Appendix 2 Index
Applicable Regulations & Policy Documents

Administration & Finance

- Project Monitoring/ Review Checklists
- Conflict of Interest Regulation & Guidance
- 2 CFR Part 200 – Audit Requirements

Fair Housing/ Equal Opportunity (FHEO)

- New Section 3 Rule Federal Register / Vol. 85, No. 189 / Tuesday, September 29, 2020
- 24 CFR Part 75, Economic Opportunities for Low & Very Low-Income Persons
- DCA Section 3 Solicitation Package & FAQs
- DCA Language Access Plan
- DCA Effective Communication Policy
- Part 109 – Fair Housing Advertising Requirements
- DCA Section 504 Grievance Procedures
- Fair Housing/ Equal Opportunity Posters & Fact Sheets
- Nondiscrimination Regulations in Federally Assisted Programs (24 CFR Part 1 & Part 6)
- Nondiscrimination Regulations & HUD Notices/ Correspondence Related to Access for those with Disabilities/ Limited English Proficiencies

Environmental Compliance

- 24 CFR Part 58 – Environmental Review Regulation
- Levels of Environmental Review – Chart Summary
- Floodplain Management – 8 Step Decision-Making Process Flow Chart
- Programmatic Agreement for Section 106 (Historic Preservation Compliance)
- HUD CPD Notice 12-006 “Process for Tribal Consultation”

Procurement

- Georgia Public Works Construction Law (O.C.G.A. §36-91-1 through §36-91-95)
- House Bill 322
- Required Construction Contract Provisions
- Procurement Instructions for Grant Writing Administration
- Procurement Instructions for Engineering and/or Architectural Grant Services

Acquisition, Relocation, & Housing

- Guideform Residential Anti-Displacement & Relocation Assistance Plan
- Section 104(d) Definitions

Georgia Immigration & Security Related Laws

- House Bill 87 “Illegal Immigration Reform & Enforcement Act of 2011”
- O.C.G.A §13-10-90 through §13-10-91 Contracts for Public Works, Security, & Immigration Compliance
- O.C.G.A §50-36-1 Verification of Lawful Presence within the United States

Project Monitoring/ Review Checklists

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ACQUISITION (U.R.A.) REVIEW

RECIPIENT _____ **REVIEW DATE** _____

GRANT #_____ **REVIEWED BY** _____

---

a) Current Status **Check: Public Facility ☐ or Housing ☐**

Number of acquisitions: proposed _____ completed _____

Types of acquisitions: Easement # _____ Right-of-way # _____

Real Property # _____ Voluntary Transaction # _____

Number of cases appealed or complaint filed: _____

Number of demolitions: proposed _____ completed _____ CDBG $ ____ other _____

Number of proposed "Occupied" or "Vacant Occupiable" demolitions: _____

Number of proposed "Vacant dilapidated" demolitions: _____
Condition for above must be documented by a Feasibility Test Form or other documentation that the unit is dilapidated.

Note: any demolitions ***of occupied (defined as occupied now or at any time in the 3 months prior to the contract for acquisition) or occupiable (suitable for rehabilitation)*** *will require a Section 104(d) one-for-one replacement review.*

b) Check the Recipient's compliance documentation

	YES	NO	COMMENTS
a) Are files available for review?	☐	☐	☐
b) Do they contain sufficient documentation?	☐	☐	☐

c) Check individual acquisition files

To complete the next section, the reviewer should chose a representative number of case files to examine for compliance documentation. Additional sheets should be attached if more than 2 files were examined.

How many files were reviewed? _____

Part II
Acquisition Individual Case File Review

	CASE 1	CASE 2
1. Record the following information:		
a) Name of Owner:	_____	_____
b) Location of Property:	_____	_____
c) Number of bedrooms:	_____	_____
d) Type of Acquisition:	_____	_____

	Yes	No	Comment Added	N.A.	Yes	No	Comment Added	N.A.
2. Notice to Owner: Is there documented evidence that the owner was notified of the Recipient's interest in acquiring the property (Preliminary Acquisition Notice) and the basic protections of law and regulation (HUD Brochure).	☐	☐	☐	☐	☐	☐	☐	☐
3. Check for Appraisal:								
a) Was there an appraisal to establish FMV?	☐	☐	☐	☐	☐	☐	☐	☐
b) If not, was Fair Market Value estimated less than $10,000 based on available data?	☐	☐	☐	☐	☐	☐	☐	☐
c) Did the owner waive right to appraisal?	☐	☐	☐	☐	☐	☐	☐	☐
d) Did the owner donate property? Note: Attach copy of Waiver if "no" on 3b or 3c.	☐	☐	☐	☐	☐	☐	☐	☐
e) Is a copy of the appraisal in the file?	☐	☐	☐	☐	☐	☐	☐	☐
f) Was a qualified, state certified, independent appraiser used?	☐	☐	☐	☐	☐	☐	☐	☐
g) Was the owner invited to accompany the appraiser?	☐	☐	☐	☐	☐	☐	☐	☐
h) Was there a review appraisal recommending or approving the value of the property?	☐	☐	☐	☐	☐	☐	☐	☐
i) What was the appraised value? (or estimated value if less than $10,000)	_____				_____			

4. Check the Written Purchase Offer

a) Is there a copy of the Offer to Purchase in the file?	☐ ☐ ☐ ☐	☐ ☐ ☐ ☐
b) Is there a statement of the "Basis of Compensation" included with the Offer?	☐ ☐ ☐ ☐	☐ ☐ ☐ ☐
c) Amount of Offer (Just Compensation):	_____	_____
d) Date of delivery of Purchase Offer:	_____	_____
e) Date owner accepted Offer:	_____	_____
f) Date of Settlement:	_____	_____
g) Date of Payment Check:	_____	_____
i) Amount of Payment:	_____	_____
j) If condemnation, date Just Compensation deposited with Court:	_____	_____

5. Check Settlement Procedures:

a) Does file contain a copy of conveyance documentation (title, deed, bill of sale, etc…)?	☐ ☐ ☐ ☐	☐ ☐ ☐ ☐
Type:	_____	_____
b) Was a Statement of Settlement costs in the file? (fee simple acquisition)	☐ ☐ ☐ ☐	☐ ☐ ☐ ☐
c) Was there proof of payment (i.e.,cancelled check) in the file?	☐ ☐ ☐ ☐	☐ ☐ ☐ ☐

		Case 1				Case 2			
		Yes	No	Comment Added	N.A.	Yes	No	Comment Added	N.A.
6.	**If this is a "Voluntary Transaction", does the acquisition meet the following conditions?**								
a)	No specific site or property needs to be acquired for the project;	☐	☐	☐	☐	☐	☐	☐	☐
b)	The acquired property is not part of a designated redevelopment area where substantially all of the property is to be acquired;	☐	☐	☐	☐	☐	☐	☐	☐
c)	The Owner was informed in writing that the Recipient will not use its power of "eminent domain" to acquire the property in the event negotiations fail to result in an amicable agreement ;	☐	☐	☐	☐	☐	☐	☐	☐
d)	The Owner was not informed by the recipient of any "intent" to acquire the property; and	☐	☐	☐	☐	☐	☐	☐	☐
e)	The Recipient informed the Owner in writing before entering into contract of what is estimated to be "Fair Market Value" of the property. (Copy of documentation must be attached.)	☐	☐	☐	☐	☐	☐	☐	☐

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ADMINISTRATIVE / PROFESSIONAL PROCUREMENT REVIEW

Grantee:_____ Grant #: _____

Date: _____

Administrative Procurement

Request for Proposals or Request for Qualifications:

Date Published: _____ Deadline for responses: _____

Newspaper: _____

Minimum of 7 firms RFP/RFQ mailed to and responses:

#1:_____ Response received? ☐ Yes ☐ No

#2: _____ Response received? ☐ Yes ☐ No

#3: _____ Response received? ☐ Yes ☐ No

#4:_____ Response received? ☐ Yes ☐ No

#5: _____ Response received? ☐ Yes ☐ No

#6: _____ Response received? ☐ Yes ☐ No

#7: _____ Response received? ☐ Yes ☐ No

Other Proposals received: (List others on reverse)_____

Was a scoring system used? ☐ Yes ☐ No Is it acceptable? ☐ Yes ☐ No

If only one response was received, was Sole Source approval requested and granted? ☐ Yes ☐ No

Firm/Company selected:_____

Total Contract Amount: _____
CDBG Amount: _____
Other Sources Amount: _____

Architectural/ Engineering Procurement

Request for Proposals or Request for Qualifications:

Date Published: _____ Deadline for responses: _____

Newspaper: _____

Minimum of 10 firms RFP/RFQ mailed to and responses:

#1:_____ Response received? ☐ Yes ☐ No

#2: _____ Response received? ☐ Yes ☐ No

#3: _____ Response received? ☐ Yes ☐ No

#4:_____ Response received? ☐ Yes ☐ No

#5: _____ Response received? ☐ Yes ☐ No

#6: _____ Response received? ☐ Yes ☐ No

#7:_____ Response received? ☐ Yes ☐ No

#8: _____ Response received? ☐ Yes ☐ No

#9: _____ Response received? ☐ Yes ☐ No

#10:_____ Response received? ☐ Yes ☐ No

Other Proposals received: (List others on reverse)_____

Was a scoring system used? ☐ Yes ☐ No Is it acceptable? ☐ Yes ☐ No

If only one response was received, was Sole Source approval requested and granted? ☐ Yes ☐ No

Firm/Company selected:_____

Total Contract Amount: _____
CDBG Amount: _____
Other Sources Amount: _____

Administrative Contract Review

Are the following basic elements included in the Administrative Contract?

1. A clear description of the scope of work to be performed by the consultant or other service provider. ☐ Yes ☐ No
2. A listing of specific responsibilities, tasks, goals, and milestones along with dates and deadlines that are clearly described in the contract along with provisions for recourse if the consultant or other service provider fails to perform by the deadlines imposed. ☐ Yes ☐ No
3. A reference to the applicable CDBG Applicants' and Recipients' manuals and a statement requiring the consultant or other service provider to adhere to all applicable requirements in the manuals (including all requirements referenced in the manuals) as well as to other directives issued by DCA. ☐ Yes ☐ No
4. Applicable dates of the contract and provisions for termination. ☐ Yes ☐ No

COMMENTS:

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

Signature of CDBG Program Representative: _____

Return to Index

AUDIT REVIEW
Interim ( ) Final ( )

RECIPIENT _____

GRANT# _____ **REVIEW DATE:** _____

REVIEWED BY _____ **Follow up needed? Yes No**

	YES	NO	COMMENT ADDED	N/A
Step A: Check audit procedures:				
1. Was the audit conducted by a C.P.A. firm?	☐	☐	☐	☐
2. Was the audit conducted in accordance with OMB Circular A-133?	☐	☐	☐	☐
3. Does the Audit Report include:				
a) schedule of federal assistance?	☐	☐	☐	☐
b) unqualified statement on compliance?	☐	☐	☐	☐
c) unqualified statement on internal control?	☐	☐	☐	☐
4. Was a source and application of funds schedule included?	☐	☐	☐	☐
5. Was a project cost schedule (by activity) included?	☐	☐	☐	☐

6. Date audit was issued _____ For FY Ending _____

7. Date audit was received _____

Step B: Check audit results:				
1. Was audit free of findings?	☐	☐	☐	☐
2. If findings were identified, did recipient submit documentation that corrective action has been taken?	☐	☐	☐	☐
3. Did recipient comply with draw down regulations?	☐	☐	☐	☐
4. Did recipient comply with State/Federal laws and regulations?	☐	☐	☐	☐
5. Were direct costs charged to the program reasonable and necessary?	☐	☐	☐	☐

6. Was program income spent appropriately?	☐	☐	☐	☐

Step C:	**YES**	**NO**	**Comment Added**	**N/A**
1. Did auditor cover the expenditure of all grant funds? If not, enter date when next audit is due:_____	☐	☐	☐	☐
2. Did the audit include Economic Development Revolving Loan Funds, if applicable?	☐	☐	☐	☐

COMMENTS:

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Cash Match Verification/Leverage Assessment

Recipient:_____ Grant No: _____

Match Amount Required:_____

Match Amount Verified:_____

Leverage Required:_____

Leverage Contributed to Date:_____

Date Match/Leverage Reviewed: _____

How Verified/Assessed: _____

Recommendation for Final Draw: ☐ Yes ☐ No

☐ Amount still required is obligated under the following contracts:

Local construction amount still owed: $_____

Local architect / engineer amount still owed: $_____

Local administration amount still owed: $_____

Assessment of Status of Leverage:_____

_____

_____

_____

_____

Signature of Program Representative

Route to: (1) Grants Consultant; (2) Grant file

Instructions: This form is to be prepared prior to a grantee's final draw request. It is to be used to ***verify*** the required cash match and to ***assess*** the status of committed leverage funds. Leverage can be assessed by reviewing leverage funds contributed to date and estimating leverage funds to be contributed based on contracts, project schedules, and type of grantee in-kind contributions. Final **verification** of leverage must be done at the closeout site visit. Under "Assessment of Status of Leverage" above, please indicate whether meeting anticipated leverage requirements is expected to be an issue for the grantee.

