potential for archeological properties listed on or eligible for listing on the National Register to be affected by the undertaking, the SHPO shall advise the State Recipient of the appropriate treatment for the archeological properties. If the State Recipient cannot avoid the archeological properties or preserve them in-situ, the State Recipient shall develop a data recovery plan that is consistent with the Secretary of the Interior's Standards and Guidelines for Archeological Documentation (48 FR 44734-37) and take into account the Council's publication "Treatment of Archeological Properties" and subsequent revisions made by the Council and appropriate state guidelines. The State Recipient shall submit treatment plans to the SHPO for review and comment and shall ensure that the approved plan is implemented by qualified archeologists.

## **VIII. DISCOVERY**

If previously unidentified historic properties, including archaeological sites, are discovered during project rehabilitation or construction, the State Recipient shall immediately stop all project activities.

The State Recipient shall immediately contact the Preservation Professional concerning the discovery who shall then be requested to follow procedures outlined in Stipulations V and VI of this Agreement.

**IX. PUBLIC NOTIFICATION REGARDING REHABILITATION ACTIVITIES**

- A. The State Recipient, in consultation with the Preservation Professional shall determine the public interest in planned rehabilitation or new constructions activities which may affect potentially historic properties or districts by informing the public about potentially historic properties while meeting its public participation requirements as set forth in the regulations for the CDBG and HOME programs and in complying with 24 CFR Part 58. The State Recipient shall notify the Preservation Professional of the public interest in any project activities covered under the terms of this Agreement.
  
- B. At a minimum, the public meetings shall include a discussion of the planned rehabilitation activities overall effect to historic properties with emphasis on the following issues, as applicable:
  - 1) The significance of the National Register districts;
  
  - 2) a description of the financial assistance offered to affected property owners;
  
  - 3) a discussion about the Federal and State Rehabilitation Tax Incentive Programs;
  
  - 4) local historic codes and standards;
  
  - 5) the relative costs of preservation verses rehabilitation;
  
  - 6) the priority given to front facing facades;
  
  - 7) treatment and/or replacement of windows and doors;
  
  - 8) treatment and/or replacement of siding;
  
  - 9) treatment of interior spaces;
  
  - 10) treatment of foundations;
  
  - 11) roofing materials;
  
  - 12) new construction, reconstruction, or in-fill construction standards
  
  - 13) mitigation of adverse affects;
  
- C. At any time during the implementation of the measures stipulated in the Agreement, should the public raise an objection pertaining to the treatment of an historic property, the State Recipient shall

Recipient and SHPO and/or Recipient is not being reviewed.

notify the Preservation Professional and take the objection into account. When requested by the objector, the State the Preservation Professional shall consult with the Council to resolve the objection. The State required to cease work while objections are

- D. The State Recipient shall record all comments received at any public meetings, in writing, or by phone, which records shall become part of the Environmental Review Record (See Stipulation XIII).

**RESOLUTION OF ADVERSE EFFECTS**

- A. As described in Stipulation V, activities which the Preservation Professional determines will have Adverse Effects to historic properties will require the State Recipient to submit the project to DCA and to the SHPO for their review;
  
- B. If the State Recipient and the SHPO agree upon how Adverse Effects to historic properties will be mitigated (in accordance with one of the options listed in Appendix C – *Standard Mitigation Measures for Adverse Effects*), the State Recipient will enter into a mitigation agreement with the SHPO. The State Recipient may submit this mitigation agreement for concurrent review at the time it provide the documentation for a finding of adverse effect as outlined in Stipulation V;
  
- C. If the State Recipient and the SHPO cannot come to an agreement on how the Adverse Effects should be mitigated using the mitigation measures in Appendix C, or if the project adversely affect a National Historic Landmark, or if human remains are present within the area of potential effects, the Preservation Professional shall notify the Council and initiate consultation as set forth at 36 CFR Part 800.5 (e).

**XI. DISPUTE RESOLUTION**

Should the SHPO object within thirty (30) days to any plans and specifications provided to it for review, or actions proposed pursuant to this Agreement, the State Recipient shall consult with DCA and the SHPO to resolve the objection. If

the State Recipient determines that the objection cannot be resolved, DCA shall request the further comments of the Council pursuant to 36 CFR Part 800.6(b). Any Council comment provided in response to such a request will be taken into account by DCA and the State Recipient in accordance with 36 CFR Part 800.6(c)(2) with reference only to the subject of the dispute. The State Recipient's responsibility to carry out all other actions under this Agreement that are not subjects of the dispute will remain unchanged.

## **XII. REVIEW OF PUBLIC OBJECTIONS**

At any time during implementation of the measures stipulated in this Agreement, should any objection to any such measure or its manner of implementation be raised by a member of the public, the State Recipient shall take the objection into account, notify the Preservation Professional of the objection, and consult as needed with the objecting party, the SHPO, or the Council to resolve the objection, and consult as needed with the objecting party, DCA, the SHPO, or the Council to resolve the objection.

## **XIII. MONITORING AND REPORTING**

- A. DCA and the State Recipient will cooperate with the SHPO and Council should they request to review files for activities at specific project sites when given reasonable advance notification of such intent.
  
- B. DCA will also review the activities of State Recipients to ensure compliance with this Agreement as part of its normal CDBG and HOME program monitoring activities.
  
- C. The Preservation Professional shall provide a report of all review activities to the State Recipient which shall become part of the Environmental Review Record maintained by the State Recipient.
  
- D. DCA will require State Recipients to complete a final report which shall include actions undertaken involving potentially historic properties. DCA shall provide access to SHPO on an ongoing basis of all final reports received from State Recipients.

## **XIV. RECORD KEEPING**

The State Recipient shall maintain records of all activities undertaken pursuant to this Agreement which shall become part of the Environmental Review Record for the project including:

- A. All records related to the selection of the Preservation Professional which clearly documents adherence to the Professional Qualification (36 CFR 61) or Recommended Qualifications (Appendix A);

- B. All records indicating the compliance of each property with the Exempt Activities at Stipulations II;
- C. All records of correspondence and finding letters provided by the Preservation Professional to the State Recipient;
- D. All records indicating all mitigation measures taken in accordance with Appendix C;
- E. All records indicating further consultations with SHPO and/or the Advisory Council;
- F. All records of public comments received during public hearings and written or telephonic comments received from the public at all other times;
- G. All records (excluding permanent public records submitted in accordance with a selected mitigation measure under Appendix C) shall be maintained for a minimum of three (3) years after completion of each project and shall be made available to the general public and all other interested parties upon request during this timeframe.

**XV. AMENDMENTS**

Amendments to this agreement shall be made in the following manner:

- A. Any party to this Agreement may request that it be amended or modified, whereupon DCA, SHPO, and the Council will consult in accordance with 36 CFR 800.13 to consider such revisions;
- B. Any resulting amendments or addenda shall be developed and executed among DCA, SHPO, and Council in the same manner as the original Agreement.

**XVI. TERMINATION**

Any party to this Agreement may withdraw from its participation in the Agreement by providing thirty (30) calendar days notice to the other parties of their reasons for withdrawing.

**XVII. FAILURE TO COMPLY WITH THIS AGREEMENT**

In the event that the State Recipient does not carry out the terms of the Agreement, the State Recipient shall comply with 36 CFR Section 800.4 through 800.6 with regard to each individual CDBG or HOME project for which DCA has awarded funding to the State Recipient.

**EXECUTION AND IMPLEMENTATION** of this Programmatic Agreement evidences that DCA has satisfied its Section 106 responsibilities for all undertakings of the State administered Community Development Block Grant and HOME Investment Partnership Programs.

**Georgia Department of Community Affairs**

\_\_\_\_\_  
Assistant Commissioner

\_\_\_\_\_  
Date

**Historic Preservation Division, Department of Natural Resources**

\_\_\_\_\_  
Director and State Historic Preservation Officer

\_\_\_\_\_  
Date

**Advisory Council on Historic Preservation**

\_\_\_\_\_  
Executive Director

\_\_\_\_\_  
Date

**APPENDIX A – *Recommended Qualifications for Historic Preservationist***

In accordance with Stipulation I of this Agreement, a Preservationist Professional must meet, at a minimum, The Secretary of the Interior’s Professional Qualifications Standards at 36 CFR 61. In addition, the following guidelines will be used to assemble the List of qualified Preservation Professionals outlined in Stipulation I.B.:

1. If the Preservation Professional is to identify historic properties pursuant to Stipulation III of this Agreement, have a minimum of one-year experience in applying the National Register of Historic Places eligibility criteria to buildings, structures and districts;
2. If the Preservation Professional is to review proposed rehabilitation work pursuant to Stipulation IV of this Agreement, have a minimum of one year experience in applying the *Secretary of the Interior’s Standards for Rehabilitation* to rehabilitation projects; and
3. Have demonstrated the successful application of acquired proficiencies in the field of historic preservation by meeting at least one of the following:

- forms
- a. Have demonstrated experience in completing the application for the rehabilitation of historic buildings pursuant to the National Park Service's Federal Historic Preservation Tax Credit program; or
  - b. Have demonstrated experience in developing plans for the rehabilitation or restoration of historic buildings that have been implemented; or
  - c. Have received an award from a local, state, or national organization in recognition for a historic building rehabilitation or restoration project; or
  - d. Have written an article in a professional journal, a chapter in an edited book, or a monograph on the subject of historic building rehabilitation or restoration; or
  - e. Have presented a paper or organized a session at a professional conference on the subject of historic building rehabilitation or restoration; or
  - f. Have served on local historic preservation commission, state National Register of Historic Places Review Board, or state or national historic preservation organization's board or committee in the capacity of architectural historian or architect.

## **APPENDIX B – *Historic Rehabilitation Guidelines***

### **A. Window Guidelines**

1. To the extent feasible, windows should be repaired and maintained in place. However, the replacement of windows due to either their deterioration, failed lead-paint surface condition, or poor energy performance which are not part of street facing-elevations, and alterations to window openings which are not part of the street-facing façade including additions, deletions, and enlargements required for structural reasons (including ADA, or other significant design purpose) are permitted. In the case of window replacement or alterations to window openings, the State Recipient shall ensure that:
  - a. The vinyl, metal, or wood replacement windows will closely replicate the existing windows in size and window light pattern to the extent feasible (e.g. jalousie windows may not be feasible to

replace with new jalousie windows due to severe energy loss considerations); and

- b. The replacement windows must be energy efficient models which may either be double-pane (insulated glass) wood, metal (must have thermally broken frames), or vinyl, or may be single-pane wood with a storm window.
2. Individual windows on the street-facing façade may be replaced if they are in an advanced state of deterioration of 50% or more. However, when such materials must be removed or replaced, the State Recipient shall ensure that:
    - a. All replacement windows will meet the above guidelines; and
    - b. The replacement windows installed on the street-facing elevations will not alter the existing window opening area and configuration.

*Preferred solution:* If windows on the street-facing façade are in an advanced state of deterioration of 50% or more and must be replaced, windows on other elevations that are in repairable condition may be relocated to the street-facing façade. If a replacement sash unit can be used which permits saving of the existing window casings and jambs, this is preferable to complete window replacement. In addition, a vinyl jamb liner can be used which encapsulates lead paint surfaces which are subject to friction wear.

## **B. Door Guidelines**

1. To the extent feasible, doors should be repaired and maintained in place. However, the replacement of doors due to either their deterioration, failed lead-paint surface condition, or poor energy performance with are not part of the street facing-façade, and alterations to door openings which are not part of the street facing-façade, and alterations to door openings which are not part of the street-facing façade including additions, deletions, and enlargements required for structural reasons (including ADA, or other significant design purpose) are permitted. In the case of door replacement or alterations to door openings, the State Recipient shall ensure that:
  - a. The wood or metal replacement door will, to the extent feasible, closely replicate the existing doors in size and door style; and
  - b. The replacement doors must be energy efficient models which may either be wood or metal, and if the doors are glazed, the glazing must be double-pane (insulated glass).



2. Doors on the street-facing façade in an advanced state of deterioration of 50% or more may be replaced. However, when such materials must be removed or replaced, the State Recipient shall ensure that:

- a. All replacement doors specified meet the guidelines; and
- b. The replacement doors installed on the street-facing façade will not alter the existing door opening area and configuration.

### C. Siding Guidelines

1. To the extent feasible, siding should be repaired and maintained in place. However, the replacement or encapsulation of wood siding which is in advanced stages of deterioration of 50% or more is permitted. When such materials must be replaced or encapsulated, the State Recipient shall ensure that:
  - a. In order to avoid further deterioration of wood elements, prior to installation of any new siding materials all sources of existing moisture shall be mitigated and repairs shall be made to any damage sub-surface materials, and further moisture penetration into the building shall be prevented.
  - b. Siding shall be installed in a manner that will not irreversibly damage or obscure the building's architectural features, decorative shingle work, and trim.
  - c. To the extent feasible, siding will be similar to the existing siding in size, profile, and finish.

*Recommended materials: vinyl, concrete-fiber board, cement board Not recommended: masonite, aluminum, asphalt*

### D. Exterior Trim and Architectural Elements

1. To the extent feasible, existing exterior trim and architectural elements (porches, dormers, gables, cornices, railings, columns, awnings, etc.)

should be repaired and maintained in place, especially if located on the front-facing façade. However, replacement of wood or other trim materials which are in advanced stages of deterioration of 50% or more is permitted. When such materials must be removed or replaced, the State Recipient shall ensure that:

- a. Preference shall be given to replacement materials which model the basic visual characteristics (not necessarily replicate) of the original trim or architectural elements in terms of size and location. For example, a flat window casing which is the same width as the

original window casing is preferable to a stock casing that reduces the scale of the original trim.

2. Activities which result in the alteration or removal of architectural elements that do not comprise the front elevation and which are either in advanced stages of deterioration of 50% or more, or are deemed necessary by the State Recipient for economic considerations, lead-paint poisoning concerns, or to meet ADA requirements are permitted. However, the State Recipient shall ensure that replacement materials will model the basic visual characteristics (though not necessarily replicate) of the original trim in terms of size and location.
3. Porch enclosures on the front façade are permitted only if no historic materials are removed or permanently altered and new materials can be easily removed at a future date. Such enclosures shall, to the extent possible, not obstruct the view of primary architectural elements.

#### **E. Interior Guidelines**

1. Program activities involving interior changes which do not affect the exterior of the property are permitted. However, the State Recipient shall ensure that each of the following guidelines is followed:
  - a. *Interior Doorways:* If interior doors must be removed, install wood paneled doors in rooms facing the street;
  - b. *Ceilings:* Where ceilings need to be lowered, they should never impact any window frames. In addition, if beaded-board ceilings are in good condition and can be left exposed, they should be painted. If they are not left exposed, the beaded ceiling should remain in place and be covered with sheetrock;
  - c. *Walls:* Plaster finishes may be removed from walls if there are not decorative elements. It is recommended that the lathe be retained on interior walls and removed on exterior walls to allow installation of insulation. If unpainted wood surfaces (such as beaded board, v-groove, or tongue and groove board, etc) exists, retain in place. If possible, scrape painted wood surfaces (in accordance with *Preservation Brief #37; Appropriate Methods for Reducing Lead-Paint Hazards in Historic Housing*) and repaint.
  - d. *Floors:* Wood floors should either be refinished or carpeted. Vinyl coverings may be used in baths and kitchens, but not in main living areas or hallways.
  - e. *Closets:* Where closets do not exist, attempt to install in most inconspicuous location in room (e.g. behind door giving access to room or at one side of chimney). If there are wood surfaces in a room, try to leave these in place (see treatments listed under

“Walls”). Do not remove and attempt to “girdle” the closet with the existing wood surface materials.

- f. *Fireplaces:* If mantels and surround are missing, these do not have to be reconstructed. However, where decorative iron surround or tile work remain in main rooms, construct a simple mantel consisting of a wood shelf with simple wood triangular supports. Leave hearth at flood level.
  - g. *Floor Plans:* A reasonable effort should be made to keep the existing floor plan of main rooms intact. If changes need to be made, it is preferable that they should be made in the rear rooms and/or second floor spaces. Where hallways are necessary to give access to rooms, the original walls should remain wherever possible, and the new walls should subdivide the existing rooms to create a hallway. Maintain the front rooms as is. In “shotgun” dwellings, if a hall is necessary, install it along one side of house to give access to rooms on the opposite side.
2. For purposes of lead-based paint abatement, the State Recipient shall verify that lead paint exists through testing. If lead paint is present, encapsulation or removal of interior surfaces and materials which do not affect the appearance of the exterior are permitted whenever all interior alterations are done in accordance with each of the guidelines.

### **APPENDIX C – Standard Mitigation Measures for Adverse Effects**

In cases of Adverse Effects, the State Recipient and the Preservation Professional may develop a mitigation plan that includes one or more of the following Standard Mitigation Measures whenever the Preservation Professional determines that the State Recipient cannot conduct the project so that it will avoid Adverse Effects as described in Stipulation V of this Agreement:

**A. Alteration of the Historic Property**

If the State Recipient determines that the subject property cannot be feasibly rehabilitated in accordance with the recommendations provided by the Preservation Professional (developed in accordance with Stipulation V and the guidelines Appendix B), the following procedure shall be followed:

1. The State Recipient shall ensure that prior to project implementation the historic property is documented. In consultation with the SHPO, one of the following documentation methodologies shall be selected:
  - a. **Contributing Structure in an Eligible Historic District:** The State Recipient shall provide a floor plan, and original archival-quality, large-format, black and white photographs as required for the 106 Review process. A brief history and explanation of the final condition of the structure prior to demolition shall be written not to exceed two (2) pages. In addition to submittal to the SHPO, this documentation shall be placed with either a local historical society archive, local library historical collection, or, at minimum kept as a permanent record by the State Recipient.
  - b. **Building Eligible for Individual Listing:** The State Recipient shall document the historic property in accordance with the Historic American Buildings Survey (HABS) Standards or other acceptable recordation method developed in consultation with the SHPO.
2. The State Recipient shall develop plans and specifications in consultation with the Preservation Professional which will, to the greatest extent feasible, preserve the basic character of the structure with regard to the scale, massing, and texture of the original.
3. Primary emphasis shall be given to the major street visible elevations and significant contributing features there, including trim, windows, doors, porches, etc., will be repaired or replaced with either in-kind materials or materials which come as close as possible to the original materials in basic appearance;
4. Any enclosures of existing porches shall be done in such a manner that none of the intact historic materials are removed or destroyed and in such a manner that a future restoration could be carried out by removing the added materials;
5. Any room additions will be built in a manner that does not “replicate” the original structure and that can be clearly distinguished from the earlier period;

**B. Demolition of the Historic Property**

If the State Recipient determines that the historic unit cannot be feasibly rehabilitated in accordance with the recommendations provided by the Preservation Professional

(developed in accordance with Stipulation V and the guidelines in Appendix B), or the historic building must be acquired for purposed of easement assemblage or sub-standard lot correction, and that the building must be demolished, then the State Recipient shall adhere to the followed guidelines:

1. The State Recipient shall follow the recordation guidelines outline in Section A.1.;
2. The State Recipient shall advertise the availability of the housing unit (with or without the land on which the house is built) prior to its demolition for a minimum of thirty (30) days. Any interested local preservation society of other pre-identified interested parties may be given a “first right of refusal” at an agreed upon price (recommended price based on actual cost of relocation only) and shall have forty-five (45) days to remove the structure from the site;
3. If more than one offer is receive, all offers shall be reviewed by the Preservation Professional and the best offer selected with regards to the appropriateness of the acquiring group’s proposed use, relocation site, the feasibility of the planned movement of the structure, plans for its temporary preservation and/or the partial or complete rehabilitation. The State Recipient shall negotiate any funds which the acquiring group may use to defray the cost of moving the structure which are derived from the avoided cost of demolition;
4. If feasible, the Preservation Professional shall ensure that all historic properties are moved in accordance with approaches recommended in *Moving Historic Buildings* (John Obed Curtis, 1979) by a professional house mover who has the capability to move historic properties properly;
5. If no interested party willing to relocate the building can be identified, the State Recipient shall then advertise the availability of historic materials or shall attempt to reuse such materials in other compatible historic homes being rehabilitated by the State Recipient. The Preservation Professional shall consider the most appropriate planned use of historic materials. All salvaged materials must be removed from the site within thirty (30) days of their advertised availability.

### **C. Reconstruction (demolition and replacement) of Historic Properties**

The State Recipient shall ensure that, to the greatest extent feasible, the reconstruction of any historic structure deemed infeasible for rehabilitation shall be carried out in a manner

that is compatible with the architecture of the original unit and/or other buildings within the surrounding historic district in terms of set-backs, size, scale, massing, design, color, features, and materials, and is responsive to the recommended approaches for new construction set forth in the *Standards*. The following procedures shall be followed to ensure the historic compatibility of the proposed reconstruction:

1. The State Recipient shall follow the recordation guidelines outlined in Section A.1.;
2. The State Recipient shall follow the guidelines for demolition outlined in Section C;
3. The State Recipient shall develop preliminary plans in consultation with the Preservation Professional. (The State Recipient shall consult with the Preservation Professional to develop a set of historically compatible model replacement house plans in advance of any planned reconstruction activities which shall be shared with the public during the initial public hearings held.) Final construction drawings used in the bidding process, including elevations, shall be submitted to the Preservation Professional for review and comment prior to the award of a construction contract and the initiation of construction activities.
4. If the State Recipient determines that the proposed plans and specifications for the reconstruction do not meet the *Standards* as interpreted by the Preservation Professional, the State Recipient shall notify the Council and initiate consultation as set forth at 36 CFR Part 800.5 (e).

#### **D. New Construction and In-Fill Construction in Historic Districts**

The State Recipient shall ensure that, to the greatest extent feasible, the construction of new housing units in an eligible historic district shall be carried out in a manner that is compatible with the architecture of other buildings within the surrounding historic district in terms of set-backs, size, scale, massing, design, color, features, and materials, and is responsive to the recommended approaches for new construction set forth in the *Standards*. The following procedures shall be followed to ensure the historic compatibility of the proposed new construction:

1. The State Recipient shall develop preliminary plans in consultation with the Preservation Professional. (The State Recipient shall consult with the Preservation Professional to develop a set of historically compatible house plans in advance of any planned construction activities which shall be shared with the public during the initial public hearings held). Final construction drawings used in the bidding process, including elevations, shall be submitted to the Preservation Professional for review and comment prior to the award of a construction contract and the initiation of construction activities.
2. If the State Recipient determines that the proposed plans and specifications for the reconstruction do not meet the *Standards* as interpreted by the Preservation Professional, the State Recipient shall

notify the Council and initiate consultation as set forth at 36 CFR Part 800.5(e).




GEORGIA DEPARTMENT OF  
**COMMUNITY AFFAIRS**

Mike Beatty  
COMMISSIONER

Sonny Perdue  
GOVERNOR

MEMORANDUM

TO: All CHIP and CDBG Housing Recipients and Administrators

FROM:  Bobby Smith, Director, Office of Grant Administration

RE: Determining Affordability of First Mortgages on Loans with CHIP or CDBG Down Payment/Second Mortgage Assistance and Effect of Adjustable or Variable Rate Mortgages and Other Flexible Mortgage Plans

DATE: April 12, 2004

During recent monitoring reviews, it has come to DCA's attention that adjustable rate mortgages (ARMs) also known as variable rate mortgages and other flexible first mortgage plans are being used by low income buyers under the CHIP and CDBG down payment or second mortgage assistance programs. This memorandum is to remind all CHIP and CDBG state recipients and their administrators of their responsibility to ensure that the low income purchaser under CHIP and CDBG obtain an affordable first mortgage loan that will remain affordable. HUD has published in their "Building HOME, A HOME Program Primer," that in negotiating first mortgage interest rates and fees that:

**"to improve the likelihood of continued affordability, loans should normally be at fixed rates."**

Also, as a reminder, the proposed leverage partnerships that you developed with local lenders or other providers, like USDA, for providing affordable first mortgages were included in each of your applications for funding under either the CHIP or CDBG program. We have some concerns that buyers under the CHIP and CDBG programs are being offered various versions of adjustable or variable rate mortgages that were not set forth or contemplated in your initial applications for funding. The initial low "introductory" interest rate on these mortgages provides for a limited time a low monthly payment for principal and interest and possibly is used by the lenders to qualify the buyer for the loan amount. The borrower should be prepared to handle an increase in his/her monthly payment should the index rate attached to this type of loan increase.



In order to assist each of you in evaluating the possibility of continued affordability of adjustable or variable rate mortgages, we have enclosed a copy of the Federal Reserve Board and Office of Thrift Supervision's "Consumer Handbook on Adjustable Rate Mortgages." We are also requiring that going forward and effective immediately that you provide each CHIP and CDBG prospective purchaser a copy of this handbook and that you assist each homebuyer in getting the "Mortgage Checklist" at the end of the booklet completed by the lender. This checklist should help you and the prospective purchasers ask the lender the right questions and then both you and the purchasers will be better able to determine if an Adjustable Rate Mortgage is appropriate for them. Therefore, it is also a requirement effective immediately that the completed checklist is included in each CHIP/CDBG applicant's file. DCA will monitor this requirement during regular monitoring reviews.

Unlike a fixed rate mortgage whereby the borrower's payment for principal and interest remain the same for the life of the loan, ARMs are structured with planned interest rate changes on certain pre-defined dates. With an ARM, in exchange for a low rate in the beginning period, the borrower has to accept a monthly payment that can fluctuate. These fluctuations occur because ARM loans are tied to indexes that can go up and down.

Please ensure as you go forward in assisting prospective low income purchasers in the home buying process that they understand the basic elements that are present in all adjustable rate or variable rate mortgages. These elements include:

1. **Index** – Periodic interest rate changes on an ARM are based upon an economic index that measures the lender's ability to borrow money. These indexes usually go up or down with the general movement of interest rates. If the index goes up, so does the mortgage rate in most circumstances, and the borrower would have to pay higher monthly payments. On the other hand, if the index rate goes down, most likely the monthly payment would go down as well. While the specific index used may vary depending upon the lender, some of the common indexes are:
  - a. the yield on either a 1, 3, or 5 year treasury bill (T-bill) or security;
  - b. the national or regional cost of funds to savings and loan associations known as the Federal Cost of Funds or the 11<sup>th</sup> District Cost of Funds (COFD); and,
  - c. the rate at which international banks operating in London inter-

borrow funds known as the London Interbank Offer Rate (LIBOR).

- 2 **Margin** – To determine the actual interest rate on an ARM, lenders add to the index rate a few percentage points (generally 1 to 3 points but could be higher) called “the margin.” The amount of the margin can differ from one lender to another, but it is usually constant over the life of the loan. The margin is also called “the spread” and it is added to the index to cover the lender’s administrative costs and profits to come up with the adjusted or “calculated interest rate.”
- 3 **Calculated interest rate** – By adding the index and the margin together, you arrive at the calculated interest rate, which is the actual rate the borrower pays. It is also the rate to which any future rate adjustments will apply, rather than the initial or “teaser” rate explained below.
- 4 **Adjustment Period and Teaser Rates** – Because the interest rate for an ARM may change due to economic conditions, a key feature to ask the lender is exactly how often the interest rate may change. This is referred to as the “adjustment period.” Many ARMs have one-year adjustment periods, which means the rate and monthly payment is recalculated (based on the index) every year. Other ARMs have 3, 5, or 7 year adjustment periods.

An ARM can also have an initial adjustment period based on a “teaser rate,” which is an artificially low introductory interest rate offered by a lender to attract homebuyers. Usually, teaser rates are good for the first 6 months or a year, at which point the loan reverts back to the calculated interest rate. (The lender does not typically use this introductory rate or teaser rate to qualify the buyer for the loan but instead uses an interest rate of 7.5% or the calculated interest rate if it is lower for loan qualifying purposes.) Oftentimes these discounted introductory rates are combined with large initial loan fees or (points) and with much higher interest rates after the discount expires.

Very large discounts are often arranged by the builder/seller or seller. The seller pays an amount to the lender so the lender can give a lower rate and lower payments early in the term of the mortgage. This is referred to as a seller buy-down. The low income purchaser needs to consider whether he/she will be able to afford payments in later years when the discount has expired and the rate is adjusted.

5. **Rate Caps** - Most ARMs have "caps" that govern how much the interest rate may rise between adjustment periods as well as how much the rate may rise (or fall) over the life of the loan. (By law, virtually all ARMs have an overall cap.) For example, an ARM may be said to have a 2% periodic cap and a 6% lifetime cap. This means that the rate can rise no more than 2% during an adjustment period, and no more than 6% over the life of the loan. The lifetime cap almost always applies to the calculated interest rate and not the introductory teaser rate.

Other features to these types of loans may include "payment caps" that can lead to negative amortization. It is always wise to assist the low income homebuyer with his/her understanding of whether or not the ARM being considered has any "payment cap" and, if so, the effect of negative amortization which means the mortgage balance is actually increasing. Examples of negative amortization are provided in the enclosed handbook.

There are currently several other flexible first mortgage plans being offered in today's market. These include "interest only" loans whereby the borrower's payment for a set period (typically 5 to 10 years) is based solely on the interest due each month rather than on both the principal and interest. At the end of this set period, the borrower's payment converts and the new payment is raised to the fully amortizing level. The new payment will be larger than it would have been if it had been fully amortizing when the borrower first signed the loan. Some interest only loans never convert and at the end of the mortgage term, a balloon payment for the entire principal balance would be due.

Another type of flexible first mortgage plan being offered is considered a "hybrid" plan. These plans combine the features of a fixed rate mortgage and an ARM. For the first few years (typically 3, 5, 7, or 10 years) the borrower pays a fixed rate then the loan converts to an adjustable schedule for the balance of the loan.

Just as discussed in the ARM section of this memorandum, low income borrowers need to understand the intricacies of these types of loans and have an assurance of their remaining affordability once the initial structure ceases.

Again, the "Consumer Handbook on Adjustable Rate Mortgages" will assist both you and the CHIP/CDBG applicant understand the intricacies involved in flexible mortgage plans.

As a reminder, under the CHIP program, HUD and DCA's policy in regard to repayment of the CHIP investment when the affordability requirements are not met for the full affordability period is to require State Recipients to recapture either the full amount or a pro-rata amount of the CHIP loan. While DCA has requested a waiver from HUD to

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allow State Recipients to implement a recapture program design to recapture only the "net proceeds" in the case of a foreclosure, the waiver request is still under HUD review. Therefore it is even more imperative that State Recipients and their award administrators evaluate the affordability of the borrower's first mortgage loan.

We appreciate your attention to these concerns. If you have questions or require additional information, please contact Jane Keefe at (404) 679 - 3167 or Glenn Misner at (404) 679 - 3138.

Enclosure

JK/jk



GEORGIA DEPARTMENT OF  
**COMMUNITY AFFAIRS**

Mike Beatty  
COMMISSIONER  
MEMORANDUM

Sonny Perdue  
GOVERNOR

TO: All CHIP and CDBG Housing Recipients and Administrators

FROM: Brian Williamson, Assistant Commissioner, Community  
Development and Finance Division

SUBJECT: Use of Adjustable Rate Mortgages, Variable Rate Mortgages or  
Other Flexible Mortgage Plans with CHIP or CDBG

DATE: September 21, 2005

This memorandum is a follow-up to our memorandum dated April 12, 2004, entitled "Determining Affordability of First Mortgage Loans with CHIP or CDBG Down Payment/Second Mortgage Assistance and Effect of Adjustable or Variable Rate Mortgages and Other Flexible Mortgage Plans."

Specifically, as set forth in the FY 2005 CDBG and CHIP Applicants' Manual, HUD has stated in its "Building HOME, a HOME Program Primer" that in negotiating first mortgage interest rates and fees that:

"to improve the likelihood of continued affordability, loans should normally be at fixed rates."

In keeping with this HUD guidance, the Community Development and Finance Division (CDFD) policy now requires review on a case-by-case basis of any adjustable and/or variable rate mortgage or other flexible mortgage plan being considered as a mortgage for low income beneficiaries under both the CHIP and CDBG programs.

Therefore, effective immediately, please forward for CDFD review the "lender's written summary" of the terms and conditions of each such contemplated mortgage setting forth the index, margin, calculated interest rate, adjustable period, teaser rates, rate cap and payment cap. Keep in mind that this policy applies to all types of CDBG and CHIP housing assistance (purchase, downpayment, second mortgage, or rehabilitation assistance, etc.) when a new, newly refinanced mortgage, or other loan product is in partnership with CDBG or CHIP funds and the new, newly refinanced mortgage, or other loan product requires that an owner's primary residence be used as collateral.

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Please forward the request for DCA review of adjustable, variable or other flexible mortgage plans to Mr. Steed Robinson, Director, Office of Community Development. DCA will review the request and provide a grant adjustment notice or other notification in the event DCA approves the request or a letter of denial if the request is not approved.

We appreciate your continued attention to our responsibility to ensure that low income beneficiaries under the CHIP and CDBG programs obtain an affordable mortgage loan that will remain affordable.

BW/jk

[Please note that the FY 2005 CHIP Recipients' Manual references a new flexible mortgage policy for purchasers. This memorandum expands the policy to include all low income beneficiaries under both the CHIP and CDBG programs.]

**Early Notice and Public Review of a Proposed  
Activity in a [100-Year/500-year Floodplain or Wetland]**

**[Note: May also be combined with other notices such as state floodplain or wetland notices so long as it contains the required information]**

To: All interested Agencies **[include all Federal, State, and Local]**, Groups and Individuals

This is to give notice that **[HUD under part 50 or Responsible Entity under Part 58]** has determined that the following proposed action under **[Program Name]** and **[HUD grant or contract number]** is located in the **[100-year/500-year floodplain/wetland]**, and **[HUD or the Responsible Entity]** will be identifying and evaluating practicable alternatives to locating the action in the **[floodplain/wetland]** and the potential impacts on the **[floodplain/wetland]** from the proposed action, as required by **[Executive Order 11988 and/or 11990]**, in accordance with HUD regulations at 24 CFR 55.20 Subpart C Procedures for Making Determinations on Floodplain Management and Protection of Wetlands. **[Describe the activity, e.g. purpose, type of assistance, the size of the site, proposed number of units, size of footprint, type of floodplain/wetland, natural and beneficial values potentially adversely affected by the activity]. [State the total number of acres of floodplains/wetland].** The proposed project(s) is located **[at addresses]** in **[Name of City]**, **[Name of County]**.

There are three primary purposes for this notice. First, people who may be affected by activities in **[floodplains/wetlands]** and those who have an interest in the protection of the natural environment should be given an opportunity to express their concerns and provide information about these areas. Commenters are encouraged to offer alternative sites outside of the **[floodplain/wetland]**, alternative methods to serve the same project purpose, and methods to minimize and mitigate impacts. Second, an adequate public notice program can be an important public educational tool. The dissemination of information and request for public comment about **[floodplains/wetlands]** can facilitate and enhance Federal efforts to reduce the risks and impacts associated with the occupancy and modification of these special areas. Third, as a matter of fairness, when the Federal government determines it will participate in actions taking place in **[floodplains/wetlands]**, it must inform those who may be put at greater or continued risk.

Written comments must be received by **[HUD or Responsible Entity]** at the following address on or before **[month, day, year]** **[a minimum 15 calendar day comment period will begin the day after the publication and end on the 16<sup>th</sup> day after the publication]:** **[HUD or Responsible Entity]**, **[Address]** and **[phone number]**, Attention: **[Name of Certifying Officer or designee]**, **[Title]**. A full description of the project may also be reviewed from **[enter available office hours]** at **[address or state address is same as above]** and **[web address if available]**. Comments may also be submitted via email at **[email address]**.

**Date:**

## Final Notice and Public Explanation of a Proposed Activity in a [100-Year/500-year Floodplain or Wetland]

To: All interested Agencies [include all Federal, State, and Local], Groups and Individuals

This is to give notice that the [HUD under part 50 or Responsible Entity under Part 58] has conducted an evaluation as required by [Executive Order 11988 and/or 11990], in accordance with HUD regulations at 24 CFR 55.20 Subpart C Procedures for Making Determinations on Floodplain Management and Wetlands Protection. The activity is funded under the [Program Name] under [HUD grant or contract number]. The proposed project(s) is located [at addresses] in [Name of City], [Name of County]. [Describe the activity, e.g. purpose, type of assistance, the size of the site, proposed number of units, size of footprint, type of floodplain/wetland, natural values]. [State the total number of acres of floodplains/wetland involved].

[HUD or Responsible Entity] has considered the following alternatives and mitigation measures to be taken to minimize adverse impacts and to restore and preserve natural and beneficial values: [List (i) ALL of the reasons why the action must take place in a floodplain/wetland, (ii) alternatives considered and reasons for non-selection, (iii) all mitigation measures to be taken to minimize adverse impacts and to restore and preserve natural and beneficial values] [Cite the date of any final or conditional LOMR's or LOMA's from FEMA where applicable] [Acknowledge compliance with state and local floodplain/wetland protection procedures]

[HUD or Responsible Entity] has reevaluated the alternatives to building in the [floodplain/wetland] and has determined that it has no practicable alternative. Environmental files that document compliance with steps 3 through 6 of [Executive Order 11988 and/or 11990], are available for public inspection, review and copying upon request at the times and location delineated in the last paragraph of this notice for receipt of comments.

There are three primary purposes for this notice. First, people who may be affected by activities in [floodplains/wetlands] and those who have an interest in the protection of the natural environment should be given an opportunity to express their concerns and provide information about these areas. Second, an adequate public notice program can be an important public educational tool. The dissemination of information and request for public comment about [floodplains/wetlands] can facilitate and enhance Federal efforts to reduce the risks and impacts associated with the occupancy and modification of these special areas. Third, as a matter of fairness, when the Federal government determines it will participate in actions taking place in [floodplains/wetlands], it must inform those who may be put at greater or continued risk.

Written comments must be received by the [HUD or Responsible Entity] at the following address on or before [month, day, year] [a minimum 7 calendar day comment period will begin the day after the publication and end on the 8<sup>th</sup> day after the publication]: [Name of Administrator], [Address] and [phone number], Attention: [Name of Certifying Officer or designee], [Title]. A full description of the project may also be reviewed from [enter available office hours] at [address or state address is same as above] and [web address if available]. Comments may also be submitted via email at [email address].

Date:



## **REGULATORY PROGRAM OVERVIEW**

### **INTRODUCTION**

The Department of the Army regulatory program is one of the oldest in the Federal Government. Initially it served a fairly simple, straightforward purpose: to protect and maintain the navigable capacity of the nation's waters. Time, changing public needs, evolving policy, case law, and new statutory mandates have changed the complexion of the program, adding to its breadth, complexity, and authority.

### **LEGISLATIVE AUTHORITIES**

The legislative origins of the program are the Rivers and Harbors Acts of 1890 (superseded) and 1899 (33 U.S.C. 401, et seq.). Various sections of the Act establish permit requirements to prevent unauthorized obstruction or alteration of any navigable water of the United States. The most frequently exercised authority is contained in Section 10 (33 U.S.C. 403), which covers construction, excavation, or deposition of materials in, over, or under such waters, or any work which would affect the course, location, condition, or capacity of those waters. This authority is granted to the Secretary of the Army. Other permit authorities in the Act include Section 9 for dams and dikes, Section 13 for refuse disposal, and Section 14 for temporary occupation of work built by the United States. Subsequent legislation has modified these authorities, but not removed them.

In 1972, amendments to the Federal Water Pollution Control Act added what is commonly called Section 404 authority (33 U.S.C. 1344) to the program. The Secretary of the Army, acting through the Chief of Engineers, is authorized to issue permits, after notice and opportunity for public hearings, for the discharge of dredged or fill material into waters of the United States at specified disposal sites. Selection of such sites must be in accordance with guidelines developed by the Environmental Protection Agency (EPA) in conjunction with the Secretary of the Army; these guidelines are known as the 404(b)(1) Guidelines. The discharge of all other pollutants into waters of the U.S. is regulated under Section 402 of the Act, which supersedes the Section 13 permitting authority mentioned above. The Federal Water Pollution Control Act was further amended in 1977 and given the common name of "Clean Water Act." It was again amended in 1987 to modify criminal and civil penalty provisions and to add an administrative penalty provision.

In 1972, with enactment of the Marine Protection, Research, and Sanctuaries Act, the Secretary of the Army, acting through the Chief of Engineers, was authorized by Section 103 of the Act to issue permits for the transportation of dredged material for ocean disposal. This authority also carries with it the requirement of notice and opportunity for public hearing. Disposal sites for such discharges are selected in accordance with criteria developed by EPA in consultation with the Secretary of the Army.

## **DELEGATION OF AUTHORITY**

Most of these permit authorities (with specific exception of Section 9) have been delegated by the Secretary of the Army to the Chief of Engineers and his authorized representatives. Section 10 authority was formally delegated on May 24, 1971, with Section 404 and 103 authorities delegated on March 12, 1973. Those exercising these authorities are directed to evaluate the impact of the proposed work on the public interest. Other requirements, including the 404(b)(1) Guidelines and ocean dumping criteria, must also be met, as applicable.

Additional clarification of this delegation is provided in the regulatory program's implementing regulations (33 CFR 320-332). Division and district engineers are authorized to condition permits (Part 325.4) and, if necessary, to modify, suspend, or revoke issued permits (Part 325.7). Division and district engineers also have authority to issue alternate types of permits such as letters of permission and regional general permits (Part 325.2).

This delegation of authority recognizes the decentralized nature and management philosophy of the Corps of Engineers. Regulatory program management and administration is focused at the district level, with policy oversight at higher levels. Federal regulations at 33 CFR 320-332 form the backbone of the program and provide the district engineer the broad policy guidance needed to administer day-to-day operation of the program. These regulations have evolved over time, changing to reflect added authorities, case law, and, in general, the concerns of the public. They are developed through formal rule making procedures.

## **GEOGRAPHIC EXTENT OF JURISDICTIONAL AUTHORITY**

The geographic jurisdiction of the Rivers and Harbors Act of 1899 includes all navigable waters of the United States, which are defined at 33 CFR Part 329 as, "those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce." This jurisdiction extends seaward to include all ocean waters within a zone extending three nautical miles from the coast line (the "territorial seas"). Limited authorities extend across the outer continental shelf for artificial islands, installations and other devices (see 43 U.S.C. 333 (e)). Activities requiring Section 10 permits include structures (e.g., piers, wharfs, breakwaters, bulkheads, jetties, weirs, transmission lines) and work such as dredging or disposal of dredged material, excavation, filling, and other modifications to the navigable waters of the United States.

Waterbodies subject to Clean Water Act jurisdiction are defined as "waters of the United States." Waters of the U.S. are defined for the Corps regulatory program at 33 CFR 328. This overview provides an abridged listing of waters of the U.S., which include:

- (1) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- (2) All interstate waters, including interstate wetlands;
- (3) The territorial seas;
- (4) All impoundments of waters otherwise identified as waters of the United States;
- (5) All tributaries of waters in (1) through (3), above;
- (6) All waters adjacent to a water identified in (1) through (5), including wetlands, ponds, lakes, oxbows, impoundments, and similar waters;
- (7) All waters in paragraphs (i) through (v), below, where they are determined, on a case-specific basis, to have a significant nexus to a water identified in (1) through (3).
  - (i) *Prairie potholes*. Prairie potholes are a complex of glacially formed wetlands, usually occurring in depressions that lack permanent natural outlets, located in the upper Midwest.
  - (ii) *Carolina bays and Delmarva bays*. Carolina bays and Delmarva bays are ponded, depressional wetlands that occur along the Atlantic coastal plain.
  - (iii) *Pocosins*. Pocosins are evergreen shrub- and tree-dominated wetlands found predominantly along the Central Atlantic coastal plain.
  - (iv) *Western vernal pools*. Western vernal pools are seasonal wetlands located in parts of California and associated with topographic depression, soils with poor drainage, mild, wet winters, and hot, dry summers.
  - (v) *Texas coastal prairie wetlands*. Texas coastal prairie wetlands are freshwater wetlands that occur as a mosaic of depressions, ridges, intermound flats, and mima mound wetlands located along the Texas Gulf Coast.
- (8) All waters located within the 100-year floodplain of a water identified in (1) through (3) and all waters located within 4,000 feet of the high tide line or ordinary high water mark of a water identified in (1) through (5), where they are determined on a case-specific basis to have a significant nexus to a water identified in (1) through (3).

The Clean Water Act uses the term “navigable waters” which is defined in law as “waters of the United States, including the territorial seas.” Thus, Section 404 jurisdiction is defined as encompassing all Section 10 waters.

Activities, requiring Department of the Army permits under Section 404 are limited to discharges of dredged or fill material into waters of the United States. Regulated discharges include return water from dredged material disposed of on dry land and generally any fill material (e.g., rock, sand, dirt) used to convert waters of the U.S. to dry land for purposes of site development, roadways, erosion protection, etc.

Graphics generally depicting the extent of Section 10 and Section 404 jurisdiction can be [viewed here](#).

The geographic scope of Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 consists of those waters of the open seas lying seaward of the baseline from which the territorial sea is measured. Along coast lines this baseline is generally taken to be the low water line. Thus, there is overlap in jurisdiction between this Act and the Clean Water Act. By interagency agreement with EPA, the discharge of dredged material into the territorial seas is regulated under Section 103 criteria rather than the criteria developed for Section 404.



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### Regulatory Program Frequently Asked Questions

#### How can I obtain further information in reference to permit requirements?

Information about the regulatory program is available from any Corps district regulatory office.

#### What will happen if I do work without getting a permit from the Corps?

Performing unauthorized work in waters of the United States or failure to comply with the terms of a valid permit can have serious consequences. You would be in violation of federal law and could face stiff penalties, including fines and/or requirements to restore the area.

Enforcement is an important part of the Corps regulatory program. Corps surveillance and monitoring activities are often aided by various agencies, groups, and individuals, who report suspected violations. When in doubt as to whether a planned activity needs a permit, contact the nearest district regulatory office. It could save a lot of unnecessary trouble later.

#### How can I design my project to eliminate the need for a Corps Permit?

If your activity is located in an area of tidal waters, the best way to avoid the need for a permit is to select a site that is above the high tide line and avoids wetlands or other water-bodies. In the vicinity of fresh water, stay above ordinary high water and avoid wetlands adjacent to the stream or lake. Also, it is possible that your activity is exempt and does not need a Corps Permit. Another possibility for minor activities is that a Nationwide or a Regional General Permit may have authorized them. So, before you build, dredge or fill, contact the Corps district regulatory office in your area for specific information about location, exemptions, and regional and nationwide general permits.

#### Why should I waste my time and yours by applying for a permit when you probably won't let me do the work anyway?

Nationwide, less than one percent of all requests for permits are denied. Those few applicants who have been denied permits usually have refused to change the design, timing, or location of the proposed activity. When a permit is denied, an applicant may redesign the project and submit a new application. To avoid unnecessary delays pre-application conferences, particularly for applications for major activities, are recommended. The Corps will endeavor to give you helpful information, including factors, which will be considered during the public interest review, and alternatives to consider that may prove to be useful in designing a project.

#### Why do I have to get a permit from the Corps? I have obtained permits from local and state governments ...

It is possible you may not have to obtain an individual permit, depending on the type or location of work. The Corps has many general permits, which authorize minor activities without the need for individual processing. Check with your Corps district regulatory office for information on general permits. When a general permit does not apply, you may still be required to obtain an individual permit.

#### When should I apply for a permit?

Since three to four months is normally required to process a routine application involving a public notice, you should apply as early as possible to be sure you have all required approvals before your planned beginning date. For a large or complex activity that may take longer, it is often helpful to have a "pre-application consultation" or informal meeting with the Corps during the early planning phase of your project. You may receive helpful information at this point, which could prevent delays later. When in doubt as to whether a permit may be required or what you need to do, don't hesitate to call a district regulatory office.

#### Who should apply for a permit?

Any person, firm, or agency (including Federal, state, and local government agencies) planning to work in navigable waters of the United States, or discharge (dump, place, deposit) dredged or fill material in waters of the United States, including wetlands, must first obtain a permit from the Corps of Engineers. Permits, licenses, variances, or similar authorization may also be required by other Federal, state and local statutes.

#### What is a wetland and what is its value?

Wetlands are areas that are periodically or permanently inundated by surface or ground water and support vegetation adapted for life in saturated soil. Wetlands include swamps, marshes, bogs and similar areas. As a significant natural resource, wetlands serve important functions relating to fish and wildlife. Such functions include food chain production, habitat, nesting spawning, rearing and resting sites for aquatic and land species. They also provide protection of other areas from wave action and erosion; storage areas for storm and flood waters; natural recharge areas where ground and surface water are interconnected; and natural water filtration and purification functions.

Although individual alterations of wetlands may constitute a minor change, the cumulative effect of numerous changes often results in major damage to wetland resources. The review of applications for alteration of wetlands will include consideration of whether the proposed activity is dependent upon being located in an aquatic environment.



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## Obtain a Permit

Corps permits are also necessary for any work, including construction and dredging, in the Nation's navigable waters. The Corps balances the reasonably foreseeable benefits and detriments of proposed projects, and makes permit decisions that recognize the essential values of the Nation's aquatic ecosystems to the general public, as well as the property rights of private citizens who want to use their land. During the permit process, the Corps considers the views of other Federal, state and local agencies, interest groups, and the general public. The results of this careful public interest review are fair and equitable decisions that allow reasonable use of private property, infrastructure development, and growth of the economy, while offsetting the authorized impacts to the waters of the US. The adverse impacts to the aquatic environment are offset by mitigation requirements, which may include restoring, enhancing, creating and preserving aquatic functions and values. The Corps strives to make its permit decisions in a timely manner that minimizes impacts to the regulated public.

- [Application Form](#) (Please mail completed forms to the appropriate Regulatory Office for review.)  
**Note:** The Corps is seeking Office of Management and Budget (OMB) review of the forms posted on this webpage. Some forms may be modified upon the completion of this review. Please continue to use the forms posted on this webpage, until further notice.
- [Application Form Instructions](#)
- [Regulations and Guidance](#)

## District Specific Permit Information

Region-specific information about applying for a permit, the permit process, and important permitting information for Regulatory Districts.

- [Applications and Application Information](#)
- [Jurisdiction](#)
- [Permit Process](#)
- [Region-Specific Permits and Documents](#)
- [Forms, Documents, and Publications](#)

## Regional and Programmatic General Permits

The U.S. Army Corps of Engineers' (USACE) Regulatory Program involves the regulating of discharges of dredged or fill material into waters of the United States and structures or work in navigable waters of the United States, under section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act of 1899. A proposed project's impacts to these areas will determine what permit type is required.

An individual, or standard permit, is issued when projects have more than minimal individual or cumulative impacts, are evaluated using additional environmental criteria, and involve a more comprehensive public interest review.

A general permit is issued for structures, work or discharges that will result in only minimal adverse effects. General permits are issued on a nationwide, regional, or state basis for particular categories of activities. There are three types of general permits – Nationwide Permits, Regional General Permits, and Programmatic General Permits. General permits are usually valid for five years and may be re-authorized by USACE.

Nationwide permits are issued by USACE on a national basis and are designed to streamline Department of the Army authorization of projects such as commercial developments, utility lines, or road improvements that produce minimal impact the nation's aquatic environment. More information on nationwide permits can be found [here](#).

A regional general permit is issued for a specific geographic area by an individual USACE District. Each regional general permit has specific terms and conditions, all of which must be met for project-specific actions to be verified.

Programmatic general permits are based on an existing state, local, or other federal program and designed to avoid duplication of that program. A State Programmatic General Permit (SPGP) is a type of permit that is issued by USACE and designed to eliminate duplication of effort between USACE districts and state regulatory programs that provide similar protection to aquatic resources. In some states, the SPGP replaces some or all of the USACE nationwide permits, which results in greater efficiency in the overall permitting process.

The table below provides a list of regional or programmatic general permits used by USACE districts across the nation.

- [Alaska](#)
- [Albuquerque](#)
- [Baltimore](#)
- [Buffalo](#)
- [Charleston](#)
- [Chicago](#)
- [Detroit](#)
- [Ft. Worth](#)
- [Galveston](#)
- [Honolulu](#)
- [Jacksonville](#)



# Wetland Regulatory Authority

## Regulatory Requirements

Section 404 of the Clean Water Act (CWA) establishes a program to regulate the discharge of dredged or fill material into waters of the United States, including wetlands. Activities in waters of the United States regulated under this program include fill for development, water resource projects (such as dams and levees), infrastructure development (such as highways and airports) and mining projects. Section 404 requires a permit before dredged or fill material may be discharged into waters of the United States, unless the activity is exempt from Section 404 regulation (e.g. certain farming and forestry activities).

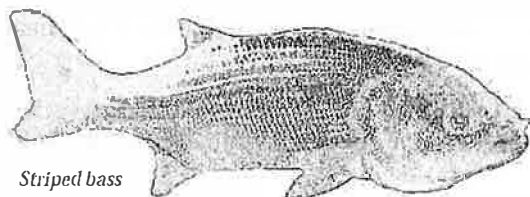


Wetlands subject to Clean Water Act Section 404 are defined as "areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas."

The basic premise of the program is that no discharge of dredged or fill material may be permitted if: (1) a practicable alternative exists that is less damaging to the aquatic environment or (2) the nation's waters would be significantly degraded. In other words, when you apply for a permit, you must show that you have, to the extent practicable:

- Taken steps to avoid wetland impacts;
- Minimized potential impacts on wetlands; and
- Provided compensation for any remaining unavoidable impacts.

Proposed activities are regulated through a permit review process. An *individual permit* is required for potentially significant impacts. Individual permits are reviewed by the U.S. Army Corps of Engineers, which evaluates applications under a public interest review, as well as the environmental criteria set forth in the CWA Section 404(b) (1) Guidelines. However, for most discharges that will have only minimal adverse effects, a *general permit* may be suitable. General permits are issued on a nationwide, regional, or State basis for particular categories of activities. The general permit process eliminates individual review and allows certain activities to proceed with little or no delay, provided that the general or specific conditions for the general permit are met. For example,



Striped bass

minor road activities, utility line backfill, and bedding are activities that can be considered for a general permit. States also have a role in Section 404 decisions, through State program general permits, water quality certification, or program assumption.

## Agency Roles and Responsibilities

The roles and responsibilities of the Federal resource agencies differ in scope.

### U.S. Army Corps of Engineers:

- Administers day-to-day program, including individual and general permit decisions;
- Conducts or verifies jurisdictional determinations;
- Develops policy and guidance; and
- Enforces Section 404 provisions.

### U.S. Environmental Protection Agency:

- Develops and interprets policy, guidance and environmental criteria used in evaluating permit applications;
- Determines scope of geographic jurisdiction and applicability of exemptions;
- Approves and oversees State and Tribal assumption;
- Reviews and comments on individual permit applications;
- Has authority to prohibit, deny, or restrict the use of any defined area as a disposal site (Section 404(c));
- Can elevate specific cases (Section 404(q));
- Enforces Section 404 provisions.

**U.S. Fish and Wildlife Service and National Marine Fisheries Service:**

- Evaluates impacts on fish and wildlife of all new Federal projects and Federally permitted projects, including projects subject to the requirements of Section 404 (pursuant to the Fish and Wildlife Coordination Act); and
- Elevates specific cases or policy issues pursuant to Section 404(q).

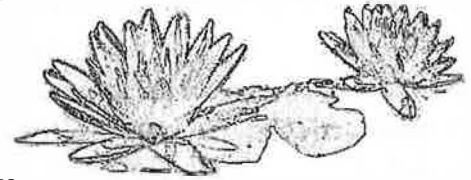
**Manual for Identifying Wetlands**

The U.S. EPA and U.S. Army Corps of Engineers use the 1987 *Corps of Engineers Wetlands Delineation Manual* to identify wetlands for the CWA Section 404 permit program. The 1987 manual organizes the environmental characteristics of a potential wetland into three categories: soils, vegetation, and hydrology. The manual contains criteria for each category. Using

this approach, an area that meets all three criteria is considered a wetland.

**Wetlands on Agricultural Lands**

Farmers who own or manage wetlands are directly affected by two important Federal programs—Section 404 of the CWA and the Swampbuster provision of the Food Security Act. The Swampbuster provision withholds certain Federal farm program benefits from farmers who convert or modify wetlands. The U.S. EPA, U.S. Army Corps of Engineers, U.S. Department of Agriculture, and U.S. Fish and Wildlife Service have established procedures to ensure consistency between the programs. Many normal farming practices are exempt from Section 404.



*Water lilies*

**The Wetland Fact Sheet Series**

EPA843-F-04-001  
Office of Water

Wetlands Overview  
 Types of Wetlands  
 Threats to Wetlands  
 Wetland Restoration  
 Funding Wetland Projects

Functions and Values of Wetlands  
 Teaching About Wetlands  
 Wetland Regulatory Authority  
 Wetlands Compensatory Mitigation  
 Benefits of Wetland Monitoring

**For more information, call EPA's Wetlands Helpline at 1-800-832-7828**

**Wetland Resources**

**On the Internet**

- EPA's Wetlands Website ..... [www.epa.gov/owow/wetlands/regs/](http://www.epa.gov/owow/wetlands/regs/)
- Section 404 of the Clean Water Act ..... [www.epa.gov/owow/wetlands/laws/](http://www.epa.gov/owow/wetlands/laws/)
- Wetland Delineation Manual ..... [www.wes.army.mil/el/wetlands/wlpubs.html](http://www.wes.army.mil/el/wetlands/wlpubs.html)
- U.S. Army Corps of Engineers Regulatory Program..... [www.usace.army.mil/inet/functions/cw/cecwo/reg/](http://www.usace.army.mil/inet/functions/cw/cecwo/reg/)
- U.S. Army Corps of Engineers' Waterways  
 Experiment Station Environmental Laboratory ..... [www.wes.army.mil/el/wetlands/wetlands.html](http://www.wes.army.mil/el/wetlands/wetlands.html)
- Environmental Law Institute ..... [www.eli.org](http://www.eli.org)

**In Print**

- America's Wetlands: Our Vital Link Between Land and Water.* For a copy, order from EPA's publications web site at <http://yosemite.epa.gov/water/owrccatalog.nsf> or call the EPA Wetlands Helpline at 1-800-832-7828.
- Wetlands Deskbook*, 2nd Edition, Margaret N. Strand. Available from the Environmental Law Institute. Call 1-800-433-5120; fax your request to (202) 939-3868; or e-mail to [orders@eli.org](mailto:orders@eli.org).
- Our National Wetland Heritage: A Protection Guide*, 2nd Edition, Jon A. Kusler, Ph.D., Executive Director, Association of State Wetland Managers. Available from the Environmental Law Institute. Call 1-800-433-5120; fax your request to (202) 939-3868; or e-mail to [orders@eli.org](mailto:orders@eli.org).



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We've made some changes to EPA.gov. If the information you are looking for is not here, you may be able to find it on the EPA Web Archive or the January 19, 2017 Web Snapshot.

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## What is a Jurisdictional Delineation?

Jurisdictional Delineations are performed on a property in order to delineate which waters are Waters of the U.S. and are therefore subject to CWA 404. Most often, a preliminary jurisdictional delineation is submitted to the Army Corps by the permit applicant, which the Corps then verifies. The applicant can decide whether they would like a final approved delineation or would like to proceed with an application with only a verified preliminary delineation, which makes for a shorter process.

### How do I delineate a wetland?

Wetland delineations are conducted in accordance with the 1987 USACE Wetland Delineation Manual. EXIT There are ten regional supplements EXIT issued by the USACE which are specific to different regions of the United States. Wetlands must have three specific criteria in order to be classified as a wetland: hydric soils, hydrophytic vegetation, and hydrology. During a wetland delineation, a project area is surveyed to determine whether wetlands with the three criteria are present.

LAST UPDATED ON DECEMBER 21, 2017



U.S. Department of Housing and Urban Development  
Community Planning and Development

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Special Attention of:

**Notice:** CPD-03-14

All Secretary's Representatives  
All State/Area Coordinators  
All CPD Division Directors  
All CDBG Grantees

Issued: December 29, 2003  
Expires: December 29, 2004

Supersedes:

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Subject: Using CDBG Funds in Addressing the Challenges of  
Homelessness

**I. Introduction:**

Fifteen years after the enactment of the McKinney-Vento Homeless Assistance Act, President Bush has established the goal of ending chronic homelessness by the year 2012. To help achieve that goal, HUD has placed greater emphasis on coordinating Federal efforts, as HUD is one of several agencies responsible for providing housing and related resources to prevent homelessness and help homeless families and individuals move to permanent housing. Each year, HUD provides over \$1.2 billion to assist homeless persons.

A critical component of addressing the needs of homeless families and individuals is the availability of affordable housing opportunities for those who are homeless or at risk of homelessness. HUD has a number of programs that provide affordable housing for low-income persons. The Community Development Block Grant (CDBG) is an important resource for local governments in their efforts to provide both transitional and permanent housing, as well as supportive services, to families and/or individuals experiencing homelessness.

CDBG funds can be used in conjunction with other Federal, state, and local programs, resulting in innovative initiatives that help local communities meet the needs of the homeless population. Because they design and administer their own CDBG

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DGBE: Distribution: W-3-1

programs, local governments have the opportunity to tailor a comprehensive approach to addressing the entire range of homeless needs along the Continuum of Care.

As might be expected, expenditures for activities benefiting homeless persons vary from year to year depending upon budget allocations and the needs identified by grantees. In Fiscal Year (FY) 2002, CDBG expenditures nationally for homeless facilities were \$18,447,753 for entitlement communities and \$3,301,000 for the State-administered CDBG program. These expenditures were exclusively for the purpose of addressing homelessness issues. These amounts do not include other expenditures for activities that provide assistance to the homeless, but are not exclusively earmarked for serving the homeless. Therefore, the amount of CDBG funds expended for activities that specifically assist homeless persons may be significantly higher than the \$21.7 million reported.

## **II. CDBG Program:**

CDBG funds are made available to states and units of general local government; HUD does not provide CDBG funds directly to individuals or organizations. States and units of local government retain autonomy over selecting eligible activities to carry-out with CDBG funds based on the community's perceptions of its local needs, priorities, and benefits to the community. Each grantee is responsible for choosing how best to serve the community's interests and meet the needs of eligible citizens. As such, each grantee is free to determine what activities it will fund as long as certain requirements are met, including that each activity is eligible and meets one of the following broad national objectives: benefits persons of low and moderate income, aids in the prevention or elimination of slums or blight, or meets other community development needs of a particular urgency that the grantee is unable to finance on its own. Persons who are homeless are presumed to be principally low and moderate income. Therefore, activities that provide assistance to the homeless will be considered to meet the national objective of benefiting low- and moderate-income persons.

## **III. Consolidated Plan and Continuum of Care:**

To receive CDBG funds, each grantee must first submit a Consolidated Plan. This plan identifies various needs in the community and identifies the activities it proposes to undertake to meet those needs. In developing its plan, a grantee must consider the needs of homeless families and individuals because the law and the regulations governing the Consolidated Plan

require the grantee to describe the nature and extent of homelessness, including homelessness in rural areas. The Consolidated Plan must contain a discussion of the need for facilities and services for homeless individuals, as well as the same needs for homeless families with children and homeless subpopulations. Homeless subpopulations include, but are not limited to: homeless persons that are severely mentally ill only, alcohol/drug addicted only, severely mentally ill and alcohol/drug addicted, fleeing domestic violence, considered youth, and diagnosed with HIV/AIDS.

The Consolidated Plan must also include a brief inventory of facilities and services that meet the emergency shelter, transitional housing, permanent supportive housing, and permanent housing needs of homeless persons within the grantee's jurisdiction. In addition, there must be a description of the grantee's strategy for preventing homelessness, providing outreach/assessment, addressing emergency shelter and transitional housing needs, and helping the homeless to transition to permanent housing and independent living.

If information is available, a grantee is also to provide a description of the special needs of homeless people with specific problems. These problems often include mental illness, substance abuse, a dual diagnosis of mental illness and addiction, domestic violence, and HIV/AIDS. When possible, each grantee is also asked to describe the nature and numbers of homeless persons by race and ethnic group, as well as the characteristics and unique needs of persons who might not presently be homeless but who are threatened with homelessness.

While some of the information required is found in census data, more current and specific data might be obtained through consultation with other public agencies and social service providers. The citizen participation process and public hearings, which are requirements of developing the Consolidated Plan, can also be valuable sources of information. In addition, other local plans may provide information necessary to evaluate the needs of the homeless and coordinate a response to address those needs.

The purpose of the Continuum of Care (CoC) is to provide a coordinated, locally developed system to assist homeless persons, especially the chronically homeless, to move to self-sufficiency and permanent housing. In addition to homeless prevention, a CoC system consists of four basic components:

- (a) A system of outreach and assessment for determining the needs and conditions of an individual or family who is homeless;
- (b) Emergency shelters with appropriate supportive services to help ensure that homeless individuals and families receive adequate emergency shelter and referral to necessary

service providers or housing finders;

(c) Transitional housing with appropriate supportive services to help those homeless individuals and families who are not prepared to make the transition to permanent housing and independent living; and

(d) Permanent housing, or permanent supportive housing, to help meet the long-term needs of homeless individuals and families.

A CoC system is developed through a community-wide or region-wide process involving nonprofit organizations (including those representing persons with disabilities), government agencies, public housing authorities, faith-based and other community-based organizations and other homeless providers, housing developers and service providers, private businesses and business associations, law enforcement agencies, funding providers, and homeless or formerly homeless persons. To ensure that the CoC system addresses the needs of homeless veterans, it is particularly important that veteran service organizations with specific experience in serving homeless veterans are involved. A CoC system should address the specific needs of each homeless subpopulation: those experiencing chronic homelessness, veterans, persons with serious mental illnesses, persons with substance abuse issues, persons with HIV/AIDS, persons with co-occurring diagnoses, victims of domestic violence, youth, and any others. (The term "co-occurring diagnoses" may include diagnoses of multiple physical disabilities or multiple mental disabilities or a combination of these two types.)

Effective CoC-wide strategies coordinate homeless assistance with mainstream health, social services and employment programs for which homeless individuals and families may be eligible. These programs include Medicaid, Children's Health Insurance Program, Temporary Assistance for Needy Families, Food Stamps, and services funded through the Mental Health Block Grant and Substance Abuse Block Grant, Workforce Investment Act, Welfare-to-Work grant program, and Veterans Health Care.

Communities are encouraged to coordinate CDBG activities with area CoC efforts and other resources in order to target assistance to chronically homeless persons in their communities. Further, recipients of CDBG funds are encouraged to also work with the appropriate local government entity to develop and implement a discharge policy for persons leaving publicly funded institutions or systems of care (such as health care facilities, foster care or other youth facilities, or correction programs and institutions) in order to prevent such discharge from immediately resulting in homelessness for such persons. Such actions and coordination will contribute to the Department's priority of ending chronic homelessness.

#### **IV. Program Funding Eligibility:**

While CDBG funds are a flexible resource that may be used to assist a wide range of activities that may help address the needs of homeless persons as they move through the Continuum of Care, it may also serve as a primary tool in developing or supporting the development of permanent housing, as well as emergency shelter and transitional housing.

Two of the most common ways of using CDBG funds to support the development of permanent affordable housing is to use CDBG to acquire property on which permanent housing will be built using other resources, or to fund the installation or reconstruction of public improvements that will serve the affordable housing to be constructed.

It is important to note that new housing construction is not, itself, an eligible activity under the CDBG program, but if a grantee has an entity within its jurisdiction that qualifies as a community based development organization (CBDO) and the CBDO is capable of serving as a housing developer, the CBDO may be provided CDBG funds for new construction undertaken as part of a neighborhood revitalization project.

Housing rehabilitation is also eligible under the CDBG program and may include the conversion of an existing, non-residential building into residential units.

The House of Refuge East (HRE) is an 88 unit transitional housing facility on a portion of the closed Williams Field Air Force Base in Mesa, Arizona. Homeless families now reside in housing units formerly occupied by Air Force personnel and their families. HRE is a non-profit organization dedicated to organizing, developing and operating programs to assist homeless and displaced persons and has been in operation for seven years. They have received Supportive Housing Program funds for providing operating and support services to residents for several years. The city of Mesa has also used CDBG funds for street improvements at HRE, and more recently has approved the use of CDBG funds to match a McKinney-Vento Act grant to replace roofs in approximately half of the units.

CDBG may also be used to assist with the development of emergency shelters and transitional housing. Although transitional housing does have a residential purpose and

residents generally reside in these units for up to two years, transitional housing is not considered to be permanent housing under the CDBG program. Therefore, as long as it is owned by the grantee or a non-profit entity, it is considered to be eligible as a public facility. This is an important distinction since CDBG funds may be used to assist in the new construction of public facilities. (It is important to note that while CDBG funds may be used to construct public facilities, CDBG funds may not be used to pay for the repair, operation or maintenance of such facilities, with the exception that operating and maintenance expenses associated with a public service are eligible as part of the public service.)

Examples of using CDBG funds to assist in providing shelter, whether emergency, transitional, or permanent, include but are not limited to the following:

- Rehabilitation of a vacant building to be used as a group home to serve the chronically homeless
- Acquisition of a building by a grantee and disposition of the property by donation to a nonprofit entity which will own the property and develop permanent rental units
- Acquisition of property and construction or rehabilitation of a building on the property to be used as a homeless shelter or transitional housing
- Clearance of a site on which an emergency shelter will be constructed
- Moving a house to another site where it will be used for transitional or permanent housing
- Homeownership assistance through payment of closing costs, payment of 50% of the downpayment costs, providing an interest rate write-down and /or a "soft-second" mortgage to ensure affordability, as well as counseling provided as part of the homeownership program, to prepare persons for the on-going responsibilities of homeownership
- Acquisition and rehabilitation of an apartment building for use as permanent affordable housing for the homeless
- Extension of water and sewer lines to a new group home
- Conversion of an abandoned public school to a facility providing both shelter and services to the homeless
- Local matching share under another Federal program for CDBG-eligible activities that assist the homeless, e.g., HUD's Shelter Plus Care Program

<p>Crossroads in Sandusky, Ohio, is a multi-funded facility that provides shelter and services, including a child nutrition program, for homeless individuals and families. Operated by the Volunteers of America Northwest Ohio, Inc., CDBG funding provided through Erie County is just one</p>
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of several funding sources used for the operation of Crossroads, which offers a 16 bed emergency shelter (assisted with Emergency Shelter Grant funds) for homeless individuals, a 48 bed transitional housing (assisted with Supportive Housing Program funds) for individuals and families, and an 8 bed veterans program that provides transitional housing.

Homelessness is not caused merely by a lack of shelter, but involves a variety of underlying, unmet needs – physical, economic, and social. CDBG funds may be used to provide a wide range of public service activities to assist persons who are homeless or to help prevent homelessness. (To be eligible, a public service must be either a new service or a quantifiable increase in an existing service, above that which has been provided by state or local funds in the 12 calendar months prior to submission of the action plan.) Public services include but are not limited to:

- Payment of the costs of operating a homeless shelter, including costs related to implementing and operating the Homeless Management Information System (HMIS) for the shelter
- Drug abuse counseling and treatment
- Child care for homeless persons seeking employment
- Providing health care by paying for salaries or equipment at a clinic
- Job training and education programs
- Fair housing counseling
- Emergency payment of rent and utilities (paid directly to the landlord and utility provider over a limited period of time)
- Operation of a food bank or soup kitchen
- Providing supportive services, on-site, at supportive housing residences

Casa Maria is a transitional housing facility in the City of Pasadena (CA) that provides services to homeless women who have a history of chronic substance abuse. Casa Maria, which is an active partner in the city's Continuum of Care, can accommodate up to 12 women (and 4 children) and provides support services to its residents, including health care, case management, life skills development, substance abuse counseling, parenting classes, etc. Residents of the facility are allowed to stay up to two years or 24 months. Casa Maria has received funding awards under the CDBG program and was awarded McKinney-Vento Act funding. The agency was



successful in the City's competitive Request for Proposal (RFP) Process and received CDBG funds for two projects: for an electrical upgrade to the facility and for health care services (Family Prevention/ Intervention Project).

**V. Additional Resources**

The CDBG Guide to National Objectives and Eligible Activities for Entitlement Communities (also referred to as the CDBG Desk Guide) and the CDBG Guide to National Objectives and Eligible Activities for State CDBG programs are available on the Internet at:

[www.hud.gov/offices/cpd/library/index.cfm](http://www.hud.gov/offices/cpd/library/index.cfm)

The CDBG regulations are available for both the Entitlement and State programs by clicking on the appropriate heading on the following website:



[www.hud.gov/offices/cpd/communitydevelopment/programs/index.cfm](http://www.hud.gov/offices/cpd/communitydevelopment/programs/index.cfm)



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410

**JAN 11 2008**

MEMORANDUM FOR: Community Planning and Development Field Directors  
Fair Housing and Equal Opportunity Regional Directors  
Community Development Block Grant and State Recipients  
Fair Housing Initiatives Program Recipients  
Fair Housing Assistance Program Recipients

FROM:   
Kim Kendrick, Assistant Secretary for Fair Housing and  
Equal Opportunity, E  
  
Nelson Bregon, General Deputy Assistant Secretary for  
Community Planning and Development, D

SUBJECT: Fair Housing Agencies eligible for Community Development  
Block Grant (CDBG) and other HUD Program funding.

PURPOSE:

The purpose of this guidance is to clarify the definitions of fair housing organizations. When awarding funds in support of the entitlement communities' certifications to "Affirmatively Further Fair Housing," CDBG recipients are encouraged to ensure that recipients receiving the funds meet one of the definitions of a fair housing organization.

BACKGROUND:

Title VIII of the Civil Rights Act of 1968, as amended (the Fair Housing Act), prohibits discrimination in all housing-related activities on the basis of race, color, religion, sex, national origin, familial status (number and age of children) and disability ("handicap"). Section 808(e)(5) of the Fair Housing Act also requires the Secretary of HUD to administer the Department's housing and community development programs in a manner to affirmatively further fair housing (AFFH). CDBG recipients are also required by Section 104(b)(2) of the Housing and Community Development Act of 1974, as amended, and Section 105(b)(3) of the National Affordable Housing Act (NAHA) of 1990 to certify that they will AFFH.

The Consolidated Plan regulations at 24 CFR 91.225 and 91.325 and the AFFH certification require the grantee to engage in fair housing planning by conducting an analysis to identify impediments to fair housing choice within its jurisdiction, take appropriate actions to overcome the effects of identified impediments, and maintain records to document the analysis and the actions taken. The regulation at 24 CFR 570.205(a)(vii) makes eligible, as a planning

activity, developing an analysis of impediments to fair housing choice, while the use of CDBG to provide fair housing services may be eligible as a program administration cost in accordance with 24 CFR 570.206 or as a public service in accordance with 24 CFR 570.201(e). Eligible fair housing costs designed to AFFH are detailed in 24 CFR 570.206(c) and include making all persons aware of the range of housing options available, enforcement, education, outreach, avoiding undue concentrations of assisted persons in areas with many low- and moderate-income persons, and other appropriate activities, including testing. States may use the entitlement regulations referenced above for interpretive guidance.

#### DEFINITIONS OF FAIR HOUSING ORGANIZATIONS:

On February 9, 2007, the Offices of Community Planning and Development (CPD) and Fair Housing and Equal Opportunity issued a joint memorandum that encouraged CDBG recipients to fund activities in support of their certifications to Affirmatively Further Fair Housing. The agencies could be HUD-approved Fair Housing Assistance Programs (FHAP) or Fair Housing Initiatives Programs (FHIP). This earlier memorandum failed to define the fair housing organizations that are eligible to receive funding under the FHIP program. This memorandum provides the regulatory definition.

Regulations at 24 CFR 125.103 define two kinds of fair housing organizations:

- Qualified Fair Housing Enforcement Organization (QFHO) -- an organization, engaged in fair housing enforcement activities, whether or not enforcement is its sole activity, that: (1) Is organized as a private, tax-exempt, nonprofit, charitable organization; (2) Has at least 2 years experience in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims; and (3) Is currently engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims.
- Fair Housing Enforcement Organization (FHO) -- an organization, engaged in fair housing enforcement activities, whether or not enforcement is its sole activity, that: (1) Is organized as a private, tax-exempt, nonprofit, charitable organization; (2) Is currently engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims; and (3) Upon the receipt of FHIP funds will continue to be engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims.

To ensure the quality of fair housing activities and services provided to the jurisdictions and to support their certifications to AFFH, CDBG recipients are encouraged to consider QFHO's and FHO's when awarding funds. CDBG recipients are also encouraged to market the announcements of the availability of funds for fair housing planning and other activities to QFHOs and FHOs.

**CONTACTS:**

CDBG grantees having questions about this guidance should contact the CPD Division in their respective HUD Field Office (see attached list). HUD staff should contact Richard Kennedy, Director, Office of Block Grant Assistance or Pamela Walsh, Director, Office of Policy, Legislative Initiatives and Outreach. Mr. Kennedy's telephone number is 202-402-4542, and Ms. Walsh's telephone number is 202-402-7017.



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
WASHINGTON, DC 20410

FEB - 9 2007

MEMORANDUM FOR: Community Planning and Development Field Directors  
Fair Housing and Equal Opportunity Regional Directors  
Community Development Block Grant and State Recipients  
Fair Housing Initiatives Program Recipients  
Fair Housing Assistance Program Recipients

FROM: *Pamela H. Patenaude*  
Pamela H. Patenaude, Assistant Secretary for Community Planning  
and Development, D  
*Kim Kendrick*  
Kim Kendrick, Assistant Secretary for Fair Housing and  
Equal Opportunity, E

SUBJECT: Affirmatively Furthering Fair Housing in the Community  
Development Block Grant Program

PURPOSE:

The purpose of this guidance is to clarify the use of Community Development Block Grant (CDBG) funds in supporting fair housing activities to assist CDBG recipients in meeting their certifications to affirmatively further fair housing (AFFH).

BACKGROUND:

Title VIII of the Civil Rights Act of 1968, as amended (the Fair Housing Act), prohibits discrimination in all housing-related activities on the basis of race, color, religion, sex, national origin, familial status (number and age of children) and disability ("handicap"). Section 808(e)(5) of the Fair Housing Act also requires the Secretary of HUD to administer the Department's housing and community development programs in a manner to affirmatively further fair housing (AFFH). CDBG grantees (metropolitan cities, urban counties, States, insular areas, and non-entitled grantees in Hawaii) are also required by Section 104(b)(2) of the Housing and Community Development Act of 1974, as amended, and Section 105(b)(3) of the National Affordable Housing Act (NAHA) of 1990 to certify that they will AFFH. Actions to AFFH should further policies of the Fair Housing Act by actively promoting wider housing opportunities for all persons while maintaining a nondiscriminatory environment in all aspects of public and private housing markets.

## AFFIRMATIVELY FURTHERING FAIR HOUSING GUIDELINES:

The Consolidated Plan regulations at 24 CFR 91.225 and 91.325 establish the AFFH requirements of the Fair Housing Act that apply to the CDBG program. They specify that the AFFH certification requires the grantee to engage in fair housing planning by conducting an analysis to identify impediments to fair housing choice within its jurisdiction, taking appropriate actions to overcome the effects of identified impediments, and maintaining records to document the analysis and the actions taken.

Sections 105(a)(8) and (13) of the Housing and Community Development Act of 1974, as amended, authorize the use of CDBG funds for public services and for planning and program administration costs. The entitlement regulation at 24 CFR 570.205(a)(vii) makes eligible, as a planning activity, developing an analysis of impediments to fair housing choice, while the use of CDBG to provide fair housing services may be eligible as a program administration cost in accordance with 24 CFR 570.206 or as a public service in accordance with 24 CFR 570.201(e). Eligible public services include the use of CDBG funds for activities such as fair housing counseling. Eligible fair housing costs designed to AFFH are detailed in 24 CFR 570.206(c) and include making all persons aware of the range of housing options available, enforcement, education, outreach, avoiding undue concentrations of assisted persons in areas with many low- and moderate-income persons, and other appropriate activities, including testing, selected by the grantee to AFFH. States may use the entitlement regulations referenced above for interpretive guidance.

One major method for achieving these purposes is funding of local fair housing agencies, which includes agencies in both the Fair Housing Initiative Program (FHIP) and Fair Housing Assistance Program (FHAP). Between these programs, these agencies can:

- Undertake fair housing enforcement, *i.e.*, complaint processing;
- Draft amendments to State and local fair housing laws in order to make them substantially equivalent to the federal Fair Housing Law;
- Conduct the Analysis of Impediments to Fair Housing Choice (AI);
- Provide fair housing education and outreach;
- Provide translation and interpretation services for persons who are limited English proficient; and/or
- Assist in the development of accessible housing for persons with disabilities

## RECORDKEEPING:

In accordance with 24 CFR 570.490 and 570.506(g), as applicable, grantees should establish a record-keeping system for their AFFH activities. This would include, among other items: copies of local fair housing laws and ordinances; the full history of the development of its AI; options available for overcoming impediments; local businesses, agencies, and resident-groups involved in the consultative process; planned actions and those taken; issues that arose when the actions were planned and conducted; and any other information about the community's fair housing planning process.

**CONTACTS:**

CDBG grantees having questions about this guidance should contact the CPD Division in their respective HUD Field Office (see attached list). HUD staff should contact Richard Kennedy, Director, Office of Block Grant Assistance, or Pamela Walsh, Acting Director, Office of Policy, Legislative Initiatives and Outreach. Mr. Kennedy's telephone number is 202-402-4542, and Ms. Walsh's telephone number is 202-402-7017.


Attachment



Georgia™  
Department of  
Community Affairs

MEMORANDUM

To: Mayor, County Commission Chairs, RDC Executive Directors, Other Interested Parties

From: Brian Williamson   
Assistant Commissioner

Date: February 27, 2008

Subject: Clarifications for the 2008 CDBG/CHIP Annual Competition; Increased Project Delivery Fees; 2008 Income Limits; Ineligible Procurement Practices

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**Clarifications for the 2008 CDBG/CHIP Annual Competition**

**Strengthening the Strategy Component of FY 2008 CDBG Applications.** The *FY 2008 Applicants' Manual* (page 34) lists the following under Program Strategy:

...3) an analysis of the ongoing financial effort that the applicant has made or will make to address the identified problem and to maintain and operate the proposed project, facility or system...

In addressing the item above, in the past most CDBG applicants have focused on discussing the financial arrangements for maintenance of planned infrastructure systems. **Please note that more competitive applications should also address the local government's financial condition. To ensure your application remains as competitive as possible, applicants are encouraged to include narrative that explains and documents the local government's inability to finance the proposed project through traditional public or private financing sources.** For example, a proposed activity for replacement of failing water lines could document that the local water rate structure is appropriate and that increasing rates to afford traditional financing would cause a hardship on the local residents. As an example, the U.S. EPA considers utility rates that exceed 1% of median household income as an affordability concern. See <http://www.efc.unc.edu/RatesDashboards/ga.htm> for additional information and explanation. Additional documentation can include turn downs from other lenders, financial statements, and community demographic information. While the discussion of financial effort will most often be applicable to utilities, applicants should discuss financial effort for other types of projects as well.





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**NPDES Permit Costs and the 12 Percent Limitation on Engineering Fees.** National Pollutant Discharge Elimination System (NPDES) monitoring is required for many CDBG infrastructure projects (most often for erosion and sedimentation control). The costs of monitoring NPDES requirements should be reflected as a line item cost on the preliminary engineering report submitted with the CDBG application. DCA limits the amount of CDBG dollars budgeted for engineering (design and non-NPDES inspection) to 12 percent of the CDBG construction cost (excluding construction contingencies). When making the CDBG engineering budget calculation for the 2008 Annual Competition, applicants *may* include the CDBG cost of NPDES monitoring with the CDBG cost of construction for the purpose of calculating the maximum allowable engineering that CDBG will pay. Of course, applicants may choose to pay for engineering, NPDES monitoring, or a portion of construction costs themselves and count those costs toward an increased leverage or match. DCA reserves the right to reduce NPDES line items should these monitoring costs appear excessive.

Currently grantees, once funded, may include NPDES monitoring in either the construction contract or the engineering contract. DCA is reviewing this matter in order to decide whether to establish a uniform policy regarding the appropriate placement of these costs in CDBG-related contracts. Please keep in mind that most NPDES monitoring for erosion and sedimentation control does not have to be monitored by a professional engineering firm. See Department of Natural Resources regulations at the following link for further information on the types of firms that may design and monitor under NPDES permits:

[http://www.georgiaepd.org/Files/PDF/techguide/wpb/cnstrct\\_swp\\_infrastructure.pdf](http://www.georgiaepd.org/Files/PDF/techguide/wpb/cnstrct_swp_infrastructure.pdf)

Whether in the engineering contract or in the construction contract, local governments should look for opportunities for competitive pricing for NPDES monitoring costs without compromising the quality of the required monitoring. Also, see the section below on *Ineligible Procurement Practices* for further information regarding these matters.

**Clarification on Requirements to Use CDBG Funds in Revitalization Areas.** As the *Applicants' Manual* (2008 edition) makes clear, recipients must "sit out" at least one year before applying for funding again **unless** a recipient falls into one or more of the categories outlined in the *Manual*. (See Part I, Page 15.) One of these categories is DCA's Revitalization Area Strategy (RAS) designation. For RAS, the requirement to "sit out" a year is lifted when the recipient proposes a project in an RAS area. This does not mean that recipients with RAS designations must always apply for projects in their RAS areas. It does mean, however, that recipients with RAS designations must "sit out" a year before being able to apply for funding **outside** their RAS areas.

**Housing Project Delivery Costs (PDCs)**

PDCs have not been adjusted since May 2001. Due to the length of time since the last change in PDCs and the growth in administrative costs and requirements for housing projects, PDCs are being raised for both the CDBG and CHIP programs as follows:

**PDC Increases for CDBG and CHIP**

Unit Type	Activity	Maximum PDC
Stick Built (including Modular)	Rehabilitation/Reconstruction	\$2,500 (formerly \$2,000)
Stick Built (including Modular)	Down Payment and Second Mortgage Assistance	\$1,500 (formerly \$1,000)
No change in PDCs for Manufactured Housing Units		

**PDC Increases for CHIP Set-Aside**

Unit Type	Activity	Maximum PDC
Stick Built (including Modular)	Rehabilitation/Reconstruction	\$3,500 (formerly \$3,000)
Stick Built (including Modular)	Down Payment and Second Mortgage Assistance	\$2,500 (formerly \$2,000)
No change in PDCs for Manufactured Housing Units		

These increased PDCs are effective immediately for all existing CDBG/CHIP housing awards and for projects being developed for the 2008 Annual Competition housing awards. Please make the appropriate budget adjustments on DCA-1, DCA-7, and DCA-8 when preparing your 2008 Annual Competition application. Keep in mind that the PDCs listed are maximum amounts. Maximum amounts may only be charged to the applicable grant when actual costs equal or exceed the maximum PDCs available. Documentation in the form of detailed invoices must be submitted to the local government recipient in order to receive PDCs.

**2008 Income Limits**

HUD has released the 2008 Low- to Moderate-Income Limits. These new limits should be used for any CDBG surveys that have not already been started. For surveys that are already underway or that have been completed, applicants may utilize the 2007 Income Limits. A copy of the new income limits may be found at:  
[http://www.huduser.org/Datasets/IL/IL08/ga\\_fy2008.pdf](http://www.huduser.org/Datasets/IL/IL08/ga_fy2008.pdf).

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### Ineligible Procurement Practices

DCA has recently become aware of ineligible procurement practices by some CDBG grantees. DCA has reviewed contract construction documents that require the general contractor to use the services of the consulting engineer for inspection services required under the NPDES permit and that specify a price for that inspection work, effectively allowing the engineer to select himself or herself for the inspection work and to set the price for that work. This is contrary to the principle of promoting fair and open competition. (See the *Recipients' Manual* (2007 edition) for further information.) **When the NPDES inspection work is included in the construction contract, the general contractor must be allowed to bid this line item without restrictions on price or inspection firm unless otherwise required by regulation. Keep in mind that ineligible procurement practices are subject to sanctions including repayment to DCA of disallowed costs.**

For questions concerning this Memorandum, please contact Steed Robinson at (404) 679-2168.

Thank you.

BW/sr

# Section 3

## What is Section 3?

Section 3 is a provision of the Housing and Urban Development (HUD) Act of 1968 that helps foster local economic development, neighborhood economic improvement, and individual self-sufficiency. The Section 3 program requires that recipients of certain HUD financial assistance, to the greatest extent feasible, provide job training, employment, and contracting opportunities for low- or very-low income residents in connection with projects and activities in their neighborhoods.

## How does Section 3 promote self- sufficiency?

Section 3 is a starting point to obtain job training, employment and contracting opportunities. From this integral foundation coupled with other resources comes the opportunity for economic advancement and self-sufficiency.

- Federal, state and local programs
- Advocacy groups
- Community and faith-based organizations

## How does Section 3 promote homeownership?

Section 3 is a starting point to homeownership. Once a Section 3 resident has obtained employment or contracting opportunities they have begun the first step to self-sufficiency.

Remember, "It doesn't have to be fields of dreams". Homeownership is achievable. For more information visit our HUD [website](#).

## Who are Section 3 residents?

Section 3 residents are:

- Public housing residents or
- Persons who live in the area where a HUD-assisted project is located and who have a household income that falls below [HUD's income limits](#).

## Determining Income Levels

- Low income is defined as 80% or below the median income of that area.
- Very low income is defined as 50% or below the median income of that area.

## What is a Section 3 business concern?

A business that:

- Is 51 percent or more owned by Section 3 residents;
- Employs Section 3 residents for at least 30 percent of its full-time, permanent staff; or

- Provides evidence of a commitment to subcontract to Section 3 business concerns, 25 percent or more of the dollar amount of the awarded contract.

### **What programs are covered?**

Section 3 applies to HUD-funded Public and Indian Housing assistance for development, operating, and modernization expenditures.

Section 3 also applies to certain HUD-funded Housing and Community Development projects that complete housing rehabilitation, housing construction, and other public construction.

### **What types of economic opportunities are available under Section 3?**

- Job training
- Employment
- Contracts

Any employment resulting from these expenditures, including administration, management, clerical support, and construction, is subject to compliance with Section 3.

*Examples of Opportunities include:*

- |                        |                         |                       |
|------------------------|-------------------------|-----------------------|
| • Accounting           | • Electrical            | • Marketing           |
| • Architecture         | • Elevator Construction | • Painting            |
| • Appliance repair     | • Engineering           | • Payroll Photography |
| • Bookkeeping          | • Fencing               | • Plastering          |
| • Bricklaying          | • Florists              | • Plumbing            |
| • Carpentry            | • Heating               | • Printing Purchasing |
| • Carpet Installation  | • Iron Works            | • Research            |
| • Catering             | • Janitorial            | • Surveying           |
| • Cement/Masonry       | • Landscaping           | • Tile setting        |
| • Computer/Information | • Machine Operation     | • Transportation      |
| • Demolition           | • Manufacturing         | • Word processing     |
| • Drywall              |                         |                       |

### **Who will award the economic opportunities?**

Recipients of HUD financial assistance will award the economic opportunities. They and their contractors and subcontractors are required to provide, to the greatest extent feasible, economic opportunities consistent with existing Federal, State, and local laws and regulations.