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GEORGIA DEPARTMENT OF COMMUNITY AFFAIRS
COMMUNITY DEVELOPMENT BLOCK GRANT
HOUSING REHAB/RECONSTRUCTION
MONITORING REVIEW I

Recipient: _____ **DCA Grant Number:** _____

Review Date: _____ **Reviewer:** _____

I. Program Status:

a. Number of Rehabilitations Proposed _____ **Completed** _____

b. Number of Reconstructions Proposed _____ **Completed** _____

c. Number of Files Reviewed _____ **Number of Site Inspections** _____

II. Recipients' Program Policy Statement Date of Resolution: _____

Post Grant Award Public Hearing Date: _____

Does Program Policy Address:	Y	N	N/A	Comments
1. Program Goals and Objectives				
2. Applicant Eligibility Criteria				
3. Priority of Processing and Funding of Applications				
4. Financing Eligibility and Techniques				
5. Direct Loan Underwriting				
6. Definition of Income				
7. Temporary Relocation				
8. Minimum Property Standards Definition/Availability				
9. Rehab Feasibility Tests				
10. Contractor Qualifications, Requirements, Debarment				
11. Bidding Methods/Policies/Procedures				
12. Inspection and Testing for Lead Paint				
13. Program Revision Procedure				
14. Arbitration/Complaint Guidelines and Procedures				
15. Definition of Standard/Substandard Housing Units				
16. Residential Anti-displacement and Relocation Plan				
17. Provision for Historic Preservation				
18. Explanation of GPI Financing				
19. Rehabilitation Advisor Job Description and Duties				

Comments: _____

Monitoring Review of:_____ **Grant No**._____

(cont.)

III. Standard Construction Contract Provisions:

Does Standard Construction Contract Address:	Y	N	N/A	Comments
1. Names of Parties to Contract				
2. Date of Contract				
3. Date of Commencement Notice and Procedure				
4. Performance Period				
5. Provision for Liquidated Damages				
6. Permit and License Procurement				
7. Insurance Requirements				
8. Conformance of Work to all Applicable Codes				
9. Lead Based Paint Prohibition				
10. Conflict of Interest				
11. Prohibition of Assignment of Contract				
12. Lien Waiver Provisions				
13. Contractor Guarantee of Work and Materials (1 Yr.)				
14. Payment Provisions and Schedules				
15. Subcontractor Regulations				
16. Provisions for Remedies				
17. Termination for Cause and Convenience Clause				
18. Equal Employment Opportunity Statement				
19. Materials Conform to Specification Provision				
20. General Contractor Supervision				
21. Protection of Resident Belongings				
22. Resident Relocation				
23. Contractor Use of Utilities Provision				
24. Procedure for Addition/Deletion of Work (change orders)				
25. Clean Up Provisions				
26. Allow Inspection by Local/State/Federal Officials				
27. Arbitration Procedure				

Comments:_____

_____

_____

_____

Monitoring Review of:_____ **Grant No.** _____

(cont.)

IV. Legal Review:

Have the Following Been Reviewed by Local Government Legal Counsel:	Y	N	N/A	Comments
1. Program Policies Statement				
2. Terms and Conditions of Rehabilitation Assistance				
3. Leverage Loan Agreements				
4. Lump Sum Drawdown Agreements				
5. Contractor and Sub-Contractor Agreements				
6. Construction Contract				
7. Rent Regulatory Agreement				
8. Promissory Note (or Legal Equivalent)				
9. Deed to Secure Debt				
10. Notice of Commencement				

Comments: _____

_____

_____

Monitoring Review of:_____ **Grant No.**_____

V. Individual Case File Review:

	Case 1	Case 2	Case 3
Client Name			
Street Address			
Location Map Number			
Occupancy (Owner/Renter)			
Type of Assistance (Rehab/Reconstruct)			
Completed Program App.			
Proof of Ownership (Method)			
Certificate of Lawful Presence?			
Proof of Insurance			
Pre-1978 Unit?			
Provision of LBP warning pamphlet			
LBP Test results in File? **(if Positive complete pages 7& 8)**			
Annualized Gross Income			
Family Size			
Method of Determining Annual Income			
How was Income Documented			
Verification of Deposits			
"Before" and "After" Photos or Video Taken			
Rehab Advisor WWU Including Cost Estimate			
Quality of Work Write-Up			
Method of Bid Selected			
Bid Amount			
Within 20% of App. Budget (If no - DCA Approval Date)			

Monitoring Review of: _____ Grant No. _____

	Case 1	Case 2	Case 3
Client Name			
Contractor Name			
Contractor License #			
Contract Signed by Owner and Contractor			
Contract Provisions:			
Contract Price			
Length in Days			
Progress Payments			
City or County Party to Contract?			
Termination Clause?			
Arbitration Clause?			
Terms and Conditions of Rehab			
Notice of Commencement Signed and Dated			
Change Orders:			
Number			
Signed by all parties?			
Justified			
Cost Reasonable			
New Contract Total (Orig Contract + Co's)			
Progress Payment Inspection Forms			
Dated Final Inspection Form			

Monitoring Review of:_____ Grant No._____

Case File Review Continued:

Client Name			
Contract Finished in Allotted Time			
If No: Signed Extension?			
Liquidated Damages Paid?			
Contractor release of Liens			
Payments made to contractor			
Totals Match? **(Payments and Contract Total)**			
Cert. of Final Payment			
Copies of Equipment and/or Materials **Warranty(s) in File**			
Termite Certification			
Insulation Certification			
Homeowner Satisfaction Statement (in file)			
Temporary Relocation Paid (if yes, list method)			
Evidence of Recorded Lien			
Date of DCA Inspection			
Homeowner Comments			

Monitoring Review of: _____ **Grant No.** _____

Complete this section for LEAD BASED PAINT HAZARD CONTROL

	Case 1	Case 2	Case 3
Client Name			
Copy of LBP Risk Assessment/Inspection report			
Risk Assessor/Inspector (name and EPD cert. #)			
Evidence that report was received by owner			
LBP hazards detected? (if no stop here)			
Hazard Control method required			
Lead Contractor completing hazard control			
Contractor Qualification (Cert or SWP training)			
Contract Signed by Owner and Contractor			
Contract Provisions:			
Contract Price			
Length in Days			
Progress Payments			
City/County not Party to Contract			
Termination Clause			
Arbitration Clause			
Terms and Conditions of Rehab			
EPD Proceed Notices			

Client Name			
Notice of Commencement Signed and Dated			
Change Orders:			
Number			
Signed by all parties?			
Justified			
Cost Reasonable			
New Contract Total (Orig Contract + Co's)			
Contractor release of Liens			
Payments made to contractor			
Totals Match? (Payments and Contract Total)			
Cert. of Final Payment			
Clearance examiner name (if different from Assessor/Inspector)			
Clearance Report copy in file			
Clearance standard met?			
Evidence that report was received by owner			
Temporary Relocation Paid?			

Comments:

Monitoring Review of: _____ Grant No._____

COMPLETE THIS SECTION FOR RECONSTRUCTION CASES ONLY

	Case 1	Case 2	Case 3
Client Name			
Street Address			
Location Map Number			
Was Reconstruction for This Unit Proposed in Original Application			
DCA Approval for Recon.			
How was Ownership Documented			
Feasibility Test in File			
Cost Estimate for Reconstruction			
Less than comparable unit in community?			
Appraisal for Recon.			
Appraised Value Higher Than Recon. Cost			
Same or More Number of Bedrooms in Recon.			
Living Area Same or More (Sq. Ft.)			

Comments:

Monitoring Review of:_____ Grant No._____

COMPLETE THIS SECTION FOR ESCROW ACCOUNT PROGRAMS ONLY

Is there Evidence that the Bank Account:	Y	N	N/A	Comments
1. Is Identified as Recipients Rehab Escrow Account				
2. Is an Interest Bearing Account				If Yes-% Rate
3. Statement has been Reconciled each Month				
4. Has an Appropriate Ledger Established for this Account				
5. Has been Intermingled with other CDBG Monies				
6. Has been Limited only to Rehab Assistance				
7. Has Written Contract Authorizing Recipient to Escrow Rehab Funds				
8. At No Time had Deposits Exceeding 10 Calendar Days Cash Needs				
9. Accrued Interest has been Remitted to DCA Quarterly				
10. CDBG Deposits were made on or after Date of The Executed Construction Contract				

Escrow Accounts:

Comments: _____

_____

_____

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GEORGIA DEPARTMENT OF COMMUNITY AFFAIRS
COMMUNITY DEVELOPMENT BLOCK GRANT
HOUSING REHAB/RECONSTRUCTION
MONITORING REVIEW II

Recipient: _____ **DCA Grant Number:** _____

Review Date: _____ **Reviewer:** _____

I. Program Status:

a. Number of Rehabilitations Proposed _____ **Completed** _____

b. Number of Reconstructions Proposed _____ **Completed** _____

c. Number of Files Reviewed _____ **Number of Site Inspections** _____

II. Changes in Recipients' Program Policy From Original Plan? Yes _____ **No** _____

If Yes, Explain: _____

_____

_____

III. Date of Rehab I Monitoring _____

IV. Problems or Follow Up Items to be Addressed During this Visit: _____

_____

_____

_____

_____

_____

_____

Monitoring Review of: _____ **Grant No.** _____ **(cont.)**

V. Case File Review:

	Case 1	Case 2	Case 3
Client Name			
Street Address			
Location Map Number			
Occupancy (Owner/Renter)			
Type of Assistance (Rehab/Reconstruct)			
Completed Program App.			
Proof of Ownership (Method)			
Certificate of Lawful Presence?			
Proof of Insurance			
Pre-1978 Unit?			
Provision of LBP warning pamphlet			
LBP Test results in File? (if Positive complete pages 5&6)			
Annualized Gross Income			
Family Size			
Method of Determining Annual Income			
How was Income Documented			
Verification of Deposits			
"Before" and "After" Photos or Video Taken			
Rehab Advisor WWU Including Cost Estimate			
Quality of Work Write-Up			
Method of Bid Selected			
Bid Amount			
Within 20% of App. Budget (If no - DCA Approval Date)			

Monitoring Review of:_____ Grant No._____ (cont.)

Case File Review Continued:

	Case 1	Case 2	Case 3
Client Name			
Contractor Name			
Contractor License #			
Contract Signed by Owner and Contractor			
Contract Provisions:			
Contract Price			
Length in Days			
Progress Payments			
City/County not Party to Contract			
Termination Clause			
Arbitration Clause			
Terms and Conditions of Rehab			
Notice of Commencement Signed and Dated			
Change Orders:			
Number			
Signed by all parties?			
Justified			
Cost Reasonable			
New Contract Total (Orig Contract + Co's)			
Progress Payment Inspection Forms			
Dated Final Inspection Form			

Monitoring Review of:_____ **Grant No.**_____ **(cont.)**

Case File Review Continued:

	Case 1	Case 2	Case 3
Client Name			
Contract Finished in Allotted Time			
If No: Signed Extension?			
Liquidated Damages Paid?			
Contractor release of Liens			
Payments made to contractor			
Totals Match? (Payments and Contract Total)			
Cert. of Final Payment			
Copies of Equipment and/or Materials Warranty(s) in File			
Termite Certification			
Insulation Certification			
Homeowner Satisfaction Statement (in file)			
Temporary Relocation Paid (if yes, list method)			
Evidence of Recorded Lien			
Date of DCA Inspection			
Homeowner/Client Comments			

Comments: _____

Monitoring Review of:_____ Grant No._____ (cont.)

Case File Review Continued:

Complete this section for LEAD BASED PAINT HAZARD CONTROL

	Case 1	Case 2	Case 3
Client Name			
Copy of LBP Risk Assessment/Inspection report			
Risk Assessor/Inspector (name and EPD cert. #)			
Evidence that report was received by owner			
LBP hazards detected? (if no stop here)			
Lead Contractor completing hazard control			
Contractor Qualification (Cert or SWP training)			
Contract Signed by Owner and Contractor			
Contract Provisions:			
Contract Price			
Length in Days			
Progress Payments			
City/County not Party to Contract			
Termination Clause			
Arbitration Clause			
Terms and Conditions of Rehab			
EPD Proceed Notices			

Monitoring Review of:_____ Grant No._____ (cont.)

LEAD BASED PAINT HAZARD CONTROL Cont.

	Case 1	Case 2	Case 3
Client Name			
Notice of Commencement Signed and Dated			
Change Orders:			
Number			
Signed by all parties?			
Justified			
Cost Reasonable			
New Contract Total (Orig Contract + Co's)			
Contractor release of Liens			
Payments made to contractor			
Totals Match? **(Payments and Contract Total)**			
Cert. of Final Payment			
Clearance examiner name **(if different from Assessor/Inspector)**			
Clearance Report copy in file			
Clearance standard met?			
Evidence that report was received by owner			
Temporary Relocation Paid?			

Monitoring Review of: _____ Grant No._____ (cont.)

COMPLETE THIS SECTION FOR RECONSTRUCTION CASES ONLY

	Case 1	Case 2	Case 3
Client Name			
Street Address			
Location Map Number			
Was Reconstruction for This Unit Proposed in Original Application			
DCA Approval for Reco.			
How was Ownership Documented			
Feasibility Test in File			
Cost Estimate for Reconstruction			
Less than comperable unit in community?			
Appraisal for Reco.			
Appraised Value Higher Than Reco. Cost			
Same or More Number of Bedrooms in Reco.			
Living Area Same or More (Sq. Ft.)			

Comments: _____

_____

COMPLETE THIS SECTION FOR ESCROW ACCOUNT PROGRAMS ONLY

Escrow Accounts:

Is there Evidence that the Bank Account:	Y	N	N/A	Comments
1. Is Identified as Recipients Rehab Escrow Account				
2. Is an Interest Bearing Account				If Yes-% Rate
3. Statement has been Reconciled each Month				
4. Has an Appropriate Ledger Established for this Account				
5. Has been Intermingled with other CDBG Monies				
6. Has been Limited only to Rehab Assistance				
7. Has Written Contract Authorizing Recipient to Escrow Rehab Funds				
8. At No Time had Deposits Exceeding 10 Calendar Days Cash Needs				
9. Accrued Interest has been Remitted to DCA Quarterly				
10. CDBG Deposits were made on or after Date of The Executed Construction Contract				

Comments: _____

_____

_____

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CITIZEN PARTICIPATION REVIEW

RECIPIENT: _____

GRANT#: _____

REVIEWED BY: _____

REVIEW DATE: _____

	YES	NO	COMMENTS ADDED	N/A
Step 1: Check the Recipient's Preapplication				
a. Participation Advertisements:				
• Did the Recipient hold at least one public hearing (within the locality) prior to submission of the Application to DCA?	☐	☐	☐	☐
• Did the Recipient publish notice of the public hearing not less than five (5) days prior to the hearing in the non-legal section of a local newspaper of general circulation (substantiated by documented evidence in the Recipient's File)?	☐	☐	☐	☐
• Is the Recipient located in a County where all Public Notices must be published in Spanish?	☐	☐	☐	☐
◦ If yes, did Recipient adhere to LEP Requirements?	☐	☐	☐	☐
• Date of Publication: _____				
• Date of Hearing: _____				
b. Participation Location:				
• Did the Recipient hold the hearing in a location That meets Title 2 accessibility standards?	☐	☐	☐	☐
• Did the Recipient complete the Sec 504 DCA Meeting Checklist?	☐	☐	☐	☐
Step 2: Check the Recipient's Post-Application Public Hearing:				
a. Participation Advertisements				
• Did the Recipient hold at least one public briefing to discuss approved activities within sixty (60) days of the Grant Award?	☐	☐	☐	☐

	YES	NO	COMMENTS ADDED	N/A
• Did the Recipient publish notice of the Public Briefing not less than five (5) days prior to the briefing in the non-legal section of a local newspaper of general circulation (substantiated by documented evidence in the Recipient's files)?	☐	☐	☐	☐
• Date of Publication: ————				
• Date of Hearing: ————				
b. Participation Location:				
• Did the Recipient hold the hearing in a location That meets Title 2 accessibility standards?	☐	☐	☐	☐
• Did the Recipient complete the Sec 504 DCA Checklist?	☐	☐	☐	☐

Step 3: Check the location of the program records:

• If the location of Program Records is other than the Recipient's normal place of business, was DCA officially notified of the location?	☐	☐	☐	☐
• If the location of Program Records is other than the Recipient's normal place of business was the minimum information required by DCA available?	☐	☐	☐	☐

COMMENTS: ————————————————————

_____

_____

CORRECTIVE ACTIONS: ————————————————————

_____

_____

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CLOSE-OUT REVIEW

Recipient:_____

Grant # _____ **Review Date:**_____

Reviewed By:_____ **Follow-up needed? Yes No**

	Yes	No	Comment Added	N/A
Step 1: Check Allowable Expenditures				
• Were Engineering cost paid for with CDBG funds Within 12% of CDBG's portion of the construction Costs? OR for Architectural projects, were fees within 10% of CDBG's portion of construction cost?	☐	☐	☐	☐
• Were administrative costs paid for with CDBG funds within allowable limits?	☐	☐	☐	☐
• Were costs incurred "eligible, reasonable and appropriate?"	☐	☐	☐	☐
• Did the project meet a National Objective? (low/mod benefit threshold) (Elimination of Slum and Blight-RD projects)	☐	☐	☐	☐
• Were recipient expenditures 'necessary & reasonable'?	☐	☐	☐	☐
• Were recipient expenditures allowable as specified in OMB Circular A-87?	☐	☐	☐	☐
• Were recipient expenditures eligible as defined by Title I, Section 105?	☐	☐	☐	☐
• Did all salaried employees paid from grant funds either devote 100% of their time to the CDBG project, or maintain time distribution sheets, if part-time?	☐	☐	☐	☐
Step 2: Check Recipient's Financial Management				
• Have all CDBG funds remaining in the checking account been returned to DCA? (if applicable)	☐	☐	☐	☐
• Will records be retained for a minimum of three years?	☐	☐	☐	☐
• Were drawdowns limited to the minimum amount of funds needed?	☐	☐	☐	☐
• Was the time between the receipt of the drawdown & the disbursement of funds as close as administratively feasible?	☐	☐	☐	☐
• Did the recipient return any interest earned on grant advances to the Department of Community Affairs?	☐	☐	☐	☐
Step 3: Check Program Income:				
• Was any Program Income generated?	☐	☐	☐	☐
• If so, was it used before drawdown of CDBG funds?	☐	☐	☐	☐
• Were all eligible expenditures of Program Income used to fund eligible community development activities?	☐	☐	☐	☐

Step 4: Check for Compliance with Property Management Standards:

	Yes	No	Comment Added	N/A
• If personal property (furniture or equipment) was purchased with CDBG funds, are records available to identify it in accordance with 24 CFR Part 85, Property Management Standards?	☐	☐	☐	☐

Step 5: Check Recipient's Close-Out Procedures

• Has the final Quarterly Report been submitted?	☐	☐	☐	☐
• Has Actual Accomplishments form been completed; & do the numbers agree with final report?	☐	☐	☐	☐
• Is supporting documentation available?	☐	☐	☐	☐
• Has documentation been reviewed by rep?	☐	☐	☐	☐
• Is data acceptable?	☐	☐	☐	☐
• Is Actual beneficiary data substantially the same as the proposed number?	☐	☐	☐	☐
• Have any civil rights complaints been filed Against the local gov't since the grant award? (If so, attach explanation)	☐	☐	☐	☐
• Does the close-out information reconcile with the Recipients records?	☐	☐	☐	☐
• Has the final public hearing been held?	☐	☐	☐	☐
• Were all Notices published in accordance with DCA requirements (including LEP, where applicable)?	☐	☐	☐	☐
• Were all hearings held in 504 accessible locations?	☐	☐	☐	☐
• DCA Meeting Checklist completed?	☐	☐	☐	☐
• If a building project, has a site visit been made to insure that clients are using it?	☐	☐	☐	☐
• If a local match was applicable, was it met? (CD Project)	☐	☐	☐	☐
• Was leverage provided?(CD Projects)	☐	☐	☐	☐
• Enter amount of LEVERAGE and MATCH credited from the Recipient's Grant Award package:	$_____			
• Indicate the amount of leverage and match the recipient has provided as verified by invoices and cancelled checks or other documentation:	$_____			
• Discrepancy? (If yes explain in comments below)	☐	☐	☐	☐
• Has a 'Final Wage Compliance Report' been submitted?	☐	☐	☐	☐
• If an ED project, has sufficient information been provided				
• to substantiate low/mod job creation?	☐	☐	☐	☐
• Has company letter documenting their investment been submitted?	☐	☐	☐	☐
• Was the goal met?	☐	☐	☐	☐

Number of jobs proposed _____

Number of jobs created _____

Comments:

Program Representative Signature:

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Procurement Review for Public Works Construction

Review is based on the Georgia Public Works Construction Law (O.C.G.A. 36-91-1)

Recipient:_____ **Review Date:**_____

Grant #_____ **Follow-up needed?** **Yes** ☐ **No** ☐

Reviewed By:_____

	Yes	No	N/A	Comment Added
1. Is Project exempt from Public Works Construction Procurement law?	☐	☐	☐	☐
If yes: Project is exempt because: (check one as applicable)				
i. "Force Account labor"[1] was used, or	☐	☐	☐	☐
ii. Inmate labor was used?	☐	☐	☐	☐
2. What advertising method was used? (check all as applicable)				
a. Legal Organ?	☐	☐	☐	☐
i. Date of first advertisement: _____				
ii. Date of second advertisement: _____				
b. Internet website	☐	☐	☐	☐
c. Other	☐	☐	☐	☐
If yes, list:_____				
3. Did local government post notice of contract opportunity properly?	☐	☐	☐	☐
4. Were all plans and specifications available for public review?	☐	☐	☐	☐
5. What construction delivery method was used? (check one as applicable)				
a. Traditional (Design-Bid-Build)	☐	☐	☐	☐
b. Design-Build	☐	☐	☐	☐
c. Construction Management	☐	☐	☐	☐
d. Other (describe): _____	☐	☐	☐	☐
6. Was DCA consulted if non-traditional method was used?	☐	☐	☐	☐
7. Was the Recipient's attorney consulted if a non-traditional was used?	☐	☐	☐	☐
8. What competitive process was used (check one as applicable)				
a. Competitive sealed bids	☐	☐	☐	☐
If yes, date of bid opening: _____				
Was bid opening held in public on specified date?	☐	☐	☐	☐
Number of days bids must remain open _____				
b. Competitive sealed proposals	☐	☐	☐	☐
If yes, date of proposal opening: _____				
Were proposals opened with no disclosure of competing offers?	☐	☐	☐	☐
Number of days proposals are valid: _____				

[1] Force account is the term used to define labor performed by the recipient's personnel. Force account labor must be approved by DCA prior to incurring costs.