### **Who receives priority under Section 3?**

For training and employment:

- Persons in public and assisted housing
- Persons in the area where the HUD financial assistance is spent
- Participants in HUD Youthbuild programs
- Homeless persons

### **For contracting:**

- Businesses that meet the definition of a Section 3 business concern

### **How can businesses find Section 3 residents to work for them?**

Businesses can recruit Section 3 residents in public housing developments and in the neighborhoods where the HUD assistance is being spent. Effective ways of informing residents about available training and job opportunities are:

- Contacting resident organizations, local community development and employment agencies
- Distributing flyers
- Posting signs
- Placing ads in local newspapers

### **Are recipients, contractors, and subcontractors required to provide long-term employment opportunities, not simply seasonal or temporary employment?**

Recipients are required, to the greatest extent feasible, to provide all types of employment opportunities to low and very low-income persons, including permanent employment and long-term jobs.

Recipients and contractors are encouraged to have Section 3 residents make up at least 30 percent of their permanent, full-time staff.

A Section 3 resident who has been employed for 3 years may no longer be counted towards meeting the 30 percent requirement. This encourages recipients to continue hiring Section 3 residents when employment opportunities are available.

### **What if it appears an entity is not complying with Section 3?**

There is a complaint process. Section 3 residents, businesses, or a representative for either may file a complaint if it seems a recipient is violating Section 3 requirements are being on a HUD-funded project.

### **Will HUD require compliance?**

Yes. HUD monitors the performance of contractors, reviews annual reports from recipients, and investigates complaints. HUD also examines employment and

contract records for evidence that recipients are training and employing Section 3 residents and awarding contracts to Section 3 businesses.

**How can Section 3 residents or Section 3 business concerns allege Section 3 violations?**

You can file a written complaint with your [local HUD Field Office](#).

A written complaint should contain:

- Name and address of the person filing the complaint
- Name and address of subject of complaint (HUD recipient, contractor or subcontractor)
- Description of acts or omissions in alleged violation of Section 3
- Statement of corrective action sought i.e. training, employment or contracts

## § 135.1

APPENDIX TO PART 135

AUTHORITY: 12 U.S.C. 1701u; 42 U.S.C. 3535(d).

SOURCE: 59 FR 33880, June 30, 1994, unless otherwise noted.

EFFECTIVE DATE NOTE: At 59 FR 33880, June 30, 1994, part 135 was revised effective August 1, 1994 through June 30, 1995. At 60 FR 28325, May 31, 1995, the effective period was extended until the final rule implementing changes made to section 3 of the Housing and Urban Development Act of 1968 by the Housing and Community Development Act of 1992 is published and becomes effective.

### Subpart A—General Provisions

#### § 135.1 Purpose.

(a) *Section 3.* The purpose of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (section 3) is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low- and very low-income persons.

(b) *Part 135.* The purpose of this part is to establish the standards and procedures to be followed to ensure that the objectives of section 3 are met.

#### § 135.2 Effective date of regulation.

The regulations of this part will remain in effect until the date the final rule adopting the regulations of this part with or without changes is published and becomes effective, at which point the final rule will remain in effect.

[60 FR 28326, May 31, 1995]

#### § 135.3 Applicability.

(a) *Section 3 covered assistance.* Section 3 applies to the following HUD assistance (section 3 covered assistance):

(1) *Public and Indian housing assistance.* Section 3 applies to training, employment, contracting and other economic opportunities arising from the

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expenditure of the following public and Indian housing assistance:

(i) Development assistance provided pursuant to section 5 of the U.S. Housing Act of 1937 (1937 Act);

(ii) Operating assistance provided pursuant to section 9 of the 1937 Act; and

(iii) Modernization assistance provided pursuant to section 14 of the 1937 Act;

(2) *Housing and community development assistance.* Section 3 applies to training, employment, contracting and other economic opportunities arising in connection with the expenditure of housing assistance (including section 8 assistance, and including other housing assistance not administered by the Assistant Secretary of Housing) and community development assistance that is used for the following projects:

(i) Housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair and replacement);

(ii) Housing construction; and

(iii) Other public construction.

(3) *Thresholds—(i) No thresholds for section 3 covered public and Indian housing assistance.* The requirements of this part apply to section 3 covered assistance provided to recipients, notwithstanding the amount of the assistance provided to the recipient. The requirements of this part apply to all contractors and subcontractors performing work in connection with projects and activities funded by public and Indian housing assistance covered by section 3, regardless of the amount of the contract or subcontract.

(ii) *Thresholds for section 3 covered housing and community development assistance—(A) Recipient thresholds.* The requirements of this part apply to recipients of other housing and community development program assistance for a section 3 covered project(s) for which the amount of the assistance exceeds \$200,000.

(B) *Contractor and subcontractor thresholds.* The requirements of this part apply to contractors and subcontractors performing work on section 3 covered project(s) for which the amount of the assistance exceeds \$200,000; and the contract or subcontract exceeds \$100,000.



(C) *Threshold met for recipients, but not contractors or subcontractors.* If a recipient receives section 3 covered housing or community development assistance in excess of \$200,000, but no contract exceeds \$100,000, the section 3 preference requirements only apply to the recipient.

(b) *Applicability of section 3 to entire project or activity funded with section 3 assistance.* The requirements of this part apply to the entire project or activity that is funded with section 3 covered assistance, regardless of whether the section 3 activity is fully or partially funded with section 3 covered assistance.

(c) *Applicability to Indian housing authorities and Indian tribes.* Indian housing authorities and tribes that receive HUD assistance described in paragraph (a) of this section shall comply with the procedures and requirements of this part to the maximum extent consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). (See 24 CFR part 905.)

(d) *Other HUD assistance and other Federal assistance.* Recipients, contractors and subcontractors that receive HUD assistance, not listed in paragraph (a) of this section, or other Federal assistance, are encouraged to provide, to the greatest extent feasible, training, employment, and contracting opportunities generated by the expenditure of this assistance to low- and very low-income persons, and business concerns owned by low- and very low-income persons, or which employ low- and very low-income persons.

#### § 135.5 Definitions.

The terms *Department*, *HUD*, *Indian housing authority (IHA)*, *Public housing agency (PHA)*, and *Secretary* are defined in 24 CFR part 5.

*Annual Contributions Contract (ACC)* means the contract under the U.S. Housing Act of 1937 (1937 Act) between HUD and the PHA, or between HUD and the IHA, that contains the terms and conditions under which HUD assists the PHA or the IHA in providing decent, safe, and sanitary housing for low income families. The ACC must be in a form prescribed by HUD under

which HUD agrees to provide assistance in the development, modernization and/or operation of a low income housing project under the 1937 Act, and the PHA or IHA agrees to develop, modernize and operate the project in compliance with all provisions of the ACC and the 1937 Act, and all HUD regulations and implementing requirements and procedures. (The ACC is not a form of procurement contract.)

*Applicant* means any entity which makes an application for section 3 covered assistance, and includes, but is not limited to, any State, unit of local government, public housing agency, Indian housing authority, Indian tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, community housing development organization (CHDO), resident management corporation, resident council, or cooperative association.

*Assistant Secretary* means the Assistant Secretary for Fair Housing and Equal Opportunity.

*Business concern* means a business entity formed in accordance with State law, and which is licensed under State, county or municipal law to engage in the type of business activity for which it was formed.

*Business concern that provides economic opportunities for low- and very low-income persons.* See definition of "section 3 business concern" in this section.

*Contract.* See the definition of "section 3 covered contract" in this section.

*Contractor* means any entity which contracts to perform work generated by the expenditure of section 3 covered assistance, or for work in connection with a section 3 covered project.

*Employment opportunities generated by section 3 covered assistance* means all employment opportunities generated by the expenditure of section 3 covered public and Indian housing assistance (i.e., operating assistance, development assistance and modernization assistance, as described in §135.3(a)(1)). With respect to section 3 covered housing and community development assistance, this term means all employment opportunities arising in connection

## § 135.5

with section 3 covered projects (as described in §135.3(a)(2)), including management and administrative jobs connected with the section 3 covered project. Management and administrative jobs include architectural, engineering or related professional services required to prepare plans, drawings, specifications, or work write-ups; and jobs directly related to administrative support of these activities, e.g., construction manager, relocation specialist, payroll clerk, etc.

*Housing authority (HA)* means, collectively, public housing agency and Indian housing authority.

*Housing and community development assistance* means any financial assistance provided or otherwise made available through a HUD housing or community development program through any grant, loan, loan guarantee, cooperative agreement, or contract, and includes community development funds in the form of community development block grants, and loans guaranteed under section 108 of the Housing and Community Development Act of 1974, as amended. Housing and community development assistance does not include financial assistance provided through a contract of insurance or guaranty.

*Housing development* means low-income housing owned, developed, or operated by public housing agencies or Indian housing authorities in accordance with HUD's public and Indian housing program regulations codified in 24 CFR Chapter IX.

*HUD Youthbuild programs* mean programs that receive assistance under subtitle D of Title IV of the National Affordable Housing Act, as amended by the Housing and Community Development Act of 1992 (42 U.S.C. 12899), and provide disadvantaged youth with opportunities for employment, education, leadership development, and training in the construction or rehabilitation of housing for homeless individuals and members of low- and very low-income families.

*Indian tribes* shall have the meaning given this term in 24 CFR part 571.

*JTPA* means the Job Training Partnership Act (29 U.S.C. 1579(a)).

*Low-income person.* See the definition of "section 3 resident" in this section.

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*Metropolitan area* means a metropolitan statistical area (MSA), as established by the Office of Management and Budget.

*Neighborhood area* means:

(1) For HUD housing programs, a geographical location within the jurisdiction of a unit of general local government (but not the entire jurisdiction) designated in ordinances, or other local documents as a neighborhood, village, or similar geographical designation.

(2) For HUD community development programs, see the definition, if provided, in the regulations for the applicable community development program, or the definition for this term in 24 CFR 570.204(c)(1).

*New hires* mean full-time employees for permanent, temporary or seasonal employment opportunities.

*Nonmetropolitan county* means any county outside of a metropolitan area.

*Other HUD programs* means HUD programs, other than HUD public and Indian housing programs, that provide housing and community development assistance for "section 3 covered projects," as defined in this section.

*Public housing resident* has the meaning given this term in 24 CFR part 963.

*Recipient* means any entity which receives section 3 covered assistance, directly from HUD or from another recipient and includes, but is not limited to, any State, unit of local government, PHA, IHA, Indian tribe, or other public body, public or private nonprofit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, community housing development organization, resident management corporation, resident council, or cooperative association. Recipient also includes any successor, assignee or transferee of any such entity, but does not include any ultimate beneficiary under the HUD program to which section 3 applies and does not include contractors.

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

*Section 3 business concern* means a business concern, as defined in this section—

(1) That is 51 percent or more owned by section 3 residents; or

(2) Whose permanent, full-time employees include persons, at least 30 percent of whom are currently section 3 residents, or within three years of the date of first employment with the business concern were section 3 residents; or

(3) That provides evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that meet the qualifications set forth in paragraphs (1) or (2) in this definition of "section 3 business concern."

*Section 3 clause* means the contract provisions set forth in § 135.38.

*Section 3 covered activity* means any activity which is funded by section 3 covered assistance public and Indian housing assistance.

*Section 3 covered assistance* means: (1) Public and Indian housing development assistance provided pursuant to section 5 of the 1937 Act;

(2) Public and Indian housing operating assistance provided pursuant to section 9 of the 1937 Act;

(3) Public and Indian housing modernization assistance provided pursuant to section 14 of the 1937 Act;

(4) Assistance provided under any HUD housing or community development program that is expended for work arising in connection with:

(i) Housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair and replacement);

(ii) Housing construction; or

(iii) Other public construction project (which includes other buildings or improvements, regardless of ownership).

*Section 3 covered contract* means a contract or subcontract (including a professional service contract) awarded by a recipient or contractor for work generated by the expenditure of section 3 covered assistance, or for work arising in connection with a section 3 covered project. "Section 3 covered contracts" do not include contracts awarded under HUD's procurement program, which are governed by the Federal Acquisition Regulation System (see 48 CFR, Chapter 1). "Section 3 covered contracts" also do not include contracts for the purchase of supplies and

materials. However, whenever a contract for materials includes the installation of the materials, the contract constitutes a section 3 covered contract. For example, a contract for the purchase and installation of a furnace would be a section 3 covered contract because the contract is for work (i.e., the installation of the furnace) and thus is covered by section 3.

*Section 3 covered project* means the construction, reconstruction, conversion or rehabilitation of housing (including reduction and abatement of lead-based paint hazards), other public construction which includes buildings or improvements (regardless of ownership) assisted with housing or community development assistance.

*Section 3 joint venture.* See § 135.40. *Section 3 resident means:* (1) A public housing resident; or

(2) An individual who resides in the metropolitan area or nonmetropolitan county in which the section 3 covered assistance is expended, and who is:

(i) *A low-income person*, as this term is defined in section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)). Section 3(b)(2) of the 1937 Act defines this term to mean families (including single persons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low-income families; or

(ii) *A very low-income person*, as this term is defined in section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)). Section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)) defines this term to mean families (including single persons) whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that

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such variations are necessary because of unusually high or low family incomes.

(3) A person seeking the training and employment preference provided by section 3 bears the responsibility of providing evidence (if requested) that the person is eligible for the preference.

*Section 8 assistance* means assistance provided under section 8 of the 1937 Act (42 U.S.C. 1437f) pursuant to 24 CFR part 882, subpart G.

*Service area* means the geographical area in which the persons benefitting from the section 3 covered project reside. The service area shall not extend beyond the unit of general local government in which the section 3 covered assistance is expended. In HUD's Indian housing programs, the service area, for IHAs established by an Indian tribe as a result of the exercise of the tribe's sovereign power, is limited to the area of tribal jurisdiction.

*Subcontractor* means any entity (other than a person who is an employee of the contractor) which has a contract with a contractor to undertake a portion of the contractor's obligation for the performance of work generated by the expenditure of section 3 covered assistance, or arising in connection with a section 3 covered project.

*Very low-income person.* See the definition of "section 3 resident" in this section.

*Youthbuild programs.* See the definition of "HUD Youthbuild programs" in this section.

[59 FR 33880, June 30, 1994, as amended at 61 FR 5206, Feb. 9, 1996]

### § 135.7 Delegation of authority.

Except as may be otherwise provided in this part, the functions and responsibilities of the Secretary under section 3, and described in this part, are delegated to the Assistant Secretary for Fair Housing and Equal Opportunity. The Assistant Secretary is further authorized to redelegate functions and responsibilities to other employees of HUD; *provided however*, that the authority to issue rules and regulations under this part, which authority is delegated to the Assistant Secretary, may

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not be redelegated by the Assistant Secretary.

### § 135.9 Requirements applicable to HUD NOFAs for section 3 covered programs.

(a) *Certification of compliance with part 135.* All notices of funding availability (NOFAs) issued by HUD that announce the availability of funding covered by section 3 shall include a provision in the NOFA that notifies applicants that section 3 and the regulations in part 135 are applicable to funding awards made under the NOFA. Additionally the NOFA shall require as an application submission requirement (which may be specified in the NOFA or application kit) a certification by the applicant that the applicant will comply with the regulations in part 135. (For PHAs, this requirement will be met where a PHA Resolution in Support of the Application is submitted.) With respect to application evaluation, HUD will accept an applicant's certification unless there is evidence substantially challenging the certification.

(b) *Statement of purpose in NOFAs.* (1) For competitively awarded assistance in which the grants are for activities administered by an HA, and those activities are anticipated to generate significant training, employment or contracting opportunities, the NOFA must include a statement that one of the purposes of the assistance is to give to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, job training, employment, contracting and other economic opportunities to section 3 residents and section 3 business concerns.

(2) For competitively awarded assistance involving housing rehabilitation, construction or other public construction, where the amount awarded to the applicant may exceed \$200,000, the NOFA must include a statement that one of the purposes of the assistance is to give, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, job training, employment, contracting and other economic opportunities to section 3 residents and section 3 business concerns.

(c) *Section 3 as NOFA evaluation criteria.* Where not otherwise precluded by statute, in the evaluation of applications for the award of assistance, consideration shall be given to the extent to which an applicant has demonstrated that it will train and employ section 3 residents and contract with section 3 business concerns for economic opportunities generated in connection with the assisted project or activity. The evaluation criteria to be utilized, and the rating points to be assigned, will be specified in the NOFA.

**§ 135.11 Other laws governing training, employment, and contracting.**

Other laws and requirements that are applicable or may be applicable to the economic opportunities generated from the expenditure of section 3 covered assistance include, but are not necessarily limited to those listed in this section.

(a) *Procurement standards for States and local governments (24 CFR 85.36)*—(1) *General.* Nothing in this part 135 prescribes specific methods of procurement. However, neither section 3 nor the requirements of this part 135 supersede the general requirement of 24 CFR 85.36(c) that all procurement transactions be conducted in a competitive manner. Consistent with 24 CFR 85.36(c)(2), section 3 is a Federal statute that expressly encourages, to the maximum extent feasible, a geographic preference in the evaluation of bids or proposals.

(2) *Flexible Subsidy Program.* Multifamily project mortgagors in the Flexible Subsidy Program are not required to utilize the methods of procurement in 24 CFR 85.36(d), and are not permitted to utilize methods of procurement that would result in their award of a contract to a business concern that submits a bid higher than the lowest responsive bid. A multifamily project mortgagor, however, must ensure that, to the greatest extent feasible, the procurement practices it selects provide preference to section 3 business concerns.

(b) *Procurement standards for other recipients (OMB Circular No. A-110).* Nothing in this part prescribes specific methods of procurement for grants and other agreements with institutions of

higher education, hospitals, and other nonprofit organizations. Consistent with the requirements set forth in OMB Circular No. A-110, section 3 is a Federal statute that expressly encourages a geographic preference in the evaluation of bids or proposals.

(c) *Federal labor standards provisions.* Certain construction contracts are subject to compliance with the requirement to pay prevailing wages determined under Davis-Bacon Act (40 U.S.C. 276a—276a-7) and implementing U.S. Department of Labor regulations in 29 CFR part 5. Additionally, certain HUD-assisted rehabilitation and maintenance activities on public and Indian housing developments are subject to compliance with the requirement to pay prevailing wage rates, as determined or adopted by HUD, to laborers and mechanics employed in this work. Apprentices and trainees may be utilized on this work only to the extent permitted under either Department of Labor regulations at 29 CFR part 5 or for work subject to HUD-determined prevailing wage rates, HUD policies and guidelines. These requirements include adherence to the wage rates and ratios of apprentices or trainees to journeymen set out in “approved apprenticeship and training programs,” as described in paragraph (d) of this section.

(d) *Approved apprenticeship and trainee programs.* Certain apprenticeship and trainee programs have been approved by various Federal agencies. Approved apprenticeship and trainee programs include: an apprenticeship program approved by the Bureau of Apprenticeship and Training of the Department of Labor, or a State Apprenticeship Agency, or an on-the-job training program approved by the Bureau of Apprenticeship and Training, in accordance with the regulations at 29 CFR part 5; or a training program approved by HUD in accordance with HUD policies and guidelines, as applicable. Participation in an approved apprenticeship program does not, in and of itself, demonstrate compliance with the regulations of this part.

(e) *Compliance with Executive Order 11246.* Certain contractors covered by this part are subject to compliance with Executive Order 11246, as amended

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by Executive Order 12086, and the Department of Labor regulations issued pursuant thereto (41 CFR chapter 60) which provide that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of Federal or Federally assisted construction contracts.

### **Subpart B—Economic Opportunities for Section 3 Residents and Section 3 Business Concerns**

#### **§ 135.30 Numerical goals for meeting the greatest extent feasible requirement.**

(a) *General.* (1) Recipients and covered contractors may demonstrate compliance with the “greatest extent feasible” requirement of section 3 by meeting the numerical goals set forth in this section for providing training, employment, and contracting opportunities to section 3 residents and section 3 business concerns.

(2) The goals established in this section apply to the entire amount of section 3 covered assistance awarded to a recipient in any Federal Fiscal Year (FY), commencing with the first FY following the effective date of this rule.

(3) For recipients that do not engage in training, or hiring, but award contracts to contractors that will engage in training, hiring, and subcontracting, recipients must ensure that, to the greatest extent feasible, contractors will provide training, employment, and contracting opportunities to section 3 residents and section 3 business concerns.

(4) The numerical goals established in this section represent minimum numerical targets.

(b) *Training and employment.* The numerical goals set forth in paragraph (b) of this section apply to new hires. The numerical goals reflect the aggregate hires. Efforts to employ section 3 residents, to the greatest extent feasible, should be made at all job levels.

(1) *Numerical goals for section 3 covered public and Indian housing programs.* Recipients of section 3 covered public and Indian housing assistance (as described in §135.5) and their contractors and

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subcontractors may demonstrate compliance with this part by committing to employ section 3 residents as:

(i) 10 percent of the aggregate number of new hires for the one year period beginning in FY 1995;

(ii) 20 percent of the aggregate number of new hires for the one period beginning in FY 1996;

(iii) 30 percent of the aggregate number of new hires for one year period beginning in FY 1997 and continuing thereafter.

(2) *Numerical goals for other HUD programs covered by section 3.* (i) Recipients of section 3 covered housing assistance provided under other HUD programs, and their contractors and subcontractors (unless the contract or subcontract awards do not meet the threshold specified in §135.3(a)(3)) may demonstrate compliance with this part by committing to employ section 3 residents as 10 percent of the aggregate number of new hires for each year over the duration of the section 3 project;

(ii) Where a managing general partner or management agent is affiliated, in a given metropolitan area, with recipients of section 3 covered housing assistance, for an aggregate of 500 or more units in any fiscal year, the managing partner or management agent may demonstrate compliance with this part by committing to employ section 3 residents as:

(A) 10 percent of the aggregate number of new hires for the one year period beginning in FY 1995;

(B) 20 percent of the aggregate number of new hires for the one year period beginning in FY 1996;

(C) 30 percent of the aggregate number of new hires for the one year period beginning in FY 1997, and continuing thereafter.

(3) Recipients of section 3 covered community development assistance, and their contractors and subcontractors (unless the contract or subcontract awards do not meet the threshold specified in §135.3(a)(3)) may demonstrate compliance with the requirements of this part by committing to employ section 3 residents as:

(i) 10 percent of the aggregate number of new hires for the one year period beginning in FY 1995;

(ii) 20 percent of the aggregate number of new hires for the one year period beginning in FY 1996; and

(iii) 30 percent of the aggregate number of new hires for the one year period beginning in FY 1997 and continuing thereafter.

(c) *Contracts.* Numerical goals set forth in paragraph (c) of this section apply to contracts awarded in connection with all section 3 covered projects and section 3 covered activities. Each recipient and contractor and subcontractor (unless the contract or subcontract awards do not meet the threshold specified in §135.3(a)(3)) may demonstrate compliance with the requirements of this part by committing to award to section 3 business concerns:

(1) At least 10 percent of the total dollar amount of all section 3 covered contracts for building trades work for maintenance, repair, modernization or development of public or Indian housing, or for building trades work arising in connection with housing rehabilitation, housing construction and other public construction; and

(2) At least three (3) percent of the total dollar amount of all other section 3 covered contracts.

(d) *Safe harbor and compliance determinations.* (1) In the absence of evidence to the contrary, a recipient that meets the minimum numerical goals set forth in this section will be considered to have complied with the section 3 preference requirements.

(2) In evaluating compliance under subpart D of this part, a recipient that has not met the numerical goals set forth in this section has the burden of demonstrating why it was not feasible to meet the numerical goals set forth in this section. Such justification may include impediments encountered despite actions taken. A recipient or contractor also can indicate other economic opportunities, such as those listed in §135.40, which were provided in its efforts to comply with section 3 and the requirements of this part.

**§ 135.32 Responsibilities of the recipient.**

Each recipient has the responsibility to comply with section 3 in its own operations, and ensure compliance in the

operations of its contractors and subcontractors. This responsibility includes but may not be necessarily limited to:

(a) Implementing procedures designed to notify section 3 residents about training and employment opportunities generated by section 3 covered assistance and section 3 business concerns about contracting opportunities generated by section 3 covered assistance;

(b) Notifying potential contractors for section 3 covered projects of the requirements of this part, and incorporating the section 3 clause set forth in §135.38 in all solicitations and contracts.

(c) Facilitating the training and employment of section 3 residents and the award of contracts to section 3 business concerns by undertaking activities such as described in the Appendix to this part, as appropriate, to reach the goals set forth in §135.30. Recipients, at their own discretion, may establish reasonable numerical goals for the training and employment of section 3 residents and contract award to section 3 business concerns that exceed those specified in §135.30;

(d) Assisting and actively cooperating with the Assistant Secretary in obtaining the compliance of contractors and subcontractors with the requirements of this part, and refraining from entering into any contract with any contractor where the recipient has notice or knowledge that the contractor has been found in violation of the regulations in 24 CFR part 135.

(e) Documenting actions taken to comply with the requirements of this part, the results of actions taken and impediments, if any.

(f) A State or county which distributes funds for section 3 covered assistance to units of local governments, to the greatest extent feasible, must attempt to reach the numerical goals set forth in §135.30 regardless of the number of local governments receiving funds from the section 3 covered assistance which meet the thresholds for applicability set forth at §135.3. The State or county must inform units of local government to whom funds are distributed of the requirements of this part; assist

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local governments and their contractors in meeting the requirements and objectives of this part; and monitor the performance of local governments with respect to the objectives and requirements of this part.

### **§ 135.34 Preference for section 3 residents in training and employment opportunities.**

(a) *Order of providing preference.* Recipients, contractors and subcontractors shall direct their efforts to provide, to the greatest extent feasible, training and employment opportunities generated from the expenditure of section 3 covered assistance to section 3 residents in the order of priority provided in paragraph (a) of this section.

(1) *Public and Indian housing programs.* In public and Indian housing programs, efforts shall be directed to provide training and employment opportunities to section 3 residents in the following order of priority:

(i) Residents of the housing development or developments for which the section 3 covered assistance is expended (category 1 residents);

(ii) Residents of other housing developments managed by the HA that is expending the section 3 covered housing assistance (category 2 residents);

(iii) Participants in HUD Youthbuild programs being carried out in the metropolitan area (or nonmetropolitan county) in which the section 3 covered assistance is expended (category 3 residents);

(iv) Other section 3 residents.

(2) *Housing and community development programs.* In housing and community development programs, priority consideration shall be given, where feasible, to:

(i) Section 3 residents residing in the service area or neighborhood in which the section 3 covered project is located (collectively, referred to as category 1 residents); and

(ii) Participants in HUD Youthbuild programs (category 2 residents).

(iii) Where the section 3 project is assisted under the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 *et seq.*), homeless persons residing in the service area or neighborhood in which the section 3 covered project is

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located shall be given the highest priority;

(iv) Other section 3 residents.

(3) Recipients of housing assistance programs administered by the Assistant Secretary for Housing may, at their own discretion, provide preference to residents of the housing development receiving the section 3 covered assistance within the service area or neighborhood where the section 3 covered project is located.

(4) Recipients of community development programs may, at their own discretion, provide priority to recipients of government assistance for housing, including recipients of certificates or vouchers under the Section 8 housing assistance program, within the service area or neighborhood where the section 3 covered project is located.

(b) *Eligibility for preference.* A section 3 resident seeking the preference in training and employment provided by this part shall certify, or submit evidence to the recipient contractor or subcontractor, if requested, that the person is a section 3 resident, as defined in § 135.5. (An example of evidence of eligibility for the preference is evidence of receipt of public assistance, or evidence of participation in a public assistance program.)

(c) *Eligibility for employment.* Nothing in this part shall be construed to require the employment of a section 3 resident who does not meet the qualifications of the position to be filled.

### **§ 135.36 Preference for section 3 business concerns in contracting opportunities.**

(a) *Order of providing preference.* Recipients, contractors and subcontractors shall direct their efforts to award section 3 covered contracts, to the greatest extent feasible, to section 3 business concerns in the order of priority provided in paragraph (a) of this section.

(1) *Public and Indian housing programs.* In public and Indian housing programs, efforts shall be directed to award contracts to section 3 business concerns in the following order of priority:

(i) Business concerns that are 51 percent or more owned by residents of the housing development or developments



for which the section 3 covered assistance is expended, or whose full-time, permanent workforce includes 30 percent of these persons as employees (category 1 businesses);

(ii) Business concerns that are 51 percent or more owned by residents of other housing developments or developments managed by the HA that is expending the section 3 covered assistance, or whose full-time, permanent workforce includes 30 percent of these persons as employees (category 2 businesses); or

(iii) HUD Youthbuild programs being carried out in the metropolitan area (or nonmetropolitan county) in which the section 3 covered assistance is expended (category 3 businesses).

(iv) Business concerns that are 51 percent or more owned by section 3 residents, or whose permanent, full-time workforce includes no less than 30 percent section 3 residents (category 4 businesses), or that subcontract in excess of 25 percent of the total amount of subcontracts to business concerns identified in paragraphs (a)(1)(i) and (a)(1)(ii) of this section.

(2) *Housing and community development programs.* In housing and community development programs, priority consideration shall be given, where feasible, to:

(i) Section 3 business concerns that provide economic opportunities for section 3 residents in the service area or neighborhood in which the section 3 covered project is located (category 1 businesses); and

(ii) Applicants (as this term is defined in 42 U.S.C. 12899) selected to carry out HUD Youthbuild programs (category 2 businesses);

(iii) Other section 3 business concerns.

(b) *Eligibility for preference.* A business concern seeking to qualify for a section 3 contracting preference shall certify or submit evidence, if requested, that the business concern is a section 3 business concern as defined in § 135.5.

(c) *Ability to complete contract.* A section 3 business concern seeking a contract or a subcontract shall submit evidence to the recipient, contractor, or subcontractor (as applicable), if requested, sufficient to demonstrate to the satisfaction of the party awarding

the contract that the business concern is responsible and has the ability to perform successfully under the terms and conditions of the proposed contract. (The ability to perform successfully under the terms and conditions of the proposed contract is required of all contractors and subcontractors subject to the procurement standards of 24 CFR 85.36 (see 24 CFR 85.36(b)(8)).) This regulation requires consideration of, among other factors, the potential contractor's record in complying with public policy requirements. Section 3 compliance is a matter properly considered as part of this determination.

**§ 135.38 Section 3 clause.**

All section 3 covered contracts shall include the following clause (referred to as the section 3 clause):

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR

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part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

### § 135.40 Providing other economic opportunities.

(a) *General.* In accordance with the findings of the Congress, as stated in section 3, that other economic opportunities offer an effective means of empowering low-income persons, a recipient is encouraged to undertake efforts to provide to low-income persons economic opportunities other than training, employment, and contract awards, in connection with section 3 covered assistance.

(b) *Other training and employment related opportunities.* Other economic opportunities to train and employ section 3 residents include, but need not be limited to, use of "upward mobility", "bridge" and trainee positions to fill vacancies; hiring section 3 residents in

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management and maintenance positions within other housing developments; and hiring section 3 residents in part-time positions.

(c) *Other business related economic opportunities.* (1) A recipient or contractor may provide economic opportunities to establish, stabilize or expand section 3 business concerns, including micro-enterprises. Such opportunities include, but are not limited to the formation of section 3 joint ventures, financial support for affiliating with franchise development, use of labor only contracts for building trades, purchase of supplies and materials from housing authority resident-owned businesses, purchase of materials and supplies from PHA resident-owned businesses and use of procedures under 24 CFR part 963 regarding HA contracts to HA resident-owned businesses. A recipient or contractor may employ these methods directly or may provide incentives to non-section 3 businesses to utilize such methods to provide other economic opportunities to low-income persons.

(2) A *section 3 joint venture* means an association of business concerns, one of which qualifies as a section 3 business concern, formed by written joint venture agreement to engage in and carry out a specific business venture for which purpose the business concerns combine their efforts, resources, and skills for joint profit, but not necessarily on a continuing or permanent basis for conducting business generally, and for which the section 3 business concern:

(i) Is responsible for a clearly defined portion of the work to be performed and holds management responsibilities in the joint venture; and

(ii) Performs at least 25 percent of the work and is contractually entitled to compensation proportionate to its work.

### Subpart C [Reserved]

### Subpart D—Complaint and Compliance Review

#### § 135.70 General.

(a) *Purpose.* The purpose of this subpart is to establish the procedures for handling complaints alleging non-compliance with the regulations of this

part, and the procedures governing the Assistant Secretary's review of a recipient's or contractor's compliance with the regulations in this part.

(b) *Definitions.* For purposes of this subpart:

(1) *Complaint* means an allegation of noncompliance with regulations of this part made in the form described in §135.76(d).

(2) *Complainant* means the party which files a complaint with the Assistant Secretary alleging that a recipient or contractor has failed or refused to comply with the regulations in this part.

(3) *Noncompliance with section 3* means failure by a recipient or contractor to comply with the requirements of this part.

(4) *Respondent* means the recipient or contractor against which a complaint of noncompliance has been filed. The term "recipient" shall have the meaning set forth in §135.7, which includes PHA and IHA.

**§ 135.72 Cooperation in achieving compliance.**

(a) The Assistant Secretary recognizes that the success of ensuring that section 3 residents and section 3 business concerns have the opportunity to apply for jobs and to bid for contracts generated by covered HUD financial assistance depends upon the cooperation and assistance of HUD recipients and their contractors and subcontractors. All recipients shall cooperate fully and promptly with the Assistant Secretary in section 3 compliance reviews, in investigations of allegations of noncompliance made under §135.76, and with the distribution and collection of data and information that the Assistant Secretary may require in connection with achieving the economic objectives of section 3.

(b) The recipient shall refrain from entering into a contract with any contractor after notification to the recipient by HUD that the contractor has been found in violation of the regulations in this part. The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts or funding of any contractors or subcontractors during any period of

debarment, suspension or otherwise ineligible status.

**§ 135.74 Section 3 compliance review procedures.**

(a) *Compliance reviews by Assistant Secretary.* The Assistant Secretary shall periodically conduct section 3 compliance reviews of selected recipients and contractors to determine whether these recipients are in compliance with the regulations in this part.

(b) *Form of compliance review.* A section 3 compliance review shall consist of a comprehensive analysis and evaluation of the recipient's or contractor's compliance with the requirements and obligations imposed by the regulations of this part, including an analysis of the extent to which section 3 residents have been hired and section 3 business concerns have been awarded contracts as a result of the methods undertaken by the recipient to achieve the employment, contracting and other economic objectives of section 3.

(c) *Where compliance review reveals noncompliance with section 3 by recipient or contractor.* Where the section 3 compliance review reveals that a recipient or contractor has not complied with section 3, the Assistant Secretary shall notify the recipient or contractor of its specific deficiencies in compliance with the regulations of this part, and shall advise the recipient or contractor of the means by which these deficiencies may be corrected. HUD shall conduct a follow-up review with the recipient or contractor to ensure that action is being taken to correct the deficiencies.

(d) *Continuing noncompliance by recipient or contractor.* A continuing failure or refusal by the recipient or contractor to comply with the regulations in this part may result in the application of sanctions specified in the contract through which HUD assistance is provided, or the application of sanctions specified in the regulations governing the HUD program under which HUD financial assistance is provided. HUD will notify the recipient of any continuing failure or refusal by the contractor to comply with the regulations in this part for possible action under any procurement contract between the recipient and the contractor.

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Debarment, suspension and limited denial of participation pursuant to HUD's regulations in 24 CFR part 24, where appropriate, may be applied to the recipient or the contractor.

(e) *Conducting compliance review before the award of assistance.* Section 3 compliance reviews may be conducted before the award of contracts, and especially where the Assistant Secretary has reasonable grounds to believe that the recipient or contractor will be unable or unwilling to comply with the regulations in this part.

(f) *Consideration of complaints during compliance review.* Complaints alleging noncompliance with section 3, as provided in §135.76, may also be considered during any compliance review conducted to determine the recipient's conformance with regulations in this part.

### § 135.76 Filing and processing complaints.

(a) *Who may file a complaint.* The following individuals and business concerns may, personally or through an authorized representative, file with the Assistant Secretary a complaint alleging noncompliance with section 3:

(1) Any section 3 resident on behalf of himself or herself, or as a representative of persons similarly situated, seeking employment, training or other economic opportunities generated from the expenditure of section 3 covered assistance with a recipient or contractor, or by a representative who is not a section 3 resident but who represents one or more section 3 residents;

(2) Any section 3 business concern on behalf of itself, or as a representative of other section 3 business concerns similarly situated, seeking contract opportunities generated from the expenditure of section 3 covered assistance from a recipient or contractor, or by an individual representative of section 3 business concerns.

(b) *Where to file a complaint.* A complaint must be filed with the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Washington, DC, 20410.

(c) *Time of filing.* (1) A complaint must be received not later than 180 days from the date of the action or

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omission upon which the complaint is based, unless the time for filing is extended by the Assistant Secretary for good cause shown.

(2) Where a complaint alleges noncompliance with section 3 and the regulations of this part that is continuing, as manifested in a number of incidents of noncompliance, the complaint will be timely if filed within 180 days of the last alleged occurrence of noncompliance.

(3) Where a complaint contains incomplete information, the Assistant Secretary shall request the needed information from the complainant. In the event this information is not furnished to the Assistant Secretary within sixty (60) days of the date of the request, the complaint may be closed.

(d) *Contents of complaint*—(1) *Written complaints.* Each complaint must be in writing, signed by the complainant, and include:

(i) The complainant's name and address;

(ii) The name and address of the respondent;

(iii) A description of the acts or omissions by the respondent that is sufficient to inform the Assistant Secretary of the nature and date of the alleged noncompliance.

(iv) A complainant may provide information to be contained in a complaint by telephone to HUD or any HUD Field Office, and HUD will reduce the information provided by telephone to writing on the prescribed complaint form and send the form to the complainant for signature.

(2) *Amendment of complaint.* Complaints may be reasonably and fairly amended at any time. Such amendments may include, but are not limited to, amendments to cure, technical defects or omissions, including failure to sign or affirm a complaint, to clarify or amplify the allegations in a complaint, or to join additional or substitute respondents. Except for the purposes of notifying respondents, amended complaints will be considered as having been made as of the original filing date.

(e) *Resolution of complaint by recipient.* (1) Within ten (10) days of timely filing of a complaint that contains complete

information (in accordance with paragraphs (c) and (d) of this section), the Assistant Secretary shall determine whether the complainant alleges an action or omission by a recipient or the recipient's contractor that if proven qualifies as noncompliance with section 3. If a determination is made that there is an allegation of noncompliance with section 3, the complaint shall be sent to the recipient for resolution.

(2) If the recipient believes that the complaint lacks merit, the recipient must notify the Assistant Secretary in writing of this recommendation with supporting reasons, within 30 days of the date of receipt of the complaint. The determination that a complaint lacks merit is reserved to the Assistant Secretary.

(3) If the recipient determines that there is merit to the complaint, the recipient will have sixty (60) days from the date of receipt of the complaint to resolve the matter with the complainant. At the expiration of the 60-day period, the recipient must notify the Assistant Secretary in writing whether a resolution of the complaint has been reached. If resolution has been reached, the notification must be signed by both the recipient and the complainant, and must summarize the terms of the resolution reached between the two parties.

(4) Any request for an extension of the 60-day period by the recipient must be submitted in writing to the Assistant Secretary, and must include a statement explaining the need for the extension.

(5) If the recipient is unable to resolve the complaint within the 60-day period (or more if extended by the Assistant Secretary), the complaint shall be referred to the Assistant Secretary for handling.

(f) *Informal resolution of complaint by Assistant Secretary*—(1) *Dismissal of complaint*. Upon receipt of the recipient's written recommendation that there is no merit to the complaint, or upon failure of the recipient and complainant to reach resolution, the Assistant Secretary shall review the complaint to determine whether it presents a valid allegation of noncompliance with section 3. The Assistant Secretary may conduct further investigation if deemed necessary. Where the com-

plaint fails to present a valid allegation of noncompliance with section 3, the Assistant Secretary will dismiss the complaint without further action. The Assistant Secretary shall notify the complainant of the dismissal of the complaint and the reasons for the dismissal.

(2) *Informal resolution*. Where the allegations in a complaint on their face, or as amplified by the statements of the complainant, present a valid allegation of noncompliance with section 3, the Assistant Secretary will attempt, through informal methods, to obtain a voluntary and just resolution of the complaint. Where attempts to resolve the complaint informally fail, the Assistant Secretary will impose a resolution on the recipient and complainant. Any resolution imposed by the Assistant Secretary will be in accordance with requirements and procedures concerning the imposition of sanctions or resolutions as set forth in the regulations governing the HUD program under which the section 3 covered assistance was provided.

(3) *Effective date of informal resolution*. The imposed resolution will become effective and binding at the expiration of 15 days following notification to recipient and complainant by certified mail of the imposed resolution, unless either party appeals the resolution before the expiration of the 15 days. Any appeal shall be in writing to the Secretary and shall include the basis for the appeal.

(g) *Sanctions*. Sanctions that may be imposed on recipients that fail to comply with the regulations of this part include debarment, suspension and limited denial of participation in HUD programs.

(h) *Investigation of complaint*. The Assistant Secretary reserves the right to investigate a complaint directly when, in the Assistant Secretary's discretion, the investigation would further the purposes of section 3 and this part.

(i) *Intimidatory or retaliatory acts prohibited*. No recipient or other person shall intimidate, threaten, coerce, or discriminate against any person or business because the person or business has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of

## § 135.90

complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing or judicial proceeding arising thereunder.

(j) *Judicial relief.* Nothing in this subpart D precludes a section 3 resident or section 3 business concerning from exercising the right, which may otherwise be available, to seek redress directly through judicial procedures.

(Approved by the Office of Management and Budget under control number 2529-0043)

### Subpart E—Reporting and Recordkeeping

#### § 135.90 Reporting.

Each recipient which receives directly from HUD financial assistance that is subject to the requirements of this part shall submit to the Assistant Secretary an annual report in such form and with such information as the Assistant Secretary may request, for the purpose of determining the effectiveness of section 3. Where the program providing the section 3 covered assistance requires submission of an annual performance report, the section 3 report will be submitted with that annual performance report. If the program providing the section 3 covered assistance does not require an annual performance report, the section 3 report is to be submitted by January 10 of each year or within 10 days of project completion, whichever is earlier. All reports submitted to HUD in accordance with the requirements of this part will be made available to the public.

(Approved by the Office of Management and Budget under control number 2529-0043)

#### § 135.92 Recordkeeping and access to records.

HUD shall have access to all records, reports, and other documents or items of the recipient that are maintained to demonstrate compliance with the requirements of this part, or that are maintained in accordance with the regulations governing the specific HUD program under which section 3 covered assistance is provided or otherwise

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made available to the recipient or contractor.

### APPENDIX TO PART 135

#### *I. Examples of Efforts To Offer Training and Employment Opportunities to Section 3 Residents*

(1) Entering into “first source” hiring agreements with organizations representing Section 3 residents.

(2) Sponsoring a HUD-certified “Step-Up” employment and training program for section 3 residents.

(3) Establishing training programs, which are consistent with the requirements of the Department of Labor, for public and Indian housing residents and other section 3 residents in the building trades.

(4) Advertising the training and employment positions by distributing flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) to every occupied dwelling unit in the housing development or developments where category 1 or category 2 persons (as these terms are defined in §135.34) reside.

(5) Advertising the training and employment positions by posting flyers (which identify the positions to be filled, the qualifications required, and where to obtain additional information about the application process) in the common areas or other prominent areas of the housing development or developments. For HAs, post such advertising in the housing development or developments where category 1 or category 2 persons reside; for all other recipients, post such advertising in the housing development or developments and transitional housing in the neighborhood or service area of the section 3 covered project.

(6) Contacting resident councils, resident management corporations, or other resident organizations, where they exist, in the housing development or developments where category 1 or category 2 persons reside, and community organizations in HUD-assisted neighborhoods, to request the assistance of these organizations in notifying residents of the training and employment positions to be filled.

(7) Sponsoring (scheduling, advertising, financing or providing in-kind services) a job informational meeting to be conducted by an HA or contractor representative or representatives at a location in the housing development or developments where category 1 or category 2 persons reside or in the neighborhood or service area of the section 3 covered project.

(8) Arranging assistance in conducting job interviews and completing job applications for residents of the housing development or developments where category 1 or category 2

persons reside and in the neighborhood or service area in which a section 3 project is located.

(9) Arranging for a location in the housing development or developments where category 1 persons reside, or the neighborhood or service area of the project, where job applications may be delivered to and collected by a recipient or contractor representative or representatives.

(10) Conducting job interviews at the housing development or developments where category 1 or category 2 persons reside, or at a location within the neighborhood or service area of the section 3 covered project.

(11) Contacting agencies administering HUD Youthbuild programs, and requesting their assistance in recruiting HUD Youthbuild program participants for the HA's or contractor's training and employment positions.