	Yes	No	N/A	Comment Added
9. Was pre qualification of bidders used?	☐	☐	☐	☐
If yes:				
a. Have procedures for pre-qualification been followed?	☐	☐	☐	☐
b. Has procedure been established for disqualified bidders?	☐	☐	☐	☐
10. Was attendance at pre-bid conference mandatory?	☐	☐	☐	☐
If yes:				
a. Was this requirement stated in advertisements for bid?	☐	☐	☐	☐
11. If the value of the contract is over $100,000:				
a. Was a Bid Bond received?	☐	☐	☐	☐
b. Performance Bond?	☐	☐	☐	☐
c. Payment Bond?	☐	☐	☐	☐

All bond sureties must: 1) have current certificate of authority to transact business from the Georgia Insurance Commissioner, OR; 2) be on the US Dept. of Treasury's list of approved sureties; OR 3) local government must approve the form and solvency of the surety prior to execution of contract. If any do not apply, explain:

_____

_____

12. Was addendum to plans or specifications issued within 72 hours of bid or proposal opening?	☐	☐	☐	☐
If yes, was bid/proposal opening extended at least 72 hours?	☐	☐	☐	☐
13. Number of bids received: _____				
14. If only one bid received, was DCA approval granted prior to contract award?	☐	☐	☐	☐
15. Did the local government negotiate with the bidder?	☐	☐	☐	☐
If yes, explain nature and result of negotiation:				

_____

_____

_____

_____

_____

16. Did construction contract include all required federal clauses? (Attach Contract Review Matrix)	☐	☐	☐	☐

Additional Comments: _____

_____

_____

CDBG CONTRACT and CONTRACTOR PROCUREMENT REVIEW CHECKLIST

CDBG Grantee:	Grant Number:	Contract Amount:	Reviewer:	Date of Review:

❑ Contractor/Subcontractor Affidavit	(Compliance with OCGA 13-10-91) Applicable to All Contracts and Subcontracts							
❑ Section 3 Clause (see note)	All Contracts							
❑ Provision for Remedies	All Contracts							
	ARCHITECTURAL and ENGINEERING SERVICES	HOUSING REHAB		CONSTRUCTION CONTRACTS				
		❑ Less than 8 Units	❑ 8 or More Units	❑ Over $100,000	❑ Over $40,000	❑ Over $10,000	❑ Over $2,000	
❑ Provision for Termination	If Over $10,000	If Over $10,000	If Over $10,000	●	●	●		
Executive Orders 11246/11375								
❑ EEO Clause	If Over $10,000	If Over $10,000	If Over $10,000	●	●	●		
❑ EEO Specifications				●	●	●		
❑ Affirmative Action Clause				●	●	●		
❑ Non-Segregated Facilities				●	●	●		
Federal Labor Standards								
❑ Copeland Anti-Kickback			●	●	●	●	●	
❑ Davis-Bacon Clause			●	●	●	●	●	
❑ Wage Rate from DCA			●	●	●	●	●	
❑ Work Hours & Safety			If Over $100,000	●				
❑ Performance & Payment Bonds				●	●			
❑ 5% Bid Bond				●				
❑ Clean Air/Water Clause				●				
❑ Provision for Disability Accessibility (if a building)	●							
❑ Provision for Ga. Energy Code (if a building)	●							

Note that the Section 3 Clause is not required in "private" housing rehabilitation contracts when the local government is not a party to the contract.

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STATE OF GEORGIA CDBG EIP PROGRAM

PROJECT REVIEW STATUS SUMMMARY

Recipient:_____ Grant Number:_____

Review component	**Review Status**
Start-up Site Visit	Completed ( ) _____ N/A ( )
Citizen Participation	Completed ( ) _____ N/A ( )
Environmental	Completed ( ) _____ N/A ( )
Fair Housing	Completed ( ) _____ N/A ( )
Section 3	Completed ( )_____N/A ( )
Procurement	Completed ( ) _____ N/A ( )
Construction Procurement	Completed ( )_____N/A ( )
Labor Standards	Completed ( ) _____ N/A ( )
Financial Management	Completed ( ) _____ N/A ( )
Acquisition	Completed ( ) _____ N/A ( )
Relocation	Completed ( ) _____ N/A ( )
Final Wage Report	Completed ( ) _____ N/A ( )
Actual Accomplishments	Completed ( ) _____ N/A ( )
Close-out Review	Completed ( ) _____ N/A ( )

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ENVIRONMENTAL REVIEW

RECIPIENT _____

GRANT # _____ **REVIEW DATE:** _____

REVIEWED BY _____ **Follow up needed?** **Yes** **No**

	YES	NO	COMMENT ADDED	N/A
Step 1: Check the Environmental Review Record (file):				
• Is there an Environmental Review Record (ERR)?	☐	☐	☐	☐
• Does the ERR contain a project description, including geographic boundaries and reference all activities included in the project?	☐	☐	☐	☐
• Is the ERR available for public review.	☐	☐	☐	☐
• Does the ERR document the environmental review process, including:				
◦ Coordination with other involved Federal or State agencies?	☐	☐	☐	☐
◦ Environmental Assessment?	☐	☐	☐	☐
◦ Public notices?	☐	☐	☐	☐
◦ Response to public comments?	☐	☐	☐	☐
◦ Request for Release of Funds and Certification?	☐	☐	☐	☐
• If appropriate, is there a determination of exemption or categorical exclusion?	☐	☐	☐	☐
◦ Is the determination signed by certifying official?	☐	☐	☐	☐
◦ Was the determination transmitted to DCA, receipt acknowledged by DCA and clearance obtained?	☐	☐	☐	☐
• Is there evidence of compliance with environmental Requirements other than NEPA (i.e., Statutory Checklist)?	☐	☐	☐	☐

NOTE: IF ENTIRE PROJECT IS EXEMPT OR CATEGORICALLY EXCLUDED AND CONVERT TO EXEMPT, STOP HERE

Step 2: Check the Environmental Assessment format:

• Did the environmental assessment describe:				
◦ Project location and description?	☐	☐	☐	☐
◦ Environmental impacts?	☐	☐	☐	☐
◦ Alternatives considered?	☐	☐	☐	☐
◦ Was mitigation required for one or more Compliance Factors for all laws and authorities?	☐	☐	☐	☐
◦ If so which factor(s): _____				
◦ Was there documentation confirming all Compliance Factors for all laws and authorities?	☐	☐	☐	☐
◦ Was a National Wetland Inventory map and a FIRM map included to document the Wetland and Flood Plain status?	☐	☐	☐	☐

	YES	NO	COMMENT ADDED	N/A
• Did the Assessment conclude with either:				
• A Finding of No Significant Effect or,	☐	☐	☐	☐
• A Finding of significant Effect	☐	☐	☐	☐

Step 3: Check the Public Notice(s) and Comment Periods

• Is there evidence that the FONSI and NOI/RROF or the Concurrent Notice was published?	☐	☐	☐	☐
• Is there evidence the FONSI and NOI/RROF or Concurrent Notice was sent to:				
• Interested individuals and groups?	☐	☐	☐	☐
• Appropriate public agencies?	☐	☐	☐	☐
• Published in a newspaper of general circulation?	☐	☐	☐	☐
• Posted in a local post office and substations if not able to publish?	☐	☐	☐	☐
• Is there evidence in the ERR of the proper minimum time period for public comment on the Notice(s)?	☐	☐	☐	☐

Step 4: Actions taken concerning Request for Release for Funds and Certifications:

• Was the Request for Release of Funds and Certification completed on the required form?	☐	☐	☐	☐
• Was it signed and dated by the Certifying Official?	☐	☐	☐	☐
• If the Certifying Official is not the Chief Elected Official is there evidence that the C.E.O. has designated the person signing the RROF/Certification as the Certifying Official?	☐	☐	☐	☐
• Did the recipient commit project funds only after the project funds were released and the general environmental condition cleared by DCA?	☐	☐	☐	☐
• Release of Funds Date: _____				
• Contract Award Date: _____				
• Construction Start Date: _____				
• Is there evidence in the ERR of DCA release and clearance of the environmental General Condition?	☐	☐	☐	☐

CORRECTIVE ACTIONS:

_____

_____

_____

FOLLOW-UP CONTACTS:

_____

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FAIR HOUSING EQUAL OPPORTUNITY REVIEW

Recipient: _____ **Grant No.:** _____
Date: _____

Local Actions:

Instructions: Check any of the local actions undertaken by the recipient. Enter a description of other actions taken. In the Documentation section list local evidence reviewed, dates of public meetings, etc. Attach copies of appropriate documentation if available, i.e. agendas, flyers, etc.

Resolution supporting State and/or Federal Fair Housing Law(s).	☐	Distribute Fair Housing brochures at public meetings or hearings.	☐
Conduct a Public Information Campaign on Fair Housing.	☐	Post Fair Housing Posters at City Hall or other public buildings.	☐
Include Fair Housing discussion on public hearing agenda.	☐	Provide Fair Housing information to relocatees.	☐
Other (List)	☐		

_____
_____

How does the Recipient notify the public of its non-discrimination policies?

_____
_____

Section 504 – Review for compliance with provisions of Sec. 504

	YES	NO	COMMENT ADDED	N/A
Has the grantee completed a self-evaluation of its projects and activities relative to Section 504 compliance?	☐	☐	☐	☐
Has the Recipient adopted a Transition Plan to address needs identified in the self-evaluation?	☐	☐	☐	☐
Has the Recipient taken appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, that it does not discriminate on the basis of disability?	☐	☐	☐	☐
Has the Recipient appointed a Section 504 Coordinator? (required if recipient employees 15 or more people)	☐	☐	☐	☐

If Yes, Name: _____

FAIR HOUSING EQUAL OPPORTUNITY REVIEW

	YES	NO	COMMENT ADDED	N/A
Has the Recipient adopted an Effective Communication Policy to ensure that communications with applicants, residents, program participants, employees, and members of the public with disabilities are as effective as communications with others?	☐	☐	☐	☐
Is the Recipient located in a City/County where all Public Notices and vital forms must be published in Spanish?	☐	☐	☐	☐
• If yes, did Recipient adhere to LEP Requirements?	☐	☐	☐	☐
Did the Recipient hold the hearing in a location That meets Title 2 accessibility standards?	☐	☐	☐	☐
• Did the Recipient complete the Sec 504 DCA Meeting Checklist for the meeting(s) location(s)?	☐	☐	☐	☐

Fair Housing

Has action been taken to affirmatively further fair housing through such activities as land development, zoning, site selection policies or programming, needs assessments, etc.?	☐	☐	☐	☐
Are local fair housing groups (or others interested in housing) assisted through the provision of information, technical assistance, CDBG funds or other support?	☐	☐	☐	☐

Identify actions taken or scheduled to be taken to further fair housing during this project/contract period:

_____

_____

_____

FAIR HOUSING ASSESSMENT:

Did the Recipient review DCA's Analysis of Impediments or Assessment of Fair Housing and make it available to the public?	☐	☐	☐	☐
Has the Recipient independently identified any local impediments to Fair Housing?	☐	☐	☐	☐
Has the Recipient taken steps to remedy impediments? [Also, see the Local Actions section above.]	☐	☐	☐	☐

FAIR HOUSING EQUAL OPPORTUNITY REVIEW

	YES	NO	COMMENT ADDED	N/A
Complaints:				
Have any fair housing complaints been recorded?	☐	☐	☐	☐
If *Yes,* explain: _____				
• Was complaint sent to HUD if discrimination was alleged?	☐	☐	☐	☐
• Did grantee notify complainant of HUD's involvement?	☐	☐	☐	☐
• What is the status of the complaint? _____				
Summary:				
Overall, is there source documentation in the grantee's files to support grantee compliance with FHEO laws and requirements?	☐	☐	☐	☐
Based on the evidence reviewed, has the grantee complied with appropriate FHEO requirements?	☐	☐	☐	☐

Is follow-up required? **yes** **no**

Comments/Corrective actions recommended:

_____

_____

_____

_____

Reviewed by: _____ **Date: _____**

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FINANCIAL MANAGEMENT REVIEW I & II