(12) Consulting with State and local agencies administering training programs funded through JTPA or JOBS, probation and parole agencies, unemployment compensation programs, community organizations and other officials or organizations to assist with recruiting Section 3 residents for the HA's or contractor's training and employment positions.

(13) Advertising the jobs to be filled through the local media, such as community television networks, newspapers of general circulation, and radio advertising.

(14) Employing a job coordinator, or contracting with a business concern that is licensed in the field of job placement (preferably one of the section 3 business concerns identified in part 135), that will undertake, on behalf of the HA, other recipient or contractor, the efforts to match eligible and qualified section 3 residents with the training and employment positions that the HA or contractor intends to fill.

(15) For an HA, employing section 3 residents directly on either a permanent or a temporary basis to perform work generated by section 3 assistance. (This type of employment is referred to as "force account labor" in HUD's Indian housing regulations. See 24 CFR 905.102, and §905.201(a)(6).)

(16) Where there are more qualified section 3 residents than there are positions to be filled, maintaining a file of eligible qualified section 3 residents for future employment positions.

(17) Undertaking job counseling, education and related programs in association with local educational institutions.

(18) Undertaking such continued job training efforts as may be necessary to ensure the continued employment of section 3 residents previously hired for employment opportunities.

(19) After selection of bidders but prior to execution of contracts, incorporating into the contract a negotiated provision for a spe-

cific number of public housing or other section 3 residents to be trained or employed on the section 3 covered assistance.

(20) Coordinating plans and implementation of economic development (e.g., job training and preparation, business development assistance for residents) with the planning for housing and community development.

#### *II. Examples of Efforts To Award Contracts to Section 3 Business Concerns*

(1) Utilizing procurement procedures for section 3 business concerns similar to those provided in 24 CFR part 905 for business concerns owned by Native Americans (see section III of this Appendix).

(2) In determining the responsibility of potential contractors, consider their record of section 3 compliance as evidenced by past actions and their current plans for the pending contract.

(3) Contacting business assistance agencies, minority contractors associations and community organizations to inform them of contracting opportunities and requesting their assistance in identifying section 3 businesses which may solicit bids or proposals for contracts for work in connection with section 3 covered assistance.

(4) Advertising contracting opportunities by posting notices, which provide general information about the work to be contracted and where to obtain additional information, in the common areas or other prominent areas of the housing development or developments owned and managed by the HA.

(5) For HAs, contacting resident councils, resident management corporations, or other resident organizations, where they exist, and requesting their assistance in identifying category 1 and category 2 business concerns.

(6) Providing written notice to all known section 3 business concerns of the contracting opportunities. This notice should be in sufficient time to allow the section 3 business concerns to respond to the bid invitations or request for proposals.

(7) Following up with section 3 business concerns that have expressed interest in the contracting opportunities by contacting them to provide additional information on the contracting opportunities.

(8) Coordinating pre-bid meetings at which section 3 business concerns could be informed of upcoming contracting and subcontracting opportunities.

(9) Carrying out workshops on contracting procedures and specific contract opportunities in a timely manner so that section 3 business concerns can take advantage of upcoming contracting opportunities, with such information being made available in languages other than English where appropriate.

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(10) Advising section 3 business concerns as to where they may seek assistance to overcome limitations such as inability to obtain bonding, lines of credit, financing, or insurance.

(11) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways to facilitate the participation of section 3 business concerns.

(12) Where appropriate, breaking out contract work items into economically feasible units to facilitate participation by section 3 business concerns.

(13) Contacting agencies administering HUD Youthbuild programs, and notifying these agencies of the contracting opportunities.

(14) Advertising the contracting opportunities through trade association papers and newsletters, and through the local media, such as community television networks, newspapers of general circulation, and radio advertising.

(15) Developing a list of eligible section 3 business concerns.

(16) For HAs, participating in the "Contracting with Resident-Owned Businesses" program provided under 24 CFR part 963.

(17) Establishing or sponsoring programs designed to assist residents of public or Indian housing in the creation and development of resident-owned businesses.

(18) Establishing numerical goals (number of awards and dollar amount of contracts) for award of contracts to section 3 business concerns.

(19) Supporting businesses which provide economic opportunities to low income persons by linking them to the support services available through the Small Business Administration (SBA), the Department of Commerce and comparable agencies at the State and local levels.

(20) Encouraging financial institutions, in carrying out their responsibilities under the Community Reinvestment Act, to provide no or low interest loans for providing working capital and other financial business needs.

(21) Actively supporting joint ventures with section 3 business concerns.

(22) Actively supporting the development or maintenance of business incubators which assist Section 3 business concerns.

*III. Examples of Procurement Procedures That Provide for Preference for Section 3 Business Concerns*

This Section III provides specific procedures that may be followed by recipients and contractors (collectively, referred to as the "contracting party") for implementing the section 3 contracting preference for each of the competitive procurement methods authorized in 24 CFR 85.36(d).

(1) *Small Purchase Procedures.* For section 3 covered contracts aggregating no more than

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\$25,000, the methods set forth in this paragraph (1) or the more formal procedures set forth in paragraphs (2) and (3) of this Section III may be utilized.

(i) *Solicitation.* (A) Quotations may be solicited by telephone, letter or other informal procedure provided that the manner of solicitation provides for participation by a reasonable number of competitive sources. At the time of solicitation, the parties must be informed of:

—the section 3 covered contract to be awarded with sufficient specificity;

—the time within which quotations must be submitted; and

—the information that must be submitted with each quotation.

(B) If the method described in paragraph (i)(A) is utilized, there must be an attempt to obtain quotations from a minimum of three qualified sources in order to promote competition. Fewer than three quotations are acceptable when the contracting party has attempted, but has been unable, to obtain a sufficient number of competitive quotations. In unusual circumstances, the contracting party may accept the sole quotation received in response to a solicitation provided the price is reasonable. In all cases, the contracting party shall document the circumstances when it has been unable to obtain at least three quotations.

(ii) *Award.* (A) Where the section 3 covered contract is to be awarded based upon the lowest price, the contract shall be awarded to the qualified section 3 business concern with the lowest responsive quotation, if it is reasonable and no more than 10 percent higher than the quotation of the lowest responsive quotation from any qualified source. If no responsive quotation by a qualified section 3 business concern is within 10 percent of the lowest responsive quotation from any qualified source, the award shall be made to the source with the lowest quotation.

(B) Where the section 3 covered contract is to be awarded based on factors other than price, a request for quotations shall be issued by developing the particulars of the solicitation, including a rating system for the assignment of points to evaluate the merits of each quotation. The solicitation shall identify all factors to be considered, including price or cost. The rating system shall provide for a range of 15 to 25 percent of the total number of available rating points to be set aside for the provision of preference for section 3 business concerns. The purchase order shall be awarded to the responsible firm whose quotation is the most advantageous, considering price and all other factors specified in the rating system.

(2) *Procurement by sealed bids (Invitations for Bids).* Preference in the award of section 3 covered contracts that are awarded under a sealed bid (IFB) process may be provided as follows:



(i) Bids shall be solicited from all businesses (section 3 business concerns, and non-section 3 business concerns). An award shall be made to the qualified section 3 business concern with the highest priority ranking and with the lowest responsive bid if that bid—

(A) is within the maximum total contract price established in the contracting party's budget for the specific project for which bids are being taken, and

(B) is not more than "X" higher than the total bid price of the lowest responsive bid from any responsive bidder. "X" is determined as follows:

	x=lesser of:
When the lowest responsive bid is less than \$100,000 .....	10% of that bid or \$9,000.
When the lowest responsive bid is:	
At least \$100,000, but less than \$200,000 .....	9% of that bid, or \$16,000.
At least \$200,000, but less than \$300,000 .....	8% of that bid, or \$21,000.
At least \$300,000, but less than \$400,000 .....	7% of that bid, or \$24,000.
At least \$400,000, but less than \$500,000 .....	6% of that bid, or \$25,000.
At least \$500,000, but less than \$1 million .....	5% of that bid, or \$40,000.
At least \$1 million, but less than \$2 million .....	4% of that bid, or \$60,000.
At least \$2 million, but less than \$4 million .....	3% of that bid, or \$80,000.
At least \$4 million, but less than \$7 million .....	2% of that bid, or \$105,000.
\$7 million or more .....	1½% of the lowest responsive bid, with no dollar limit.

(ii) If no responsive bid by a section 3 business concern meets the requirements of paragraph (2)(i) of this section, the contract shall be awarded to a responsible bidder with the lowest responsive bid.

(3) *Procurement under the competitive proposals method of procurement (Request for Proposals (RFP)).* (i) For contracts and sub-contracts awarded under the competitive proposals method of procurement (24 CFR 85.36(d)(3)), a Request for Proposals (RFP) shall identify all evaluation factors (and their relative importance) to be used to rate proposals.

(ii) One of the evaluation factors shall address both the preference for section 3 business concerns and the acceptability of the strategy for meeting the greatest extent feasible requirement (section 3 strategy), as disclosed in proposals submitted by all business concerns (section 3 and non-section 3 business concerns). This factor shall provide for a range of 15 to 25 percent of the total number of available points to be set aside for the evaluation of these two components.

(iii) The component of this evaluation factor designed to address the preference for section 3 business concerns must establish a preference for these business concerns in the order of priority ranking as described in 24 CFR 135.36.

(iv) With respect to the second component (the acceptability of the section 3 strategy), the RFP shall require the disclosure of the contractor's section 3 strategy to comply with the section 3 training and employment preference, or contracting preference, or both, if applicable. A determination of the contractor's responsibility will include the submission of an acceptable section 3 strategy. The contract award shall be made to the responsible firm (either section 3 or non-section 3 business concern) whose proposal is determined most advantageous, considering

price and all other factors specified in the RFP.

**PART 146—NONDISCRIMINATION ON THE BASIS OF AGE IN HUD PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE**

**Subpart A—General**

- Sec.
- 146.1 Purpose of the Age Discrimination Act of 1975.
- 146.3 Purpose of HUD's age discrimination regulation.
- 146.5 Applicability of part.
- 146.7 Definitions.

**Subpart B—Standards for Determining Age Discrimination**

- 146.11 Scope of subpart.
- 146.13 Rules against age discrimination.

**Subpart C—Duties of HUD Recipients**

- 146.21 General responsibilities.
- 146.23 Notice of subrecipients.
- 146.25 Assurance of compliance and recipient assessment of age distinctions.
- 146.27 Information requirements.

**Subpart D—Investigation, Settlement, and Enforcement Procedures**

- 146.31 Compliance reviews.
- 146.33 Complaints.
- 146.35 Mediation.
- 146.37 Investigation.
- 146.39 Enforcement procedures.
- 146.41 Prohibition against intimidation or retaliation.



U.S. Department of Housing and Urban Development  
Community Planning and Development

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Special Attention of:

All Regional Directors  
All Field Office Directors  
All CPD Division Directors  
All Regional Environmental Officers  
All Responsible Entities  
All Housing Directors  
All PIH Division Directors  
All Program Environmental Clearance Officers

**Notice:** CPD 12-006

Issued: June 15, 2012

Expires: This Notice is effective until amended, superseded, or rescinded.

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Cross References:

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**SUBJECT: Process for Tribal Consultation in Projects That Are Reviewed Under 24 CFR Part 58**

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**I. Purpose**

The “Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities,” 24 CFR Part 58, outlines the review process for many projects assisted with HUD programs, including those funded through CDBG, HOME, HOPE VI, HOPWA, Emergency Shelter Grants, certain Indian Housing programs, Public Housing Capital Fund, and Economic Development Initiative grants, and certain loans guaranteed by HUD. Part 58 covers many environmental areas, including historic resources. It references the “Section 106” review process for historic resources, which requires federal agencies to consult with federally-recognized Indian tribes on projects that may affect historic properties of religious and cultural significance to tribes. Under Part 58, local, state, or tribal governments become Responsible Entities (REs) and assume the federal agency’s environmental review authority and responsibility for projects within their jurisdiction, including those for which they are grantees. The RE must consult with tribes to determine whether a proposed project may adversely affect historic properties of religious and cultural significance, and if so, how the adverse effect could be avoided, minimized or mitigated. This applies to projects on and off tribal lands. This Notice clarifies the steps that REs should follow in the tribal consultation process. Following this protocol ensures compliance with the requirement for certification of tribal consultation on the Request for Release of Funds and Certification (form HUD 7015.15).

**II. Background**

Section 106 of the National Historic Preservation Act (*16 U.S.C. 470f*) and its implementing regulations (36 CFR Part 800) direct federal agencies to undertake an open, consultative process to consider the impact of their projects on historic and archeological resources. The review must

be completed before an agency approves and/or commits funds to a project. In projects that are reviewed under 24 CFR Part 58, the Responsible Entity (RE), acting as HUD, consults with the State Historic Preservation Officer (SHPO), local government, individuals and organizations with demonstrated interest, the public, and representatives of federally-recognized Indian tribes and Native Hawaiian Organizations, including Tribal Historic Preservation Officers (THPOs). This Notice focuses on tribal consultation and project impacts to historic properties of religious and cultural significance to tribes. If a project includes activities that may affect such properties, the RE must consult with tribes to identify the property(ies) and consider ways to avoid, minimize or mitigate possible adverse effects to them. For guidance on consulting with Native Hawaiian Organizations, see "[Consultation with Native Hawaiian Organizations in the Section 106 Review Process: A Handbook](#)" published by the Advisory Council on Historic Preservation in June 2011.

Effective tribal consultation begins at the earliest possible stages of a project and is carried out to meet project timeframes. It fosters meaningful dialogue that strives to protect historic properties of religious and cultural significance to tribes. As noted in 36 CFR 800.2(c)(2)(ii)(B): "Consultation with Indian tribes should be conducted in a sensitive manner respectful of tribal sovereignty. Nothing in this part alters, amends, repeals, interprets, or modifies tribal sovereignty, any treaty rights, or other rights of an Indian tribe, or preempts, modifies, or limits the exercise of any such rights." [Additional guidance](#) on working with tribal representatives is available. REs may engage cultural resource specialists to assist in the process as needed, but REs remain ultimately responsible for initiating consultation with tribes.

Further details on the Statutory and Regulatory Requirements for tribal consultation are included in Section VI. Definitions are included in Section VII.

### **III. Required Actions by Responsible Entities**

#### **A. Determine if Section 106 Review is Required**

Not all projects require Section 106 review. Some are exempted through regulation or Programmatic Agreements between the RE and the SHPO. If Section 106 review is not required, tribal consultation is not required.

##### **1. Exempt Activities**

If project activities are limited to those listed in [24 CFR 58.34 \(a\) \(1-11\)](#) as Exempt Activities and those listed in [24 CFR 58.35 \(b\)](#), as Categorical Exclusions not subject to §58.5, no further review and no consultation are required. The listed Activities and Exclusions have "No Potential to Cause Effects." Examples include: maintenance activities, tenant-based rental assistance, operating costs, affordable housing pre-development costs, studies and plans.

##### **2. Programmatic Agreement**

If the funded activity is covered by an existing Programmatic Agreement (PA), the PA may contain more Exempt activities in addition to the ones above. [[Link to PA database](#)] Follow the review process in the PA, including appropriate tribal consultation. If the PA does not

contain a section on tribal consultation, and the activity is not Exempt, follow the process in III. C., below.

### **3. Projects Involving Multiple Federal Agencies**

If the project involves multiple federal agencies, the RE may defer to another federal agency as the lead agency to undertake the Section 106 review. Generally, the agency with the largest stake in the project acts as the lead agency. Document the lead agency agreement in writing and retain it in the Environmental Review Record (ERR). The agreement must contain provisions for appropriate tribal consultation. If adverse effects are involved, the RE must sign the Memorandum of Agreement that resolves the adverse effect(s). Contact the HUD Federal Preservation Officer to discuss questions about a specific case.

## **B. Determine if Tribal Consultation is Required**

Not all projects that require Section 106 review require consultation with Indian tribes. Consultation with federally-recognized tribes is required when a project includes activities that have the potential to affect historic properties of religious and cultural significance to tribes. These types of activities include: ground disturbance (digging), new construction in undeveloped natural areas, introduction of incongruent visual, audible, or atmospheric changes, work on a building or structure with significant tribal association, or transfer, lease or sale of historic properties of religious and cultural significance.

### **1. Checklist on When to Consult With Tribes**

Use the When to Consult With Tribes Under Section 106 checklist (Appendix A) to determine if the project includes types of activities that have the potential to affect historic properties of religious and cultural significance. [Link to checklist] If not, tribal consultation is not required. Keep a copy of the checklist in the Environmental Review Record (ERR). If needed, you may seek technical assistance from the HUD Field Environmental Officer (FEO). If consultation is required, follow the steps below.

Through written agreement with a tribe, an RE may modify the process outlined below. [[See 36 CFR 800.2\(c\)\(2\)\(ii\)\(E\)](#)] An RE may also choose to incorporate into their consultation effort any relevant provisions in existing agreements between SHPOs and tribes and in other SHPO and THPO written guidance regarding tribal consultation.

## **C. Consult With Tribes**

If a project includes the types of activities that may affect historic properties of religious and cultural significance, the RE must consult with the relevant tribe(s) to identify any such properties in the project's Area of Potential Effect (APE). If they are present, consultation continues with evaluation of the eligibility of the properties for the National Register of Historic Places and assessment of the possible effects of the project on Register-eligible properties. The goal is to avoid adverse effects if possible.

Steps 1-4 below correspond to the steps commonly used to describe the Section 106 process in other guidance: Initiate Consultation (Step 1); Identify and Evaluate Historic Properties (Step 2); Assess Effects (Step 3); and Resolve Adverse Effects (Step 4). For the sake of efficiency, Steps

2, 3 and 4 may be treated together in consultation discussions and comments. [[See 36 CFR 800.3\(g\) Expediting consultation](#)]

**Step1. Identify federally-recognized tribes with an interest in the project area and initiate consultation**

The RE can use the [Tribal Directory Assessment Tool \(TDAT\)](#) to identify tribes with a current or ancestral interest in the county where the project is located. TDAT is a web-based directory of federally-recognized tribes and their geographic areas of interest. Tribes may have an interest in counties far from their current location, counties where the tribe lived centuries or millennia ago.

**a. Tribal Directory Assessment Tool (TDAT)**

Type the project address into the locator box in TDAT and it will return a list of tribes with interest in the area, with contact names, addresses, e-mail addresses, fax numbers and phone numbers. You can export the list as an Excel spreadsheet for mail merge in g. below. If TDAT shows no federally-recognized tribes with an interest in the area, document the result in the ERR; consultation is complete unless a previously unidentified, federally-recognized tribe expresses a desire to consult.

**b. Tribe as Grant Recipient**

If a tribe is a grant recipient in a HUD project and assumes the role of RE and conducts the Section 106 review, that tribe is responsible for inviting other tribes to consult if other tribes also have a religious or cultural interest in the project area. [Additional guidance](#) is available.

**c. Non-federally Recognized Tribes**

Although REs are only required to consult with federally-recognized tribes, the RE may invite non-federally recognized tribes with a demonstrated interest in the project to consult as additional consulting parties. They may also participate as members of the public. [See pages 9-11 of [Consultation with Indian Tribes in the Section 106 Review Process: A Handbook](#)]

**d. Contact federally-recognized tribe(s) and invite consultation**

Once the RE has identified tribes with a potential interest in the project area, the RE mails a letter to each tribe to invite consultation. The letter(s), on RE letterhead, may be transmitted by email. Keep a copy of the letter(s) in the Environmental Review Record (ERR) for monitoring purposes.

**e. Historic Properties of Religious and Cultural Significance**

The letter that invites consultation should contain a request for assistance in identifying historic properties of religious and cultural significance in the project area - archeological sites, burial grounds, sacred landscapes or features, ceremonial areas, traditional cultural places, traditional cultural landscapes, plant and animal communities, and buildings and structures with significant tribal association - and any initial concerns with impacts of the project on those resources.

**f. Tribal Historic Preservation Officer (THPO)**

Some tribes have both a tribal leader and a Tribal Historic Preservation Officer (THPO) listed in TDAT. Send letters to both and ask that the tribe's response indicate a single point of contact if possible. On tribal lands, a THPO may have assumed authority for Section 106 review in lieu of the State Historic Preservation Officer (SHPO). On non-tribal lands, the THPO may have been delegated by the tribe to represent them in Section 106 reviews, but their participation does not take the place of consultation with the SHPO. [See page 6 of [Consultation with Indian Tribes in the Section 106 Review Process: A Handbook](#)]

**g. Template Letter**

Send a letter to the tribe(s) using TDAT contact info mail merged with the template letter. The RE may customize the template letter if desired. [Link to template letter]

You must add a description of the project into the letter by editing the template. The description should include, as applicable: the location and size of the property; type of project; type and scale of new building(s) or structures; construction materials; number of housing units; depth and area of ground disturbance; introduction of visual, audible or atmospheric changes; or transfer, lease or sale of property. [Link to sample project descriptions]

The RE -- not a contractor, lender, sponsor, sub-recipient or other grantee -- must sign the letter to the tribe(s). The RE is required to conduct government-to-government consultation.

**h. Map**

Enclose a map showing the location of the project and the Area of Potential Effect (APE), which may be larger than the project property. For urban sites, a map generated from a site like Google Earth is preferred. [Link to Google Earth] For rural sites, a USGS topographic map is preferred. [Link to topo map site]

**i. Timeframes**

HUD's policy is to request a response to the invitation to consult within 30 days from the date the tribe receives the letter. For gauging the beginning and end of the 30 day period, an RE may assume that an emailed letter is received on the date it is sent. For a hard copy letter, an RE may send the letter certified mail, or, if mail delivery is predictable and reliable, the RE may assume a 5-day delivery period, and assume that the period ends 35 days after the letter is mailed.

If a tribe wishes to be a consulting party, the tribe must provide within 30 days an indication of their desire to consult. The tribe does not need to actually provide information about historic properties of religious and cultural significance within 30 days; that may take longer. If a tribe responds that they do not want to consult, document the response in the ERR. If a tribe does not respond to the invitation to consult within 30 days, the RE should document the invitation and lack of response in the ERR; further consultation is not required.

**j. Tiered Review**

If a project is utilizing a Tiered review, consultation should usually begin in the Tier 1 broad level review. If a tribe expresses interest in further consultation on specific sites, the Tier 1 review should include a written strategy for continuing consultation on site specific reviews in Tier 2. [See [24 CFR 58.15](#)]

**Step 2. Consult with the tribe(s) to identify and evaluate historic properties of religious and cultural significance**

Theoretically, the consultation process first identifies potential historic properties, then evaluates which ones are eligible for the National Register of Historic Places, and then assesses the impact(s) of the project on those resources. In practice, those efforts often occur simultaneously. It is important to remember though, that only historic properties of religious and cultural significance that are eligible for or listed on the National Register are protected under Section 106. If no such properties are present, refer to the “No Historic Properties Affected” finding in Step 3 below.

**a. Consultation Meeting(s)**

After receiving a response that a tribe wants to consult, contact the tribe(s) to arrange further consultation which may take place by phone, web meeting, or face-to-face meeting. Try to accommodate a tribe’s preferences as to meeting location and method of communication. If needed, a site visit is an eligible project expense. If more than one tribe wants to consult, consult jointly if possible. Integrate tribal consultation with consultation with other non-tribal parties, including the SHPO, as possible and appropriate. Recognize that some tribes may not want to consult jointly, particularly where there are concerns for confidentiality of information.

**b. Evaluation of Historic Properties for the National Register of Historic Places**

Gather information on known historic properties from the tribe, SHPO, consultants, and other repositories. Discuss with the tribe whether known properties appear eligible for the National Register of Historic Places. HUD acknowledges that tribes possess special expertise in evaluating the eligibility of religious and cultural properties for the National Register. Generally, if the RE disagrees with a tribe’s opinion, the RE or the tribe may ask the Advisory Council on Historic Preservation to enter the consultation. The tribe may also ask the Council to request the RE to obtain a formal determination of eligibility from the Keeper of the National Register.

**c. Surveys to Identify Additional Historic Properties**

If a convincing case is made by the tribe(s) and/or SHPO that National Register eligible historic properties potentially exist on the site, and that they may be affected by the project, the grantee may approve funding for an archeological survey as part of the project. Consult HUD’s HP Fact Sheet #6, [Guidance on Archeological Investigations in HUD Projects](#). [Link to HP Fact Sheet #6]

Sometimes, consultation results in modification of project plans to avoid potential effects on historic properties of religious and cultural significance. If effects are avoided, e.g. by designating a sensitive area as undisturbed green space, it is generally not necessary to fully identify and document resources with an archeological survey.

An RE is not required to pay for consultation. However, an RE may choose to negotiate payment to a tribe for detailed survey documentation on historic properties of religious and cultural significance to the tribe, similar to payment to a consultant. If agreed upon ahead of time, this payment may be an eligible project expense.

#### **d. Confidentiality of Information**

Tribes may be hesitant to share information on the location, character, and use of historic properties of special religious and cultural significance. Discuss with the tribe(s) ways to protect confidentiality of such information. The RE should strive to ensure confidentiality when requested. [36 CFR 800.11\(c\)](#) outlines a formal process for obtaining federal authority to withhold sensitive information, in the event that practical means or state authority are not available.

### **Step 3. Consult with the tribe(s) to evaluate the effects of the project on identified and potential historic resources**

After discussing the possible effects of the project on historic properties of religious and cultural significance to tribes, the RE determines the appropriate finding: “No Historic Properties Affected”; “No Adverse Effect”; or “Adverse Effect”. The RE will also be consulting with other parties, like the SHPO, to determine effects of the project on these and other types of resources, like historic buildings with no tribal association. It is desirable to consolidate findings of effect for all types of historic properties in one letter. Ultimately, a project has one overall finding of effect. Tribes have 30 days to object to a finding of effect.

#### **a. Criteria of Adverse Effect**

Consult with the tribe(s) and other consulting parties to apply the [Criteria of Adverse Effect](#), and determine if the project may have an adverse effect.

#### **b. “No Historic Properties Affected” Finding**

If there are no known or potential historic properties in the project area that are listed on or eligible for the National Register of Historic Places, or if such properties exist but there will be no effect on them, notify the tribe(s) and other consulting parties of your determination of “No Historic Properties Affected.” Describe which of the above circumstances applies. It is not necessary to fully identify and document resources if they will not be affected by the project.

#### **c. “No Adverse Effect” Finding**

If the project will have an effect, but it will not be adverse, notify the tribe(s) and other consulting parties of your determination of “No Adverse Effect.” They have 30 days to object. If a tribe objects, the RE should consult to resolve the objection. The tribe or the RE may also ask the Advisory Council on Historic



Preservation to review the determination. The request must be made within the 30-day period and must include the documentation listed in [36 CFR 800.11 \(e\)](#).

**d. “Adverse Effect” Finding**

If the project will affect National Register listed or eligible historic properties in any of the ways outlined in the Criteria of Adverse Effect, notify the tribe(s) and other consulting parties of your determination of “Adverse Effect” and consult to resolve the adverse effects. Typical activities that could adversely affect historic properties of religious and cultural significance include: ground disturbance (digging), new construction in undeveloped natural areas, introduction of incongruent visual, audible, or atmospheric changes, work on a building or structure with significant tribal association, or transfer, lease or sale of historic properties of religious and cultural significance.

**Step 4. Consult to resolve adverse effects**

If there are possible “Adverse Effects”, consult with the tribe(s) and other consulting parties to consider alternatives that would avoid or minimize adverse effects, including possible mitigation measures.

**a. Notification of Advisory Council**

The RE must notify the Advisory Council on Historic Preservation (ACHP) about the adverse effect and give them an opportunity to enter the consultation. The Council will decide whether to enter the consultation based on established [criteria](#) that include whether a project “Presents issues of concern to Indian tribes or Native Hawaiian organizations.” The Advisory Council must respond within 15 days of receipt of the request. [See link to on-line ACHP notification system – pending]

**b. Consideration of Alternatives**

Consult with the tribe(s) and other consulting parties about possible ways to modify a project to avoid adverse effects. If initial discussion does not resolve the issue(s), a site visit with consulting parties and project developers is often helpful. An agreed upon alternative may be stipulated with “conditions” in a revised “No Adverse Effect” finding for the project.

**c. Consideration of Mitigation Measures**

If adverse effects cannot be fully resolved, and there is a compelling need for the project to proceed despite the adverse effect(s), consider ways to mitigate or compensate for the harm to the historic property(ies). Mitigation measures may include data recovery, documentation, research, publication, education, interpretation, curation, off-site preservation, and/or monitoring and may relate to the specific resource that is being affected, or other historic properties in a similar location or of a similar type.

**d. If needed, prepare and execute a Memorandum of Agreement (MOA)**

An MOA stipulates the agreed upon measures to minimize and/or mitigate adverse effects. It is a legally binding document that obligates all named parties

to the agreement. The RE is responsible for ensuring that the measures required by the MOA are satisfactorily carried out. Model language is available. At the discretion of the RE, where deemed necessary, an MOA may also be used to codify agreed upon measures to avoid an adverse effect, in conjunction with a conditional “No Adverse Effect” finding.

**e. Execution of the MOA**

The MOA must be executed prior to the decision point for the project -- as applicable, prior to the dissemination or publication of public notices required by 24 CFR Part 58 (e.g., notice of finding of no significant impact (§58.43), and notice of intent to request the release of funds (§58.70)). The RE should send a digital copy of the MOA to the HUD Field Environmental Officer (FEO) who will file it in the MOA file in the central HUD shared drive. A copy must also be provided to the Advisory Council on Historic Preservation and the consulting tribe(s).

**f. Signatories to the MOA**

The Responsible Entity may invite the tribe(s) to sign the MOA as a consulting party. The tribal leader and the THPO may sign the MOA. For projects on tribal lands, if the tribe has a THPO who has assumed Section 106 responsibilities for the tribe, the THPO must be a signatory.

HUD does not sign Section 106 agreement documents covered by 24 CFR Part 58. HUD does sign agreements covered by 24 CFR Part 50. If a project is subject to both, HUD may sign as long as the agreement states the appropriate program reference. [See CPD [Memo on HUD Environmental Regulations and Section 106 Agreement Documents](#)]

**g. Completion of MOA requirements**

The RE must ensure that the stipulations and mitigation measures in the MOA are carried out and inform the tribe(s) of completion. Document completion in the Environmental Review Record (ERR).

**h. Termination of Consultation**

If consulting about properties on tribal lands, a THPO may determine that further consultation will not be productive and terminate consultation. Likewise, an RE, SHPO, or, if participating, the Advisory Council on Historic Preservation, may terminate consultation. Termination of consultation is detailed at [36 CFR 800.7](#). A tribe that is consulting about properties off tribal lands may decline an invitation to sign an MOA, but does not have a right to terminate consultation under 36 CFR 800.7.

**IV. Record of Compliance**

Include evidence of compliance with this protocol in the Environmental Review Record (ERR), including notes, letters, e-mails, reports, etc.

Failure to consult with tribes per this protocol may lead to HUD issuing a finding of non-compliance with 36 CFR Part 800, the regulations that implement Section 106. If HUD makes a finding, HUD may initiate sanctions, corrective actions, or other remedies specified in program regulations or agreements or contracts with the RE which may include terminating grants where appropriate and repayment of funds expended with non-federal funds. (See [24 CFR 58.77](#))

#### **A. Request for Release of Funds (RROF) (Form 7015.15)**

REs and grantees must certify on the Request for Release of Funds and Certification (form HUD 7015.15) that they have consulted with federally-recognized tribes per this protocol. [See Part 2, #3 of [form](#)]

#### **V. Discoveries During Construction**

Whenever previously unknown below ground historic properties of religious and cultural significance are discovered during construction, excavation in the area of the resources must immediately stop until tribal consultation can occur. The RE must notify tribes (including the THPOs), the Advisory Council on Historic Preservation, and the SHPO within 48 hours of the discovery. [See [36 CFR 800.13\(b\)](#)] Contact the tribes identified in Step 1 and reenter consultation which should take place under an accelerated timeframe. A site visit with the RE, tribe(s), and SHPO (as appropriate) is recommended to resolve any potential adverse effect(s) to the historic property(ies) of religious and cultural significance.

##### **A. Human Remains**

If the discovery includes human remains, they should be respectfully covered over and secured, and the RE should contact law enforcement authorities as well as tribes and other consulting parties. If the human remains are determined to be Indian burials, the RE should follow the guidance in the “[Advisory Council on Historic Preservation Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects.](#)”

##### **B. Native American Graves Protection and Repatriation Act (NAGPRA)**

In undertakings on federal or tribal lands, the Native American Graves Protection and Repatriation Act (NAGPRA) (*25 U.S.C. 3001 et seq*) requires that cultural items excavated or inadvertently discovered be returned to their respective peoples. Cultural items include human remains, funerary objects, sacred objects, and objects of cultural patrimony. [More information](#) is available.

#### **VI. Statutory and Regulatory Requirements**

Federal law directs federal agencies to consult with tribes when there is a potential for a federally-funded project to affect a historic property of religious and cultural significance to tribes.

Section 106 of the National Historic Preservation Act ([16 U.S.C. 470f](#)) requires that prior to approving the expenditure of funds for a project, a federal agency must take into account the effect of the undertaking on historic resources.

Section 101 (d)(6)(A) and (B) of the National Historic Preservation Act identifies the types of properties to be considered and the obligation to consult. The Act provides that properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion in the National Register of Historic Places. In carrying out its responsibilities under Section 106 of the Act, a Federal agency is required to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to such properties. In projects that are reviewed under 24 CFR Part 58, the Responsible Entity (RE) assumes the role of the Federal agency, including tribal consultation. [[See 24 CFR 58.4](#)]

The regulations that implement Section 106 of the Act, [36 CFR Part 800](#) – “Protection of Historic Properties,” define “Indian tribe” as federally-recognized tribes, and limit the need to consult to projects that have the potential to affect historic properties of religious and cultural significance to tribes.

### **36 CFR 800.2 (c )(2)(ii)**

*Consultation on historic properties of significance to Indian tribes and Native Hawaiian organizations.*

Section 101(d)(6)(B) of the act requires the agency official to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking...

### **36 CFR 800.3**

(a) *Establish undertaking.* The agency official shall determine whether the proposed Federal action is an undertaking as defined in § 800.16(y) and, if so, whether it is a type of activity that has the potential to cause effects on historic properties.

(1) *No potential to cause effects.* If the undertaking is a type of activity that does not have the potential to cause effects on historic properties, assuming such historic properties were present, the agency official has no further obligations under section 106 or this part.

Therefore, the consultation process outlined in this Notice starts by first establishing whether the project includes a type of activity that has the potential to affect historic properties of religious and cultural significance to tribes. If it does, it outlines the steps to consult with tribes to identify and evaluate resources, and to assess the effects of the project on the resources.

## **VII. Definitions**

Definitions of some of the terms used in this Notice may be found in 24 CFR Part 58 and 36 CFR Part 800, “Protection of Historic Properties”, and are repeated here for convenience.

The definition of *Responsible Entity* is found in 24 CFR 58.2(a)(7).

**Responsible Entity.** Responsible Entity means:

- (i) With respect to environmental responsibilities under programs listed in §58.1(b)(1), (2), (3)(i), (4), and (5), a recipient under the program.
- (ii) With respect to environmental responsibilities under the programs listed in §58.1(b)(3)(ii) and (6) through (12), a state, unit of general local government, Indian tribe or Alaska Native Village, or the Department of Hawaiian Home Lands, when it is the recipient under the program. Under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.* ) listed in §58.1(b)(10)(i), the Indian tribe is the responsible entity whether or not a Tribally Designated Housing Entity is authorized to receive grant amounts on behalf of the tribe. The Indian tribe is also the responsible entity under the Section 184 Indian Housing Loan Guarantee program listed in §58.1(b)(11). Regional Corporations in Alaska are considered Indian tribes in this part. Non-recipient responsible entities are designated as follows:

- (A) For qualified housing finance agencies, the State or a unit of general local government, Indian tribe or Alaska native village whose jurisdiction contains the project site;
- (B) For public housing agencies, the unit of general local government within which the project is located that exercises land use responsibility, or if HUD determines this infeasible, the county, or if HUD determines this infeasible, the State;
- (C) For non-profit organizations and other entities, the unit of general local government, Indian tribe or Alaska native village within which the project is located that exercises land use responsibility, or if HUD determines this infeasible, the county, or if HUD determines this infeasible, the State;

Definitions of some other parties in the Section 106 process are found in 36 CFR 800.16.

**Council** means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.

**Indian tribe** means an Indian tribe, band, nation, or other organized group or community, including a native village, regional corporation, or village corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

**Native Hawaiian organization** means any organization which serves and represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of historic preservation that are significant to Native Hawaiians.

***Native Hawaiian*** means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

***State Historic Preservation Officer (SHPO)*** means the official appointed or designated pursuant to section 101(b)(1) of the act to administer the State historic preservation program or a representative designated to act for the State historic preservation officer.

***Tribal Historic Preservation Officer (THPO)*** means the tribal official appointed by the tribe's chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for purposes of section 106 compliance on tribal lands in accordance with section 101(d)(2) of the act.

Other relevant definitions found in 36 CFR 800.16 include:

***Area of potential effects*** means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

***Consultation*** means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process. The Secretary's "Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act" provide further guidance on consultation.

***Effect*** means alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register.

***Eligible for inclusion in the National Register*** includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.

***Historic property*** means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.

***Memorandum of agreement*** means the document that records the terms and conditions agreed upon to resolve the adverse effects of an undertaking upon historic properties.

***National Register*** means the National Register of Historic Places maintained by the Secretary of the Interior.

***Programmatic agreement*** means a document that records the terms and conditions agreed upon to resolve the potential adverse effects of a Federal agency program, complex undertaking or other situations in accordance with §800.14(b).

***Tribal lands*** means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.

***Undertaking*** means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval.

### **Acronyms Used in This Notice**

<b>ACHP</b>	Advisory Council on Historic Preservation (federal)
<b>APE</b>	Area of Potential Effect
<b>CPD</b>	Community Planning and Development Office
<b>ERR</b>	Environmental Review Record
<b>FEO</b>	Field Environmental Officer
<b>HUD</b>	U.S. Department of Housing and Urban Development
<b>MOA</b>	Memorandum of Agreement
<b>NAGPRA</b>	Native American Graves Protection and Repatriation Act
<b>PA</b>	Programmatic Agreement
<b>RE</b>	Responsible Entity
<b>REO</b>	Regional Environmental Officer
<b>RROF</b>	Request for Release of Funds and Certification
<b>SHPO</b>	State Historic Preservation Officer
<b>TDAT</b>	Tribal Directory Assessment Tool
<b>THPO</b>	Tribal Historic Preservation Officer

### **Appendix A**

#### When To Consult With Tribes Under Section 106 Checklist

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Yolanda Chávez  
Deputy Assistant Secretary for Grant  
Programs

## Appendix A

### When To Consult With Tribes Under Section 106

Section 106 requires consultation with federally-recognized Indian tribes when a project may affect a historic property of religious and cultural significance to the tribe. Historic properties of religious and cultural significance include: archeological sites, burial grounds, sacred landscapes or features, ceremonial areas, traditional cultural places, traditional cultural landscapes, plant and animal communities, and buildings and structures with significant tribal association. The types of activities that may affect historic properties of religious and cultural significance include: ground disturbance (digging), new construction in undeveloped natural areas, introduction of incongruent visual, audible, or atmospheric changes, work on a building with significant tribal association, and transfer, lease or sale of properties of the types listed above.

**If a project includes any of the types of activities below, invite tribes to consult:**

- significant ground disturbance (digging)**  
Examples: new sewer lines, utility lines (above and below ground), foundations, footings, grading, access roads
- new construction in undeveloped natural areas**  
Examples: industrial-scale energy facilities, transmission lines, pipelines, or new recreational facilities, in undeveloped natural areas like mountaintops, canyons, islands, forests, native grasslands, etc., and housing, commercial, and industrial facilities in such areas
- incongruent visual changes**  
Examples: construction of a focal point that is out of character with the surrounding natural area, impairment of the vista or viewshed from an observation point in the natural landscape, or impairment of the recognized historic scenic qualities of an area
- incongruent audible changes**  
Examples: increase in noise levels above an acceptable standard in areas known for their quiet, contemplative experience
- incongruent atmospheric changes**  
Examples: introduction of lights that create skyglow in an area with a dark night sky
- work on a building with significant tribal association**  
Examples: rehabilitation, demolition or removal of a surviving ancient tribal structure or village, or a building or structure that there is reason to believe was the location of a significant tribal event, home of an important person, or that served as a tribal school or community hall
- transfer, lease or sale of a historic property of religious and cultural significance**  
Example: transfer, lease or sale of properties that contain archeological sites, burial grounds, sacred landscapes or features, ceremonial areas, plant and animal communities, or buildings and structures with significant tribal association
- None of the above apply**

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**Project**

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**Reviewed By**

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**Date**



## **Section 3 Policy for Covered HUD Funded Activities**

This Section 3 policy pertains to training, employment contracting, and other economic opportunities arising in connection with the expenditure of Federal housing assistance and community development assistance that is used in conjunction with the following activities:

- Housing rehabilitation,
- Housing construction, and
- Other public construction.

All Recipients and Sub-recipients of Section 3 Covered Assistance (including but not limited to contractors, sub-contractors, developers, grantees, CHDOs, non-profits, and local government entities) must be in compliance with the provisions of this policy in order to be eligible for DCA awards.

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SOLICITATION PACKAGE AND CERTIFICATION DOCUMENTS

## **BACKGROUND ON THE SECTION 3 REGULATION:**

The purpose of Section 3 of the Housing and Urban Development Act of 1968, as amended by Section 915 of the Housing and Community Development Act of 1992 (Section 3), is to “ensure that employment and other economic opportunities generated by certain HUD financial funding shall, to the greatest extent feasible, and consistent with existing Federal, State, and local laws and regulations, be directed toward low and very low-income persons, particularly those who are recipients of government funding for housing and to Business Concerns which provide economic opportunities to low- and very low-income persons.”

Consistent with 24 CFR Part 135, as a recipient of HUD Housing and Community Development Funding, the State of Georgia Department of Community Affairs (DCA) requires fulfillment of Section 3 obligations on all contracts subject to 24 CFR Part 135 that make use of that assistance. These policies are implemented for contract amounts as specified in 24 CFR Part 135 whether it is designated as housing construction, housing rehabilitation, lead based paint abatement, or other public construction project. DCA works to ensure the provision of employment, training, contracting, and other economic opportunities to low-income persons. In doing so, DCA utilizes Section 3 as a means of promoting stability and self-sufficiency of Section 3 Residents. Implementation procedures may be amended periodically by DCA to insure that the policy requirements are being met and/or to enhance the efficiencies of compliance.

### **PART I. APPLICABILITY:**

Section 3 of the Housing and Urban Development Act of 1968 by the Housing and Community Development Act of 1992. Section 3, as amended, requires that economic opportunities generated by Federal Housing and Community Development programs shall, to the greatest extent feasible, be given to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to businesses that provide economic opportunities for these persons.

Section 3 requirements apply to **all** housing rehabilitation, housing construction or other public construction projects, and activities for which the recipient or sub recipient's award exceeds \$200,000 and the contract or subcontract exceeds \$100,000. If the recipient or sub recipient's award of assistance exceeds \$200,000, but the contracts and subcontracts do not exceed \$100,000, then only the recipient or sub recipient is subject to the Section 3 requirements. The recipient or sub recipient's responsibility includes awarding contracts, to the greatest extent feasible, to Section 3 business concerns.

## **PART II. DEFINITIONS:**

Please refer to the 24 CFR 135.5 for a full list of prevailing definitions found in the regulation.

*Employment Opportunities Generated by Section 3 Covered Assistance:* All employment opportunities generated by the expenditure of applicable Federal Section 3 covered funding (i.e., Housing and Community Development Funding) and with respect to Section 3 covered Housing and Community Development Funding, all employment opportunities arising in connection with Section 3 Covered Projects.

*Full-Time:* For recipient, sub-recipients, and contractors, this term refers to an employee assigned to a position who regularly works a minimum of forty (40) hours per week on a continuous basis. For DCA, this term refers to an employee who is assigned to an unclassified position who regularly works a minimum of forty (40) hours per week on a continuous basis. Regular full-time employees will be eligible to receive full State-sponsored benefits and accrue any form of service credit.

*Housing and Community Development Funding:* Resources from the U.S. Department of Housing and Urban Development (HUD) covered by Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u) include Community Development Block Grant (CDBG), HOME Investment Partnership (HOME), Emergency Solutions Grant (ESG), Housing Opportunities for Persons with AIDS (HOPWA), and Neighborhood Stabilization (NSP) programs, as well as certain grants awarded under HUD Notices of Funding Availability (NOFAs). The requirements for Section 3 only apply to the portion(s) of covered funding used for project/activities involving housing construction, rehabilitation, demolition, and/or other public construction.

*Low Income Person:* A person whose household (including single persons) has a total income that does not exceed 80% of the median income for the project area. Income levels can be obtained online at: <https://www.huduser.gov/portal/datasets/il.html>.

*New Hires:* Full-time employees for at-will, permanent, temporary or seasonal employment opportunities for any Section 3 covered contract.

*Recipient:* An entity which receives Section 3 covered assistance directly from HUD (i.e., DCA) or from any other recipient (e.g., local government, PHA or other public body, public or private non-profit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, Community Housing Development organization, resident management corporation, resident council, or cooperative association). For the purpose of this policy, the phrase, “any other recipient” will carry the same definition as “Sub-recipient” and may include DCA in cases when program terminology establishes a “Recipient” as any entity receiving an award of DCA funds under a HUD-funded program.