Recipient: _____ **Review Date:** _____

Grant # _____ **Follow-up needed? Yes ☐ No ☐**

Reviewed By: _____

	Yes	No	Comment Added	N/A
Step 1: Check the Recipient's Accounting System:				
• Are generally accepted accounting principles followed?	☐	☐	☐	☐
• Are internal controls adequate to safeguard CDBG assets?	☐	☐	☐	☐
• Are CDBG transactions supported by original source documents?	☐	☐	☐	☐
• Will records be retained for a minimum of three years?	☐	☐	☐	☐
• Are Quarterly Reports submitted on a timely basis?	☐	☐	☐	☐
• Is the information provided on the Quarterly Reports supported by accounting records?	☐	☐	☐	☐
Step 2: Check Drawdown of CDBG funds:				
• Were drawdowns limited to the minimum amount of funds needed?	☐	☐	☐	☐
• Was the time between the receipt of the drawdown & the disbursement of funds as close as administratively feasible?	☐	☐	☐	☐
Step 3: Check Program Funds:				
• Did the recipient return any interest earned on grant advances to the Department of Community Affairs?	☐	☐	☐	☐
• If a local match was applicable, was it met?	☐	☐	☐	☐
◦ If not, is it on schedule to be met prior to completion?	☐	☐	☐	☐
• If a local leverage was applicable, was it met?	☐	☐	☐	☐
◦ If not, is it on schedule to be met prior to completion?	☐	☐	☐	☐
• Was any Program Income generated?	☐	☐	☐	☐
• If so, was it used before drawdown of CDBG funds?	☐	☐	☐	☐
• Were all eligible expenditures of Program Income used to fund eligible community development activities?	☐	☐	☐	☐
Step 4: Check for Allowable Expenditures:				
• Were recipient expenditures "necessary & reasonable"?	☐	☐	☐	☐
• Were recipient expenditures allowable as specified in OMB Circular A-87?	☐	☐	☐	☐
• Were recipient expenditures eligible as defined by Title I, Section 105?	☐	☐	☐	☐

• Did all salaried employees paid from grant funds either devote 100% of their time to the CDBG project, or maintain time distribution sheets, if part-time?	☐	☐	☐	☐
• Are engineering and/or architectural costs paid with CDBG funds within the allowable limits?	☐	☐	☐	☐
• Are the administration costs paid with CDBG funds within the allowable limits?	☐	☐	☐	☐

Step 5: Check for Compliance with Property Management Standards:

• If personal property (furniture or equipment) was purchased with CDBG funds, are records available to identify it in accordance with 24 CFR Part 85, Property Management Standards?	☐	☐	☐	☐

Step 6: Check for Compliance with Procurement Procedures. Have Recipients followed procurement standards which ensure that:

• Purchases are made on the basis of maximum open and free competition?	☐	☐	☐	☐
• Were applicable local procurement standards met for eligible small purchases under $100,000?	☐	☐	☐	☐
• Were procurement standards followed equivalent to those specified in Part 85 or State Law?	☐	☐	☐	☐

Corrective Actions:

_____

_____

_____

_____

Follow-up Contacts:

_____

_____

_____

GRANT CLOSEOUT CHECKLIST

Recipient _____ **GRANT NUMBER** _____

Original Grant Application	_____
Award documents	_____
General Conditions	_____
Special Conditions	_____
Statement of Revisions	_____
Score Sheets	_____
Grant Adjustment Notices	_____
Drawdown file	_____
All Quarterly Reports	_____
Final Quarterly Report	_____
Request for Release of Funds	_____
Concurrent Notice	_____
Environmental Clearance	_____
Wage Determination	_____
Startup	_____
Citizen Participation	_____
Fair Housing	_____
Environmental	_____
Professional Procurement	_____
Sole Source Approval	_____
Construction Procurement	_____
Contract Matrix	_____
Contractor Clearance	_____
Notice of Contract Action	_____
Acquisition	_____
Labor	_____
Labor2	_____
Financial	_____
Individual Housing Analysis	_____
Section 104 d	_____
Rehabilitation 1	_____
Rehabilitation 2	_____
Relocation	_____
Cash Match	_____
Section 3	_____
Close Out Review	_____
Final Wage Compliance Report	_____
Actual Accomplishments	_____

Request waiver of 60 day submission requirement?

Y _____ N _____

If yes, state reason:

_____

_____

_____

_____

Representative Signature

_____

Date

REV 10-18

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Individual Housing Analysis
Homebuyer Assistance

RECIPIENT _____ **GRANT #**_____

Housing Type (Circle one): Stick Built Modular MHU Other: _____

Owner: _____ Address: _____

	Yes	No	N/A	Comment Added
1. Application for assistance in file, including all required information?	☐	☐	☐	☐
2. Income Documented (file should include an income calculation worksheet)?	☐	☐	☐	☐
National Objective met?	☐	☐	☐	☐
3. Certificate of Lawful Presence (and documentation) in file?	☐	☐	☐	☐
4. Was sale price equal to or less than appraised value?	☐	☐	☐	☐
If no, explain _____				
Sale price: _____ Appraised value: _____				
5. Did owner complete a Homebuyer Counseling conducted by a HUD approved counseling agency?	☐	☐	☐	☐
How was course completion documented? _____				
6. Was the home inspected by the local CDBG grantee?	☐	☐	☐	☐
Who Inspected? _____				
7. Amount of CDBG funds provided: $ _____				
Was the assistance provided true Gap Financing?	☐	☐	☐	☐
Describe basis for determining the amount of Gap financing provided: _____				
8. Amount of Primary Mortgage: $ _____				
Terms: Length (in years) _____ Interest Rate: _____%				
9. Mortgage terms adhere to DCA policy (Fixed rate, no balloon, etc.)?	☐	☐	☐	☐
If no, explain: _____				
10. Was the unit constructed prior to 1978? (If Yes, complete page 2)	☐	☐	☐	☐

Additional comments:

_____

_____

_____

Reviewer: _____ Date: _____

COMPLETE THIS SECTION IF THE PURCHASED UNIT WAS BUILT PRIOR TO 1978

COMPLIANCE WITH LEAD-BASED PAINT REGULATIONS (24CFR Part35)

All federal assistance provided for the purpose of purchase of pre 1978 housing must meet the following conditions:

The proposed owner must receive the EPA pamphlet "Protect Your Family From Lead In Your Home"

The proposed unit must undergo Visual Assessment for deteriorated paint. Personnel conducting this assessment must complete the HUD Internet Course for Conducting Visual Assessment.

If deteriorated paint is identified, the paint must be tested and, if found to contain lead-based paint, stabilized using safe work practices. Clearance must be achieved in the unit prior to occupancy if vacant or, if occupied, immediately prior to Federal Assistance.

The owner must be provided all reports related to lead hazard control activity: Inspection/risk assessment report, lead hazard control work write-up, and clearance report that includes lead hazard control work completed.

	Yes	No	N/A	Comment Added
Disclosures to owner (owner/occupant signed receipt must be in file).				
1. LBP Warning pamphlet provided?	☐	☐	☐	☐
2. Who performed Visual Assessment for deteriorated paint? _____				
3. Was deteriorated paint found?	☐	☐	☐	☐
IF NO STOP HERE				
IF YES:				
4. Copy of Paint Testing results in file?	☐	☐	☐	☐
5. Did testing indicate presence of Lead-Based Paint?	☐	☐	☐	☐
IF NO STOP HERE				
IF YES:				
6. Copy of Inspection/Risk Assessment report?	☐	☐	☐	☐
7. Hazard Control work performed (Work write-up/contract)?	☐	☐	☐	☐
8. Clearance Inspection Report?	☐	☐	☐	☐
9. Who performed Lead Hazard Evaluation testing (name and EPD cert. #) _____				
10. Evidence that owner received all reports related to the work performed?	☐	☐	☐	☐

Other observations:

_____

_____

_____

_____

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Individual Housing Analysis
Rehabilitation and Reconstruction

RECIPIENT _____ **GRANT #**_____

Housing Type (Circle one): Stick Built Modular MHU Other: _____

Activity (Circle one): Rehabilitation Reconstruction Other: _____

Map/Unit No. _____ of _____ units Contract status: (ongoing, complete, etc.)_____

Owner: _____ Address: _____

	Yes	No	N/A	Comment Added
1. Application for assistance in file, including all required information?	☐	☐	☐	☐
2. Income Documented (file should include an income calculation worksheet)?	☐	☐	☐	☐
National Objective met?	☐	☐	☐	☐
3. Certificate of Lawful Presence (and documentation) in file?	☐	☐	☐	☐
4. Estimated cost per CDBG application: _____ Actual Cost: _____				
5. Did actual cost exceed 20% of estimated cost per application?	☐	☐	☐	☐
6. If yes, was prior DCA approval obtained (DCA approval letter in file)?	☐	☐	☐	☐
7. Was a detailed work write-up and cost estimate prepared, prior to bid?	☐	☐	☐	☐
8. Were significant deviations (+/- 10%) from the cost estimate explained?	☐	☐	☐	☐
9. Did the homeowner provide private funds as specified in the local financial plan?	☐	☐	☐	☐
10. Was the unit constructed prior to 1978? (If Yes, complete page 3)	☐	☐	☐	☐
11. Was a construction contract (including all exhibits and required attachments) fully executed by the owner and contractor?	☐	☐	☐	☐
12. Did the homeowner authorize the contract, all amendments (Change Orders) to the contract and all progress payments?	☐	☐	☐	☐
13. Did owner sign a Satisfaction Statement for all progress and final payments?	☐	☐	☐	☐
14. Does the file contain evidence of Release of Liens (from subcontractors & Material suppliers AND from General Contractor)?	☐	☐	☐	☐
15. If #14 is 'no' a walk-through should be performed. Does this inspection reveal deviations from the work specifications and change orders?	☐	☐	☐	☐

if no, explain_____

	Yes	No	N/A	Comment Added
16. Does the contract amount (including all CO's) equal payments to the contractor?	☐	☐	☐	☐
17. Were progress payments based on work completed?	☐	☐	☐	☐
18. Are Inspection Reports in file documenting work performed?	☐	☐	☐	☐
19. Who Authorized payment_____				
20. Evidence of recorded lien in file (term consistent with local Policies and Procedures)?	☐	☐	☐	☐
21. Other observations:_____				

Program Representatives will complete this form for each housing unit developed by the recipient and attach the work write-up.

Complete payment analysis to answer #16:

Check Number	Date	Amount	Payee
_____	_____	$_____	_____
_____	_____	$_____	_____
_____	_____	$_____	_____
_____	_____	$_____	_____
Owner Contribution	_____	$_____	_____
Total		$_____	

Additional comments:

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

Reviewer: _____ Date: _____

COMPLETE THIS SECTION IF REHAB UNIT WAS BUILT PRIOR TO 1978

COMPLIANCE WITH LEAD-BASED PAINT REGULATIONS (24CFR Part35)

	Yes	No	N/A	Comment Added
Disclosures to owner (owner/occupant signed receipts must be in file).				
1. LBP Warning pamphlet provided within 60 days of rehab Work?	☐	☐	☐	☐
2. Copy of Inspection/Risk Assessment report?	☐	☐	☐	☐
3. Hazard Control work performed (Work write-up/contract)?	☐	☐	☐	☐
4. Clearance Inspection Report?	☐	☐	☐	☐
5. Who performed Lead Hazard Evaluation testing (name and EPD cert. #) _____				

Complete this section if a separate lead hazard control contract was executed:

1. Lead Contractor completing hazard control _____				
2. Proof of EPD Certification or RRP Training in file?	☐	☐	☐	
3. Contract Signed by Owner and Contractor?	☐	☐	☐	☐
4. Does the contract amount (including all CO's) equal payments to the contractor?	☐	☐	☐	☐

Record Check/Payment Information for Lead contract:

Check Number	Date	Amount	Payee
_____	_____	$_____	_____
_____	_____	$_____	_____
_____	_____	$_____	_____
_____	_____	$_____	_____
Total		$_____	

Other observations:

_____

_____

_____

_____

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Immediate Threat and Danger Program
Monitoring Checklist

RECIPIENT _____

GRANT # _____ **REVIEW DATE:** _____

REVIEWED BY _____ **Follow up needed?** **Yes** **No**

SECTION 1 – Environmental Review

	YES	NO	COMMENT ADDED	N/A
Step 1: Check the Environmental Review Record (file):				
• Is there an Environmental Review Record?	☐	☐	☐	☐
• Is the Environmental Review Record available for public review.	☐	☐	☐	☐
• Does the Environmental Review Record document the environmental review process, including:				
◦ Coordination with other involved Federal or State agencies?	☐	☐	☐	☐
◦ Environmental Assessment?	☐	☐	☐	☐
◦ Public notices?	☐	☐	☐	☐
◦ Response to public comments?	☐	☐	☐	☐
◦ Request for Release of Funds and Certification?	☐	☐	☐	☐
• If appropriate, is there a determination of exemption or categorical exclusion?	☐	☐	☐	☐
◦ Is the determination signed by certifying official?	☐	☐	☐	☐
◦ Was the determination transmitted to DCA, receipt acknowledged by DCA and clearance obtained?	☐	☐	☐	☐
• Is there evidence of compliance with environmental Requirements other than NEPA (i.e., Statutory Checklist)?	☐	☐	☐	☐

NOTE: IF ENTIRE PROJECT IS EXEMPT OR EXCLUDED, STOP HERE

Step 2: Check the Environmental Assessment format:

• Did the environmental assessment describe:				
◦ Project location and description?	☐	☐	☐	☐
◦ Environmental impacts?	☐	☐	☐	☐
◦ Alternatives considered?	☐	☐	☐	☐
◦ Mitigation measures considered?	☐	☐	☐	☐
◦ Sources of data?	☐	☐	☐	☐
• Did the Assessment conclude with either:				
◦ A Finding of No Significant Impact or,	☐	☐	☐	☐
◦ A Finding of significant Impact? (indicate which) _____	☐	☐	☐	☐

	YES	NO	COMMENT ADDED	N/A
Step 3: Check the Public Notice(s) and Comment Periods				
• Is there evidence that the FONSI and the NOI/RROF or the Concurrent Notice was published?	☐	☐	☐	☐
• Is there evidence the FONSI and NOI/RROF or Concurrent Notice was sent to:				
◦ Interested individuals and groups?	☐	☐	☐	☐
◦ Appropriate public agencies?	☐	☐	☐	☐
◦ Published in a newspaper of general circulation?	☐	☐	☐	☐
◦ Posted in a local post office and substations if not able to publish?	☐	☐	☐	☐
• Is there evidence in the ERR of the proper minimum time period for public comment on the Notice(s)?	☐	☐	☐	☐
Step 4: Actions taken concerning Request for Release for Funds and Certifications:				
• Was the Request for Release of Funds and Certification completed on the required form?	☐	☐	☐	☐
• Was it signed and dated by the Certifying Official?	☐	☐	☐	☐
• If the Certifying Official is not the Chief Elected Official is there evidence that the C.E.O. has designated the person signing the RROF/Certification as the Certifying Official?	☐	☐	☐	☐
• Did the recipient commit project funds only after the project funds were released and the general environmental condition cleared by DCA?	☐	☐	☐	☐
• Is there evidence in the ERR of DCA release and clearance of the environmental General Condition?	☐	☐	☐	☐

SECTION 2 - Financial Management Review

	Yes	No	Comment Added	N/A
Step 1: Check the Recipient's Accounting System:				
• Are generally accepted accounting principles followed?	☐	☐	☐	☐
• Are internal controls adequate to safeguard CDBG assets?	☐	☐	☐	☐
• Are CDBG transactions supported by original source documents?	☐	☐	☐	☐
• Will records be retained for a minimum of three years?	☐	☐	☐	☐
Step 2: Check Drawdown of CDBG funds:				
• Were drawdowns limited to the minimum amount of funds needed?	☐	☐	☐	☐

	Yes	No	Comment Added	N/A
• Was the time between the receipt of the drawdown & the disbursement of funds as close as administratively feasible?	☐	☐	☐	☐
Step 3: Check Program Funds:				
• Did the recipient return any interest earned on grant advances to the Department of Community Affairs?	☐	☐	☐	☐
• If a local match was applicable, was it met?	☐	☐	☐	☐
◦ If not, is it on schedule to be met prior to completion?	☐	☐	☐	☐
• Was any Program Income generated?	☐	☐	☐	☐
• If so, was it used before drawdown of CDBG funds?	☐	☐	☐	☐
• Were all eligible expenditures of Program Income used to fund eligible community development activities?	☐	☐	☐	☐
Step 4: Check for Allowable Expenditures:				
• Were recipient expenditures "necessary & reasonable"?	☐	☐	☐	☐
• Were recipient expenditures allowable as specified in 2 CFR Part 200?	☐	☐	☐	☐
• Were recipient expenditures eligible as defined by Title I, Section 105?	☐	☐	☐	☐
• Did all salaried employees paid from grant funds either devote 100% of their time to the CDBG project, or maintain time distribution sheets, if part-time?	☐	☐	☐	☐
Step 5: Check for Compliance with Property Management Standards:				
• If personal property (furniture or equipment) was purchased with CDBG funds, are records available to identify it in accordance with 2 CFR Part 200, Property Management Standards?	☐	☐	☐	☐
Step 6: Check for Compliance with Procurement Procedures. Have Recipients followed procurement standards which ensure that:				
• Purchases are made on the basis of maximum open and free competition?	☐	☐	☐	☐
• Were applicable local procurement standards met for eligible small purchases under $100,000?	☐	☐	☐	☐
• Were procurement standards followed equivalent to those specified in Part 200 or State Law?	☐	☐	☐	☐

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SECTION 3 – Labor Standards Review

Step 1: Record the following information:

- Contract Name: _____
- General Contractor: _____
- Contract Amount: _____
- Wage Decision No.: _____ Bid Opening Date: _____
- Date Contract Executed: _____ Construction State Date: _____

	YES	NO	COMMENT ADDED	N/A
Step 2: Check for Wage Rate Determination:				
• Were wage rate determinations requested from DCA?	☐	☐	☐	☐
• Were wage rates included in the solicitation specifications?	☐	☐	☐	☐
• Was correct decision, including all applicable modifications, used?	☐	☐	☐	☐
• Was DCA contacted 10 days prior to bid to confirm?	☐	☐	☐	☐
• Were additional classifications requested from DCA?	☐	☐	☐	☐
Step 3: Check for Contractual Provisions and Certification:				
• Are minutes from pre-construction conference in file?	☐	☐	☐	☐
• Was most recent labor standards provision included in solicitation and contracts?	☐	☐	☐	☐
Step 4: Check for Verification of Contractor Eligibility:				
• Were verifications requested and received to determine contractor eligibility prior to contract execution?	☐	☐	☐	☐
Step 5: Check for Recipient monitoring/enforcement of Labor Standards:				
• Were wage rate determinations and labor posters on the job site?	☐	☐	☐	☐
• Were Statement of Compliance and payrolls received on a weekly basis?	☐	☐	☐	☐
• Did an officer or owner of the construction firm certify the payrolls?	☐	☐	☐	☐
• If not, is authorization (signed by the owner or an officer) on file for the person who signed certification of payrolls?	☐	☐	☐	☐
• Were the contractors/subcontractors payroll reports checked for accuracy and did they contain required information?	☐	☐	☐	☐

	YES	NO	COMMENT ADDED	N/A
• Were worker interviews conducted and checked against payroll reports?	☐	☐	☐	☐
• Were a representative number of trades covered, at least one in each category?	☐	☐	☐	☐
No. of Employee Interviews: _____				
• Was Certificate of Registration for each apprentice employed on file?	☐	☐	☐	☐
Was overtime paid?	☐	☐	☐	☐

Step 6: Review the actions taken by Recipient to investigate and follow-up violations:

• Were investigations conducted in a timely manner?	☐	☐	☐	☐
• Were records and documents sufficient to support the findings?	☐	☐	☐	☐
• Were appropriate cases referred to DCA?	☐	☐	☐	☐

SECTION 4 – Accomplishments

Total people:_____ Low/Mod People:_____

SECTION 5 – Field Observations (Please record project site observations/comments)

_____

_____

_____

_____

_____

CORRECTIVE ACTIONS:

_____

_____

_____

FOLLOW-UP CONTACTS:

_____

_____

_____

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LABOR STANDARDS REVIEW

RECIPIENT _____

GRANT # _____ **REVIEW DATE:** _____

REVIEWED BY _____ **Follow up needed?** **Yes** **No**

Step 1: Record the following information:

- Project Description: _____ Subcontractors Hired: Yes No
- General Contractor: _____ Force Account Used: Yes No
- Contract Amount: _____
- Wage Decision No.: _____ Bid Opening Date: _____
- Date Contract Executed: _____ Construction Start Date: _____

	YES	NO	COMMENT ADDED	N/A
Step 2: Check for Wage Rate Determination:				
• Were wage rate determinations requested from DCA?	☐	☐	☐	☐
• Were wage rates included in the solicitation specifications?	☐	☐	☐	☐
• Was correct decision, including all applicable modifications, used?	☐	☐	☐	☐
• Was DCA contacted 10 days prior to bid to confirm?	☐	☐	☐	☐
• Was Contract awarded within 90 days of bid date?	☐	☐	☐	☐
• If no, was the wage determination used in effect on the date of the contract award?	☐	☐	☐	☐
Step 3: Check for Contractual Provisions and Certification:				
• Are minutes from pre-construction conference in file?	☐	☐	☐	☐
Did minutes include Federal Labor Standards contracting responsibilities and actions?	☐	☐	☐	☐
• Was most recent labor standards provision included in solicitation and contracts?	☐	☐	☐	☐
Step 4: Check for Verification of Contractor Eligibility:				
• Were verifications requested and received to determine contractor eligibility prior to contract execution?	☐	☐	☐	☐
Step 5: Check for Recipient monitoring/enforcement of Labor Standards:				
• Were wage rate determinations and labor posters on the job site?	☐	☐	☐	☐

	YES	NO	COMMENT ADDED	N/A
• Were Statement of Compliance and payrolls received on a weekly basis?	☐	☐	☐	☐
• Did an officer or owner of the construction firm certify the payrolls?	☐	☐	☐	☐
• If not, is authorization (signed by the owner or an officer) on file for the person who signed certification of payrolls?	☐	☐	☐	☐
• Were the contractors/subcontractors payroll reports checked for accuracy and did they contain required information?	☐	☐	☐	☐
• Were fringe benefits required?	☐	☐	☐	☐
• If yes, were the fringe benefits paid in cash?	☐	☐	☐	☐
• If fringes were not paid in cash, did Statement of Compliance list the fringes paid?	☐	☐	☐	☐
• Bonafide fringes?	☐	☐	☐	☐
• Did payrolls include classifications not listed on wage decision?	☐	☐	☐	☐
• If yes, were additional classifications requested?	☐	☐	☐	☐
• Did payrolls include all trades required to complete project?	☐	☐	☐	☐
• Did payrolls includes a proportionate number of laborers to mechanics?	☐	☐	☐	☐
• Were worker interviews conducted and checked against payroll reports?	☐	☐	☐	☐
• Were interview forms signed in the appropriate place when compared to payrolls?	☐	☐	☐	☐
• Were a representative number of trades covered, at least one in each category?	☐	☐	☐	☐
No. of Trades Represented: _____				
No. of Employee Interviews: _____				
• Was Certificate of Registration for each apprentice employed on file?	☐	☐	☐	☐
• Was overtime paid?	☐	☐	☐	☐
• Were deductions permissible?	☐	☐	☐	☐
• Was restitution required?	☐	☐	☐	☐
• If yes, does the file contain documentation restitution was paid?	☐	☐	☐	☐

Step 6: Review the actions taken by Recipient to investigate and follow-up violations:

• Were investigations conducted in a timely manner?	☐	☐	☐	☐

	YES	NO	COMMENT ADDED	N/A
• Were records and documents sufficient to support the findings?	☐	☐	☐	☐
• Were appropriate cases referred to DCA?	☐	☐	☐	☐

Program Representative Comments:

Compliance Officer Comments:

Follow-up Needed:

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LABOR STANDARDS REVIEW
Subcontractor Payrolls

RECIPIENT _____

GRANT # _____ **REVIEW DATE:** _____

REVIEWED BY _____ **Follow up needed?** **Yes** **No**

Step 1: Record the following information:

- Project Description: _____
- Subcontractor: _____
- General Contractor: _____
- Wage Decision Number: _____

	YES	NO	COMMENT ADDED	N/A
Step 2: Weekly Payrolls:				
• Did owner work with a crew?	☐	☐	☐	☐
• If no, is the Sub reported on the General's payroll?	☐	☐	☐	☐
• Were Statement of Compliance and payrolls received on a weekly basis?	☐	☐	☐	☐
• Did an officer or owner of the construction firm certify the payrolls?	☐	☐	☐	☐
• If not, is authorization (signed by the owner or an officer) on file for the person who signed certification of payrolls?	☐	☐	☐	☐
• Were the payroll reports checked for accuracy and did they contain required information?	☐	☐	☐	☐
• Were fringe benefits required?	☐	☐	☐	☐
• If yes, were the fringe benefits paid in cash?	☐	☐	☐	☐
• If fringes were not paid in cash, did Statement of Compliance list the fringes paid?	☐	☐	☐	☐
◦ Bonafide fringes?	☐	☐	☐	☐
• Did payrolls include classifications not listed on wage decision?	☐	☐	☐	☐
• If yes, were additional classifications requested?	☐	☐	☐	☐
• Did payrolls includes a proportionate number of laborers to mechanics?	☐	☐	☐	☐
• Were worker interviews conducted and checked against payroll reports?	☐	☐	☐	☐
• Were a representative number of trades covered, at least one in each category?	☐	☐	☐	☐
No. of Trades Represented: _____				