Resident Owned Business (ROB): A Business Concern owned or controlled by low or very low-income residents who reside within the legal boundaries where the funds are expended. A ROB must meet these requirements: (a) at least 51% owned and operated by Section 3 residents, and (b) whose management and daily business operations are controlled by one or more such individuals. For purposes of Section 3 compliance, a ROB must also meet Subpart A to the definition of a Section 3 Business Concern.

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

Section 3 Resident:

(1) A public housing resident; or

(2) An individual who resides in the area in which the Section 3 covered assistance is expended, and who is a low-income person whose household income does not exceed 80% of the average median income for the area or a very low-income person whose household income does not exceed 50% of the average median income for the area as per Section 3(b) (2) of the U.S. Housing Act of 1937 (1937 Act).

To find the current Average Median Income go to:

<https://www.huduser.gov/portal/datasets/il.html>

Section 3 Business Concern: As defined by HUD, an entity:

- A. That is Fifty-one (51%) percent or more owned by Section 3 Residents; or
- B. Whose permanent, full-time employees includes persons, at least 30 percent of whom are current Section 3 Residents, or were Section 3 Residents within three (3) years of the date of first employment with the Business; or
- C. That provides evidence of a commitment to subcontract in excess of 25 percent of the total contract award amount (including any modifications) to Section 3 Business Concerns as defined in A or B. Example: If the Contract Amount is = \$1,000,000, the contractor must subcontract in excess of 25%, or greater than \$250,000, to a Section 3 Business Concern (s) as defined in A or B in this part.

Section 3 Clause: The contract provisions and sanctions set forth in 24 CFR 135.38

Section 3 Covered Activity: Any activity that involves housing construction, rehabilitation, or other public construction funded by Section 3 covered assistance.

Section 3 Covered Assistance: The requirements of Part 135 apply to Recipients of covered Section 3 Housing and Community Development Funding for which the amount of the assistance exceeds \$200,000. These requirements also apply to contractors and subcontractors performing

work on projects using Federal Housing and Community Development Funding from DCA for which the Recipient's award exceeds \$200,000 and the contract or subcontract exceeds \$100,000. If the Recipient or Sub-recipient's award of assistance exceeds \$200,000, but the contracts and subcontracts do not exceed \$100,000, then only the Recipient or Sub-recipient is subject to the Section 3 requirements. The Recipient's responsibility includes awarding contracts, to the greatest extent feasible, to Section 3 business concerns.

*Section 3 Covered Contract:* A contract or subcontract, including a professional service contract, awarded by a recipient, sub-recipient, or contractor for work generated by the expenditure of Section 3 Covered Assistance or for work arising in connection with a Section 3 Covered Project. "Section 3 Covered Contracts" do not include contracts for the purchase of supplies and materials except whenever a contract for materials includes the installation of the materials.

*Section 3 Covered Project:* The construction, reconstruction, conversion or rehabilitation of housing (including reduction and abatement of lead-based paint hazards), other public construction which includes buildings or improvements (regardless of ownership) assisted with applicable Federal Housing and Community Development Funding.

*Section 3 Joint Venture:* An association of Business Concerns, one of which qualifies as a Section 3 Business Concern, formed by written joint venture agreement to engage in and carry out a specific business venture for which purpose the Business Concerns combine their efforts, resources, and skills for joint profit, but not necessarily on a continuing or permanent basis for conducting business generally, and for which the Section 3 Business Concern:

- Is responsible for a clearly defined portion of the work to be performed and holds management responsibilities in the joint venture; and
- Performs at least 25% of the work and is contractually entitled to compensation proportional to its work.

*Sub-recipient:* Any public or private agency, institution, organization, or other entity ( e.g. Local government, Public Housing Authority, public or private non-profit organization, private agency or institution, mortgagor, developer, limited dividend sponsor, builder, property manager, Community Housing Development organization, resident management corporation, resident council, or cooperative association) to whom Federal financial assistance is extended, through the Georgia Department of Community Affairs for any program or activity, or who otherwise participates in carrying out such program or activity but such term does not include any Beneficiary under any such program. The term "Sub-recipient" may include the term "Recipient" when program terminology establishes a "Recipient" as any entity receiving an award of DCA funds under a HUD-funded program.

*Very Low Income Person:* A person whose household (including single persons) has a total income that does not exceed 50% of the median family income for the project area.

**PART III. GOALS OF THE SECTION 3 REGULATION:**

DCA's Section 3 protocol seeks to aid Section 3 residents to the greatest extent feasible in three ways, listed in order of preference:

*A. Hiring low- and very low-income workers*

DCA requires that a recipient or sub-recipient and its contractors make every effort within their disposal to attempt to hire at least 30% Section 3 residents of the aggregate number of full-time new hires with a preference for Section 3 residents in this order:

- 1: Residents of HUD-assisted housing.
- 2: Residents at the site where the work is being performed.
- 3: Residents of the city where the work is being performed.
- 4: Residents of the county where the work is being performed.

*B. Awarding contracts to Section 3 business concerns*

DCA requires that the recipient or sub-recipient, and its contractors make every effort within their disposal to award at least 10% of the total dollar amount of all Section 3 covered contracts for building trades work arising in connection with housing rehabilitation, housing construction, and other public construction, to Section 3 business concerns. DCA also requires that the recipient or sub-recipient and its contractors make every effort within their disposal to award at least 3% of the total dollar amount of all "Other" Section 3 covered contracts.

*C. Providing other economic opportunities*

If a recipient, sub-recipient, or contractor identifies a greater need, other training and employment opportunities may be provided to substitute for goals A and B. In such cases, a recipient, sub-recipient, or contractor must provide training and other employment opportunities as described in Part VII equal to or exceeding 3% of the total contract award in order to meet this goal.

**PART IV. RECIPIENT AND SUBRECIPIENT RESPONSIBILITIES:**

The recipient or sub recipients of DCA Housing and Community Development Funding accept the responsibility of not only enforcing the Section 3 requirements, but also for pro-actively providing notice, encouraging, and facilitating compliance with Section 3 subject to the definition of a Section 3 Covered Project. The recipient or sub-recipient will have fulfilled this responsibility when they can provide evidence that the following have occurred in the case of every contract and sub-contract solicitation that exceeds the threshold requirements of 24 CFR Part 135:

The following actions are required for all contract and sub-contract solicitations:

- A) Notifying Section 3 residents of opportunities through posting of job openings in community sources that are generally available to low income residents and the general public, including but not limited to: the local community newspaper; the most widely distributed newspaper; the management office of the local housing authority, or homeless agency, or/local low-income housing community; the local workforce board; the local office of the Georgia Division of Family and Children Services; and the local office of the Georgia Department of Public Health serving the county in which the project is located.
- B) Conveying that the contract work is a Section 3 Covered Contract in any advertisement for bids and proposals by placing the following language in each advertisement/public notice and website: **“This project is covered under the requirements of Section 3 of the HUD Act of 1968.”**
- C) Notifying contractors of Section 3 requirements in any pre-bid or pre-construction meeting held.
- D) Incorporating the HUD mandated Section 3 clauses in all contracts where the work to be performed is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3).
- E) Providing Resident Certification and Affidavit forms for employment at the recipient or sub-recipient’s business offices and allowing applications to be submitted at appropriate local locations.
- F) Encouraging the training of Section 3 residents by the contractors.
- G) Reporting quarterly on its efforts regarding Section 3 implementation on the DCA prescribed mechanism or form.
- H) Refusing to award contracts to businesses or persons that have previously violated Section 3 requirements.
- I) Using the attached Solicitation Package for each procurement associated with a covered project indicating that the work to be performed is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C.1701u (Section 3).
- J) Documenting actions taken to comply with Section 3 requirements including all results and impediments using the DCA prescribed mechanism or form.



Recipients or Sub-recipients also must implement at least one (1) of the following actions:

- K) Facilitating an opportunity fair annually for contractors to meet interested Section 3 residents for possible employment. A list can be developed as a resource for the recipient or sub-recipient and contractors when seeking to hire Section 3 workers in the future.
- L) When employment opportunities arise or are anticipated, posting all job sites funded by DCA with a location or phone number of whom and how to apply for any opportunities for employment, training or contracting. The sign should be no smaller than 24" x 24" in Black ink and specifically read:

*"This project is covered under Section 3 of the HUD Act of 1968 which requires that any new hiring opportunities first be directed to low- and very low income persons in this community. Please contact (list the contact person name and number) for information on any employment, contracting and sub-contracting opportunities."*

**PART V. RECIPIENT, SUB-RECIPIENT, AND CONTRACTOR RESPONSIBILITIES:**

All recipient, sub-recipients, and contractors must submit prior to an award exceeding \$100,000 the prescribed forms in the attached solicitation package describing their proposal to implement Section 3. Omission of a satisfactorily completed solicitation package prior to award makes that contractor ineligible for award. Regardless of the amount of the potential contract award, all recipient, sub-recipients, and contractors that wish to claim a Section 3 preference must submit with any bid or proposal the *Section 3 Self-Certification and Action Plan* and the *Section 3 Business Concern Self Certification* that is part of the attached solicitation package. Prior to award of a contract exceeding \$100,000, the remainder of the solicitation package must be prepared in its entirety. No preference may be claimed after bids are opened.

The only safe harbors for determining whether Section 3 requirements have been met are the following:

- A. The 30% new hiring of Section 3 Residents goal;
- B. The 10% Section 3 Business Concern Contracting for Building Trades Work goal; and,
- C. The 3% Section 3 Business Concern Contracting for "Other" Covered Contracts goal.

As DCA does not execute final funding contracts, it is reliant upon the compliance of its recipient, sub-recipient, and/or contractor(s) to execute DCA's Section 3 initiatives. If the goals above cannot be met by the recipient, sub-recipient, and/or contractor, the recipient, sub-recipient, and/or contractor must provide documentation explaining why those numerical goals could not be met, including a description of any actions taken, any impediments encountered, and any other economic opportunities provided (See Part VII – Other Economic Opportunities). This documentation must be submitted to DCA for review and approval. DCA will take each recipient or sub-recipient's explanation into consideration when making the determination of compliance.

In addition to the notice requirements for both hiring and contracting, other examples of activities to demonstrate effort to comply with the Safe Harbor Limits are listed in the appendix to part 135 of the Code of Federal Regulations—24 CFR Part 135 and include:

1. Distributing or posting flyers advertising positions to be filled;
2. Contacting the local government or housing authority for a list of residents who have expressed interest in Section 3 employment;
3. Holding job informational meetings for residents, contractors, etc...;
4. Contacting agencies administering HUD YouthBuild programs and requesting their assistance in recruiting HUD YouthBuild program participants for training and employment positions.

**PART VI. PREFERENCES AND ELIGIBILITY:**

*Note: All persons who are recipients of housing assistance from the government are Section 3 residents. Residents of HUD assisted housing are top priority Section 3 residents (Tier One). HUD assisted housing includes: (A) public housing, (B) Housing Choice Voucher holders, (C) substance abuse rehabilitation housing, (D) domestic violence shelters, (E) transitional housing facilities, (F) homeless shelters, and (G) veterans housing. The businesses owned by Section 3 residents (ROBs) are top priority business concerns (Tier One). When employment or contracting opportunities are offered and all requirements are met and remain equal, HUD assisted housing residents and ROBs within the area of the project shall be provided preference over other Section 3 residents/business concerns and non-Section 3 residents/business concerns.*

- A) Regarding the hiring of Section 3 residents, preference, in the following order, shall be given to those residents who live:
1. In HUD assisted housing.
  2. At the site where the work is being performed.
  3. In the city where the work is being performed.
  4. In the county where the work is being performed.
- B) Regarding the contracting opportunities for Section 3 business concerns, preference shall be given to business concerns, in the order of preference described in Section A of Part VI, Preference and Eligibility, meeting these definitions and in this order:
1. Resident Owned Businesses (ROBs) owned and operated at 51% by Section 3 Residents.
  2. Businesses that employ Section 3 residents at no less than 30% of the contractors aggregate full time staff.

3. Contractors that at the time of bid show evidence (meaning the specific name and preference met) of their intent to award no less than 25% of their total award to Section 3 business concerns.
- C) A Section 3 resident seeking employment must fulfill the requirements of the sought position and, if asked, must provide evidence of their Section 3 status (e.g., proof of residency in public housing development; evidence of participation in a HUD YouthBuild program operated in the metropolitan area (or non-metropolitan county) where the Section 3 covered assistance is spent; evidence that the individual resides in the Section 3 area and is a low or very low-income person as defined in Section 3(b) (2) of the U.S. Housing Act of 1937). Recipient agencies may choose to allow prospective Section 3 residents to self-certify their eligibility. Any self-certification should include a statement of penalty for falsifying information. A Section 3 Business Concern seeking to win a contract must fulfill the requirements of the contract and, if asked, provide evidence of their Section 3 status.

#### **PART VII. OTHER ECONOMIC OPPORTUNITIES:**

The Other Economic Opportunities provision may only be used when a contractor, recipient, or sub-recipient desires to claim a preference under Part VI and cannot comply with the hiring or subcontracting goals set forth in the Preference Tier structure, or, based on observed special needs, has concluded that providing Other Economic Opportunities will be a greater benefit to Section 3 Residents or Businesses. Whenever the Other Economic Opportunities provision is employed, the actions must equal or exceed 3% of the total contract value including all labor and material costs as well as any change orders to these costs.

Firms that will provide other economic opportunities will be responsible for soliciting and contracting a qualified firm/individual experienced in providing a Georgia Department of Labor Approved training curriculum consistent with Section 3 requirements of 135.11 in the area of Section 3 resident training in the following areas:

- Employment Readiness and Professional Development
- Section 3 Small Business Concern Development Training
- Computer Literacy and Data Entry Skills Training
- Employment Skills Training (Any Viable Employment Field)
- Other training curriculum approved by DCA

The acceptability of these efforts will be determined by DCA in the case of a recipient, sub-recipient, and by the recipient or sub-recipient in the case of a contractor, or in cases of a complaint, by HUD.

#### **PART VIII. DCA SECTION 3 RESPONSIBILITIES:**

Refer to the Georgia Department of Community Affairs Section 3 Hiring Policy available upon request to the Georgia Department of Community Affairs Human Resources Department.

**PART IX. COMPLAINTS AND COMPLIANCE:**

Any Section 3 resident or business concern that feels that the Section 3 regulations were not complied with may file a complaint directly to the Assistant Secretary for Fair Housing and Equal Opportunity at the following address (or as otherwise directed by HUD):

Assistant Secretary for Fair Housing and Equal Opportunity  
U.S. Department of Housing and Urban Development  
Regional Field Office  
40 Marietta Street, NW  
Atlanta, Georgia 30303

The complaint must be in writing and be received within 180 days from the date of the action upon which the complaint is based. It should include the complainant's name and address, the recipient, sub-recipient's or contractor's name and address, and a description of the acts in question. The complainant will receive a response from HUD within 10 days in which further investigation will be explained.

**PART X. DCA STANDARD SECTION 3 OPERATING PROCEDURES**

Policy Effective Date: \_\_\_\_\_, 20\_\_      Procedural Change Date: \_\_\_\_\_, 20\_\_

**Procedure Title: Section 3**

This operating procedure is tied to the Operating Policy on Section 3 designed to achieve and maintain compliance with the HUD Act of 1968 revised in 1992 and in 1994.

The procedures contained within are relative to the Section 3 daily operations in:

- Hiring
- Procurement
- Contracting
- Compliance Management
- Solicitation Package and Certification Documents

**Section 1 – Recipient, Sub-Recipients and Contractors: Hiring**

This procedure encompasses all full time employment types including, long term, short term, temporary and special assignments. In the process of seeking new employees for the recipient,

sub-recipient, contractor, or subcontractor, the following procedures should be followed in an effort to create as many employment opportunities for Tier 1 HUD direct beneficiaries:

**Step 1:** Post the position in community sources that are generally available to low income residents and the general public. It is required that a minimum of three (3) of the following listed sources will be exercised at least once prior to extending an offer of employment to anyone not covered by Section 3 requirements:

- A) The local community newspaper
- B) The most widely distributed newspaper
- C) Company or agency website
- D) The management office of the local housing authority, or homeless service agency, or local low income housing community
- E) Local Workforce Board (i.e., Department of Labor)
- F) Local office of the Georgia Division of Family and Children Services
- G) Local office of the Georgia Department of Public Health
- H) Dodge Room <http://www.construction.com/dodge/dodge.asp>
- I) Other locations as approved by DCA.

**Step 2:** Be certain to list in the notice that the position is a **“Section 3 Covered Position under the HUD Act of 1968 and that Section 3 Residents and Business Concerns are encouraged to apply.”**

**Step 3:** In reviewing all applicants, be certain to first select candidates that best fit the position requirements. If a Tier I resident is identified as a qualified candidate, all things being equal with others in consideration, a preference for employment should be given to the Section 3 Resident based on the Policy order established in Part VI – Preferences and Eligibility.

**Step 4:** In cases where a recipient, sub-recipient or contractor establishes a relationship and requirement with any temporary employment agency contractor, the temporary employment agency contractor or temporary employment agency must require placements to its recipient, sub-recipient or contractors to complete the Self Certification form clarifying their qualifications as a qualified Section 3 Resident. Any person certifying as a qualified Section 3 Resident must be given Preference for any Section 3 covered assignment with the recipient, sub-recipient or contractor providing they meet all other position requirements.

## **Section 2 –Recipient, Sub-Recipients and Contractors: Procurement**

Whenever a contract opportunity is solicited, these steps must be followed in order to comply with DCA’s Section 3 Policy.

**ROB Verification:** Whenever ROB status is sought, the recipient, sub-recipient or contractor staff shall request address and ownership verification of the 51% Owner/Operator rule as stated in

the HUD Act of 1968. Use of the “**Section 3 Self-Certification Form**” attached to this policy is an acceptable statement of address and business data, when presented along with all other required incorporation documents, including any Letter of Issuance of a Federal Employer Identification Number (FEIN) and state Articles of Incorporation.

**Step 1: This step is only applicable when a public housing authority is involved in the transaction.** During the development process of any solicitation or work project, there should be a determination as to whether or not the work can be and/or should be isolated to Resident Owned Businesses (ROB’s) under the **24 CFR Part 963.12 Alternative Procurement Method**. If so, then Steps 2-8 should be followed with respect for **ROB’s ONLY**. Keep in mind, a qualified ROB can be one that is a Joint Venture Partnership where a non-ROB can participate at no more than 49% ownership, operations and profit. A statement where both parties have committed to these terms is required as validation of ROB status.

**Step 2:** As a direct method of encouraging greater participation and election of Section 3 Preference by contractors, DCA requires that all recipient, sub-recipient, and contractors conduct at least one pre-bid meeting or workshop to facilitate the meeting of contractors (large and small) in hopes that more opportunities will be afforded all parties in covered DCA funded contracts. These steps must be in compliance with State of Georgia procurement laws. Where a conflict occurs, the recipient, sub-recipient, or contractor should not conduct such acts that would constitute a violation.

**Step 3:** Post the contract opportunity in community sources that are generally available to Section 3 Businesses, low income residents and the general public. It is required that a minimum of three (3) of the listed sources will be exercised at least once prior to entering into a contract with anyone not covered by Section 3 requirements:

- A) The local community newspaper
- B) The most widely distributed newspaper
- C) Company or agency website
- D) The management office of the local housing authority, or homeless service agency, or local low income housing community
- E) Local Workforce Board (i.e. Georgia Department of Labor)
- F) Local Office of the Georgia Division of Family and Children Services
- G) Local Offices of the Georgia Department of Public Health
- H) Dodge Room <http://www.construction.com/dodge/dodge.asp>
- I) Other locations as approved by DCA.

DCA recommends that all such posting periods shall last at least one calendar week.

**Step 4:** The recipient, sub-recipient or contractor must check the HUD Section 3 Business Registry to determine if there are any Section 3 businesses in the County where the work will be performed. If there are Section 3 businesses in the County that may be able to perform the work, the recipient,

sub-recipient or contractor must provide a copy of the contracting opportunity(ies) (e.g., bid notices) to the Section 3 businesses. See the HUD Section 3 Business Registry at: <https://portalapps.hud.gov/Sec3BusReg/BRegistry/What>.

**Step 5:** All ads must include a notice that the contract opportunity is a **“Section 3 Covered Contract and that Section 3 Business Concerns are encouraged to apply.”**

**Step 6:** All awardees must include the attached **“Solicitation Package”** for recipient, sub-recipients and contractors to complete and return with their applications/responses. Any application/response claiming a preference must include the satisfactorily completed *Section 3 Self-Certification and Action Plan* and the *Section 3 Business Concern Self Certification*.

**Step 7:** In reviewing the solicitation responses, any contractors that claim a preference and are identified as qualified Section 3 Concerns should be reviewed and if legitimate, granted a Preference in contracting, all other things being equal.

**Step 8:** When procurements require point scores as part of the award process, the recipient, sub-recipient or contractor shall ensure that a method of providing Preference exists based on the solicitation criteria to secure the most qualified firm or individual for the contract. Under no circumstances shall a contract be awarded to a firm (Section 3 or Non-Section 3) if they fail to meet minimum standards or do not score high enough to surpass “competitive range” scoring. **Section 3 Preference only is to be considered after all other relative quantitative and qualitative factors have been scored and weighted.**

**Step 9:** All solicitations exceeding \$100,000 shall require that applicants/respondents prior to award convey prior compliance with Section 3 on any HUD funded contract. **If a contractor has not complied on any HUD funded contract effective on or after January 1, 2014, they should be considered non-responsive.**

**Step 10:** All solicitations exceeding \$100,000 must include a certification of prior compliance with HUD Section 3 for all HUD funded contracts effective on or after January 1, 2014 as a requirement for award. See the attached form titled: “Previous Compliance Certification.”

### **Section 3 – Recipient, Sub-Recipients and Contractors: Contracting**

**Step 1:** In addition to the required Section 3 contract language provided in 24 CFR §135.38, the following language is to be added to all new contracts effective immediately:

“All contractors claiming a Preference in contracting by meeting any of the three qualifications including: a Resident Owned Business, Hiring/Employing 30% of New Hires, and/or sub-contracting at least 25% of their total award to a Section 3 Concern, shall maintain that status throughout the life of the contract. Failure to meet this requirement will result in penalties up to and including contract termination.”

**Step 2:** Any recipient, sub-recipient or contractor claiming a Preference **must be in compliance prior to the issuance of a notice to proceed** by DCA, recipient, sub-recipient, or contractor based on the policies established for the applicable DCA funding program.

**Step 3:** The sub-recipient or contractor must maintain compliance. If at any time a recipient, sub-recipient or contractor fails to bring the contract into compliance, DCA, recipient, the sub-recipient, or contractor must withhold all future payments until the contract is in compliance or until other penalties have been levied as stated below.

DCA, the recipient, sub-recipient, or the contractor shall execute these remedies to achieve compliance in this order:

- A. Based on the first observation or report of non-compliance with Section 3, the recipient, sub-recipient or contractor will be sent an e-mail by the compliance manager notifying them of their non-compliance issue. The recipient, sub-recipient or contractor will have until the next payroll or 10 business days, whichever is less, to bring the contract into compliance and/or justify in writing why they cannot meet compliance requirements.
- B. DCA, the recipient, sub-recipient or contractor must render a response to the violating party within 10 business days of receipt of the violating party's letter of reason for non-compliance. If DCA, the recipient, sub-recipient, or the contractor deems the reason to be unacceptable, at its option, DCA, the recipient, sub-recipient, or the contractor can extend the response period one time for up to 5 business days to allow the violating party to identify and secure other compliance options.
- C. If the violating party fails to take any corrective action to bring the contract into compliance within the allotted time, or DCA, the recipient, sub-recipient, or the contractor rejects any of the corrective plans and justifications for non-compliance, DCA, the recipient, sub-recipient, or the contractor will either terminate the contract immediately or impose liquidated damages equal to \$100 a day for every day out of compliance. At DCA's determination, any liquidated damages received must be paid to the recipient, sub-recipient or DCA, at DCA's determination, and be used to promote economic opportunities for Section 3 Residents and Business Concerns.
- D. .

DCA, the recipient, sub-recipient, or the contractor will hold **all funds due to the violating party until such time that a financial workout is completed.**

***Additionally the violating party may be banned by DCA, the recipient, the sub-recipient, and the contractor on future HUD funded projects.***



Georgia Department of Community Affairs  
60 Executive Park South, NE, Atlanta, GA 30329

## Mandatory Section 3 Solicitation Package

This mandatory solicitation package has been developed in accordance with DCA's Section 3 Policy for Covered HUD Funded Activities. DCA encourages all recipients, sub-recipients, contractors, and sub-contractors to review this policy prior to completion of the solicitation package. For those solicitations that meet the applicable Section 3 thresholds, this package must be returned in accordance with the applicable instructions to the contracting entity prior to award **or at the time of submission of a bid/proposal in order to claim a Section 3 preference**. The Section 3 Clause, required forms, and instructions are included in this package.

***To be considered for a contract award exceeding \$100,000, the entire solicitation package must be satisfactorily completed and submitted prior to award. In order to claim a preference for a contract award exceeding \$100,000, the Section 3 Self-Certification and Action Plan and the Section 3 Business Concern Self Certification portions of the solicitation package must be satisfactorily completed and submitted at the time of submission of a bid/proposal.***

***For Section 3 Covered Assistance of \$100,000 or less, the solicitation package must be made available to bidders/offers in accordance with DCA's Section 3 Policy; however, bidders/offers are not required to submit the solicitation package unless a preference is being claimed. In this case, only the Section 3 Self-Certification and Action Plan and the Section 3 Business Concern Self Certification must be completed at the time of submission of a bid/proposal***

***Any bid/proposal claiming a preference must include the completed and signed Section 3 Self-Certification and Action Plan and the Section 3 Business Concern Self Certification, and be submitted by the bid/proposal deadline.***

The following Section 3 forms must be completed and returned as instructed:

- Section 3 Self Certification and Action Plan
- Previous Section 3 Compliance Certification
- Assurance of Compliance Certification

Additionally, if the contractor is claiming certification as a 51% Resident Owned Business (ROB) or is certifying as a 30% employer, the Resident Self-Certification and Skills Data Form must be returned for all employees who meet the low- or very low-income requirement as well as the appropriate Section 3 Business Certification.

## Section 3 Solicitation Overview and Instructions for Contractors

The DCA Section 3 Policy requires that, when the **Section 3 regulation is triggered**, every effort within the contractor's disposal must be made, to the greatest extent feasible, to offer all available employment and contracting opportunities to Section 3 residents and Section 3 businesses based on the compliance methods below.

### All Contracts and All Contractors must meet Section 3 compliance by:

- A. Giving notice of any and all opportunities for employment and contracting to residents of the local Public Housing Authority (PHA), and other low and very low income area residents and businesses, by posting the opportunity in community sources generally available to low income residents and the general public. Exercising a **minimum of three (3)** of the following listed sources must be completed prior to offering employment to anyone not covered by Section 3 requirements:
1. The local community newspaper
  2. The most widely distributed newspaper
  3. Company or agency website
  4. The management office of the local housing authority/homeless service agency/local low income housing community
  5. Local Workforce Board (i.e. Department of Labor)
  6. Local office of the Georgia Division of Family and Children Services
  7. Dodge Room <http://www.construction.com/dodge/dodge.asp>
  8. Other locations as approved by DCA
- B. The recipient, sub-recipient or contractor must check the HUD Section 3 Business Registry to determine if there are any Section 3 businesses in the County where the work will be performed. If there are Section 3 businesses in the County that may be able to perform the work, the recipient, sub-recipient or contractor must provide a copy of the contracting opportunity(ies) (e.g., bid notices) to the Section 3 businesses. See the HUD Section 3 Business Registry at: <https://portalapps.hud.gov/Sec3BusReg/BRegistry/What>.
- C. Clearly stating in notices that the position is a "Section 3 covered position under the HUD Act of 1968 and that Section 3 Residents and Business Concerns are encouraged to apply."
- D. Placing the Section 3 Clause provided in Appendix A in ALL solicitations.
- E. When possible, other activities may be done to demonstrate effort to comply with the Safe Harbor Limits. These other efforts are listed in the appendix to part 135 of the Code of Federal Regulations—24 CFR Part 135 and include:
1. Distributing or posting flyers advertising positions to be filled;

2. Contacting the local government or housing authority for a list of residents who have expressed interest in Section 3 employment;
  3. Holding job informational meetings for residents, contractors, etc...;
  4. Contacting agencies administering HUD YouthBuild programs and requesting their assistance in recruiting HUD YouthBuild program participants for training and employment positions.
- F. Linking residents or businesses to local resources that may be available to help prepare them for applying for and achieving the opportunity.
- G. Working with DCA, the recipient, sub-recipient or contractor as applicable in developing a communication and follow up process to track and report all Section 3 applications and hiring activities to ensure the reporting of compliance efforts, and that contracting and sub-contracting are accurate. Provide preference in hiring and contracting to Section 3 applicants and contractors when employment or contracting opportunities are offered and all requirements are met and remain equal. Contractors must:
1. Provide this package to all sub-contractors when soliciting bids for all contracts or sub-contracts;
  2. Meet all the same processes in A-E; and
  3. Provide Preference to all sub-contractors meeting the definitions as stated in Section VI of DCA's Section 3 Policy for Covered HUD Funded Activities.
- H. In order for Preference as a Section 3 Contractor to be factored into the award decision, all elements of the solicitation criteria must be equal between contracts. This means price and all other factors must be equal. Then the contractors that elect Preference on the Certification and Action Plan form that meet that Preference criterion will be provided Preference in the award of the contract as provided in Part VI., Preferences and Eligibility of DCA's Section 3 Policy for Covered HUD Funded Activities.

Example:

Bill's electrical and Sue's Electrical bid a job where the housing authority has a budget of \$500,000. Bill bids \$480,000 and elects a Preference as a Section 3 business concern because he qualifies as a 51% Resident Owned Business. Sue bids \$450,000 but does not elect any Preference. Both companies met all the other requirements. Sue will be awarded the contract because Bill's bid was higher.

**Important items to remember about receiving Preferences in contract award:**

All contractors and/or subcontractors that elect a Preference and are awarded a contract must be in compliance prior to the issuance of a Notice to Proceed by DCA, the recipient, sub-recipient, or the contractor based on the policies established for the applicable DCA funding program. The contractor and/or subcontractor must maintain the elected Preference standard during the entire contract or risk having the contract terminated for failure to comply. **See Appendix B for further details.**

When a contractor and/or subcontractor that elected a Preference is unable to identify a Section 3 resident or a Section 3 business for employment or contracting opportunities, the contractor then **must** offer employment related training to the Section 3 residents in the county. The training must be provided according to Part VII – Other Economic Opportunities in DCA’s Section 3 Policy.

## **Appendix A** **Section 3 Clause**

**Training and Employment Opportunities for Residents in the Project Area** (Section 3, HUD Act of 1968; 24 CFR 135)

(a) The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

(b) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

(c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of Section 3 apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

(d) The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.

(e) The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.

(f) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

## **Appendix B**

### **Section 3 Contract Non-Compliance Cure /Termination Processes**

This language is a component of contract compliance with the work to which you are responding in this solicitation. The full requirements are provided in the Section 3 Clause found elsewhere in this package and in DCA's Section 3 Policy for Covered HUD Funded Activities.

Any recipient, sub-recipient or contractor claiming Preference **must be in compliance prior to issuance of a notice to proceed by DCA, recipient, sub-recipient, or contractor based on the policies established for the applicable DCA funding program. This preference can be met by any of the three qualifications:**

1. Resident Owned Businesses (ROBs) owned and operated at 51% by Section 3 Residents.
2. Businesses that employ Section 3 residents at no less than 30% of the contractors aggregate full time staff.
3. Contractors that at the time of bid show evidence (meaning the specific name and preference met) of their intent to award no less than 25% of their total award to Section 3 business concerns.

The recipient, sub-recipient or contractor must maintain compliance throughout the life of the contract. The contractor understands and agrees that a compliance management firm may be used to conduct routine and certified payroll reviews to ensure compliance. The Contractor agrees to provide the payroll data in an Excel or Word format each time the payroll is processed throughout the contract.

Failure to meet the Section 3 requirements will result in penalties up to and including contract termination. Any contractor triggering the regulation by doing any hiring or contracting once they are awarded the contract through execution must comply with the Section 3 requirements by executing the efforts on their Certification and Action Plan in accordance with DCA's Section 3 Policy.

DCA, the recipient, sub-recipient or contractor shall execute these remedies to achieve compliance in this order:

#### **NON-COMPLIANCE CURE PROCESS**

- A. Based on the first observation or report of non-compliance with Section 3, the recipient, sub-recipient or contractor will be sent an e-mail by the compliance manager notifying them of their non-compliance issue. The recipient, sub-recipient or contractor will have until the next payroll or 10 business days, whichever is less, to bring the contract into compliance and/or justify in writing why they cannot meet compliance requirements.
- B. DCA, the recipient, sub-recipient or contractor must render a response to the violating party within 10 business days of receipt of the violating party's letter of reason for non-compliance. If DCA, the recipient, sub-recipient, or the contractor deems the reason to

be unacceptable, at its option, DCA, the recipient, sub-recipient, or the contractor can extend the response period one time for up to 5 business days to allow the violating party to identify and secure other compliance options.

#### **NON-COMPLIANCE TERMINATION PROCESS**

If the violating party fails to take any corrective action to bring the contract into compliance within the allotted time, or DCA, the recipient, sub-recipient, or the contractor rejects any of the corrective plans and justifications for non-compliance, DCA, the recipient, sub-recipient, or the contractor will either terminate the contract immediately or impose liquidated damages equal to \$100 a day for every day out of compliance. At DCA's determination, any liquidated damages received must be paid to the recipient, sub-recipient or DCA, at DCA's determination, and be used to promote economic opportunities for Section 3 Residents and Business Concerns.

DCA, the recipient, sub-recipient, or the contractor will hold **all funds due to the violating party until such time that a financial workout is completed.**

***Additionally the violating party may be banned by DCA, the recipient, sub-recipient, and the contractor on future HUD funded projects.***

**Appendix C**  
**Section 3 Forms**





**I am Certifying as a Section 3 Business Concern and requesting Preference accordingly (Select only One Option):**

Option 1

- A business claiming status as a Section 3 Resident-Owned Business Concern (ROB) entity:

\_\_\_\_\_ Initial here to confirm selection of this option

Option 2

- A business claiming Section 3 status, because at least 30% of the existing or newly hired workforce for this specific contract will be Section 3 residents throughout the entire contract period. If a Prime or General Contractor is electing this option, the 30% employment requirement will be for the entire project including all the sub-contractors' employees:

**Check all methods you will employ to secure Section 3 Residents/Persons**

Posting the position in community sources that are generally available to low income residents and the general public is a standard requirement. **Check at least three (3) methods you will employ:**

- The local community newspaper
- The most widely distributed newspaper
- Company or agency website
- The management office of the local housing authority, or homeless service agency, or local low income housing community
- Local Workforce Board (i.e., Department of Labor)
- Local office of the Georgia Division of Family and Children Services
- Local office of the Georgia Department of Public Health
- Dodge Room <http://www.construction.com/dodge/dodge.asp>
- Other locations identified below and subject to DCA approval:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ Initial here to confirm selection of this option

*I anticipate my total number of employees for this contract to be \_\_\_\_\_ and \_\_\_\_\_ will be qualified Section 3 Residents/persons.*

Option 3

- A business claiming Section 3 status by subcontracting 25% of the dollar award to qualified Section 3 Business:

*Attach a list of intended subcontract Section 3 business(es) with subcontract amount.*

*Attach certification & all supporting documentation for each planned subcontract Section 3 Business.*

\_\_\_\_\_ Initial here to confirm selection of this option

**I am NOT Requesting Preference under Section 3:**

- I am **NOT** certifying as a qualified Section 3 Business Concern and I am not requesting a preference. However **if I do trigger the regulation by doing any sub-contracting or hiring, I will comply by meeting all requirements of DCA's Section 3 policy and am** committing to do the outreach as specified below.

**Check all methods you will employ to secure Section 3 Residents/Businesses**

Posting the position/contract opportunity in community sources that are generally available to low income residents and Section 3 Businesses and the general public is a standard requirement. **Check at least three (3) methods you will employ:**

- The local community newspaper
- The most widely distributed newspaper
- Company or agency website
- The management office of the local housing authority, or homeless service agency, or local low income housing community
- Local Workforce Board (i.e., Department of Labor)
- Local office of the Georgia Division of Family and Children Services
- Local office of the Georgia Department of Public Health
- Dodge Room <http://www.construction.com/dodge/dodge.asp>
- Other locations identified below and subject to DCA approval:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ Initial here to confirm selection of this option

Signature: \_\_\_\_\_

Printed/Typed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Notarial Affidavit**

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
*Signature of Notary Public*

\_\_\_\_\_  
*Printed Name of Notary Public*

Commission Expiration Date: \_\_\_\_\_

*(Notarial Seal)*



**Required Submittal - Assurance of Compliance Certification  
Section 3 Action Plan  
Housing and Urban Development Act of 1968  
(12 U.S.C. 1701 U)**

**Contract/Solicitation Name or Number:**

---

**DCA Funding**

**Program:** \_\_\_\_\_

**Entity Receiving DCA Funding Award:** \_\_\_\_\_

**Purpose:** To ensure that regulations promulgated under 24 CFR Part 135 Employment Opportunities for Businesses and Lower Income Persons in Connection with Assisted Projects and the Section 3 Policy of DCA, its recipients, sub-recipients and contractors to the greatest extent feasible is adhered to, and to serve as the “assurance of compliance” certification and action plan as required in the bid documents, supplemental general conditions, and required forms for the contract for any HUD work funded by DCA.

**Description of the project’s work detail:** The project work will be as listed in the final scope of work in the contract with DCA, its recipients, sub-recipients and contractors including any change orders. List all known subcontractors below:

**Subcontractor(s):** \_\_\_\_\_

**Subcontractor(s):** \_\_\_\_\_

**Subcontractor(s):** \_\_\_\_\_

**Subcontractor(s):** \_\_\_\_\_

**Subcontractor(s):** \_\_\_\_\_

**Subcontractor(s):** \_\_\_\_\_

**Subcontractor(s):** \_\_\_\_\_

**Subcontractor(s):** \_\_\_\_\_

*Use an additional sheet if required.*

*Note: If subcontractors are unknown at this time, print UNKNOWN on the line above. Also, the contractor must notify DCA or recipient or sub-recipient if subcontractors are added or changed during the contract. Any changes to this certification requires a resubmission of this form to DCA or recipient or sub-recipient.*

**Preliminary Statement for Work Force Needs:**

DCA intends to meet Section 3 compliance at the highest level and it is our intent to identify any short-term and long-term employment or contracting opportunities for qualified Section 3 persons and Business Concerns during the course of the contract funded by DCA via its recipients or sub-recipients and contractors. Please list the status of all planned employment positions and opportunities for this contract. **Preference for all opportunities must be given to low and very low-income residents if they qualify. If awarded a contract, regardless of whether your firm has elected a preference, you are required to provide a list of your aggregate workforce on this project. Any changes to that workforce during the project will constitute NEW hires. You must notify DCA, its recipient, sub-recipient or contractor (respectively) overseeing your contract of any new hire opportunities that arise during the life of your contract. The anticipated workforce list may be provided on a separate sheet or in a different format.**

<u>List All Employees</u>	<u>Date Hired</u>	<u>Section 3 Resident (Yes/No)</u>	<u>Job Title/Trade</u>	<u>Salary Range</u>
Name: Address: City, ZIP:				
Name: Address: City, Zip Code:				
Name: Address: City, Zip Code:				
Name: Address: City, Zip Code:				

Use additional pages as needed.

**“To the Greatest Extent Feasible”:**

The Contractor has identified \_\_\_ # of **OPEN** positions with respect to this contract. The positions are filled by the \_\_\_\_\_ (Position title) of the Contractor.

Should the scope of work or duties of the contractor change to a degree requiring a modification of the work force needs, the contractor shall put forth a reasonable effort to fill vacant positions with eligible Section 3 residents.

**Documentation of “To the Greatest Extent Feasible”:**

The contractor will work with DCA, its recipients, sub-recipients, and contractors staff to notify residents of any opportunities afforded under the contract. The contractor will partner with DCA, its recipients, sub-recipients, and contractors by giving preference of any employment opportunities to the Section 3 persons or businesses.

The contractor shall recruit or attempt to recruit from the Section 3 area the necessary number of low-income and very low-income residents and Section 3 businesses, as applicable. The contractor must also document their recruiting efforts and any impediments to compliance with DCA’s Section 3 policy and the requirements of this solicitation package. This documentation must be submitted to the recipient or sub-recipient.

1. DCA, its sub-recipients and contractors shall: Maintain a list of all low-income area residents who have applied, either on their own or from referral from any source, and employ such person if otherwise eligible and if a trainee vacancy exists.
2. Conduct solicitation in accordance with DCA’s Section 3 policy and the requirements outlined in the solicitation package.

The contractor shall review all employment applications and determine if low-income and very low-income residents or Section 3 businesses meet minimum hiring or contracting qualifications. If these applicants meet such minimum qualifications, but are not hired due to lack of employment opportunities or for other reasons, they will be placed on a priority list and offered positions/contracts upon the occurrence of the first available appropriate opening.

**Utilization of Section 3 Businesses Located Within the County:**

The recipient, sub-recipient or contractor does \_\_\_ does not \_\_\_ intend to subcontract any of the work identified in the scope of work cited in the bid specifications, scope of work or General Conditions. Should the scope of work or needs of the contractor change, the contractor shall, to the greatest extent feasible, assure that subcontracts be awarded to business concerns within the Section 3 covered area, or to business concerns owned in the substantial part (at least 51%) by persons residing in the Section 3 covered area.

**Record Keeping:**

The recipient, sub-recipient, contractor or subcontractor, as applicable, shall maintain on file all records related to employment and job training of low-income and very low-income residents or other such records, advertisements, legal notices, brochures, flyers, publications, assurances of compliance from sub-contractors, etc., in connection with this contract. If a report is needed in the future, the recipient,

sub-recipient, contractor or subcontractor, as applicable, agrees to provide all records upon request. The contractor shall, upon request, provide such records or copies of records to HUD, DCA, their recipients, sub-recipients, contractors, staff, or agents. Records shall be maintained for at least three (3) years after the close of the contract.

**Reports:**

The recipient, sub-recipient or contractor shall provide reports as required in connection with the contractor specifications. All certified and regular payrolls shall clearly detail which employees qualify under Section 3.

**Certification:**

The recipient, sub-recipient or contractor will certify that any vacant employment positions, including training positions that filled:

- 1) After the recipient, sub-recipient or contractor is selected but before the contract is executed, and
- 2) With persons other than those to who the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the subcontractor's obligations under 24 CFR Part 135.

**Grievance and Compliance:**

The recipient, sub-recipient, contractor or subcontractor hereby acknowledges that they understand that any low-income and very low-income resident of the project area, for him/her or as representatives of persons similarly situated, seeking employment or job training opportunities in the project area, or any eligible business concerns seeking contract opportunities may file a grievance if efforts to the greatest extent feasible were not executed. The grievance must be filed with HUD not later than one hundred eighty (180) calendar days from the date of the action (or omission) upon which the grievance is based.

I attest that the information on the preceding pages is true and correct.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title





**Purpose:**

The purpose of Section 3 of the Housing and Urban Development of 1968 (12 U.S.C. 1701u) (Section 3) is to ensure that employment and other economic and business opportunities generated by HUD Financial Assistance shall be directed to the Authority Residents and other low- and very low-income persons, particularly those who are recipients of government housing assistance and to business concerns which provide economic opportunities to Residents and other low- and very low-income persons.

Section 3 resident means:

- (1) A public housing resident; or
- (2) An individual who resides in the metropolitan area or non-metropolitan county in which the section 3 covered assistance is expended, and who is:
  - I. A low-income person, as this term is defined in section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)). Section 3(b)(2) of the 1937 Act defines this term to mean families (including single persons) whose incomes do not exceed 80% of the median family income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 80% of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction costs or unusually high or low-income families; or
  - II. A very low-income person, as this term is defined in section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2)). Section 3(b)(2) of the 1937 Act (42 U.S.C. 1437a(b)(2) defines this term to mean families (including single persons) whose incomes do not exceed 50% of the median family income for the area, as determined by the Secretary with adjustments made for smaller or larger families, except that the Secretary may establish income ceilings higher or lower than 50% of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.
- (3) A person seeking the training and employment preference provided by section 3 bears the responsibility of providing evidence (if requested) that the person is eligible for the preference.

Service area means the geographical area in which the persons benefiting from the Section 3-covered project reside.

The figures below represent very low-income families; bottom figures represent low-income families. The most recent income limits established for each county may be found at:

<http://www.hud.gov/offices/cpd/affordablehousing/programs/home/limits/income/>.

**Subrecipient or Contractor to Insert 2013 Income Limits for Project Location**

FY 20XX Income Limit Area	Median Income	FY 20XX Income Limit Category	1 Person	2 Person	3 Person	4 Person	5 Person	6 Person	7 Person	8 Person
		<b>Very Low (50%) Income Limits</b>								
		<b>Low (80%) Income Limits</b>								

**RESIDENT SECTION 3 SELF-CERTIFICATION  
AND SKILLS DATA FORM  
AFFADAVIT**

---

STATE OF \_\_\_\_\_

County of \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of the City/County of \_\_\_\_\_,  
State of \_\_\_\_\_, do hereby certify that, \_\_\_\_\_, whose  
name is signed to the writing above bearing date on the \_\_\_\_\_ Day of \_\_\_\_\_,  
20\_\_\_\_, has acknowledged the same before me in my State aforesaid.

Given under my hand and official seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
*Signature of Notary Public*

\_\_\_\_\_  
*Printed Name of Notary Public*

Commission Expiration Date: \_\_\_\_\_

*(Notarial Seal)*

### SECTION 3 BUSINESS CONCERN SELF CERTIFICATION

The Georgia Department of Community Affairs (DCA) is seeking to extend the benefits of and to promote compliance with Section 3 by identifying Section 3 Business Concerns and targeting Section 3 Business Concerns for business opportunities, events and educational programs.

In an effort to comply with Federal Section 3 Regulations which promote contract, employment and training opportunities for State of Georgia residents, DCA has instituted a Section 3 Self Certification process.

Businesses seeking certification must complete and submit the attached Section 3 Business Concern Self Certification forms as follow:

1. If your company is qualified because it is owned (51% or more) by one or more Section 3 residents, then complete **Form A, "Section 3 Business Concern – Resident Business Owner(s) Verification"**;

**OR**

2. If your company is qualified because 30% or more of its full time permanent workforce are Section 3 Residents\*, then complete **Form B, "Section 3 Business Concern – 30% + Workforce"**.

**OR**

3. If more than 25% of all subcontract work to be awarded shall be performed by Section 3 business concerns as described above, then complete **Form C, "Section 3 Business Concern-Subcontractor"**.

Please answer all questions, sign the completed forms, and notarize the affidavit.

Completed packets must be returned to the sub-recipient or contractor as follows:

Name of sub-recipient/contractor: \_\_\_\_\_

Attn: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

\_\_\_\_\_

If you have any questions or require assistance, please contact:

Name: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

**Form A**  
**SECTION 3 BUSINESS CONCERN**  
**Resident Business Owner(s) Verification**

A business can be certified as a Section 3 Business Concern if the business is owned (51% or more) by Georgia Section 3 Resident(s).

Name of Owner: \_\_\_\_\_

Home Street Address: \_\_\_\_\_

Home City, County, & Zip Code: \_\_\_\_\_

Name of Business: \_\_\_\_\_

Percentage of Ownership: \_\_\_\_\_%

**Low- to – Moderate Income (80% of Median)**

Check the appropriate box for your family size and income *if your total household income is equal to or less than the Gross Household Income Maximum amount listed for your appropriate household size:*

Check Box	# of Persons in Household	Gross Household Income Maximum
	1 Individual	
	2 Individuals	
	3 Individuals	
	4 Individuals	
	5 Individuals	
	6 Individuals	
	7 Individuals	
	8 Individuals	

(Effective \_\_\_\_\_, 2013)

*If the business is owned by more than one Section 3 resident, list each owner below and each should submit a separate Resident Business Owner Verification Form (Form A).*

Please list additional Section 3 Resident owners of the business below:

Name	Position	% Percentage of Ownership

**I certify that I am a resident of the State of Georgia and my total household income last year was not more than the amount shown above for my family size. I further certify the information provided is true and accurate and agree to provide upon request, documents verifying the information submitted to qualify as a Section 3 Business Concern.**

**Print:** \_\_\_\_\_ **Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Form B**  
**SECTION 3 BUSINESS CONCERN**  
**30% + Workforce**

A business can be certified as a Section 3 Business Concern if at least 30% of its permanent, full-time employees are Section 3 residents, or were Section 3 residents within three years of the date of the first employment with the business. You may also certify as a Section 3 Business Concern if, for this award, you will hire Section 3 residents for at least 30% of your permanent, full-time employees for this specific project. For your firm to be eligible UNDER THIS CRITERIA, you must provide the following information for **all permanent, full-time employees**.

**You may attach additional copies of this chart, if necessary.**

List All Employees	Date Hired	Section 3 Resident	Job Title/Trade	Salary Range
Name: Address: City/Zip:				
Name: Address: City/Zip:				
Name: Address: City/Zip:				
Name: Address: City/Zip:				
Name: Address: City/Zip:				
Name: Address: City/Zip:				
Total Number of Employees:	<b>Full-Time:</b> _____	<b>Part-Time:</b> _____	<b>Contract:</b> _____	
Number of Section 3 Residents:				
Section 3 % of Total Workforce:				

**I certify that the information provided is true and accurate and agree to provide upon request, any/all documents verifying the information submitted to qualify as a Section 3 Business Concern.**

**Print Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Company Name:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Form C**  
**SECTION 3 BUSINESS CONCERN**  
**Subcontractor Awarded**

A business can be certified as a Section 3 Business Concern if the firm makes a commitment to subcontract in excess of twenty-five percent (25%) of the total amount of subcontracts to be awarded to: A) Section 3 Resident Owned Businesses; or B) Businesses for which 30% or more of their permanent full-time workforce is comprised of Section 3 Residents.

List all work performed by Section 3 Business Concerns Identified (This Form is to be updated as Section 3 Business Concerns are awarded through the completion of the project):

Name of Business	Qualifying Conditions	Total Contract Award

All identified Section 3 Business Concerns listed above are required to complete a Section 3 Self Certification Application (Forms A – C as appropriate) or provide proof of Section 3 Certification status. Attach all required documents to this form.

**I certify that the information provided is true and accurate and agree to provide upon request, any/all documents verifying the information submitted to qualify as a Section 3 business concern.**

**Print Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Company Name:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

schedule a substance in schedule I on a temporary basis. Such an order may not be issued before the expiration of 30 days from (1) the publication of a notice in the **Federal Register** of the intention to issue such order and the grounds upon which such order is to be issued, and (2) the date that notice of a proposed temporary scheduling order is transmitted to the Assistant Secretary of HHS. 21 U.S.C. 811(h)(1).

Inasmuch as section 201(h) of the CSA directs that temporary scheduling actions be issued by order and sets forth the procedures by which such orders are to be issued, the DEA believes that the notice and comment requirements of section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, do not apply to this temporary scheduling action. In the alternative, even assuming that this action might be subject to section 553 of the APA, the Deputy Administrator finds that there is good cause to forgo the notice and comment requirements of section 553, as any further delays in the process for issuance of temporary scheduling orders would be impracticable and contrary to the public interest in view of the manifest urgency to avoid an imminent hazard to the public safety.

Further, the DEA believes that this temporary scheduling action final order is not a "rule" as defined by 5 U.S.C. 601(2), and, accordingly, is not subject to the requirements of the Regulatory Flexibility Act (RFA). The requirements for the preparation of an initial regulatory flexibility analysis in 5 U.S.C. 603(a) are not applicable where, as here, the DEA is not required by section 553 of the APA or any other law to publish a general notice of proposed rulemaking. Additionally, this action is not a significant regulatory action as defined by Executive Order 12866 (Regulatory Planning and Review), section 3(f), and, accordingly, this action has not been reviewed by the Office of Management and Budget (OMB).

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132 (Federalism) it is determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Pursuant to section 808(2) of the Congressional Review Act (CRA), "any rule for which an agency for good cause finds...that notice and public procedure thereon are impracticable, unnecessary,

or contrary to the public interest, shall take effect at such time as the Federal agency promulgating the rule determines." It is in the public interest to schedule these substances immediately because they pose a public health risk. This temporary scheduling action is taken pursuant to section 811(h), which is specifically designed to enable the DEA to act in an expeditious manner to avoid an imminent hazard to the public safety from new or designer drugs or abuse of those drugs. Section 811(h) exempts the temporary scheduling order from standard notice and comment rulemaking procedures to ensure that the process moves swiftly. For the same reasons that underlie section 811(h), that is, the DEA's need to move quickly to place these substances into schedule I because they pose a threat to public health, it would be contrary to the public interest to delay implementation of the temporary scheduling order. Therefore, in accordance with section 808(2) of the CRA, this order shall take effect immediately upon its publication.

**List of Subjects in 21 CFR Part 1308**

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

Under the authority vested in the Attorney General by section 201(h) of the CSA, 21 U.S.C. 811(h), and delegated to the Deputy Administrator of the DEA by Department of Justice regulations, 28 CFR 0.100, Appendix to Subpart R, the Deputy Administrator hereby intends to order that 21 CFR part 1308 be amended as follows:

**PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES**

■ 1. The authority citation for part 1308 continues to read as follows:

**Authority:** 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

■ 2. Section 1308.11 is amended by adding paragraphs (h)(12), (13), and (14) to read as follows:

**§ 1308.11 Schedule I.**

\* \* \* \* \*

(h) \* \* \*

(12) 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine, its optical, positional, and geometric isomers, salts and salts of isomers—7538 (Other names: 25I-NBOMe; 2C-I-NBOMe; 25I; Cimbi-5)

(13) 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine, its optical, positional, and geometric isomers, salts and salts of isomers—7537 (Other

names: 25C-NBOMe; 2C-C-NBOMe; 25C; Cimbi-82)

(14) 2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine, its optical, positional, and geometric isomers, salts and salts of isomers—7536

(Other names: 25B-NBOMe; 2C-B-NBOMe; 25B; Cimbi-36)

Dated: November 7, 2013.

**Thomas M. Harrigan,**  
*Deputy Administrator.*

[FR Doc. 2013-27315 Filed 11-14-13; 8:45 am]

BILLING CODE 4410-09-P

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Parts 50, 55, and 58**

[Docket No. FR-5423-F-02]

RIN 2501-AD51

**Floodplain Management and Protection of Wetlands**

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule revises HUD's regulations governing the protection of wetlands and floodplains. With respect to wetlands, the rule codifies existing procedures for Executive Order 11990 (E.O. 11990), Protection of Wetlands. HUD's policy has been to require the use of the 8-Step Process for floodplains for wetlands actions performed by HUD or actions performed with HUD financial assistance. This rule codifies this wetlands policy and improves consistency and increases transparency by placing the E.O. 11990 requirements in regulation. In certain instances, the new wetlands procedures will allow recipients of HUD assistance to use individual permits issued under section 404 of the Clean Water Act (Section 404 permits) in lieu of 5 steps of the E.O. 11990's 8-Step Process, streamlining the wetlands decisionmaking processes. With respect to floodplains, with some exceptions, the rule prohibits HUD funding (e.g., Community Development Block Grants, HOME Investment Partnerships Program, Choice Neighborhoods, and others) or Federal Housing Administration (FHA) mortgage insurance for construction in Coastal High Hazard Areas. In order to ensure maximum protection for communities and wise investment of Federal resources in the face of current and future risk, this final rule also requires the use of preliminary flood maps and advisory base flood elevations where the Federal Emergency

Management Agency (FEMA) has determined that existing Flood Insurance Rate Maps (FIRMs) may not be the "best available information" for floodplain management purposes. This change in map usage requirements brings HUD's regulations into alignment with the requirement in Executive Order 11988 that agencies are to use the "best available information" and will provide greater consistency with floodplain management activities across HUD and FEMA programs. The rule also streamlines floodplain and wetland environmental procedures to avoid unnecessary processing delays. The procedures set forth in this rule would apply to HUD and to state, tribal, and local governments when they are responsible for environmental reviews under HUD programs.

**DATES:** Effective December 16, 2013.

**FOR FURTHER INFORMATION CONTACT:** Danielle Schopp, Director, Office of Environment and Energy, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., Room 7250, Washington, DC 20410-8000. For inquiry by phone or email, contact Jeremiah Sanders, Environmental Review Division, Office of Environment and Energy, Office of Community Planning and Development, at 202-402-4571 (this is not a toll-free number) or at [Jerimiah.J.Sanders@hud.gov](mailto:Jerimiah.J.Sanders@hud.gov). Persons with hearing or speech impairments may access this number through TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. The December 12, 2011, Proposed Rule*

Federal departments and agencies (agencies) are charged by E.O. 11990, entitled Protection of Wetlands, dated May 24, 1977 (42 FR 26961) and Executive Order 11988 (E.O. 11988), entitled "Floodplain Management," dated May 24, 1977 (42 FR 26951), with incorporating floodplain management goals and wetland protection considerations in their respective planning, regulatory, and decisionmaking processes. A floodplain refers to the lowland and relatively flat areas adjoining inland and coastal waters including flood-prone areas of offshore islands that, at a minimum, are subject to a one percent or greater chance of flooding in any given year (often referred to as the "100-year" flood). Wetlands refers to those areas that are inundated by surface or ground water with a frequency sufficient to support, and under normal

circumstances does or would support, a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas, such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds.

On December 12, 2011, HUD proposed revising its regulations governing floodplain management (76 FR 77162, as corrected by 76 FR 79145) to codify the procedures applicable to wetlands authorized by E.O. 11990. The procedures authorized by E.O. 11990, which focus on protection of wetlands, require the completion of an 8-step process referred to as the "8-Step Process" of evaluation, public notice, environmental review, and evaluation of alternatives. This review and evaluation process is similar to the process required for protection of floodplains under E.O. 11988, Floodplain Management, which is already codified in HUD regulations, (See 24 CFR 55.20).

The 8-Step Process is administered by HUD, state governments, units of general local government, or tribal governments. Step 1 requires a determination regarding whether or not the proposed project to be developed with HUD financial assistance will be in a wetland. If the project is in a wetland, Step 2 requires that public notice be issued to inform interested parties that a proposal to consider an action in a wetland has been made. Following this notice, Step 3 requires the identification and evaluation of practicable alternatives to avoid locating the project in a wetland. Step 4 requires the identification and evaluation of the potential direct and indirect impacts associated with the occupancy or modification of wetlands. Step 4 also requires the identification of the potential direct support of wetlands development, such as housing or public-service structures that require additional investment such as food service or parking, and indirect support of wetlands development that can be caused by infrastructure, such as water and waste water systems for the development that could induce further development due to proximity to the wetland. Step 5 requires an analysis of practicable modifications and changes to the proposal to minimize adverse impacts to the wetlands and to the project as a result of its proposed location in wetlands. Under Step 6, the practicable alternatives developed under Step 3 are evaluated. If there is no practicable alternative to the proposed wetland development, Step 7 requires a second notice to be issued to the public

stating that the decision has been made and providing details associated with the decision. After this second notice, Step 8 implements the action, including any mitigating measures established during the decisionmaking process. The December 12, 2011, rule also proposed requiring appropriate compensatory mitigation for adverse impacts to more than one acre of wetlands.

The December 12, 2011, rule also proposed streamlining the wetlands decisionmaking process by allowing HUD and HUD's recipients of assistance to use permits issued under section 404 of the Clean Water Act (33 U.S.C. 1344) (Section 404) in lieu of performing the first 5 steps of the 8-Step Process. Section 404 of the Clean Water Act establishes a program to regulate the discharge of dredged or fill material into waters of the United States, including wetlands. Activities in waters of the United States regulated under this program include fill for development, water resource projects (such as dams and levees), infrastructure development (such as highways and airports) and mining projects. Section 404 requires a permit before dredged or fill material may be discharged into waters of the United States, unless the activity is exempt from Section 404 regulation (e.g., certain farming and forestry activities). In order to obtain a permit, an applicant must show that it has: (1) Taken steps to avoid wetland impacts, (2) minimized potential impacts on wetlands, and (3) provided compensation for any remaining unavoidable impacts.

The use of Section 404 permits was proposed to reduce costs and the processing time for complying with parts of the 8-Step Process. The proposed rule provided that if the applicant had obtained an individual Section 404 permit and submitted the permit with its application for a HUD program, then HUD or a responsible entity assuming HUD's authority need complete only the last 3 steps of the 8-Step Process. The rule also proposed to streamline project approvals by expanding the use of the current "5-Step Process" for repairs, rehabilitations, and improvements to facilitate rehabilitation of certain residential and nonresidential properties.

Several other changes were proposed by the December 12, 2011, rule including a proposal to require the use of FEMA's preliminary flood maps and advisory base flood elevations in post-disaster situations where the FEMA has determined that the official FIRMs may not be the most up-to-date information. In addition, the proposed rule suggested exempting certain activities, such as



leasing some already insured structures, allowing entities to adopt previous reviews performed by a responsible entity or HUD, and modifying a categorical exclusion from review under the National Environmental Policy Act of 1969 (NEPA). Further, the rule proposed prohibiting HUD funding or FHA mortgage insurance for the construction of new structures in Coastal High Hazard Areas. The rule also proposed to encourage nonstructural floodplain management, when possible, to encourage resiliency. When HUD or a recipient analyzes alternatives, the nonstructural alternative should be chosen if all other factors are considered to be equal. For a full discussion of the proposed rule, please see the December 12, 2011 *Federal Register* (76 FR 77162).

### *B. Solicitation of Specific Comment on Requiring That Critical Actions Be Undertaken at the 500-Year Base Flood Elevation*

HUD's proposed rule also solicited specific comment regarding a potential change to § 55.20(e), Step 5 of the "Decisionmaking process" to require that all new construction of "critical actions" in the 100- or 500-year floodplain be elevated to the 500-year base flood elevation. While HUD received comments on this issue, which will be discussed later in this preamble, HUD has decided not to make any changes to address this issue at this time. HUD will continue to research the impact of allowing critical actions below the 500-year base flood elevation.

### *C. This Final Rule*

This final rule follows publication of the December 12, 2011, proposed rule. HUD received four public comments, which are detailed in the section of this preamble labeled "Discussion of Public Comments received on the December 12, 2011 Proposed Rule," and is making several changes in response to public comment. In addition, HUD is making selected changes in the final rule to provide greater consistency between the regulatory text, the intent expressed in the proposed rule preamble language, paragraph 2(b) of E.O. 11990, and other codified HUD regulations. HUD is also revising § 55.20(a) to make it more consistent with the preamble of the proposed rule and the requirements of E.O. 11990. Section 55.28 is also revised to make it more consistent with the preamble of the proposed rule and section 404 of the Clean Water Act.

A summary of key changes in the final rule from the proposed rule follow.

*Changes made in response to public comments.*

- Clarification of § 55.1(c)(3), which describes the exceptions to the prohibition on HUD financial assistance for noncritical actions in high hazard areas, to allow "infrastructure" improvements and reconstruction following destruction caused by a disaster in Coastal High Hazard Areas. This change is intended to reduce confusion. It also narrows the proposed prohibition and makes HUD's policies for grantees more consistent with FEMA policies. Section 55.11(c) is also revised to make the table in this section consistent with § 55.1(c)(3).

- Revision of the definition of Coastal High Hazard Areas in § 55.2(b)(1) to allow FEMA flood insurance studies to be used in addition to flood insurance maps in making the determinations of the boundaries of the Coastal High Hazard Areas, 100- and 500-year floodplains, and floodways. HUD is also clarifying that when available, the latest interim FEMA information, such as advisory base flood elevations or preliminary maps or studies, shall be used as the source of these designations.

- Modification of the definition of wetlands in § 55.2(b)(11) to cover manmade wetlands in order to ensure that wetlands built for mitigation would be preserved as natural wetlands would be preserved.

- Revision of the scope of assistance eligible for the 5-Step Process in § 55.12(a)(3) by providing that certain types of projects not be categorized as substantial improvements as defined by § 55.2(b)(10). Projects that are "substantial improvements" remain subject to the 8-Step Process, while projects that fall below that rehabilitation threshold are eligible for the 5-Step Process for the residential and nonresidential rehabilitations at § 55.12(a)(3) and (4). This will allow less costly housing units and those housing units damaged by events to receive expedited processing, while more costly and more severely damaged units will continue to be subject to the full 8-Step Process.

*Changes made to more closely align the regulatory text with the statutory language and the Executive Order.*

- Revision of § 55.12(c) to remove the exclusion from part 55 for HUD's implementation of the full disclosure and other registration requirements of the Interstate Land Sales Disclosure Act (15 U.S.C. 1701–1720) (ILSDA). Section 1061(b)(7) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5581(b)(7), transferred all of HUD's consumer protection functions under ILSDA to the Bureau of Consumer Financial Protection.

- Clarification of § 55.20(a), which describes Step 1 in the decisionmaking process. The change removes redundant language and clarifies that actions that result in new construction in a wetland are covered actions. The revised regulatory text is more consistent with E.O. 11990 and current policy to protect wetlands impacted by off-site actions. For example, it would now cover such situations as damming a stream, which could result in diking or impounding of wetlands offsite. This change will allow wetlands to be considered consistent with the hydrology of the land as opposed to the property boundaries that often do not reflect hydrological conditions. An estimated 275 8-Step Processes for wetlands and floodplains will be performed on HUD-assisted projects each year.

- Clarification of § 55.28(a)(2) to permit recipients of HUD assistance to use permits issued by state and tribal governments under section 404(h) of the Clean Water Act in lieu of 5 steps of the Executive Order's 8-Step Process. State agencies and tribes were specifically mentioned in the proposed rule preamble, and the terms are now included in the regulatory text to provide effective notice to affected parties that these entities are covered. Michigan and New Jersey currently exercise the authority under section 404(h) of the Clean Water Act to issue Section 404 permits.

## **II. Discussion of Public Comments Received on the December 12, 2011, Proposed Rule**

By the close of the public comment period on February 10, 2012, HUD received four public comments on the proposed rule. Comments were submitted by two individuals; a national, nonprofit organization representing state floodplain managers; and the Floodplain Management Branch of FEMA. The comments generally expressed support for the proposed rule, but several raised questions about the rule or offered suggestions for additional amendments. After careful consideration of the issues raised by the commenters, HUD has decided to adopt the regulatory amendments as proposed, with some minor changes as already discussed.

The following section of this preamble summarizes the significant issues raised by the commenters on the December 12, 2011, proposed rule and HUD's responses to these comments. To ease review of the comments, the comments and responses are presented in the sequence of the sections presented for proposed amendment in the proposed rule.

*Comment: Prohibit HUD funding or FHA multifamily mortgage insurance for construction of new structures in Coastal High Hazard Areas.* One commenter supported the prohibition on construction in Coastal High Hazard Areas (V Zones, one of the FEMA-defined Special Flood Hazard Areas in the 100-year Floodplain) that was contained in the proposed rule. The commenter stated that HUD may, under existing regulations, fund construction activities in the Coastal High Hazard Area as long as the structures meet FEMA regulations establishing acceptable construction standards. The commenter referenced HUD's current policy in relationship to current FEMA regulations in 44 CFR 60.3(e), "Floodplain management criteria for flood-prone areas" and stated that these minimal construction standards would still result in significant residual risk and an increased flood risk, particularly given the current sea level rise projections. Accordingly, the commenter supported HUD's proposal to completely eliminate HUD funding for construction in these areas.

Another commenter addressing this issue stated that the regulatory text of proposed § 55.1(c)(3), which lists some regulatory exceptions to the general prohibition on HUD assistance, was not clear as to the meaning of "an improvement of an existing structure" and "reconstruction." The commenter also stated that it was unclear as to whether some definitions would be retained. In addition, the commenter suggested minimization for V Zones and floodways, which are defined in § 55.2(b)(4).

*HUD Response.* HUD appreciates these comments. In response, HUD has decided to clarify § 55.1(c)(3), which would prohibit the use of HUD financial assistance with respect to most noncritical actions in Coastal High Hazard Areas, by removing reference to improvements to existing "structures" and "structures" destroyed by disasters. HUD is making this clarification since HUD's proposed rule prohibited new construction of structures, a term that is defined by FEMA regulations at 44 CFR 9.4 to mean walled or roofed buildings, including mobile homes and gas or liquid storage tanks. HUD believes that referencing the term "structures" could be misinterpreted as limiting improvements of projects that are not structures under the FEMA regulations, such as roads and utility lines. Such an interpretation does not accurately describe current HUD regulations and policies or accurately portray the intent of the proposed rule changes. Namely, HUD has been interpreting currently

codified § 55.1(c)(3) to allow infrastructure reconstruction in V Zones. HUD has changed the language to "existing construction (including improvements)" to better describe the eligible activities and in order to make the provision more consistent with § 55.1(c)(3)(ii), which uses the term "existing construction." Under the same rationale, HUD has changed the § 55.1(c)(3) language from "reconstruction of a structure destroyed by a disaster" to "reconstruction following destruction caused by a disaster." HUD made the change to follow the intent of the proposed rule, which was not to limit reconstruction to structures alone. Additionally, these changes are consistent with the intent of the preamble to the December 12, 2011, proposed rule, which expresses HUD's goal of aligning HUD's development standards with those of FEMA grant programs.

Section 55.11(c) is also revised to make a corresponding change to a table in this section describing the type of proposed actions allowed in various locations.

*Comment: The "Coastal High Hazard Area" definition is confusing and seems to address multiple topics.* A commenter stated that too many references were made within the "Coastal High Hazard Area" definition at § 55.2(b)(1). The commenter also stated that the "Coastal High Hazard Area" definition is not consistent with that of the National Flood Insurance Program (NFIP). In addition, the commenter expressed concern as to whether other terms from the codified regulations not mentioned in the proposed rule would be retained.

*HUD Response.* HUD has decided to retain the current definition of "Coastal High Hazard Area" in order to maintain consistency with HUD's preexisting codified environmental regulations. This definition is also consistent with FEMA's "Coastal High Hazard Area" definition at 44 CFR 9.4, which is used for FEMA grant programs. Terms are retained as indicated in the proposed rule.

*Comment: Require the use of preliminary flood maps, Flood Insurance Studies, and Advisory Base Flood Elevations where they may be deemed best available data.* A commenter stated that HUD's requirement to use updated and preliminary data where existing official published data, such as FIRMs, is not the "best available information" is a useful course of action. The commenter also stated that past experience has shown that flood events frequently highlight the inadequacy of older flood

maps and studies. A commenter also recommended the use of Flood Insurance Studies (FIS).

*HUD Response.* HUD agrees with this comment and will, in the interest of public safety, require the use of the latest interim FEMA information. HUD has also added a reference to FIS at § 55.2(b)(1). In addition, HUD clarifies that, when available, the latest interim FEMA information, such as an Advisory Base Flood Elevation or preliminary map or study, is the best available information for the designation of flood hazard areas or equivalents. If FEMA information is unavailable or insufficiently detailed, other Federal, state, or local data may be used as "best available information" in accordance with E.O. 11988.

*Comment: Mitigation banking should not be used in an urban area and this term should be restricted to areas of open space and significant environmental areas.* Mitigation banking means the restoration, creation, enhancement, and, in exceptional circumstances, preservation of wetlands and/or other aquatic resources expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources. A commenter stated that mitigation banking could be a "check the box" analysis.

*HUD Response.* HUD declines to adopt the commenter's recommendation, although HUD agrees that mitigation banking, or compensatory mitigation as defined in the rule, is not appropriate for all sites. Due to the various different state and local mitigation programs around the United States, HUD supports the flexibility to allow state and local governments to determine what is best for projects. For this reason, the definition of compensatory mitigation at § 55.2(b)(2) will remain broad as presented in the proposed rule.

*Comment: The proposed definition of wetlands does not include manmade wetlands.* The commenter stated that the Environmental Protection Agency (EPA) and United States Army Corps of Engineers (USACE) programs often create wetlands, and these wetlands are not covered by the definition.

*HUD Response.* HUD has clarified the definition based on the commenter's recommendation. The definition in the proposed rule is the definition that is stated in E.O. 11990. HUD has added a sentence to the regulatory text of § 55.2(b)(11) to ensure that the definition covers manmade wetlands under compensatory programs. The definition of wetlands at § 55.2(b)(11)

now includes “constructed wetlands” in the final regulatory text.

*Comment: The Department of Fish and Wildlife should be involved in wetlands protection.* One commenter stated that consultation with, or permit approvals from, the “Department of Fish and Wildlife” should be involved with wetlands protection.

*HUD Response.* HUD has decided not to revise the proposed rule language. HUD encourages its employees and recipients of financial assistance from HUD to consult with the United States Fish and Wildlife Service (USFWS). If the HUD employee or responsible entity wants to challenge the USFWS National Wetlands Inventory (NWI) maps, they must consult with the USFWS, under § 55.2(b)(11)(ii-iv). In addition, all federal requirements (including Section 404 permits) and state and local laws apply to HUD assistance.

*Comment: HUD should include all available sources in wetlands evaluations.* One commenter stated that all sources should be used in the wetlands evaluation and not just federal sources.

*HUD Response.* HUD declines to adopt the commenter’s recommendation. The final rule encourages the use of other sources in the wetlands evaluation after using the NWI maps as primary screening. HUD does not require, but recommends, other sources as well as the NWI maps. At § 55.2(b)(11)(iii), the regulatory text states: “As secondary screening used in conjunction with NWI maps, HUD or the responsible entity is encouraged to use the Department of Agriculture, Natural Resources Conservation Service (NRCS) National Soil Survey (NSS) and any state and local information concerning the location, boundaries, scale, and classification of wetlands within the action area.”

*Comment: Opposition to HUD’s broadening the use of the 5-Step Process for repairs, rehabilitations, and improvements.* One commenter opposed HUD’s proposal to broaden use of the 5-Step Process which eliminates the consideration of alternatives at Step 3, and the two notices at Step 2 and Step 7. The commenter stated that applications of the 5-Step Process as provided in the proposed rule would increase the possible risk to federal investments in these floodplain areas. The commenter also stated opposition to placing some critical actions under the 5-Step Process; for example, making hospitals and nursing homes, which are critical facilities that must be operable and accessible during flood events, eligible for the 5-Step Process. A commenter also questioned what was

meant by the terminology not “significantly increasing the footprint or paved areas.”

*HUD Response.* HUD declines to accept all of these recommendations, but has made some changes. HUD has found that the 5-Step Process has worked well for repairs, rehabilitations, and improvements under HUD mortgage insurance programs, and that using the full 8-Step Process for these activities has not resulted in significant differences in comments or project outcomes.

HUD has revised the proposed expansion of types of assistance subject to the 5-Step Process by requiring in paragraph (a)(3) and (a)(4) of § 55.12 that a project be below a threshold of a “substantial improvement” to be eligible for the 5-Step Process for residential and nonresidential rehabilitations.

“Substantial improvement” is generally defined as any repair, reconstruction, modernization, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either: (1) before the improvement is started; or (2) if the structure has been damaged and is being restored, before the damage occurred. Setting the substantial improvement criteria as a threshold will allow less costly repairs and less damaged housing units to be subject to expedited processing, while more costly repairs and more severely damaged units will continue to be subject to the full 8-Step Process.

In general, HUD has not received public comments during its administration of the 8-Step notice and comment process for the vast majority of HUD or HUD-assisted projects that have not risen to the level of substantial improvements. However, the public remains welcome to inspect the full environmental review record developed on floodplain impacts, or any other aspect of environmental reviews.

HUD considers an increase in the footprint up to 10 percent not to be significant. This is consistent with the policy regarding reconstruction in V Zones under § 55.1(c)(3).

*Comment: Exemption of certain activities from the 8-Step Process for floodplain management compliance.* One commenter opposed the proposed exemptions for leasing structures (except those that are in floodways or Coastal High Hazard Areas, and critical actions in either the 100-year or 500-year floodplains), special projects to increase access for those with special needs, and activities involving ships or waterborne vessels. However, the commenter supported the exemption for

activities that preserve or enhance natural and beneficial functions of floodplains.

*HUD Response.* HUD declines to adopt the commenter’s recommendation to delete the exemptions proposed in the proposed rule, but appreciates the commenter’s statement supporting the proposed exemption of activities that preserve or restore beneficial functions.

HUD has found that the 8-Step Process has not been beneficial for projects that only allow access for those with special needs or involving ships and waterborne vessels due to the activities’ lack of impacts or alternatives. HUD supports greater participation in the National Flood Insurance Program. The exception for leasing requires the purchase of flood insurance for the structure. HUD also believes that the economic costs of the premiums and the financial protection of the property through insurance are adequate mitigation where the building is not owned by HUD or the recipient of financial assistance.

*Comment: Environmental justice is an unresolved issue.* One commenter questioned how environmental justice was addressed by HUD.

*HUD Response.* HUD is charged with addressing environmental justice under Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (dated February 11, 1994 (59 FR 7629)). Executive Order 12898 requires Federal agencies to ensure that consideration is given to disproportionately high and adverse health and environmental effects on minority and low-income populations. This analysis is done on a site-by-site basis by determining the concentration of minority and low-income populations and then analyzing environmental and health risks in the area. Environmental justice is an integral part of HUD’s mission. HUD works with multiple stakeholders and other Federal agencies in its efforts to assure environmental justice concerns are addressed and are part of the environmental review for HUD-assisted projects. HUD recently published a final strategy on environmental justice. (See Department of Housing and Urban Development Summary of Public Comments, Response to Public Comments, and Final 2012–2015 Environmental Justice Strategy, dated April 16, 2012 (77 FR 22599)). For a copy of that notice see the following Web site: [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/sustainable\\_housing\\_communities](http://portal.hud.gov/hudportal/HUD?src=/program_offices/sustainable_housing_communities). HUD requires consideration of environmental justice as part of the floodplain management

process at § 55.20(c)(2)(ii). Additional background information on environmental justice and links can be found at the following Web site: [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/comm\\_planning/environment/review/justice](http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/environment/review/justice).

*Comment:* HUD should include birds, fish, and wildlife in the floodplain evaluation. A commenter suggested that HUD include language specifying that effects on birds, fish, and wildlife be included in the final rule.

*HUD Response.* HUD believes that the proposed rule already included this language. The rule includes an evaluation of "Living resources such as flora and fauna" at § 55.20(d)(1)(ii). Fauna is typically interpreted to include all birds, fish, and wildlife of an area.

*Comment:* Infiltration and stormwater capture and reuse should have standards as they can be subject to contamination or disease. The commenter stated that oil and gas contamination as well as aviary disease should be addressed and suggested that HUD impose standards.

*HUD Response.* HUD declines to adopt the commenter's recommendation. HUD relies on other Federal, state, and local agencies to regulate water quality issues. Typically, stormwater capture and reuse involves a cistern to store the water pending reuse. This storage isolates the water from groundwater. In addition, this water is normally not used for human consumption. Instead, the water is most often used for toilets or landscaping. For these reasons, stormwater standards are beyond the scope of this rule and are unnecessary.

Infiltration, as used in this rule, relates only to flooding and is not meant to address industrial or other contamination issues. Any contamination issues should be addressed during the environmental review regulated under the processes established by § 50.3(i) or § 58.5(i)(2). If contamination issues cannot be sufficiently remediated, the project and HUD financial assistance should be cancelled, and these techniques should not be used under § 55.20(c)(1).

*Comment:* The evacuation plans and routes established by HUD are not feasible or enforceable. The commenter stated that the plans and routes were not feasible or enforceable, and that the responsible party for the evacuation plans and routes for critical actions was not clearly identified.

*HUD Response.* HUD declines to adopt any changes to the regulations as these issues are already addressed. Depending on the program, either HUD employees or state or local authorities

are responsible for approving these routes and plans. All routes and plans are included in the environmental record and subject to public review and monitoring by HUD staff. Further, the current language has been in the regulation for at least 18 years and has produced a number of evacuation plans for subject properties. HUD will continue to monitor its own employees and state and local authorities and to provide guidance regarding evacuation plans and routes. HUD also encourages its employees' involvement with local emergency response staff to attain higher levels of preparedness and safety.

*Comment:* Allow HUD or a responsible entity to adopt previous review processes that were performed by another responsible entity or HUD. One commenter supported the provision in the proposed rule that allows reviews performed by HUD or a responsible entity under E.O. 11988 and E.O. 11990 to be adopted by HUD or a different responsible entity for the same project.

*HUD Response.* HUD agrees with the commenter and believes this provision will eliminate duplication and speed processing for projects receiving assistance from multiple programs.

*Comment:* Use permits issued under section 404 of the Clean Water Act for E.O. 11990, Protection of Wetlands, purposes. A commenter supported explicitly allowing HUD and HUD's recipients of assistance to use permits issued by state and tribal governments under section 404 of the Clean Water Act (33 U.S.C. 1344) (Section 404) in lieu of performing the first 5 steps of the 8-Step Process.

*HUD Response.* HUD agrees with this comment and this provision remains in the final rule. HUD has changed the text of the rule to explicitly allow Section 404 permits issued by state and tribal governments under programs approved by EPA. HUD also discussed this policy in the preamble of the proposed rule, and accordingly, inclusion of specific language on state and tribal governments in the final rule language is consistent with the preamble of the proposed rule.

*Comment:* HUD should allow USACE nationwide permits issued under the authority provided by Section 404 to be used in lieu of 5 steps. One commenter requested that nationwide permits under Section 404 be allowed to be used in place of 5 of the steps of the 8-Step Process.<sup>1</sup> The commenter also requested

that these permits be allowed to substitute for 5 steps in the 8-Step Process for floodplains.

*HUD Response.* HUD cannot adopt the commenter's recommendation as it is inconsistent with the requirements of E.O. 11988 to provide two notices to the public, it focuses on wetlands as opposed to floodplains, and it would not result in adequate permitting. Further, while HUD agrees that many wetlands are in 100-year floodplains, HUD is also aware of many wetlands that are not in floodplains. HUD does not believe that wetlands outside of the 100-year floodplain are rare on a nationwide basis and believes that the Department must provide for these situations in the rule.

HUD, therefore, cannot allow the abbreviated 3-Step Process to substitute for the 8-Step Process in floodplains, because E.O. 11988 requires two notices at sec. 2(a)(2) and (4) instead of just one notice as required by E.O. 11990. As a result, the single notice under the 3-Step Process would be insufficient for E.O. 11988 purposes. In addition, the USACE Section 404 permitting process does not provide notice or analysis regarding floodplain impacts, so the permitting process would not adequately address the 5 steps, for which HUD is allowing the permit, to substitute for the purposes of floodplains and E.O. 11988.

HUD has also chosen not to allow nationwide permits at this time because the permits are not as site-specific in nature as individual permits. While HUD supports the use of nationwide permits, it has chosen not to allow these permits to substitute for 5 steps of the process. HUD believes that the more intense review under individual permits is a better starting point to begin this process. If HUD and grantees encounter the anticipated high degree of success with the streamlined process provided by this rule using individual permits, HUD will consider expanding this streamlined process to nationwide permits. Additionally, any mitigation under the nationwide permit could be used as part of HUD's 8-Step Process for E.O. 11990 compliance.

*Comment:* HUD should allow applicants to forego 5 steps of the 8-Step Process for wetlands before a Section 404 permit is secured. One commenter stated that it is an unreasonable hardship on the applicant to require the acquisition of a wetlands permit prior to

<sup>1</sup> USACE issues nationwide permits (NWP) to authorize certain activities that require Department of the Army permits under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899. The NWP authorize activities that have minimal individual and cumulative

adverse effects on the aquatic environment. The NWP authorize a variety of activities, such as aids to navigation, utility lines, bank stabilization activities, road crossings, stream and wetland restoration activities, residential developments, mining activities, commercial shellfish aquaculture activities, and agricultural activities.

entering the abbreviated 3-Step wetlands process.

**HUD Response.** The 3-Step Process is only applicable when a permit has been granted. If the permit has not yet been granted, the public would not have access to supporting documentation that was necessary for the permit. This information is necessary for HUD to adequately perform the 8-Step Process and for HUD to provide adequate notice to the public as required by E.O. 11990 at sec. 2(b) and NEPA. For these reasons, HUD will require the full 8-Step Process unless a Section 404 permit has been issued prior to the environmental review.

**Comment:** HUD should not modify the Categorical Exclusion (CatEx) from environmental review under NEPA for minor rehabilitation of one- to four-unit residential properties by removing the qualification that the footprint of the structure may not be increased in a floodplain or wetland. Two commenters objected to the proposed removal of the footprint qualification for the categorical exclusion for minor rehabilitation of one- to four-unit residential properties. One commenter recognized that this may seem like a trivial matter, but the expansion can increase risk to the property or adjacent properties and may increase the base flood elevation level.

**HUD Response.** HUD declines to adopt the commenters' recommendations, and will retain the proposed language to remove the footprint qualification in the final rule. HUD assistance for minor rehabilitations in a floodplain or wetland will remain subject to E.O. 11988 and E.O. 11990 8-Step-process review, unless 24 CFR 55.12(b)(2) or another exception applies. However, a full environmental assessment will no longer be required unless extraordinary circumstances indicate the potential of significant environmental impact. HUD has found that a full environmental assessment has not been productive in the past. Further, this change will subject rehabilitations of one- to four-unit properties to the same review level as new construction of one- to four-unit buildings, which are currently categorically excluded at 24 CFR 58.35(a)(4), instead of requiring a greater level of review.

### III. Comment on Solicitation of Views on Requirement That Critical Actions Be Undertaken at the 500-Year Base Flood Elevation

**Comment:** HUD should require that critical actions be elevated to the 500-year floodplain level. The commenter supported HUD's potential change submitted for public comment requiring

that all new construction of "critical actions" in the 100- or 500-year floodplain level be elevated to the 500-year base flood elevation. The commenter supported making this change because those actions, such as funding a community wastewater facility, can be among the most significant investments a community will make. Further, such type of facility must be operable during and after a flood event. The commenter also supported, as HUD requested comment on, consistency with the Water Resources Council guidance on critical actions.

**HUD Response.** HUD appreciates the commenter's support. HUD has decided, however, not to make any changes to address moving "critical actions" at this time. HUD intends to gather more data to analyze factors such as, perhaps, costs and benefits, safety, and project viability. HUD will continue to research the impact of allowing critical actions below the 500-year base flood elevation, and, if adequate data is available, propose changes to HUD regulations at § 55.20(e).

### IV. Findings and Certifications

#### Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (E.O. 12866) (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order.

Executive Order 13563 (E.O. 13563) (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are "outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned." E.O. 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This rule was determined to be a "significant regulatory action" as defined in section 3(f) of E.O. 12866 (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Executive Order).

As discussed in this preamble, this rule revises HUD's regulations for the protection of wetlands and floodplains to incorporate existing procedures for E.O. 11990 Protection of Wetlands and,

in certain instances, to allow recipients of HUD assistance to use permits issued under section 404 of the Clean Water Act in lieu of 5 steps of E.O. 11990's 8-Step Process. With respect to floodplains, with some exceptions, the rule prohibits HUD funds or mortgage insurance for the construction of new structures in Coastal High Hazard Areas. The rule thus streamlines processes and codifies procedures that are currently addressed in guidance.

### Regulatory Impact Analysis

The Office of Management and Budget (OMB) reviewed this regulation under E.O. 12866 (entitled "Regulatory Planning and Review"). The regulation has been determined to be a "significant regulatory action," as defined in section 3(f) of E.O. 12866, but not economically significant, as provided in section 3(f)(1) of the Executive Order.

The majority of the regulatory changes made by this rule will have minor economic effects. The primary purpose of this rule is to streamline the existing procedures pertaining to floodplain management and protection of wetlands. However, two changes proposed by HUD are anticipated to have some economic effect. These two changes are: (1) HUD's streamlining the approval process for rehabilitations, repairs, and improvements of HUD-funded properties in floodplains and wetlands; and (2) HUD's prohibiting new construction that would either be funded by HUD or have mortgages insured by FHA in Coastal High Hazard Areas. The streamlined process for rehabilitations will lower costs for projects, which could induce more improvement activities. The prohibition of new construction in Coastal High Hazard Areas could affect the siting of properties, but these projects are rarely proposed or approved even in the absence of a prohibition.

#### Streamlined Procedures for Minor Repairs and Improvements of Properties in Floodplains

HUD or responsible entities reviewing proposals for rehabilitations, repairs, and improvements to multifamily properties located in floodplains are required to follow the 8-Step Process to minimize the impact to floodplains. This rule abbreviates the process for these proposals because the process no longer requires public notices or the consideration of alternatives for floodplain Executive order compliance. The benefits of this change arise from the reduced compliance costs associated with the eliminated steps. Total labor compliance costs for the entire 8-Step Process have been estimated at \$320 per

project. A more detailed step-by-step cost estimate is not available.

Without precise estimate concerning the costs of the specific steps eliminated, HUD ran Monte Carlo simulations to estimate the percentage reduction in costs. Any one step is assumed to have a cost of either 0 and 1 units of effort. Fixed costs are assumed to equal the number of steps less variable costs so that all of the randomized cost functions result in the same total cost. Expected variable costs are equal to 4 units  $\frac{1}{2} \times 8$ . Eliminating 3 steps could result in a reduction of between 0 and 3 units of effort. Of the eight possible combinations, a reduction of 1.5 is the average. Thus, the average reduction in total costs would be 18.75 percent, which we observe in simulations. The median and mode of our distribution is often lower, however, and equal to 12.5 percent. For this reason we use a range of between 10 and 15 percent as a measure of central tendency.

If eliminating the 3 steps saves 10 to 15 percent of the total labor cost of compliance, then each rehabilitation project would save between \$32 and \$48. Costs to publish the notices would be added to this amount for the overall cost of compliance. The precise number of proposed rehabilitation, repair, and improvement projects is not available, although the overall number is estimated through a survey of HUD field staff to be less than 100 annually. Although the reduced compliance costs could, on the margin, induce an increase in the requests for funding, that increase is unlikely considering that the cost of these projects generally range from thousands to millions of dollars. For this analysis, HUD estimates an annual total of 100 projects, including the induced projects. One hundred such projects would produce benefits ranging from \$3,200 and \$4,800 plus minimal costs of publication. Since these assessments rarely lead to a different outcome for rehabilitation, repair, and improvement projects, the lost benefits (additional public notice) of not conducting a full floodplain assessment—the cost of this provision—are negligible. These publication steps are typically not costly beyond the publication costs due to HUD providing notice templates to HUD staff and recipients.