No. of Employee Interviews: _____

- Was Certificate of Registration for each apprentice employed on file? ☐ ☐ ☐ ☐
- Was overtime paid? ☐ ☐ ☐ ☐
- Was restitution required? ☐ ☐ ☐ ☐
- Were additional classifications required and requested? ☐ ☐ ☐ ☐

Step 3: Review the actions taken by Recipient to investigate and follow-up violations:

- Were investigations conducted in a timely manner? ☐ ☐ ☐ ☐
- Were records and documents sufficient to support the findings? ☐ ☐ ☐ ☐
- Were appropriate cases referred to DCA? ☐ ☐ ☐ ☐

Program Representative Comments:

_____

_____

Compliance Officer Comments:

_____

_____

Follow-up Needed:

_____

_____

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RELOCATION REVIEW
PART I

PROGRAM REVIEW

RECIPIENT _____

GRANT # _____ **REVIEW DATE** _____

REVIEWED BY _____ **FOLLOW-UP NEEDED: YES NO**

---

1. CURRENT STATUS:

Number of relocations: proposed _____ completed _____

Number of cases appealed or complaints filed: _____

Types of relocations proposed: Owner _____ Renter _____
Business _____ Temporary _____

	YES	NO	COMMENTS	N/A
2. CHECK THE RECIPIENT'S GENERAL BOOKKEEPING REQUIREMENTS: Is the Recipient maintaining a Relocation Management Report?	☐	☐	☐	☐
3. CHECK THE RECIPIENT'S PROGRAM POLICY STATEMENT: a. Has the community officially adopted a Program Policy Statement? Date of Resolution:_____	☐	☐	☐	☐
b. Does the Statement incorporate the current "Fair Market Rent" Schedules by reference or attachment?	☐	☐	☐	☐
c. Does the Statement include or reference the current Moving Expense Schedule?	☐	☐	☐	☐
d. Does the statement describe Appeal procedures?	☐	☐	☐	☐
e. If applicable, are "Optional" benefits described and complied with?	☐	☐	☐	☐
f. If applicable, is there a Down Payment Assistance policy and has it been complied with?	☐	☐	☐	☐
g. Does the Statement include a methodology for determining utility costs?	☐	☐	☐	☐

PART II
RELOCATION CASE REVIEW

APPLICABILITY

CASE 1		CASE 2	
Uniform Act	☐	Uniform Act	☐
Section 104(d)	☐	Section 104(d)	☐
Last Resort	☐	Last Resort	☐
"Optional" Payment	☐	"Optional" Payment	☐

STEPS:

		CASE 1	**CASE 2**
1.	**Record the following information**:		
	a. Name of Relocatee	_____	_____
	b. Address:	_____	_____
	c. Homeowner or tenant?	_____	_____
	d. Low/Mod Income Occupants?	_____	_____
	e. Temporary Relocation necessary?	_____	_____

		YES	**NO**	**COMMENTS**	**N/A**
2.	**CHECK ELIGIBILITY DOCUMENTATION**				
	a. Is there an individual file for each displaced family?	☐	☐	☐	☐
	b. Do personal information records verify "Gross Household Income" of occupants?	☐	☐	☐	☐

Case 1:
Method & Source of verification: _____
Annual GHI: $ _____
L&M Limit: $ _____

Case 2:
Method & Source of verification: _____
Annual GHI: $ _____
L&M Limit: $ _____

c. Can the occupant(s) be defined as a "displaced person"?	☐	☐	☐	☐
d. Does the displacee(s) meet the length of occupancy (time) standards?	☐	☐	☐	☐

	YES	NO	COMMENTS	N/A
3. CHECK THE WRITTEN NOTICES:				
a. Was a "General Information Notice" containing all required information issued as soon as feasible with evidence of receipt in file?	☐	☐	☐	☐
b. Did tenant receive a "Preliminary Displacement Notice"?	☐	☐	☐	☐
c. Was a "Notice of Eligibility for "Relocation Assistance" issued at the time eligibility was established with evidence of receipt in file?	☐	☐	☐	☐
d. Was a "Ninety-day Notice to Vacate" in file with evidence of receipt (if applicable)?	☐	☐	☐	☐
4. CHECK REPLACEMENT HOUSING PAYMENT CLAIMS:				
a. Type of Replacement Housing Payment: Case 1: _____ Case 2: _____				
b. If replacement housing assistance claim was paid, was the claim:				
1. Completed and signed?	☐	☐	☐	☐
2. Verified by supporting documentation? (i.e., old and new rent & utilities)	☐	☐	☐	☐
3. Correctly calculated?	☐	☐	☐	☐
4. Filed within a reasonable period of time?	☐	☐	☐	☐
5. Are periodic payments being made? Terms: _____	☐	☐	☐	☐
6. For eligible Section 104(d) cases: was claimant offered a choice of benefits?	☐	☐	☐	☐
7. If any Replacement Housing Payment claims were not paid, is there documentation of the basis for denial?	☐	☐	☐	☐
5. CHECK MOVING EXPENSE CLAIMS:				
a. Was a moving expense paid?	☐	☐	☐	☐
b. Was there a choice of fixed or actual expenses?	☐	☐	☐	☐
c. Were actual moving expenses eligible?	☐	☐	☐	☐
d. Was the actual claim verified with supporting documentation?	☐	☐	☐	☐
e. Was the claim correctly calculated?	☐	☐	☐	☐
6. CHECK RELOCATION ADVISORY ASSISTANCE:				
a Is there a Site Occupant Record on the displacee indicating Replacement Housing needs (i.e., handicapped facilities).	☐	☐	☐	☐
b Is there a Selection of Most Representative Comparable Replacement Dwelling chart completed?	☐	☐	☐	☐
c Were the referred replacement units documented:				
1. "Decent, safe and sanitary"?	☐	☐	☐	☐

	YES	NO	COMMENTS	N/A
2. "Comparable"?	☐	☐	☐	☐
3. Compliance with lead-based paint regulations?	☐	☐	☐	☐
d. Has actual replacement dwelling been inspected with an acceptable checklist?	☐	☐	☐	☐
e. If the relocatee moved into a substandard unit, was the required letter sent?	☐	☐	☐	☐
f. Is there evidence of receipt of the above required letter?	☐	☐	☐	☐

7. CHECK TEMPORARY RELOCATION DOCUMENTATION:

If occupant(s) were temporarily relocated, did recipient:				
a. Offer available facilities (i.e. dwelling units)?	☐	☐	☐	☐
b. Document and pay eligible expenses?	☐	☐	☐	☐
c. Receive a statement from the displacee that no eligible "out of pocket" expenses were incurred?	☐	☐	☐	☐

8. CHECK LAST RESORT HOUSING DOCUMENTATION:

		YES	NO
a. If "Last Resort" replacement housing was provided, is the decision adequately documented and justified? (Justification is based on the lack of availability and/or resources for "comparable replacement housing"; or the individual circumstances of the displacee?	CASE 1:	☐	☐
	CASE 2:	☐	☐

b. Check what method(s) were selected to provide "Last Resort" housing assistance:

CASE 1	CASE 2	
( )	( )	Replacement housing payment in excess of limits
( )	( )	Rehab or addition to existing unit
( )	( )	New construction
( )	( )	Direct Loan (_____%) (Type: _____)
( )	( )	Relocation and rehab of dwelling
( )	( )	Purchase of land/dwelling by Recipient and subsequent-sale or lease to displaced person
( )	( )	Removal of barriers to the handicapped
( )	( )	Cost effective conversion from tenant to homeowner
( )	( )	Modified methods (i.e., different unit space and physical characteristics) Describe: _____

		YES	NO
c. If applicable, do the specifications of the construction contract between the relocate and provider indicate the new unit to be "functionally similar" to the displaced unit?	CASE 1 :	☐	☐
	CASE 2:	☐	☐

PART III
SITE INSPECTION I

NAME: _____

	YES	NO	COMMENT	N/A
1. Was the unit the relocatee moved into:				
a. "Decent, safe and sanitary?"	☐	☐	☐	☐
b. "Functional similar" in size and construction?	☐	☐	☐	☐
If not, did the relocatee sign the required waiver?	☐	☐	☐	☐
2. Was the unit inspected by a DCA Program Representative?	☐	☐	☐	☐
1. Was the relocatee interviewed by a DCA Program Representative?	☐	☐	☐	☐
2. Was the relocatee interviewed satisfied with the unit?	☐	☐	☐	☐

COMMENTS: _____

_____

_____

_____

PART III
SITE INSPECTION II

NAME: _____

	YES	NO	COMMENTS	N/A
1. Was the unit the relocatee moved into:				
a. "Decent, safe and sanitary"?	☐	☐	☐	☐
b. "Functionally similar" in size and construction?	☐	☐	☐	☐
If not, did the relocatee sign the required waiver?	☐	☐	☐	☐
2. Was the unit inspected by a DCA Program Representative?	☐	☐	☐	☐
3. Was the relocatee interviewed by a DCA Program Representative?	☐	☐	☐	☐
4. Was the relocatee interviewed satisfied with the unit?	☐	☐	☐	☐

COMMENTS: _____

_____

_____

_____

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SECTION 104 (d) DEMOLITION REVIEW

Owner: _____ **# of Bedrooms:** _____

Address: _____ **Sq. Footage:** _____

Date of Demolition: _____ **Occupied:** _____

1. Applicability of Section 104(d) One-for-One Replacement Housing:

	YES	NO	COMMENTS	N/A
a) Was the demolished occupied unit a "low and moderate income dwelling unit" Rent/Utilities: $ _____ FMR: $ _____	☐	☐	☐	☐
b) If vacant, was demolished "low and moderate income dwelling unit" occupied within 3 months prior to the date of the demolition contract?	☐	☐	☐	☐
c) Was demolished vacant "low and moderate income dwelling unit" suitable for rehab? (If no, attach a copy of the Rehab Feasibility Test)	☐	☐	☐	☐

Continue, if answer is "yes" on 1a) or (b) or (c)

2. If applicable, is there evidence that a "low and moderate income" replacement unit has been or will be:

a) Identified? address:_____ # of bedrooms:_____	☐	☐	☐	☐
b) Provided within 3 years of the start of demolition; or	☐	☐	☐	☐
Unavailable for occupancy for more than one year prior to date of submission of Anti Displacement Plan Source:_____ Date Provided:_____	☐	☐	☐	☐
c) Located within recipient's jurisdiction?	☐	☐	☐	☐
d) At least equal to the # of bedrooms removed and sufficient in the number of bedrooms and size to house at least the # of occupants that were housed in the demolished unit in accordance with applicable housing occupancy codes? Sq. Footage:_____ # of Bedrooms:_____	☐	☐	☐	☐
e) Provided in "Standard" Condition?	☐	☐	☐	☐
f) Designed to remain low/mod income dwelling				

| | YES | NO | COMMENTS | N/A |

units for at least 10 years from date of initial occupancy of the units? (Replacement dwelling units may include public and existing housing receiving Section 8 project-based assistance.) ☐ ☐ ☐ ☐
Base Rent: $_____
Utilities: $_____
Total: $_____
FMR: $_____

g) If applicable, rehabilitated and vacant for 3 months prior to date of construction contract and the previous tenant(s) was not displaced as a direct results of an assisted activity? ☐ ☐ ☐ ☐

Comments:_____
_____

Note: If new unit does not meet all of the applicable criteria above, the unit is disqualified.