#### *Prohibition on New Construction in Coastal High Hazard Areas*

Prohibiting new construction in Coastal High Hazard Areas would force developers to locate HUD-funded or FHA-insured properties out of hazard areas subject to high velocity waters.

This prohibition would not affect developments that are destroyed by floods and that need to be rebuilt. Existing property owners interested in developing in Coastal High Hazard Areas would either incur transaction costs from selling the existing property and purchasing an alternative site, or obtain a more expensive source of funding/assistance. HUD would prefer to mitigate existing units from storm damage rather than increase the number of units in these areas. In addition, increasing the footprint of structures in Coastal High Hazard Areas can prevent open spaces from absorbing the storm surge and increase debris that will be carried inland causing additional damage to preexisting structures.

Based on HUD's records, it is extremely rare for HUD to fund, or provide mortgage insurance for, a new construction proposal in these coastal areas. HUD found only one project that had been completed in a Coastal High Hazard Area, and one additional project was recently under review but never built. These projects were approximately 6 years apart.

The benefits are not expected to be significant because only very few properties appear to be affected (2 over 6 years). Calculating the benefits (as measured by the reduction in expected damage) would require an extensive analysis of weather data. Additionally, the use of sea walls and dunes has effectively removed areas from V Zones<sup>2</sup> in many areas by protecting structures from storm surge. This type of approach would eliminate some risk and lower flood insurance costs while allowing the land to be developed with HUD funds. However, it would be difficult to estimate the number of seawalls and dunes, if any, that would be built due to this rule change. HUD believes that this provision will not have a significant impact. For developers preferring to build in V Zones, this rule would require them to acquire an alternate source of funding or mortgage insurance or relocate to a potentially less preferable location.

#### *Preference for Nonstructural Alternatives*

When HUD or recipients analyze alternatives, the nonstructural alternative should be chosen if all other factors are considered to be equal. This complies with E.O. 11988's purpose of avoiding floodplain development. This provision is intended to focus on resiliency in the 8-Step Process.

<sup>2</sup> Coastal areas with a 1 percent or greater chance of flooding and an additional hazard associated with storm waves.

The provision is advisory and is not a binding requirement. If a decisionmaker were to avoid floodplain development, the cost savings associated with not purchasing flood insurance, floodproofing or elevating, or creating and maintaining a levee would result in cost savings. In addition, threats to safety and investment would also decrease as the hazard area is avoided. This provision helps HUD accomplish its mission of supplying safe, decent, and affordable housing.

#### *Use of Individual Permits Under Section 404 of the Clean Water Act for HUD Executive Order 11990 Processing Where All Wetlands Are Covered by the Permit*

This final rule permits recipients of HUD assistance to use permits issued by state and tribal governments under section 404 of the Clean Water Act in lieu of 5 steps of the E.O. 11990 8-Step Process. Specifically, the rule permits applicants that have obtained an individual Section 404 permit to submit it with his or her application for a HUD program. By doing so, HUD or the responsible entity assuming HUD's authority would only need to complete the last 3 steps of the 8-Step Process. HUD expects that this provision would apply to fewer than five projects a year since recipients generally complete an environmental review prior to obtaining a Section 404 permit or general or nationwide permit. As a result, HUD has determined that the costs and benefits of eliminating these steps, specifically the reduced delay of one notice and cost of documenting other steps, would be minimal.

Accordingly, this regulation is expected to create an annual economic impact ranging from \$3,200 to \$4,800, which are avoided costs resulting from a streamlined approval process for rehabilitations of properties located in floodplains. Thus, the implementation of this rule will not create an impact exceeding the \$100 million threshold established by E.O. 12866.

The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202-402-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

### Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. This final rule will not have a significant economic impact on a substantial number of small entities.

As discussed more fully in the Background section of the preamble, this final rule is largely a procedural rule that codifies HUD's existing policies and procedures implementing E.O. 11990, Protection of Wetlands. The goal of E.O. 11990 is to prevent adverse impacts associated with the destruction or modification of wetlands. E.O. 11990 establishes a uniform set of requirements designed to meet this goal, which are applicable to both large and small entities that propose to use HUD financial assistance in wetlands. HUD is codifying these procedures in 24 CFR part 55 to increase consistency and transparency in these processes and to reduce confusion when working with other Federal agencies. The rule also broadens the use of the abbreviated 8-Step Process, also known as the 5-Step Process, used by HUD and responsible entities when considering the impact on floodplains in connection with the repair of existing structures. Specifically, the rule authorizes the use of the abbreviated process for all of HUD's rehabilitation programs. The current regulations limit the use of the abbreviated process to repairs financed under HUD's mortgage insurance programs. Finally, the rule requires the use of preliminary flood maps and advisory base flood elevations where FEMA has determined that existing FIRMs may not be the best available information.

Section 601 of the Regulatory Flexibility Act defines the term "small entity" to include small businesses, small organizations, and small governmental jurisdictions. HUD asserts that this rule would neither increase the incidence of floodplain and wetlands assessments nor increase the burdens associated with carrying out such an assessment. As discussed above, the focus of this rule is to codify procedures for protection of wetlands that are already in place. The rule would not prohibit HUD support of activities in floodplains or wetlands (except for certain activities in Coastal High Hazard Areas), but would create a consistent departmental policy governing such

support. HUD's codification of these procedures will neither increase the incidence of floodplain and wetlands assessment nor increase the burdens of carrying out an assessment. The rule also streamlines floodplain and wetland environmental review procedures to avoid unnecessary processing delays. As described in HUD's Regulatory Impact Analysis, the benefits of HUD's streamlined floodplain and wetland review will provide a beneficial cost impact on entities of all sizes and decrease burdens on both large and small entities.

This final rule contains several other provisions that will reduce administrative burden for entities of all sizes. It removes the footprint qualification for the categorical exclusion for minor rehabilitation of one- to four-unit residential properties and, to avoid unnecessary delays, exempts leasing from the 8-Step Process for floodplain management where the building is insured with the National Flood Insurance Program and not located in a floodway or Coastal High Hazard Area. Exemptions are also added for special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and persons with disabilities, and activities that involve ships or waterborne vessels. The rule also exempts from review activities that restore and preserve natural and beneficial functions of floodplains and wetlands. Together, these changes will reduce administrative burdens and unnecessary delays and assist communities that choose to engage in actions beneficial to floodplains and wetlands.

In HUD's December 12, 2011, proposed rule, HUD certified that this rule would not have a significant economic impact on a substantial number of small entities and invited public comment on HUD's certification. HUD received no comment in response to its certification. Therefore, the undersigned has determined that the rule will not have a significant economic impact on a substantial number of small entities.

### Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to environment was made at the proposed rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of NEPA (42 U.S.C. 4332(2)(C)). The FONSI remains applicable to this final rule and is available for public inspection at [www.regulations.gov](http://www.regulations.gov) under docket number FR-5423-F-02. The FONSI is

also available for public inspection between the hours of 8 a.m. and 5 p.m., weekdays, in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at (800) 877-8339 (this is a toll-free number).

### E.O. 13132 Federalism

E.O. 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Order. This rule does not have federalism implications and would not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Order.

### Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule does not impose any Federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of UMRA.

### Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to OMB for review and approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520 *et seq.*). The information collection requirement for Floodplain Management and Wetland Protection is assigned OMB control number 2506-0151. The information collection requirements in this final rule include largely preexisting information collection requirements. However, the preexisting information collection requirements are being revised to reduce the paperwork burden. Specifically, the information collection requirements reflect a slight decrease to the paperwork burden as a result of revising the scope of assistance eligible for the streamlined 5-Step

Process. Under the rule, recipients' actions under any HUD program for the repair, rehabilitation, modernization, or improvement of existing multifamily housing projects are eligible for the 5-Step Process for residential and nonresidential rehabilitations as long as the action does not meet the threshold of substantial improvement under § 55.2(b)(10). Similarly, financial

assistance for weatherizations and floodplain and wetland restoration activities would also be granted the use of the shortened 5-Step Process. These changes will allow for expedited processing and a decreased amount of analysis for projects that have no or little adverse impact or have beneficial effects.

The sections in this rule that contain the current information collection requirements and the upcoming revisions that are awaiting OMB approval, as well as the estimated adjusted burden of the pending revisions, are set forth in the following table.

CFR Section	Number of respondents	Total annual responses	Average hours per response	Total annual burden hours	Total annual cost (\$40/hr)
§ 55.20 Decisionmaking process .....	275	1	8	2200	\$88,000
§ 55.21 Notification of floodplain hazard .....	300	1	1	300	12,000
Totals .....	575	2	9	2500	100,000

All estimates include the time for reviewing instructions, searching existing data sources, gathering or maintaining the needed data, and reviewing the information. The docket file is available for public inspection. For information on, or a copy of, the paperwork package submitted to OMB, contact Colette Pollard at 202-708-0306 (this is not a toll-free number) or via email at [Colette.Pollard@hud.gov](mailto:Colette.Pollard@hud.gov). In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a valid OMB control number.

**List of Subjects**

*24 CFR Part 50*

Environmental impact statements.

*24 CFR Part 55*

Environmental impact statements, Floodplains, Wetlands.

*24 CFR Part 58*

Community development block grants, Environmental impact statements, Grant programs—housing and community development, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble above, HUD amends 24 CFR parts 50, 55, and 58 as follows:

**PART 50—PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY**

■ 1. The authority citation for part 50 is revised to read as follows:

**Authority:** 42 U.S.C. 3535(d) and 4332; and Executive Order 11991, 3 CFR, 1977 Comp., p. 123.

■ 2. In § 50.4, revise paragraphs (b)(2) and (3) to read as follows:

**§ 50.4 Related federal laws and authorities.**

\* \* \* \* \*

(b) \* \* \*

(2) HUD procedure for the implementation of Executive Order 11988 (Floodplain Management), (3 CFR, 1977 Comp., p. 117)—24 CFR part 55, Floodplain Management and Protection of Wetlands.

(3) HUD procedure for the implementation of Executive Order 11990 (Protection of Wetlands), (3 CFR, 1977 Comp., p. 121)—24 CFR part 55, Floodplain Management and Protection of Wetlands.

\* \* \* \* \*

**PART 55—FLOODPLAIN MANAGEMENT AND PROTECTION OF WETLANDS**

■ 3. The authority citation for part 55 is revised to read as follows:

**Authority:** 42 U.S.C. 3535(d), 4001-4128 and 5154a; E.O. 11988, 42 FR 26951, 3 CFR, 1977 Comp., p. 117; E.O. 11990, 42 FR 26961, 3 CFR, 1977 Comp., p. 121.

■ 4. Revise the part heading for part 55 to read as set forth above.

■ 5. Amend § 55.1 as follows:

- a. Revise paragraph (a);
- b. Redesignate paragraph (b) as paragraph (b)(1);
- c. Add paragraph (b)(2); and
- d. Revise paragraphs (c)(1), (c)(3) introductory text, and (c)(3)(i).

The revisions and addition read as follows:

**§ 55.1 Purpose and basic responsibility.**

(a)(1) The purpose of Executive Order 11988, Floodplain Management, is “to avoid to the extent possible the long and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative.”

(2) The purpose of Executive Order 11990, Protection of Wetlands, is “to avoid to the extent possible the long- and short-term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative.”

(3) This part implements the requirements of Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands, and employs the principles of the Unified National Program for Floodplain Management. These regulations apply to all HUD (or responsible entity) actions that are subject to potential harm by location in floodplains or wetlands. Covered actions include the proposed acquisition, construction, demolition, improvement, disposition, financing, and use of properties located in floodplains or wetlands for which approval is required either from HUD, under any applicable HUD program, or from a responsible entity authorized by 24 CFR part 58.

(4) This part does not prohibit approval of such actions (except for certain actions in Coastal High Hazard Areas), but provides a consistent means for implementing the Department's interpretation of the Executive Orders in the project approval decisionmaking processes of HUD and of responsible entities subject to 24 CFR part 58. The implementation of Executive Orders 11988 and 11990 under this part shall be conducted by HUD for Department-administered programs subject to environmental review under 24 CFR part 50 and by authorized responsible entities that are responsible for environmental review under 24 CFR part 58.



(5) Nonstructural alternatives to floodplain development and the destruction of wetlands are both favored and encouraged to reduce the loss of life and property caused by floods, and to restore the natural resources and functions of floodplains and wetlands. Nonstructural alternatives should be discussed in the decisionmaking process where practicable.

(b) \* \* \*

(2) Under section 582 of the National Flood Insurance Reform Act of 1994 (42 U.S.C. 5154a), HUD disaster assistance that is made available in a special flood hazard area may not be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration of damage to any personal, residential, or commercial property if:

(i) The person had previously received Federal flood disaster assistance conditioned on obtaining and maintaining flood insurance; and

(ii) The person failed to obtain and maintain the flood insurance.

(c) \* \* \*

(1) Any action other than a functionally dependent use or floodplain function restoration activity, located in a floodway;

\* \* \* \* \*

(3) Any noncritical action located in a Coastal High Hazard Area, unless the action is a functionally dependent use, existing construction (including improvements), or reconstruction following destruction caused by a disaster. If the action is not a functionally dependent use, the action must be designed for location in a Coastal High Hazard Area. An action will be considered designed for a Coastal High Hazard Area if:

(i) In the case of reconstruction following destruction caused by a disaster or substantial improvement, the work meets the current standards for V zones in FEMA regulations (44 CFR 60.3(e)) and, if applicable, the Minimum Property Standards for such construction in 24 CFR 200.926d(c)(4)(iii); or

\* \* \* \* \*

■ 6. Amend § 55.2 as follows:

■ a. Revise paragraph (a);

■ b. Revise paragraphs (b) introductory text and (b)(1);

■ c. Redesignate paragraphs (b)(2) through (6) and (7) and (8) as paragraphs (b)(3) through (7) and (9) and (10), respectively;

■ d. Add new paragraphs (b)(2) and (b)(8);

■ e. Revise newly designated paragraph (b)(9); and

■ f. Add paragraph (b)(11).

The revisions read as follows:

#### § 55.2 Terminology.

(a) With the exception of those terms defined in paragraph (b) of this section, the terms used in this part shall follow the definitions contained in section 6 of Executive Order 11988, section 7 of Executive Order 11990, and the Floodplain Management Guidelines for Implementing Executive Order 11988 (43 FR 6030, February 10, 1978), issued by the Water Resources Council; the terms “special flood hazard area,” “criteria,” and “Regular Program” shall follow the definitions contained in FEMA regulations at 44 CFR 59.1; and the terms “Letter of Map Revision” and “Letter of Map Amendment” shall refer to letters issued by FEMA, as provided in 44 CFR part 65 and 44 CFR part 70, respectively.

(b) For purposes of this part, the following definitions apply:

(1) *Coastal high hazard area* means the area subject to high velocity waters, including but not limited to hurricane wave wash or tsunamis. The area is designated on a Flood Insurance Rate Map (FIRM) or Flood Insurance Study (FIS) under FEMA regulations. FIRMs and FISs are also relied upon for the designation of “100-year floodplains” (§ 55.2(b)(9)), “500-year floodplains” (§ 55.2(b)(4)), and “floodways” (§ 55.2(b)(5)). When FEMA provides interim flood hazard data, such as Advisory Base Flood Elevations (ABFE) or preliminary maps and studies, HUD or the responsible entity shall use the latest of these sources. If FEMA information is unavailable or insufficiently detailed, other Federal, state, or local data may be used as “best available information” in accordance with Executive Order 11988. However, a base flood elevation from an interim or preliminary or non-FEMA source cannot be used if it is lower than the current FIRM and FIS.

(2) *Compensatory mitigation* means the restoration (reestablishment or rehabilitation), establishment (creation), enhancement, and/or, in certain circumstances, preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts that remain after all appropriate and practicable avoidance and minimization have been achieved.

Examples include, but are not limited to:

(i) *Permittee-responsible mitigation*: On-site or off-site mitigation undertaken by the holder of a wetlands permit under section 404 of the Clean Water Act (or an authorized agent or contractor), for which the permittee retains full responsibility;

(ii) *Mitigation banking*: A permittee’s purchase of credits from a wetlands mitigation bank, comprising wetlands that have been set aside to compensate for conversions of other wetlands; the mitigation obligation is transferred to the sponsor of the mitigation bank; and

(iii) *In-lieu fee mitigation*: A permittee’s provision of funds to an in-lieu fee sponsor (public agency or nonprofit organization) that builds and maintains a mitigation site, often after the permitted adverse wetland impacts have occurred; the mitigation obligation is transferred to the in-lieu fee sponsor.

\* \* \* \* \*

(8) *New construction* includes draining, dredging, channelizing, filling, diking, impounding, and related activities and any structures or facilities begun after the effective date of Executive Order 11990. (See section 7(b) of Executive Order 11990.)

(9) *100-year floodplain* means the floodplain of concern for this part and is the area subject to inundation from a flood having a one percent or greater chance of being equaled or exceeded in any given year. (See § 55.2(b)(1) for appropriate data sources.)

\* \* \* \* \*

(11) *Wetlands* means those areas that are inundated by surface or ground water with a frequency sufficient to support, and under normal circumstances does or would support, a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds. This definition includes those wetland areas separated from their natural supply of water as a result of activities such as the construction of structural flood protection methods or solid-fill road beds and activities such as mineral extraction and navigation improvements. This definition includes both wetlands subject to and those not subject to section 404 of the Clean Water Act as well as constructed wetlands. The following process shall be followed in making the wetlands determination:

(i) HUD or, for programs subject to 24 CFR part 58, the responsible entity, shall make a determination whether the action is new construction that is located in a wetland. These actions are subject to processing under the § 55.20 decisionmaking process for the protection of wetlands.

(ii) As primary screening, HUD or the responsible entity shall verify whether the project area is located in proximity

to wetlands identified on the National Wetlands Inventory (NWI). If so, HUD or the responsible entity should make a reasonable attempt to consult with the Department of the Interior, Fish and Wildlife Service (FWS), for information concerning the location, boundaries, scale, and classification of wetlands within the area. If an NWI map indicates the presence of wetlands, FWS staff, if available, must find that no wetland is present in order for the action to proceed without further processing. Where FWS staff is unavailable to resolve any NWI map ambiguity or controversy, an appropriate wetlands professional must find that no wetland is present in order for the action to proceed without § 55.20 processing.

(iii) As secondary screening used in conjunction with NWI maps, HUD or the responsible entity is encouraged to use the Department of Agriculture, Natural Resources Conservation Service (NRCS) National Soil Survey (NSS) and any state and local information concerning the location, boundaries, scale, and classification of wetlands within the action area.

(iv) Any challenges from the public or other interested parties to the wetlands determinations made under this part must be made in writing to HUD (or the responsible entity authorized under 24 CFR part 58) during the commenting period and must be substantiated with verifiable scientific information. Commenters may request a reasonable extension of the time for the commenting period for the purpose of substantiating any objections with verifiable scientific information. HUD or the responsible entity shall consult FWS staff, if available, on the validity of the challenger's scientific information prior to making a final wetlands determination.

■ 7. In § 55.3, revise paragraphs (a)(1), (b)(1) and (2), and (c) and add paragraph (d) to read as follows:

#### § 55.3 Assignment of responsibilities.

(a)(1) *The Assistant Secretary for Community Planning and Development (CPD)* shall oversee:

(i) The Department's implementation of Executive Orders 11988 and 11990 and this part in all HUD programs; and

(ii) The implementation activities of HUD program managers and, for HUD financial assistance subject to 24 CFR

part 58, of grant recipients and responsible entities.

\* \* \* \* \*

(b) \* \* \*

(1) Ensure compliance with this part for all actions under their jurisdiction that are proposed to be conducted, supported, or permitted in a floodplain or wetland;

(2) Ensure that actions approved by HUD or responsible entities are monitored and that any prescribed mitigation is implemented;

\* \* \* \* \*

(c) *Responsible Entity Certifying Officer.* Certifying Officers of responsible entities administering or reviewing activities subject to 24 CFR part 58 shall comply with this part in carrying out HUD-assisted programs. Certifying Officers of responsible entities subject to 24 CFR part 58 shall monitor approved actions and ensure that any prescribed mitigation is implemented.

(d) *Recipient.* Recipients subject to 24 CFR part 58 shall monitor approved actions and ensure that any prescribed mitigation is implemented. Recipients shall:

(1) Supply HUD (or the responsible entity authorized by 24 CFR part 58) with all available, relevant information necessary for HUD (or the responsible entity) to perform the compliance required by this part; and

(2) Implement mitigating measures required by HUD (or the responsible entity authorized by 24 CFR part 58) under this part or select alternate eligible property.

■ 8. The heading for subpart B is revised to read as follows:

#### Subpart B—Application of Executive Orders on Floodplain Management and Protection of Wetlands

■ 9. Revise § 55.10 to read as follows:

#### § 55.10 Environmental review procedures under 24 CFR parts 50 and 58.

(a) Where an environmental review is required under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), and 24 CFR part 50 or part 58, compliance with this part shall be completed before the completion of an environmental assessment (EA), including a finding of no significant impact (FONSI), or an

environmental impact statement (EIS), in accordance with the decision points listed in 24 CFR 50.17(a) through (h), or before the preparation of an EA under 24 CFR 58.40 or an EIS under 24 CFR 58.37. For types of proposed actions that are categorically excluded from NEPA requirements under 24 CFR part 50 (or part 58), compliance with this part shall be completed before the Department's initial approval (or approval by a responsible entity authorized by 24 CFR part 58) of proposed actions in a floodplain or wetland.

(b) The categorical exclusion of certain proposed actions from environmental review requirements under NEPA and 24 CFR parts 50 and 58 (see 24 CFR 50.20 and 58.35(a)) does not exclude those actions from compliance with this part.

■ 10. Revise § 55.11 to read as follows:

#### § 55.11 Applicability of Subpart C decisionmaking process.

(a) Before reaching the decision points described in § 55.10(a), HUD (for Department-administered programs) or the responsible entity (for HUD financial assistance subject to 24 CFR part 58) shall determine whether Executive Order 11988, Executive Order 11990, and this part apply to the proposed action.

(b) If Executive Order 11988 or Executive Order 11990 and this part apply, the approval of a proposed action or initial commitment shall be made in accordance with this part. The primary purpose of Executive Order 11988 is "to avoid to the extent possible the long and short term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative." The primary purpose of Executive Order 11990 is "to avoid to the extent possible the long and short-term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative."

(c) The following table indicates the applicability, by location and type of action, of the decisionmaking process for implementing Executive Order 11988 and Executive Order 11990 under subpart C of this part.

TABLE 1

Type of proposed action (new reviewable action or an amendment) <sup>1</sup>	Type of proposed action			
	Floodways	Coastal high hazard areas	Wetlands or 100-year floodplain outside coastal high hazard area and floodways	Nonwetlands area outside of the 100-year and within the 500-year floodplain
Critical Actions as defined in § 55.12(b)(2).	Critical actions not al- lowed.	Critical actions not al- lowed.	Allowed if the proposed critical action is pro- cessed under § 55.20. <sup>2</sup>	Allowed if the proposed critical action is pro- cessed under § 55.20. <sup>2</sup>
Noncritical actions not ex- cluded under § 55.12(b) or (c).	Allowed only if the pro- posed non-critical action is a functionally depend- ent use and processed under § 55.20. <sup>2</sup>	Allowed only if the pro- posed noncritical action is processed under § 55.20 <sup>2</sup> and is (1) a functionally dependent use, (2) existing con- struction (including im- provements), or (3) re- construction following destruction caused by a disaster. If the action is not a functionally de- pendent use, the action must be designed for lo- cation in a Coastal High Hazard Area under § 55.1(c)(3).	Allowed if proposed non- critical action is pro- cessed under § 55.20. <sup>2</sup>	Any noncritical action is al- lowed without pro- cessing under this part.

<sup>1</sup> Under Executive Order 11990, the decisionmaking process in § 55.20 only applies to Federal assistance for new construction in wetlands lo-  
cations.

<sup>2</sup> Or those paragraphs of § 55.20 that are applicable to an action listed in § 55.12(a).

■ 11. Revise 55.12 to read as follows:

**§ 55.12 Inapplicability of 24 CFR part 55 to certain categories of proposed actions.**

(a) The decisionmaking steps in § 55.20(b), (c), and (g) (steps 2, 3, and 7) do not apply to the following categories of proposed actions:

(1) HUD's or the recipient's actions involving the disposition of acquired multifamily housing projects or "bulk sales" of HUD-acquired (or under part 58 of recipients') one- to four-family properties in communities that are in the Regular Program of National Flood Insurance Program and in good standing (i.e., not suspended from program eligibility or placed on probation under 44 CFR 59.24). For programs subject to part 58, this paragraph applies only to recipients' disposition activities that are subject to review under part 58.

(2) HUD's actions under the National Housing Act (12 U.S.C. 1701) for the purchase or refinancing of existing multifamily housing projects, hospitals, nursing homes, assisted living facilities, board and care facilities, and intermediate care facilities, in communities that are in good standing under the NFIP.

(3) HUD's or the recipient's actions under any HUD program involving the repair, rehabilitation, modernization, weatherization, or improvement of existing multifamily housing projects, hospitals, nursing homes, assisted living facilities, board and care facilities,

intermediate care facilities, and one- to four-family properties, in communities that are in the Regular Program of the National Flood Insurance Program (NFIP) and are in good standing, provided that the number of units is not increased more than 20 percent, the action does not involve a conversion from nonresidential to residential land use, the action does not meet the thresholds for "substantial improvement" under § 55.2(b)(10), and the footprint of the structure and paved areas is not significantly increased.

(4) HUD's or the recipient's actions under any HUD program involving the repair, rehabilitation, modernization, weatherization, or improvement of existing nonresidential buildings and structures, in communities that are in the Regular Program of the NFIP and are in good standing, provided that the action does not meet the thresholds for "substantial improvement" under § 55.2(b)(10) and that the footprint of the structure and paved areas is not significantly increased.

(b) The decisionmaking process in § 55.20 shall not apply to the following categories of proposed actions:

(1) HUD's mortgage insurance actions and other financial assistance for the purchasing, mortgaging or refinancing of existing one- to four-family properties in communities that are in the Regular Program of the NFIP and in good standing (i.e., not suspended from program eligibility or placed on

probation under 44 CFR 59.24), where the action is not a critical action and the property is not located in a floodway or Coastal High Hazard Area;

(2) Financial assistance for minor repairs or improvements on one- to four-family properties that do not meet the thresholds for "substantial improvement" under § 55.2(b)(10);

(3) HUD or a recipient's actions involving the disposition of individual HUD-acquired, one- to four-family properties;

(4) HUD guarantees under the Loan Guarantee Recovery Fund Program (24 CFR part 573) of loans that refinance existing loans and mortgages, where any new construction or rehabilitation financed by the existing loan or mortgage has been completed prior to the filing of an application under the program, and the refinancing will not allow further construction or rehabilitation, nor result in any physical impacts or changes except for routine maintenance; and

(5) The approval of financial assistance to lease an existing structure located within the floodplain, but only if;

(i) The structure is located outside the floodway or Coastal High Hazard Area, and is in a community that is in the Regular Program of the NFIP and in good standing (i.e., not suspended from program eligibility or placed on probation under 44 CFR 59.24);

(ii) The project is not a critical action; and

(iii) The entire structure is or will be fully insured or insured to the maximum under the NFIP for at least the term of the lease.

(c) This part shall not apply to the following categories of proposed HUD actions:

(1) HUD-assisted activities described in 24 CFR 58.34 and 58.35(b);

(2) HUD-assisted activities described in 24 CFR 50.19, except as otherwise indicated in § 50.19;

(3) The approval of financial assistance for restoring and preserving the natural and beneficial functions and values of floodplains and wetlands, including through acquisition of such floodplain and wetland property, but only if:

(i) The property is cleared of all existing structures and related improvements;

(ii) The property is dedicated for permanent use for flood control, wetland protection, park land, or open space; and

(iii) A permanent covenant or comparable restriction is placed on the property's continued use to preserve the floodplain or wetland from future development.

(4) An action involving a repossession, receivership, foreclosure, or similar acquisition of property to protect or enforce HUD's financial interests under previously approved loans, grants, mortgage insurance, or other HUD assistance;

(5) Policy-level actions described in 24 CFR 50.16 that do not involve site-based decisions;

(6) A minor amendment to a previously approved action with no additional adverse impact on or from a floodplain or wetland;

(7) HUD's or the responsible entity's approval of a project site, an incidental portion of which is situated in an adjacent floodplain, including the floodway or Coastal High Hazard Area, or wetland, but only if:

(i) The proposed construction and landscaping activities (except for minor grubbing, clearing of debris, pruning, sodding, seeding, or other similar activities) do not occupy or modify the 100-year floodplain (or the 500-year floodplain for critical actions) or the wetland;

(ii) Appropriate provision is made for site drainage that would not have an adverse effect on the wetland; and

(iii) A permanent covenant or comparable restriction is placed on the property's continued use to preserve the floodplain or wetland;

(8) HUD's or the responsible entity's approval of financial assistance for a

project on any nonwetland site in a floodplain for which FEMA has issued:

(i) A final Letter of Map Amendment (LOMA), final Letter of Map Revision (LOMR), or final Letter of Map Revision Based on Fill (LOMR-F) that removed the property from a FEMA-designated floodplain location; or

(ii) A conditional LOMA, conditional LOMR, or conditional LOMR-F if HUD or the responsible entity's approval is subject to the requirements and conditions of the conditional LOMA or conditional LOMR;

(9) Issuance or use of Housing Vouchers, Certificates under the Section 8 Existing Housing Program, or other forms of rental subsidy where HUD, the awarding community, or the public housing agency that administers the contract awards rental subsidies that are not project-based (i.e., do not involve site-specific subsidies);

(10) Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and persons with disabilities;

(11) The approval of financial assistance for acquisition, leasing, construction, rehabilitation, repair, maintenance, or operation of ships and other waterborne vessels that will be used for transportation or cruises and will not be permanently moored.

(12) The approval of financial assistance for restoring and preserving the natural and beneficial functions and values of floodplains and wetlands, including through acquisition of such floodplain and wetland property, but only if:

(i) The property is cleared of all existing structures and related improvements;

(ii) The property is dedicated for permanent use for flood control, wetland protection, park land, or open space; and

(iii) A permanent covenant or comparable restriction is placed on the property's continued use to preserve the floodplain or wetland from future development.

■ 12. The heading for subpart C is revised to read as follows:

**Subpart C—Procedures for Making Determinations on Floodplain Management and Protection of Wetlands**

■ 13. Amend § 55.20 by revising the introductory text and paragraphs (a), (b) introductory text, (b)(3), (c), (d), (e), (f), (g)(1), and (h) to read as follows:

**§ 55.20 Decisionmaking process.**

Except for actions covered by § 55.12(a), the decisionmaking process

for compliance with this part contains eight steps, including public notices and an examination of practicable alternatives when addressing floodplains and wetlands. The steps to be followed in the decisionmaking process are as follows:

(a) *Step 1.* Determine whether the proposed action is located in the 100-year floodplain (500-year floodplain for critical actions) or results in new construction in a wetland. If the action does not occur in a floodplain or result in new construction in a wetland, then no further compliance with this part is required. The following process shall be followed by HUD (or the responsible entity) in making wetland determinations.

(1) Refer to § 55.28(a) where an applicant has submitted with its application to HUD (or to the recipient under programs subject to 24 CFR part 58) an individual Section 404 permit (including approval conditions and related environmental review).

(2) Refer to § 55.2(b)(11) for making wetland determinations under this part.

(3) For proposed actions occurring in both a wetland and a floodplain, completion of the decisionmaking process under § 55.20 is required regardless of the issuance of a Section 404 permit. In such a case, the wetland will be considered among the primary natural and beneficial functions and values of the floodplain.

(b) *Step 2.* Notify the public and agencies responsible for floodplain management or wetlands protection at the earliest possible time of a proposal to consider an action in a 100-year floodplain (or a 500-year floodplain for a Critical Action) or wetland and involve the affected and interested public and agencies in the decisionmaking process.

\* \* \* \* \*

(3) A notice under this paragraph shall state: The name, proposed location, and description of the activity; the total number of acres of floodplain or wetland involved; the related natural and beneficial functions and values of the floodplain or wetland that may be adversely affected by the proposed activity; the HUD approving official (or the Certifying Officer of the responsible entity authorized by 24 CFR part 58); and the phone number to call for information. The notice shall indicate the hours of HUD or the responsible entity's office, and any Web site at which a full description of the proposed action may be reviewed.

(c) *Step 3.* Identify and evaluate practicable alternatives to locating the proposed action in a 100-year floodplain

(or a 500-year floodplain for a Critical Action) or wetland.

(1) Except as provided in paragraph (c)(3) of this section, HUD's or the responsible entity's consideration of practicable alternatives to the proposed site selected for a project should include:

(i) Locations outside and not affecting the 100-year floodplain (or the 500-year floodplain for a Critical Action) or wetland;

(ii) Alternative methods to serve the identical project objective, including feasible technological alternatives; and

(iii) A determination not to approve any action proposing the occupancy or modification of a floodplain or wetland.

(2) Practicability of alternative sites should be addressed in light of the following:

(i) Natural values such as topography, habitat, and hazards;

(ii) Social values such as aesthetics, historic and cultural values, land use patterns, and environmental justice; and

(iii) Economic values such as the cost of space, construction, services, and relocation.

(3) For multifamily projects involving HUD mortgage insurance that are initiated by third parties, HUD's consideration of practicable alternatives should include a determination not to approve the request.

(d) *Step 4.* Identify and evaluate the potential direct and indirect impacts associated with the occupancy or modification of the 100-year floodplain (or the 500-year floodplain for a Critical Action) or the wetland and the potential direct and indirect support of floodplain and wetland development that could result from the proposed action.

(1) *Floodplain evaluation:* The focus of the floodplain evaluation should be on adverse impacts to lives and property, and on natural and beneficial floodplain values. Natural and beneficial values include:

(i) Water resources such as natural moderation of floods, water quality maintenance, and groundwater recharge;

(ii) Living resources such as flora and fauna;

(iii) Cultural resources such as archaeological, historic, and recreational aspects; and

(iv) Agricultural, aquacultural, and forestry resources.

(2) *Wetland evaluation:* In accordance with Section 5 of Executive Order 11990, the decisionmaker shall consider factors relevant to a proposal's effect on the survival and quality of the wetland. Among these factors that should be evaluated are:

(i) Public health, safety, and welfare, including water supply, quality,

recharge, and discharge; pollution; flood and storm hazards and hazard protection; and sediment and erosion;

(ii) Maintenance of natural systems, including conservation and long-term productivity of existing flora and fauna; species and habitat diversity and stability; natural hydrologic function; wetland type; fish; wildlife; timber; and food and fiber resources;

(iii) Cost increases attributed to wetland-required new construction and mitigation measures to minimize harm to wetlands that may result from such use; and

(iv) Other uses of wetlands in the public interest, including recreational, scientific, and cultural uses.

(e) *Step 5.* Where practicable, design or modify the proposed action to minimize the potential adverse impacts to and from the 100-year floodplain (or the 500-year floodplain for a Critical Action) or the wetland and to restore and preserve its natural and beneficial functions and values.

(1) Minimization techniques for floodplain and wetland purposes include, but are not limited to: the use of permeable surfaces, natural landscape enhancements that maintain or restore natural hydrology through infiltration, native plant species, bioswales, evapotranspiration, stormwater capture and reuse, green or vegetative roofs with drainage provisions, and Natural Resource Conservation Service conservation easements. Floodproofing and elevating structures, including freeboard above the required base flood elevations, are also minimization techniques for floodplain purposes.

(2) Appropriate and practicable compensatory mitigation is recommended for unavoidable adverse impacts to more than one acre of wetland. Compensatory mitigation includes, but is not limited to: permittee-responsible mitigation, mitigation banking, in-lieu fee mitigation, the use of preservation easements or protective covenants, and any form of mitigation promoted by state or Federal agencies. The use of compensatory mitigation may not substitute for the requirement to avoid and minimize impacts to the maximum extent practicable.

(3) Actions covered by § 55.12(a) must be rejected if the proposed minimization is financially or physically unworkable. All critical actions in the 500-year floodplain shall be designed and built at or above the 100-year floodplain (in the case of new construction) and modified to include:

(i) Preparation of and participation in an early warning system;

(ii) An emergency evacuation and relocation plan;

(iii) Identification of evacuation route(s) out of the 500-year floodplain; and

(iv) Identification marks of past or estimated flood levels on all structures.

(f) *Step 6.* Reevaluate the proposed action to determine:

(1) Whether the action is still practicable in light of exposure to flood hazards in the floodplain or wetland, possible adverse impacts on the floodplain or wetland, the extent to which it will aggravate the current hazards to other floodplains or wetlands, and the potential to disrupt the natural and beneficial functions and values of floodplains or wetlands; and

(2) Whether alternatives preliminarily rejected at Step 3 (paragraph (c)) of this section are practicable in light of information gained in Steps 4 and 5 (paragraphs (d) and (e)) of this section.

(i) The reevaluation of alternatives shall include the potential impacts avoided or caused inside and outside the floodplain or wetland area. The impacts should include the protection of human life, real property, and the natural and beneficial functions and values served by the floodplain or wetland.

(ii) A reevaluation of alternatives under this step should include a discussion of economic costs. For floodplains, the cost estimates should include savings or the costs of flood insurance, where applicable; flood proofing; replacement of services or functions of critical actions that might be lost; and elevation to at least the base flood elevation for sites located in floodplains, as appropriate on the applicable source under § 55.2(b)(1). For wetlands, the cost estimates should include the cost of filling the wetlands and mitigation.

(g) *Step 7.* (1) If the reevaluation results in a determination that there is no practicable alternative to locating the proposal in the 100-year floodplain (or the 500-year floodplain for a Critical Action) or the wetland, publish a final notice that includes:

(i) The reasons why the proposal must be located in the floodplain or wetland;

(ii) A list of the alternatives considered in accordance with paragraphs(c)(1) and (c)(2) of this section; and

(iii) All mitigation measures to be taken to minimize adverse impacts and to restore and preserve natural and beneficial functions and values.

\* \* \* \* \*

(h) *Step 8.* Upon completion of the decisionmaking process in Steps 1 through 7, implement the proposed action. There is a continuing

responsibility on HUD (or on the responsible entity authorized by 24 CFR part 58) and the recipient (if other than the responsible entity) to ensure that the mitigating measures identified in Step 7 are implemented.

§ 55.21 [Amended]

- 14. Amend § 55.21 by removing the term “grant recipient” and adding in its place the term “responsible entity.”
- 15. Revise § 55.24 to read as follows:

§ 55.24 Aggregation.

Where two or more actions have been proposed, require compliance with subpart C of this part, affect the same floodplain or wetland, and are currently under review by HUD (or by a responsible entity authorized by 24 CFR part 58), individual or aggregated approvals may be issued. A single compliance review and approval under this section is subject to compliance with the decisionmaking process in § 55.20.

§ 55.25 [Amended]

- 16. Amend § 55.25 as follows:
  - a. Remove, in paragraph (c), the term “grant recipient” and add in its place the term “responsible entity;” and
  - b. Remove in paragraph (d)(2) the term “grant recipients” and add in its place the term “responsible entities.”
- 17. In § 55.26, revise the introductory text and paragraph (a) to read as follows:

§ 55.26 Adoption of another agency’s review under the executive orders.

If a proposed action covered under this part is already covered in a prior review performed under either or both of the Executive Orders by another agency, including HUD or a different responsible entity, that review may be adopted by HUD or by a responsible entity authorized under 24 CFR part 58, provided that:

- (a) There is no pending litigation relating to the other agency’s review for floodplain management or wetland protection;

\* \* \* \* \*

- 18. Amend § 55.27 as follows:
  - a. Revise paragraph (a);
  - b. Remove, in paragraph (b), the term “grant recipient” and add, in its place, the words “responsible entity” and;
  - c. Remove, in paragraph (c), the term “grant recipients” and add, in its place, the words “responsible entities”.

The revision reads as follows:

§ 55.27 Documentation.

(a) For purposes of compliance with § 55.20, the responsible HUD official who would approve the proposed action (or Certifying Officer for a responsible entity authorized by 24 CFR part 58) shall require that the following actions be documented:

- (1) When required by § 55.20(c), practicable alternative sites have been considered outside the floodplain or wetland, but within the local housing market area, the local public utility service area, or the jurisdictional boundaries of a recipient unit of general local government, whichever geographic area is most appropriate to the proposed action. Actual sites under review must be identified and the reasons for the nonselection of those sites as practicable alternatives must be described; and
- (2) Under § 55.20(e)(2), measures to minimize the potential adverse impacts of the proposed action on the affected floodplain or wetland as identified in § 55.20(d) have been applied to the design for the proposed action.

\* \* \* \* \*

- 19. Add § 55.28 to read as follows:

§ 55.28 Use of individual permits under section 404 of the Clean Water Act for HUD Executive Order 11990 processing where all wetlands are covered by the permit.

(a) *Processing requirements.* HUD (or the responsible entity subject to 24 CFR part 58) shall not be required to perform the steps at § 55.20(a) through (e) upon adoption by HUD (or the responsible entity) of the terms and conditions of a Section 404 permit so long as:

- (1) The project involves new construction on a property located outside of the 100-year floodplain (or the 500-year floodplain for critical actions);
- (2) The applicant has submitted, with its application to HUD (or to the recipient under programs subject to 24 CFR part 58), an individual Section 404 permit (including approval conditions) issued by the U.S. Army Corps of Engineers (USACE) (or by a State or Tribal government under Section 404(h) of the Clean Water Act) for the proposed project; and
- (3) All wetlands adversely affected by the action are covered by the permit.

(b) Unless a project is excluded under § 55.12, processing under all of § 55.20 is required for new construction in wetlands that are not subject to section 404 of the Clean Water Act and for new construction for which the USACE (or a

State or Tribal government under section 404(h) of the Clean Water Act) issues a general permit under Section 404.

PART 58—ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES

- 20. The authority citation for part 58 continues to read as follows:

**Authority:** 12 U.S.C. 1707 note; 42 U.S.C. 1437o(i)(1) and (2), 1437x, 3535(d), 3547, 4332, 4852, 5304(g), 11402, and 12838; E.O. 11514, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 3 CFR, 1977 Comp., p.123.

- 21. In § 58.5, revise paragraph (b)(2) to read as follows:

§ 58.5 Related federal laws and authorities.

\* \* \* \* \*

- (b) \* \* \*

(2) Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961), 3 CFR, 1977 Comp., p. 121, as interpreted in HUD regulations at 24 CFR part 55, particularly sections 2 and 5 of the order.

\* \* \* \* \*

- 22. In § 58.6, add paragraph (a)(4) to read as follows:

§ 58.6 Other requirements.

\* \* \* \* \*

- (a) \* \* \*

(4) Flood insurance requirements cannot be fulfilled by self-insurance except as authorized by law for assistance to state-owned projects within states approved by the Federal Insurance Administrator consistent with 44 CFR 75.11.

\* \* \* \* \*

- 23. In § 58.35, revise paragraph (a)(3)(i) to read as follows:

§ 58.35 Categorical exclusions.

\* \* \* \* \*

- (a) \* \* \*

- (3) \* \* \*

(i) In the case of a building for residential use (with one to four units), the density is not increased beyond four units, and the land use is not changed;

\* \* \* \* \*

Dated: November 6, 2013.

Mark Johnston,

Deputy Assistant Secretary for Special Needs,  
[FR Doc. 2013–27427 Filed 11–14–13; 8:45 am]

BILLING CODE 4210–67–P

## Sample Public Hearing Notice

The (city or county) of (name of city or county) is considering applying to the Georgia Department of Community Affairs for a Community Development Block Grant of up to \$(amount of funds). These funds must be used to primarily benefit low- and moderate-income persons.

The activities for which these funds may be used are in the areas of housing, public facilities, and economic development. More specific details regarding eligible activities, plans to assist displaced persons (if any), the estimated amount of funds proposed to be used for activities to benefit low- and moderate-income persons, and the rating system will be provided at a public hearing which will be held at (place/address) on (date), at (time).

The purpose of this hearing will be to obtain citizen input into the development of the application and to review progress on the previous CDBG grant (if applicable). The (City or County) of (name of City or County) is committed to providing all persons with equal access to its services, programs, activities, education and employment regardless of race, color, national origin, religion, sex, familial status, disability or age. Persons with special needs relating to handicapped accessibility or foreign language shall contact (name/phone) prior to (date). This person can be located at (complete address) between the hours of (hours am - pm), Monday through Friday, except holidays. Persons with hearing disabilities can contact us at our TDD number (AC + number). [Applicants who do not have a TDD phone may consider using the Georgia Relay Service, at (TDD) 1-800-255-0056 or (Voice) 1-800-255-0135.]



Equal Housing Opportunity

## Muestra de Aviso de Audiencia Pública - Pre-solicitud de fondos para CDBG

La/el (ciudad o condado) de (nombre de ciudad o condado) está considerando solicitar un Community Development Block Grant (Subvención en bloque para el desarrollo de la comunidad) de hasta \$(cantidad de fondos) del Departamento de Asuntos Comunitarios de Georgia. Se deben usar estos fondos principalmente para beneficiar a personas de ingreso bajo o medio.

Se pueden usar estos fondos para actividades en las áreas de vivienda, instalaciones públicas y desarrollo económico. Se proporcionarán detalles más específicos sobre las actividades elegibles, los planes para dar asistencia a personas desplazadas (si existen), la cantidad aproximada de fondos propuestos para actividades que benefician a personas de ingreso bajo y medio, y el sistema de clasificación en una audiencia pública que tendrá lugar en (lugar/dirección) el (fecha), a las (hora).

El motivo de esta audiencia será obtener opiniones de ciudadanos sobre el desarrollo de la solicitud y revisar el progreso de la subvención de CDBG previa (si procede). La/el (ciudad o condado) de la/el (nombre de ciudad o condado) está comprometido a proporcionarles a todas personas acceso igual a sus servicios, programas, actividades, educación y empleo de manera independiente de su raza, color, origen nacional, religión, sexo, estatus familiar, discapacidad o edad. Las personas con necesidades especiales o adecuaciones relacionadas con accesibilidad de discapacitados o idiomas extranjeras contactaran a (nombre/número de teléfono) antes de (fecha). Se puede encontrar a tal persona en (dirección completa) entre las horas (horas am - pm), Junes a viernes, excepto durante fiestas. Personas con discapacidades auditivas pueden contactarnos a nuestro número telefónico TDD (número AC +). [Los solicitantes quienes no tienen un teléfono TDD pueden considerar usar el Georgia Relay Service, al (TDD) 1-800-255-0056 o (Voz) 1-800-255-0135.]







# AFFH FACT SHEET:

## THE DUTY TO AFFIRMATIVELY FURTHER FAIR HOUSING

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### WHAT IS THE DUTY TO AFFIRMATIVELY FURTHER FAIR HOUSING?

From its inception, the Fair Housing Act (and subsequent laws reaffirming its principles) not only prohibited discrimination in housing related activities and transactions but also imposed a duty to affirmatively further fair housing (AFFH). The AFFH rule sets out a framework for local governments, States, and public housing agencies (PHAs) to take meaningful actions to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities that are free from discrimination. The rule is designed to help program participants better understand what they are required to do to meet their AFFH duties and enables them to assess fair housing issues in their communities and then to make informed policy decisions.

**For purposes of the rule, affirmatively furthering fair housing** “means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a program participant’s activities and programs relating to housing and urban development.”

**For purposes of the rule, meaningful actions** “means significant actions that are designed and can be reasonably expected to achieve a material positive change that affirmatively furthers fair housing by, for example, increasing fair housing choice or decreasing disparities in access to opportunity.”

### WHAT IS THE PROCESS PROGRAM PARTICIPANTS MUST FOLLOW?

Under the AFFH rule, an “Assessment of Fair Housing” (AFH) will replace the current “Analysis of Impediments” (AI) process. The AFH Assessment Tool, which includes instructions and data provided by HUD, consists of a series of questions designed to help program participants identify, among other things, fair housing issues pertaining to patterns of integration and segregation; racially and ethnically concentrated areas of poverty; disparities in access to opportunity; and disproportionate housing needs, as well as the contributing factors for those issues.

- The Assessment Tool is intended to help communities understand and identify local barriers to fair housing choice. The AFH provides an approach that will help program participants more effectively affirmatively further the purposes and policies of the Fair Housing Act.
- HUD will review the AFH within 60 calendar days after the date of submission. An AFH submission is deemed accepted 61 days after submission unless HUD provides notification on or before that it is not accepted. Non-acceptance notifications will explain the reasons for non-acceptance and how a program participant may remedy deficiencies.
- The AFFH rule establishes specific requirements for the incorporation of the AFH into subsequent Consolidated Plans and PHA Plans in a manner that connects housing and community development policy and investment planning with meaningful actions to AFFH.
- The AFFH rule links existing community participation and consultation requirements to the AFH process to ensure program participants give the public opportunities for involvement in the development of the AFH and in its incorporation into the Consolidated Plan and PHA Plan.

**Endangered Species Act (ESA):** The U.S. Fish and Wildlife Service published a final 4(d) rule on January 14, 2016 that established prohibitions against the purposeful and incidental take of the Northern Long-Eared Bat (NLEB) as part of the Endangered Species Act. The **information below** gives background on the regulation, activities that trigger compliance with the rule, and links to websites to assist in complying with the regulation.

Final 4(d) rule went into effect on February 16, 2016. The final rule established Section 9 prohibitions against both purposeful and incidental take of the Northern Long-Eared Bat (NLEB). The NLEB was listed as a threatened species under the Endangered Species Act (ESA) on April 2, 2015 because of the white-nose syndrome (WNS). The WNS is a fungal disease affecting many hibernating bat species. As a result of this listing, the NLEB is now protected under Sections 7 and 9 of the ESA.

Section 7 applies only to federal actions. It requires agencies not to jeopardize the existence of threatened and endangered species and requires agencies to consult with the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS).

Section 9 applies to federal and non-federal actions. It prohibits the taking of endangered fish and wildlife.

The ESA defines take as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect”. According to the ESA, a purposeful take occurs when the reason for the activity or action is to conduct some form of take and incidental take is a take that is incidental to the carrying out of an otherwise lawful activity.

All **purposeful take** of the NLEB throughout the species range is prohibited, unless authorized by a permit, except the removal of the bat from human structures, defense of human life (including public health monitoring) and the removal of hazardous trees for human life and property protection.

**Take within the WNS zones:**

- Incidental take is prohibited if it occurs in the hibernaculum (i.e. bat cave or other locations bats hibernate in the winter), unless permitted under Section 10(a)(1)9A) of the ESA.
- Incidental take of the NLEB outside of hibernacula is not prohibited as long as it does not involve tree removal.
- Incidental take caused by tree removal is prohibited (without a permit):
  - if the tree removal occurs within ¼ mile of a known hibernaculum (at any time of the year),
  - tree removal cuts or destroys a known occupied maternity roost tree or any other trees within a 150 foot radius of the maternity roots tree during the pup season (June 1 – July 31)

**Take outside of the WNS Zones:**

- Incidental take is not prohibited.

The incidental take actions that are not prohibited under the 4(d) rule are considered effects under Section 7 of the ESA and requires a Section 7 consultation process. The Responsible Entity may

choose to complete the Streamlined Consultation Form (Northern Long-Eared Bat 4(d) Rule Streamlined Consultation Form) only for non-prohibited actions that may affect the NLEB.

For more information on the NLEB see the USFWS NELB 4(d) Rule page at <https://www.fws.gov/midwest/endangered/mammals/nleb/4drule.html>

Information on the Section 7 Consultation process, including what constitutes an effect, may be found at <http://www.fws.gov/Midwest/Endangered/mammals/nleb/s7.html>.

Detailed information regarding actions that may affect the NLEB is found in the *Programmatic Biological Opinion of the Final 4(d) Rule for the Northern Long Eared Bat and Activities Excepted from Take Prohibitions* [https://www.fws.gov/midwest/Endangered/section7/bo/16\\_Rangewide\\_FHWA\\_FTA\\_FRA\\_ProgrammaticINBAandNLEB20May2016.pdf](https://www.fws.gov/midwest/Endangered/section7/bo/16_Rangewide_FHWA_FTA_FRA_ProgrammaticINBAandNLEB20May2016.pdf)

**Language Access Plan Template  
CDBG Recipients**

**Instructions:**

Refer to the *DCA LAP Policy* and the *DCA Sub recipient Language Access Plan Guidance* and follow the following steps described in detail below:

**Step 1: Provide General Information**

**Step 2: Perform the Four Factor Analysis**

Factor 1: The number of LEP people in the jurisdiction

- Use the most recent data release of American Community Survey Table S1601 (Language Spoken at Home) published in December of each year. *Please source all data provided to DCA.*
- *This information can be accessed via <https://data.census.gov/cedsci/> or the 2021 CDBG Applicant Concentration Map.*
- Determine the threshold for providing translation

Factor 2: The frequency of interaction

Factor 3: The nature and importance of the activity

Factor 4: The resources available

**Step 3: Prepare the Language Access Plan**

- Four-Factor Analysis
- Responsible staff and training plan
- Documents to be translated (if needed)
- Plan for complaints and appeals
- Records retention and update plan

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**Step 1: Provide General Information:**

Provide the following information at the beginning of the local government's Language Access plan

- Grantee
- CDBG Grant Number
- Target Area
- Preparer's name, phone number, email address

## Step 2: Conduct a Four-Factor Analysis to determine how to provide needed language assistance

The Four Factors are:

**Factor 1:** The number or proportion of LEP persons eligible to be served or likely to be encountered by the Agency or its federally funded programs.

### Use data to answer the question:

How many Limited English Proficient people are in your local government's city or county's jurisdiction?

**Attach maps (if applicable) or other relevant data to your Language Access Plan. All data or maps provided must be accurately sourced.**

Please use the Census Table B16001 and Table S1601 to find this information. The size of the language group determines the recommended provision for written language assistance.

Size of Language Group	Recommended Provision of Written Language Assistance
1,000 or more in the eligible population	Translated vital documents
More than 5% of the eligible population or beneficiaries and more than 50 in number	Translated vital documents
More than 5% of the eligible population or beneficiaries and 50 or less in number	Translated written notice of right to receive free oral interpretation of documents.
5% or less of the eligible population or beneficiaries and less than 1,000 in number	No written translation is required.

Note: In the case where the overall jurisdiction numbers fall below the threshold to provide translated written documents but existing or planned DCA target areas exist, the DCA Sub recipient must evaluate whether there are limited English proficient households within the target areas that may need notification or other LAP services. The Sub recipient's evaluation should use local knowledge or data or other relevant data in conducting its evaluation and should indicate its conclusions regarding the steps necessary reach out to these households in the language they speak to ensure that adequate notification is achieved. This evaluation will be particularly important for housing grants where eligible applicants for assistance may need application or other documents translated to take advantage of available services.

**Factor 2:** The frequency with which LEP persons come into contact with the Agency's programs: The frequency with which a program engages with the public can vary. For example: *Daily*: walk-ins at a housing counseling agency; *Annually*: A program accepts applications for assistance once a year.

For CDBG grants, grantees must engage with the public at these critical steps:

- When notifying the public about a grant award application and its proposed activities
- When notifying the public about the grant award and its funded activities



- c. When seeking applicants to participate in the program (e.g., when seeking homeowners for rehabilitation assistance)
- d. When seeking qualified contractors
- e. When working with homeowners selected for assistance
- f. When seeking bids from builders to construct the homes
- g. When notifying the public about the grant award closeout and its accomplishments

**Identify how your program engages with the public and how frequently does this occur**

**Factor 3:** The nature and importance of the programs, activities, or services to people's lives. The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP persons, the more likely the need for language services. The obligations to communicate rights to a person who is being evicted differ, for example, from those to provide recreational programming. A recipient needs to determine whether denial or delay of access to services or information could have serious or even life-threatening implications for the LEP individual.

**Answer the following questions:**

What is the nature of the program? e.g. Providing improved water and sewer services

What is the importance of the program? Would denial or delay of access to services or information could serious or even life-threatening implications for the LEP individual?

**Factor 4:** The resources available and costs to the recipient.

Read the section in the guidance on this factor and the expectations from HUD about cost reasonableness. DCA can assist with translation services if necessary. Language assistance that a sub recipient might provide to LEP persons includes, but is not limited to

- Oral interpretation services;
- Bilingual staff;
- Telephone service lines interpreter;
- Written translation services;
- Notices to staff and sub recipients of the availability of LEP services; or
- Referrals to community liaisons proficient in the language of LEP persons.
- Provide "I speak" card (see policy documents for details)

**Determine the resources to be made available if any**

**Step 3: Prepare a Language Access Plan (LAP) and submit it to your DCA representative that includes:**

- a. The Four-Factor Analysis
- b. The name of the individual responsible for coordination of LEP compliance
- c. A training plan on LEP requirements for all staff involved in programs and activities funded by the federal government and awarded by DCA



- d. A list of vital documents to be translated (if necessary) and schedule for translating and disseminating vital documents
- e. A plan for complaints and appeals. See the complaints and appeals requirement in the DCA policy.
- f. A policy for updating the Four-Factor Analysis and the LAP every five years. Note: The CDBG grant term is two years. A grantee can apply for CDBG and use the established LAP for multiple grant terms.
- g. A plan to maintain records regarding its efforts to comply with Title VI LEP obligations.



## **DCA Sub Recipient Language Access Plan Guidance**

Pursuant to the requirements of Title VI of the Civil Rights Act of 1964, all DCA sub recipients (including State recipients) must take timely and reasonable steps to provide Limited English Proficient (LEP) persons with meaningful access to programs and activities funded by the federal government and awarded by DCA.

Within sixty days of award of funds, sub recipients must undertake the following steps:

- 1.) Conduct a Four-Factor Analysis to determine how to provide needed language assistance.
- 2.) Prepare a Language Access Plan (LAP) and submit it to your DCA representative that includes:
  - a. The Four-Factor Analysis
  - b. The name of the individual responsible for coordination of LEP compliance
  - c. A training plan on LEP requirements for all staff involved in programs and activities funded by the federal government and awarded by DCA
  - d. A list of vital documents to be translated (if necessary) and schedule for translating and disseminating vital documents
  - e. A policy for updating the Four-Factor Analysis and the LAP every five years
  - f. A plan to maintain records regarding its efforts to comply with Title VI LEP obligations.
  - g. A plan for complaints and appeals. See the complaints and appeals requirement in the DCA Policy.

The following document provides guidance on how to accomplish these steps. Addition resources on HUD compliance policies and guidance can be found in the Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons Notice: <https://www.gpo.gov/fdsys/pkg/FR-2007-01-22/pdf/07-217.pdf>. Complete LEP resources and information for all federal programs can be found on this website: <https://www.lep.gov/>

### **Conducting the Four-Factor Analysis**

The Four-Factor Analysis includes:

- 1.) The number or proportion of LEP persons served or encountered in the eligible service population ("served or encountered" includes those persons who would be served or encountered by the sub recipient if the persons received adequate education and outreach and the sub recipient provided sufficient language services).
- 2.) The frequency with which LEP persons come into contact with the program;
- 3.) The nature and importance of the program, activity, or service provided by the program; and
- 4.) The resources available and costs to the recipient.

### **Factor 1: Determining the number of LEP persons served or encountered in the eligible service population:**

Sub recipients must use the most recent and relevant data to determine the number of LEP persons in the service area. Most sub recipients will depend on the most recent release of data from the American Community Survey Table S1601, updated each year in December. This data may be supplemented by local



knowledge or data, especially when evaluating sub jurisdictional areas such as target areas. All data provided must be accurately sourced.

The size of the language group determines the recommended provision for written language assistance.

Size of Language Group	Recommended Provision of Written Language Assistance
1,000 or more in the eligible population	Translated vital documents
More than 5% of the eligible population or beneficiaries and more than 50 in number	Translated vital documents
More than 5% of the eligible population or beneficiaries and 50 or less in number	Translated written notice of right to receive free oral interpretation of documents.
5% or less of the eligible population or beneficiaries and less than 1,000 in number	No written translation is required.

A vital document is any document that is critical for ensuring meaningful access to the recipients' major activities and programs by beneficiaries generally and LEP persons specifically. Leases, rental agreements and other housing documents of a legal nature enforceable in U.S. courts should be in English. See more about vital documents and legal documents in the FAQ below.

**Factor 2: The frequency with which LEP persons come into contact with the program:**

Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with an LEP individual from different language groups seeking assistance. The more frequent the contact with a particular language group, the more likely the need for enhanced language services in that language. The steps that are reasonable for a recipient that serves an LEP person on a one-time basis will be very different than those expected from a recipient that serves LEP persons daily. It is also advisable to consider the frequency of different types of language contacts. For example, frequent contacts with Spanish-speaking people who are LEP may require extensive assistance in Spanish. Less frequent contact with different language groups may suggest a different and less intensified solution. If an LEP individual accesses a program or service on a daily basis, a recipient has greater duties than if the same individual's program or activity contact is unpredictable or infrequent. But even recipients that serve LEP persons on an unpredictable or infrequent basis should determine what to do if an LEP individual seeks services under the program in question. This plan need not be intricate. It may be as simple as being prepared to use one of the commercially available telephonic interpretation services to obtain immediate interpreter services. In applying this standard, recipients should consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.

**Factor 3: The nature and importance of the program, activity, or service provided by the program:**

The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP persons, the more likely the need for language services. The obligations to communicate rights to a person who is being evicted differ, for example, from those to provide recreational programming. A recipient needs to determine whether denial or delay of access to services or information could have serious or even life-threatening implications for the LEP individual. Decisions by HUD, another federal, state, or local entity, or the recipient to make a specific activity

compulsory in order to participate in the program, such as filling out particular forms, participating in administrative hearings, or other activities, can serve as strong evidence of the program's importance.

**Factor 4: The resources available and costs to the recipient:**

Language assistance that a sub recipient might provide to LEP persons includes, but is not limited to

- Oral interpretation services;
- Bilingual staff;
- Telephone service lines interpreter;
- Written translation services;
- Notices to staff and sub recipients of the availability of LEP services; or
- Referrals to community liaisons proficient in the language of LEP persons.
- Provide "I speak" card (more in the FAQ below)

A recipient's level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. In addition, "reasonable steps" may cease to be reasonable where the costs imposed substantially exceed the benefits. Resource and cost issues, however, can often be reduced by technological advances; sharing of language assistance materials and services among and between recipients, advocacy groups, and federal grant agencies; and reasonable business practices. Where appropriate, training bilingual staff to act as interpreters and translators, information sharing through industry groups, telephonic and video conferencing interpretation services, pooling resources and standardizing documents to reduce translation needs, using qualified translators and interpreters to ensure that documents need not be "fixed" later and that inaccurate interpretations do not cause delay or other costs, centralizing interpreter and translator services to achieve economies of scale, or the formalized use of qualified community volunteers, for example, may help reduce costs. Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. Small recipients with limited resources may find that entering into a bulk telephonic interpretation service contract will prove cost effective. Large entities and those entities serving a significant substantiated before using this factor as a reason to limit language assistance. Such recipients may find it useful to articulate, through documentation or in some other reasonable manner, their process for determining that language services would be limited based on resources or costs. This four-factor analysis necessarily implicates the "mix" of LEP services the recipient will provide. Recipients have two main ways to provide language services: Oral interpretation in person or via telephone interpretation service (hereinafter "interpretation") and through written translation (hereinafter "translation"). Oral interpretation can range from on-site interpreters for critical services provided to a high volume of LEP persons through commercially available telephonic interpretation services. Written translation, likewise, can range from translation of an entire document to translation of a short description of the document. In some cases, language services should be made available on an expedited basis, while in others the LEP individual may be referred to another office of the recipient for language assistance. The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. For instance, a public housing provider in a largely Hispanic neighborhood may need immediate oral interpreters available and should give serious consideration to hiring some bilingual staff. (Of course, many have

already made such arrangements.) By contrast, there may be circumstances where the importance and nature of the activity and number or proportion and frequency of contact with LEP persons may be low and the costs and resources needed to provide language services may be high – such as in the case of a voluntary public tour of a recreational facility – in which pre-arranged language services for the particular service may not be necessary. Regardless of the type of language service provided, quality and accuracy of those services can be critical in order to avoid serious consequences to the LEP person and to the recipient. Recipients have substantial flexibility in determining the appropriate mix.

### **Language Access Plan Frequently Asked Questions:**

#### **Who are limited English proficient (LEP) persons?**

For persons who, as a result of national origin, do not speak English as their primary language and who have a limited ability to speak, read, write, or understand. For purposes of Title VI and the LEP Guidance, persons may be entitled to language assistance with respect to a particular service, benefit, or encounter.

#### **What is Title VI and how does it relate to providing meaningful access to LEP persons?**

Title VI of the Civil Rights Act of 1964 is the federal law that protects individuals from discrimination on the basis of their race, color, or national origin in programs that receive federal financial assistance. In certain situations, failure to ensure that persons who are LEP can effectively participate in, or benefit from, federally assisted programs may violate Title VI's prohibition against national origin discrimination.

#### **What do Executive Order (EO) 13166 and the Guidance require?**

EO 13166, signed on August 11, 2000, directs all federal agencies, including the Department of Housing and Urban Development (HUD), to work to ensure that programs receiving federal financial assistance provide meaningful access to LEP persons. Pursuant to EO 13166, the meaningful access requirement of the Title VI regulations and the four-factor analysis set forth in the Department of Justice (DOJ) LEP Guidance apply to the programs and activities of federal agencies, including HUD. In addition, EO 13166 requires federal agencies to issue LEP Guidance to assist their federally assisted recipients in providing such meaningful access to their programs. This Guidance must be consistent with the DOJ Guidance. Each federal agency is required to specifically tailor the general standards established in DOJ's Guidance to its federally assisted recipients. On December 19, 2003, HUD published such proposed Guidance.

#### **Who must comply with the Title VI LEP obligations?**

All programs and operations of entities that receive financial assistance from the federal government, including but not limited to state agencies, local agencies and for-profit and non-profit entities, must comply with the Title VI requirements. A listing of most, but not necessarily all, HUD programs that are federally assisted may be found at the "List of Federally Assisted Programs" published in the Federal Register on November 24, 2004 (69 FR 68700). Sub-recipients must also comply (i.e., when federal funds are passed through a recipient to a sub-recipient). As an example, Federal Housing Administration (FHA) insurance is not considered federal financial assistance, and participants in that program are not required

to comply with Title VI's LEP obligations, unless they receive federal financial assistance as well. [24 CFR 1.2 (e)].

**Does a person's citizenship and immigration status determine the applicability of the Title VI LEP obligations?**

United States citizenship does not determine whether a person is LEP. It is possible for a person who is a United States citizen to be LEP. It is also possible for a person who is not a United States citizen to be fluent in the English language. Title VI is interpreted to apply to citizens, documented non-citizens, and undocumented non-citizens. Some HUD programs require recipients to document citizenship or eligible immigrant status of beneficiaries; other programs do not. Title VI LEP obligations apply to every beneficiary who meets the program requirements, regardless of the beneficiary's citizenship status.

**What is expected of recipients under the Guidance?**

Federally assisted recipients are required to make reasonable efforts to provide language assistance to ensure meaningful access for LEP persons to the recipient's programs and activities. To do this, the recipient should

- (1) Conduct the four-factor analysis;
- (2) Develop a Language Access Plan (LAP); and
- (3) Provide appropriate language assistance.

The actions that the recipient may be expected to take to meet its LEP obligations depend upon the results of the four-factor analysis including the services the recipient offers, the community the recipient serves, the resources the recipient possesses, and the costs of various language service options. All organizations would ensure nondiscrimination by taking reasonable steps to ensure meaningful access for persons who are LEP. HUD recognizes that some projects' budgets and resources are constrained by contracts and agreements with HUD. These constraints may impose a material burden upon the projects. Where a HUD recipient can demonstrate such a material burden, HUD views this as a critical item in the consideration of costs in the four-factor analysis. However, refusing to serve LEP persons or not adequately serving or delaying services to LEP persons would violate Title VI. The agency may, for example, have a contract with another organization to supply an interpreter when needed; use a telephone service line interpreter; or, if it would not impose an undue burden, or delay or deny meaningful access to the client, the agency may seek the assistance of another agency in the same community with bilingual staff to help provide oral interpretation service.

**What is the four-factor analysis?**

Recipients are required to take reasonable steps to ensure meaningful access to LEP persons. This "reasonableness" standard is intended to be flexible and fact-dependent. It is also intended to balance the need to ensure meaningful access by LEP persons to critical services while not imposing undue

financial burdens on small businesses, small local governments, or small nonprofit organizations. As a starting point, a recipient may conduct an individualized assessment that balances the following four factors:

- 5.) The number or proportion of LEP persons served or encountered in the eligible service population ("served or encountered" includes those persons who would be served or encountered by the sub recipient if the persons received adequate education and outreach and the sub recipient provided sufficient language services);
- 6.) The frequency with which LEP persons come into contact with the program;
- 7.) The nature and importance of the program, activity, or service provided by the program; and
- 8.) The resources available and costs to the sub recipient. Examples of applying the four-factor analysis to HUD-specific programs are located in Appendix A of the LEP Final Guidance.

### **What are examples of language assistance?**

Language assistance that a sub recipient might provide to LEP persons includes, but is not limited to

- Oral interpretation services;
- Bilingual staff;
- Telephone service lines interpreter;
- Written translation services;
- Notices to staff and sub recipients of the availability of LEP services; or
- Referrals to community liaisons proficient in the language of LEP persons.

### **What is a Language Access Plan (LAP) and what are the elements of an effective LAP?**

After completing the four-factor analysis and deciding what language assistance services are appropriate, a sub recipient may develop an implementation plan or LAP to address identified needs of the LEP populations it serves. Some elements that may be helpful in designing an LAP include

Identifying LEP persons who need language assistance and the specific language assistance that is needed;

- Identifying the points and types of contact the agency and staff may have with LEP persons;
- Identifying ways in which language assistance will be provided; · Outreaching effectively to the LEP community;
- Training staff;
- Determining which documents and informational materials are vital;
- Translating informational materials in identified language(s) that detail services and activities provided to beneficiaries (e.g., model leases, tenants' rights and responsibilities brochures, fair housing materials, first-time homebuyer guide);
- Providing appropriately translated notices to LEP persons (e.g., eviction notices, security information, emergency plans);
- Providing interpreters for large, medium, small, and one-on-one meetings;
- Developing community resources, partnerships, and other relationships to help with the provision of language services; and
- Making provisions for monitoring and updating the LAP, including seeking input from beneficiaries and the community on how it is working and on what other actions should be taken.

### **What is a vital document?**

A vital document is any document that is critical for ensuring meaningful access to the sub recipients' major activities and programs by beneficiaries generally and LEP persons specifically. Whether or not a document (or the information it solicits) is "vital" may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information is not provided accurately or in a timely manner. For instance, applications for auxiliary activities, such as certain recreational programs in public housing, would not generally be considered a vital document, whereas applications for housing would be considered vital. However, if the major purpose for funding the sub recipient were its recreational program, documents related to those programs would be considered vital. Where appropriate, sub recipients are encouraged to create a plan for consistently determining, over time and across its various activities, what documents are "vital" to the meaningful access of the LEP populations they serve.

### **How may a sub recipient determine the language service needs of a beneficiary?**

Sub recipients should elicit language service needs from all prospective beneficiaries (regardless of the prospective beneficiary's race or national origin). If the prospective beneficiary's response indicates a need for language assistance, the sub recipient may want to give applicants or prospective beneficiaries a language identification card (or "I speak" card). Language identification cards invite LEP persons to identify their own language needs. Such cards, for instance, might say "I speak Spanish" in both Spanish and English, "I speak Vietnamese" in both Vietnamese and English, etc. To reduce costs of compliance, the federal government has made a set of these cards available on the Internet. Download the "I speak" card [here](#).

### **How may a sub recipient's limited resources be supplemented to provide the necessary LEP services?**

A sub recipient should be resourceful in providing language assistance as long as quality and accuracy of language services are not compromised. The sub recipient itself need not provide the assistance, but may decide to partner with other organizations to provide the services. In addition, local community resources may be used if they can ensure that language services are competently provided. In the case of oral interpretation, for example, demonstrating competency requires more than self-identification as bilingual. Some bilingual persons may be able to communicate effectively in a different language when communicating information directly in that language, but may not be competent to interpret between English and that language.

In addition, the skill of translating is very different than the skill of interpreting and a person who is a competent interpreter may not be a competent translator. To ensure the quality of written translations and oral interpretations, HUD encourages sub recipients to use members of professional organizations. Examples of such organizations are national organizations, including American Translators Association (written translations), National Association of Judicial Interpreters and Translators, and International Organization of Conference Interpreters (oral interpretation); state organizations, including Colorado

Association of Professional Interpreters and Florida Chapter of the American Translators Association; and local legal organizations such as Bay Area Court Interpreters.

While HUD recommends using the list posted on the official LEP website, its limitations must be recognized. Use of the list is encouraged, but not required or endorsed by HUD. It does not come with a presumption of compliance. There are many other qualified interpretation and translation providers, including in the private sector.

**May sub recipients rely upon family members or friends of the LEP person as interpreters?**

Generally, sub recipients should not rely on family members, friends of the LEP person, or other informal interpreters. In many circumstances, family members (especially children) or friends may not be competent to provide quality and accurate interpretations. Therefore, such language assistance may not result in an LEP person obtaining meaningful access to the sub recipients' programs and activities. However, when LEP persons choose not to utilize the free language assistance services expressly offered to them by the sub recipient but rather choose to rely upon an interpreter of their own choosing (whether a professional interpreter, family member, or friend), LEP persons should be permitted to do so, at their own expense. Sub recipients may consult HUD LEP Guidance for more specific information on the use of family members or friends as interpreters. While HUD guidance does not preclude use of friends or family as interpreters in every instance, HUD recommends that the sub recipient use caution when such services are provided.

**Are leases, rental agreements and other housing documents of a legal nature enforceable in U.S. courts when they are in languages other than English?**

Generally, the English language document prevails. The translated documents may carry a disclaimer. For example, "This document is a translation of a HUD-issued legal document. HUD provides this translation to you merely as a convenience to assist in your understanding of your rights and obligations. The English language version of this document is the official, legal, controlling document. This translated document is not an official document."

Where both the landlord and tenant contracts are in languages other than English, state contract law governs the leases and rental agreements. HUD does not interpret state contract law. Therefore, s regarding the enforceability of housing documents of a legal nature that are in languages other than English should be referred to a lawyer well-versed in contract law of the appropriate state or locality. Neither EO 13166 nor HUD LEP Guidance grants an individual the right to proceed to court alleging violations of EO 13166 or HUD LEP Guidance.

In addition, current Title VI case law only permits a private right of action for intentional discrimination and not for action based on the discriminatory effects of a sub recipient's practices. However, individuals may file administrative complaints with HUD alleging violations of Title VI because the HUD sub recipient failed to take reasonable steps to provide meaningful access to LEP persons.

The local HUD office will intake the complaint, in writing, by date and time, detailing the complainant's allegation as to how the state failed to provide meaningful access to LEP persons. HUD will determine jurisdiction and follow up with an investigation of the complaint.

**Who enforces Title VI as it relates to discrimination against LEP persons?**

Most federal agencies have an office that is responsible for enforcing Title VI of the Civil Rights Act of 1964. To the extent that a sub recipient's actions violate Title VI obligations, then such federal agencies will take the necessary corrective steps. The Secretary of HUD has designated the Office of Fair Housing and Equal Opportunity (FHEO) to take the lead in coordinating and implementing EO 13166 for HUD, but each program office is responsible for its sub recipients' compliance with the civil-rights related program requirements (CRRPRs) under Title VI.

**How does a person file a complaint if he/she believes the state is not meeting its Title VI LEP obligations?**

If a person believes that the state is not taking reasonable steps to ensure meaningful access to LEP persons, that individual may file a complaint with HUD's local Office of FHEO. For contact information of the local HUD office, go to the HUD website or call the housing discrimination toll free hotline at 800-669-9777 (voice) or 800-927-9275 (TTY).

**What will HUD do with a complaint alleging noncompliance with Title VI obligations?**

HUD's Office of FHEO will conduct an investigation or compliance review whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI obligations by the state. If HUD's investigation or review results in a finding of compliance, HUD will inform the state in writing of its determination. If an investigation or review results in a finding of noncompliance, HUD also will inform the state in writing of its finding and identify steps that the state must take to correct the noncompliance. In a case of noncompliance, HUD will first attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, HUD may then secure compliance by

- (1) Terminating the financial assistance of the state only after the state has been given an opportunity for an administrative hearing; and/or
- (2) Referring the matter to DOJ for enforcement proceedings.

**How will HUD evaluate evidence in the investigation of a complaint alleging noncompliance with Title VI obligations?**

Title VI is the enforceable statute by which HUD investigates complaints alleging a sub recipient's failure to take reasonable steps to ensure meaningful access to LEP persons. In evaluating the evidence in such complaints, HUD will consider the extent to which the state followed the LEP Guidance or otherwise demonstrated its efforts to serve LEP persons. HUD's review of the evidence will include, but may not be limited to, application of the four-factor analysis identified in HUD LEP Guidance. The four-factor analysis



provides HUD a framework by which it may look at all the programs and services that the sub recipient provides to persons who are LEP to ensure meaningful access while not imposing undue burdens on sub recipients.

**What is a safe harbor?**

A "safe harbor," in the context of this guidance, means that the sub recipient has undertaken efforts to comply with respect to the needed translation of vital written materials. If a sub recipient conducts the four-factor analysis, determines that translated documents are needed by LEP applicants or beneficiaries, adopts an LAP that specifies the translation of vital materials, and makes the necessary translations, then the sub recipient provides strong evidence, in its records or in reports to the agency providing federal financial assistance, that it has made reasonable efforts to provide written language assistance.

**What "safe harbors" may sub recipients follow to ensure they have no compliance finding with Title VI LEP obligations?**

HUD has adopted a "safe harbor" for translation of written materials. The Guidance identifies actions that will be considered strong evidence of compliance with Title VI obligations. Failure to provide written translations under these cited circumstances does not mean that the sub recipient is in noncompliance.

Rather, the "safe harbors" provide a starting point for sub recipients to consider

- Whether and at what point the importance of the service, benefit, or activity involved warrants written translations of commonly used forms into frequently encountered languages other than English;
- Whether the nature of the information sought warrants written translations of commonly used forms into frequently encountered languages other than English;
- Whether the number or proportion of LEP persons served warrants written translations of commonly used forms into frequently encountered languages other than English; and
- Whether the demographics of the eligible population are specific to the situations for which the need for language services is being evaluated. In many cases, use of the "safe harbor" would mean provision of written language services when marketing to the eligible LEP population within the market area. However, when the actual population served (e.g., occupants of, or applicants to, the housing project) is used to determine the need for written translation services, written translations may not be necessary.

The table below sets forth safe harbors for written translations.

Size of Language Group	Recommended Provision of Written Language Assistance
1,000 or more in the eligible population in the market area or among current beneficiaries	Translated vital documents
More than 5% of the eligible population or beneficiaries and more than 50 in number	Translated vital documents

More than 5% of the eligible population or beneficiaries and 50 or less in number	Translated written notice of right to receive free oral interpretation of documents.
5% or less of the eligible population or beneficiaries and less than 1,000 in number	No written translation is required.

When HUD conducts a review or investigation, it will look at the total services the sub recipient provides, rather than a few isolated instances.

**Is the sub recipient expected to provide any language assistance to persons in a language group when fewer than 5 percent of the eligible population and fewer than 50 in number are members of the language group?**

HUD recommends that sub recipients use the four-factor analysis to determine whether to provide these persons with oral interpretation of vital documents if requested.

**Are there "safe harbors" provided for oral interpretation services?**

There are no "safe harbors" for oral interpretation services. Sub recipients should use the four-factor analysis to determine whether they should provide reasonable, timely, oral language assistance free of charge to any beneficiary that is LEP (depending on the circumstances, reasonable oral language assistance might be an in-person interpreter or telephone interpreter line).

**Is there a continued commitment by the Executive Branch to EO 13166?**

There has been no change to the EO 13166. The President and Secretary of HUD are fully committed to ensuring that LEP persons have meaningful access to federally conducted programs and activities.

**Did the Supreme Court address and reject the LEP obligation under Title VI in Alexander v. Sandoval [121 S. Ct. 1511 (2001)]?**

The Supreme Court did not reject the LEP obligations of Title VI in its Sandoval ruling. In Sandoval, 121 S. Ct. 1511 (2001), the Supreme Court held that there is no right of action for private parties to enforce the federal agencies' disparate impact regulations under Title VI. It ruled that, even if the Alabama Department of Public Safety's policy of administering driver's license examinations only in English violates Title VI regulations, a private party may not bring a lawsuit under those regulations to enjoin Alabama's policy. Sandoval did not invalidate Title VI or the Title VI disparate impact regulations, and federal agencies' (versus private parties) obligations to enforce Title VI. Therefore, Title VI regulations remain in effect. Because the legal basis for the Guidance required under EO 13166 is Title VI and, in HUD's case, the civil rights-related program requirements (CRRPR), dealing with differential treatment, and since Sandoval did not invalidate either, the EO remains in effect.

**What are the obligations of HUD sub recipients if they operate in jurisdictions in which English has been declared the official language?**

In a jurisdiction where English has been declared the official language, a HUD sub recipient is still subject to federal nondiscrimination requirements, including Title VI requirements as they relate to LEP persons.

**Where can I find more information on LEP?**

You should review HUD's LEP Guidance: <https://www.gpo.gov/fdsys/pkg/FR-2007-01-22/pdf/07-217.pdf>

Additional information may also be obtained through the federal-wide LEP website and HUD's LEP website: <https://www.lep.gov/>

For CDBG LAP technical assistance, contact Kathleen Vaughn at [kathleen.vaughn@dca.ga.gov](mailto:kathleen.vaughn@dca.ga.gov) or (404) 679-0594.

## **DUPLICATION OF BENEFITS CDBG-CV PROGRAM POLICY**

In accordance with the Coronavirus Aid, Relief, and Economic Security Act (Pub. L. 116–136) (CARES Act), the United States Department of Housing and Urban Development (HUD) allocated Community Development Block Grant coronavirus response (CDBG-CV) funds to the state of Georgia to prevent, prepare for, and respond to coronavirus. Recipients of CDBG-CV funds shall develop procedures to prevent any Duplication of Benefits (DOB) as required by Section 312 of the Stafford Act, as amended by Section 1210 of the Disaster Recovery Reform Act of 2018 (division D of Public Law 115–254; 42 U.S.C. 5121 et seq.). This policy outlines procedures for the Georgia Department of Community Affairs (DCA), subrecipients that administer CDBG-CV programs local community food banks, food pantries, or rural healthcare facilities throughout the state of Georgia that are deemed eligible recipients of CDBG-CV funds.

DCA uses the Pre-Construction Duplication of Benefits Worksheet to evaluate applications for assistance. Each applicant shall complete and sign the Pre-Construction Duplication of Benefits Worksheet, Post-Construction Verification of Benefits Worksheet, and Subrogation Agreement which document other assistance received or anticipated and includes an agreement to repay any duplicative benefit. To document compliance with DOB requirements, subrecipients shall adopt this policy and work to prevent any potential DOB as directed below:

This policy is applicable to all subrecipients, local community food banks, food pantries, or rural healthcare facilities responsible for the implementation of programs and activities funded under Georgia’s CDBG-CV Program.

CDBG-CV grants are one of multiple federal sources which assist coronavirus response. These sources of federal assistance often can be used for the same purposes by subrecipients and direct beneficiaries. For this reason, the Stafford Act requires HUD, grant award recipients and subrecipients to adhere to the following:

### Subrecipients

- A. Identify Applicant’s Total Need
  - a. Applicants indicate total need in the Pre-Construction Duplication of Benefits Worksheet
  - b. The applicant and its beneficiary shall sign the Pre- Construction Duplication of Benefits Worksheet Certification, and Subrogation Agreement form attesting that the statements are true and accurate.
  - c. Subrecipients shall verify that the local community food bank’s, food pantry’s, or rural healthcare facility’s request is associated with an action

to prevent, prepare for, or respond to coronavirus. Subrecipients shall maintain applicable supporting documentation.

- d. All costs included in total need shall be reasonable and necessary. The applicant shall provide applicable supporting documentation.
  - e. The assessment of total need shall consider in-kind donations of materials or services that are known to subrecipients, local community food banks, food pantries, or rural healthcare facilities at the time that each calculates total need and applies for the award. In-kind donations are non-cash contributions, such as donations of professional services, use of construction equipment, or contributions of building materials. In-kind donations are not “financial assistance” that creates a DOB under the Stafford Act, but they do reduce the amount of CDBG–CV assistance for unmet needs because the donated goods or services reduce activity costs.
  - f. Subrecipients may not use CDBG-CV funds to reimburse costs paid by subsidized loans and the calculation of total need may not include such costs.
- B. Identify Total Assistance Received or Anticipated
- a. Applicants indicate total assistance received or anticipated in the Pre-Construction Duplication of Benefits Worksheet.
  - b. Subrecipients, local community food banks, food pantries, or rural healthcare facilities shall provide applicable supporting documentation for any sources of funding cited in the total assistance received or anticipated calculation.
  - c. Subrecipients shall review and evaluate local community food banks, food pantries, or rural healthcare facilities total assistance received or anticipated. Subrecipients shall request clarification and/or additional supporting documentation to address any inconsistencies or omissions prior to submitting application to DCA.
  - d. Types of Resources Included in Total Assistance
    - i. Total assistance includes resources such as cash awards, insurance proceeds, grants, and loans received or anticipated by each CDBG–CV applicant, including awards under local, state or federal programs, and from private or nonprofit charity organizations. “Anticipated” assistance means assistance likely to be received by acting reasonably to evaluate need and the resources available to meet that need.
    - ii. Subsidized Loans
      - a. Subsidized loans (including forgivable loans) are loans other than private loans. Subsidized loans may also be available from other sources. Subsidized loans are assistance that shall be included in the DOB analysis, unless an exception regarding declined or cancelled subsidized loans applies.

- b. Declined or cancelled subsidized loans are not a duplication and are not included in the DOB analysis.
- iii. Total assistance does not include personal assets such as money in a checking or savings account (excluding insurance proceeds or disaster assistance deposited into the applicant's account); retirement accounts; credit cards and lines of credit; in-kind donations (although these non-cash contributions known to the subrecipients reduce total need); and private loans.

C. Exclude Non-Duplicative Assistance

- a. Recipients of CDBG-CV funds and subrecipients will indicate non-duplicative assistance in the Pre- Construction Duplication of Benefits Worksheet, and Subrogation Agreement form.
- b. Subrecipients shall review and evaluate local community food banks, food pantries, or rural healthcare facilities provided data regarding non-duplicative assistance. Subrecipients shall request clarification and/or additional supporting documentation to address any inconsistencies or omissions.
- c. Exclude assistance that is:
  - i. Provided for a different purpose.
  - ii. Provided for the same purpose (eligible activity), but for a different, allowable use (cost).

D. Identify DOB Amount and Calculate the total CDBG–CV funds to be requested in the application

- a. After evaluating and verifying applicant-provided data, the Subrecipient shall use the Pre-Construction Duplication of Benefits Worksheet to identify the DOB amount and calculate the total CDBG–CV funds to be requested.
- b. Steps
  - i. Identify total need
  - ii. Identify total assistance
  - iii. Subtract exclusions from total assistance to determine the amount of the any DOB
  - iv. Subtract the amount of the DOB from the amount of the total need to determine the maximum amount of the CDBG–CV award.

E. Subrecipients, local community food banks, food pantries, or rural healthcare facilities shall submit a signed Subrogation Agreement with application to DCA for potential CDBG-CV Funding

- a. Include a provision that all additional funds received will be reported to the subrecipients no later than thirty (30) calendar days. If the additional funds are determined to be duplicative, the award will be reduced and/or the local community food banks, food pantries, or rural healthcare facilities will be required to repay, no later than forty-five (45) calendar days, following notification from subrecipients of any disbursed duplicative benefit.
- F. Post- Construction Verification of Benefits
- a. If other resources become available to pay for the costs of an activity, thereby reducing the need for CDBG-CV funding, subrecipients shall reevaluate the total assistance available calculation and adjust the CDBG-CV award accordingly.
  - b. After construction is complete and prior to the close of the Continued Use Period (10 years), applicant shall complete the Post- Construction Verification of Benefits worksheet. Completing and signing this form, certifies that the information is or has been corrected and all funds for this specific activity have been accounted for.
  - c. Provided there has been no DOB and no funds are owed to DCA, the form will be verified and sign by an authorized official from DCA prior to full close out of this award.

## **Recordkeeping**

- A. Policies and Procedures
- a. CDBG-CV subrecipients shall incorporate this policy into its policies and procedures for implementing CDBG-CV-funded activities.
  - b. To implement DOB policies and procedures, Subrecipients shall use appropriate forms, as developed by DCA, including but not limited to:
    - i. Pre- Construction Duplication of Benefits Worksheet
    - ii. Subrogation Agreement
    - iii. Adoption of this policy
    - iv. Post- Construction Verification of Benefits worksheet
  - c. Subrecipients shall identify a method to monitor compliance with the subrogation agreement during the 10-year continued use period and shall articulate this method in its written policies and procedures.
- B. Applicant Records
- a. Subrecipients shall maintain records for each applicant, including, but not limited to:
    - i. Memorandum of Agreement

- ii. Pre- Construction Duplication of Benefits Worksheet, and
- iii. Subrogation Agreement
- iv. Documentation of Total Need
  - a. Documentation to verify that the applicant's request is associated with an action to prevent, prepare for, or respond to coronavirus.
  - b. Documentation that costs included in total need are reasonable and necessary.
- v. Post-Construction Duplication of Benefits Worksheet that includes:
  - a. Identification of unmet need
  - b. Identification of all sources of assistance provided to applicant
  - c. Identification of those sources that are duplicative (with comments as needed)
  - d. Final award calculation
- vi. Supporting documentation for any sources of funding cited by the applicant as assistance received or anticipated.

### **Oversight and Monitoring**

Subrecipients shall monitor compliance with the subrogation agreement for the duration of the continued use period. DCA will monitor subrecipients compliance with DOB requirements as part of the grant closeout process and will provide technical assistance to help rectify any instances of DOB miscalculation.

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[SIGNATURE PAGE FOLLOWS]



**IN WITNESS WHEREOF**, the undersigned has affixed his/her signature and seal this day of \_\_\_\_\_.

**[INSERT SUBRECIPIENT]**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**[INSERT LOCAL COMMUNITY  
FOOD BANK, FOOD PANTRY,  
OR RURAL HEALTH CARE  
FACILITIES]**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_