SUMMARY

DEFICIENCIES:

COMMENTS:

CORRECTIVE ACTION NEEDED:

FINDINGS: Yes( ) No ( )

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SECTION 3 REVIEW

RECIPIENT _____

GRANT # _____ **REVIEW DATE** _____

REVIEWED BY _____ **Follow up needed? Yes No**

Grant Amount _____ **Is Section 3 Applicable? Yes No**

Note: If Section 3 is not applicable, STOP HERE (Grant Amounts less than $200,000)

	Yes	No	Comment Added	N/A
Step 1: Check Section 3 file				
• Are there procedures in place to notify Section 3 residents and business concerns about employment, training, and contracting opportunities	☐	☐	☐	☐
• Is there documentation of the actions taken to comply with the Section 3 requirements in DCA's Section 3 Policy	☐	☐	☐	☐
• Were Section 3 residents notified of hiring opportunities o Method Used _____ o Is it an approved method (as outlined in DCA's Policy)	☐	☐	☐	☐
• Were Section 3 residents provided Resident Certification and Affidavit forms for employment	☐	☐	☐	☐
• Were contractors encouraged to offer training to Section 3 residents	☐	☐	☐	☐
• Is there evidence the advertisement for bids and/or proposals conveyed that the contract work is a Section 3 covered contract	☐	☐	☐	☐
• Is there evidence that DCA's Solicitation package was used for all applicable procurement actions	☐	☐	☐	☐
• Was a pre-bid meeting or workshop held	☐	☐	☐	☐
• Were contractors notified of Section 3 requirements at the pre-bid meeting	☐	☐	☐	☐

	Yes	No	Comment Added	N/A
• Were there any refusals to award contracts to businesses or persons who previously violated the Section 3 requirements	☐	☐	☐	☐
• Were the Section 3 clauses incorporated into all applicable contracts	☐	☐	☐	☐
• Did job sites include a location or phone number of person to contact and how to apply for employment, training, or contracting opportunities	☐	☐	☐	☐
• Were one of the following goals met:	☐	☐	☐	☐
○ 30% of the aggregate number for new hires were Section 3 residents	☐	☐	☐	☐
○ 10% of the total dollar amount of covered construction contracts were awarded to Section 3 business concerns	☐	☐	☐	☐
○ 3% of the total dollar amount of covered non-construction contracts were awarded to Section 3 business concerns	☐	☐	☐	☐
• Overall, did the grantee comply with DCA's Section 3 Policy and reporting requirements	☐	☐	☐	☐

Comments:

_____

_____

_____

Corrective Actions:

_____

_____

_____

START-UP SITE VISIT REPORT

Recipient:_____ **Grant #:**_____

Date:_____ **Meeting Participants**:_____
(circle items discussed)

1.0 Grant Award Package
- 1.1 Acceptance within required period
- 1.2 Signature Cards and correct number of signatories
- 1.3 General and Special Condition compliance
- 1.4 DCA CDBG Staff resources / responsibilities
- 1.5 Local official/interested party overseeing project? (Technical/Admin)
  _____
- 1.6 Recipient's Manual – local government has their copy? yes no

2.0 Financial Management / Audits
- 2.1 Setting-up checking account– only CDBG funds, non-interest bearing, $5,000 limit on- hand.
- 2.2 Force account records, if applicable
- 2.3 Time sheet requirements, if applicable
- 2.4 Audits – make sure DCA gets a copy
- 2.5 Budget
- 2.6 Limits on CDBG $'s for Admin and Arch/Eng fees
- 2.7 Local Match and Leverage (amount and use)
  - 2.7.1 Leverage points awarded and method of monitoring for match and leverage spent by local government
- 2.8 Financial Management and Accounting System:
  - Local Bookkeeper_____
  - Drawdowns – who approves?_____
  - Invoices – who approves?_____
  - Bank reconciliation – who performs?_____
  - Checks – who signs?_____
- 2.9 Conflict of Interest Yes No Cleared

3.0 Administration
- 3.1 Procurement Standards/contracts – method of selecting/advertising/RFP/RFQ If completed, fill out Construction Contractor Procurement Review form
- 3.2 Georgia Procurement Registry – any contract over $100,000 must be posted
- 3.3 Administrator Contracts – basic requirements (See Chapter 1, Section 18 of Recipients' Manual). If completed, fill out Admin/Prof. Procurement Review form
- 3.4 Record keeping & filing system – minimum records to be kept on-site
  Where will others be kept?_____
- 3.5 Amendments
- 3.6 Quarterly Reports (Electronic submission process) – use comments sections on form to keep us updated
- 3.7 Labor Standard provisions/"Common Rule" contract provisions/HB 87 Provisions
- 3.8 Clearance of General Contractor
- 3.9 Notice of Contract Action. There is a 10% draw limit until form is submitted
- 3.10 Weekly payrolls – signed by an officer / anyone on job must be on payroll / date stamped when received / notify rep. of any difficulty in collecting them
- 3.11 Pre-Construction Conference – who should attend, notify rep. of date

3.12 Timetables / Award Expiration Date – Extension Request Process
3.13 Send in updated Disclosure Reports when applicable
3.14 Citizens Participation
3.15 Post-award hearing within 60 days of award – document with tear sheet, agenda and minutes
3.16 Section 504 accessibility requirements for hearing locations
3.16.1 Review DCA Meeting Checklist
3.17 Final Public Hearing after Final Quarterly Report completed – document with tear sheet, agenda and minutes

4.0 Environmental – Historic / Floodplains / Wetlands
4.1 Preparation of Assessment & Environmental Review Record
4.2 Exempt and excluded activities – FOE in ERR for admin. & design
4.3 Environmental Special Conditions, if applicable. Clear prior to completion of assessment
4.4 Army Corps permit for wetland disturbing activities
4.5 Is any part of project in a floodplain? yes no
4.6 Cannot complete E.R. until historic preservation compliance is met (except for housing only grants). Must not begin any aspect of entire project except for exempt activities
4.7 Programmatic Agreement for housing rehab of historic properties
4.8 Publications – Concurrent Notice / Floodplain Notices / tear sheets
4.9 Comment periods and Request for Release of Funds. Funds are released in Environmental Clearance letter from DCA. Keep in ERR
4.10 Coordination with other involved Federal or State Agencies. Document in ERR.

5.0 Beneficiaries / Fair Housing / Civil Rights / Section 3
5.1 Requirement to Affirmatively Further Fair Housing
5.1.1 Review responsibilities and potential activities
5.1.2 LAP Requirements
5.2 Civil rights data collection
5.3 Section 3 requirements Contractors and Sub-contractors
5.4 HB2 Certification of Lawful Presence for Direct Beneficiaries (Neighborhood revitalization projects only)
5.5 Examine low/mod income benefit surveys. Are they consistent with application? yes no
5.6 Actual Accomplishments – how will benefit be measured? Review numbers on DCA-2 and DCA-6 forms

COMMENTS AND FOLLOW-UP

Item # Comments

_____

_____

_____

Additional "Start-up Site Visit(s)" required? yes no

Acquisition applicable? yes no If yes, what type do you anticipate?

Signature of Program Representative: _____

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HUD CDBG Conflict of Interest Regulations

§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 decisionmaking 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 as 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 decisionmaking 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.

ELECTRONIC CODE OF FEDERAL REGULATIONS

e-CFR data is current as of September 6, 2019

Title 2: Grants and Agreements
PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Subpart F—Audit Requirements

Contents

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General

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§200.500 Purpose.

This part sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards.

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Audits

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§200.501 Audit requirements.

(a) *Audit required.* A non-Federal entity that expends $750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part.

(b) *Single audit.* A non-Federal entity that expends $750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single audit conducted in accordance with §200.514 Scope of audit except when it elects to have a program-specific audit conducted in accordance with paragraph (c) of this section.

(c) *Program-specific audit election.* When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted in accordance with §200.507 Program-specific audits. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.

(d) *Exemption when Federal awards expended are less than $750,000.* A non-Federal entity that expends less than $750,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in §200.503 Relation to other audit requirements, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).

(e) *Federally Funded Research and Development Centers (FFRDC).* Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.

(f) *Subrecipients and Contractors.* An auditee may simultaneously be a recipient, a subrecipient, and a contractor. Federal awards expended as a recipient or a subrecipient are subject to audit under this part. The payments received for goods or services provided as a contractor are not Federal awards. Section §200.330 Subrecipient and contractor determinations sets forth the considerations in determining whether payments constitute a Federal award or a payment for goods or services provided as a contractor.

(g) *Compliance responsibility for contractors.* In most cases, the auditee's compliance responsibility for contractors is only to ensure that the procurement, receipt, and payment for goods and services comply with Federal statutes, regulations, and the terms and conditions of Federal awards. Federal award compliance requirements normally do not pass through to contractors. However, the auditee is responsible for ensuring compliance for procurement transactions which are structured such that the contractor is responsible for program compliance or the contractor's records must be reviewed to determine program compliance. Also, when these procurement transactions relate to a major program, the scope of the audit must include determining whether these transactions are in compliance with Federal statutes, regulations, and the terms and conditions of Federal awards.

(h) *For-profit subrecipient.* Since this part does not apply to for-profit subrecipients, the pass-through entity is responsible for establishing requirements, as necessary, to ensure compliance by for-profit subrecipients. The agreement with the for-profit

subrecipient must describe applicable compliance requirements and the for-profit subrecipient's compliance responsibility. Methods to ensure compliance for Federal awards made to for-profit subrecipients may include pre-award audits, monitoring during the agreement, and post-award audits. See also §200.331 Requirements for pass-through entities.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014]

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§200.502 Basis for determining Federal awards expended.

(a) *Determining Federal awards expended.* The determination of when a Federal award is expended must be based on when the activity related to the Federal award occurs. Generally, the activity pertains to events that require the non-Federal entity to comply with Federal statutes, regulations, and the terms and conditions of Federal awards, such as: expenditure/expense transactions associated with awards including grants, cost-reimbursement contracts under the FAR, compacts with Indian Tribes, cooperative agreements, and direct appropriations; the disbursement of funds to subrecipients; the use of loan proceeds under loan and loan guarantee programs; the receipt of property; the receipt of surplus property; the receipt or use of program income; the distribution or use of food commodities; the disbursement of amounts entitling the non-Federal entity to an interest subsidy; and the period when insurance is in force.

(b) *Loan and loan guarantees (loans).* Since the Federal Government is at risk for loans until the debt is repaid, the following guidelines must be used to calculate the value of Federal awards expended under loan programs, except as noted in paragraphs (c) and (d) of this section:

(1) Value of new loans made or received during the audit period; plus

(2) Beginning of the audit period balance of loans from previous years for which the Federal Government imposes continuing compliance requirements; plus

(3) Any interest subsidy, cash, or administrative cost allowance received.

(c) *Loan and loan guarantees (loans) at IHEs.* When loans are made to students of an IHE but the IHE does not make the loans, then only the value of loans made during the audit period must be considered Federal awards expended in that audit period. The balance of loans for previous audit periods is not included as Federal awards expended because the lender accounts for the prior balances.

(d) *Prior loan and loan guarantees (loans).* Loans, the proceeds of which were received and expended in prior years, are not considered Federal awards expended under this part when the Federal statutes, regulations, and the terms and conditions of Federal awards pertaining to such loans impose no continuing compliance requirements other than to repay the loans.

(e) *Endowment funds.* The cumulative balance of Federal awards for endowment funds that are federally restricted are considered Federal awards expended in each audit period in which the funds are still restricted.

(f) *Free rent.* Free rent received by itself is not considered a Federal award expended under this part. However, free rent received as part of a Federal award to carry out a Federal program must be included in determining Federal awards expended and subject to audit under this part.

(g) *Valuing non-cash assistance.* Federal non-cash assistance, such as free rent, food commodities, donated property, or donated surplus property, must be valued at fair market value at the time of receipt or the assessed value provided by the Federal agency.

(h) *Medicare.* Medicare payments to a non-Federal entity for providing patient care services to Medicare-eligible individuals are not considered Federal awards expended under this part.

(i) *Medicaid.* Medicaid payments to a subrecipient for providing patient care services to Medicaid-eligible individuals are not considered Federal awards expended under this part unless a state requires the funds to be treated as Federal awards expended because reimbursement is on a cost-reimbursement basis.

(j) *Certain loans provided by the National Credit Union Administration.* For purposes of this part, loans made from the National Credit Union Share Insurance Fund and the Central Liquidity Facility that are funded by contributions from insured non-Federal entities are not considered Federal awards expended.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014]

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§200.503 Relation to other audit requirements.

(a) An audit conducted in accordance with this part must be in lieu of any financial audit of Federal awards which a non-Federal entity is required to undergo under any other Federal statute or regulation. To the extent that such audit provides a Federal agency with the information it requires to carry out its responsibilities under Federal statute or regulation, a Federal agency must rely upon and use that information.

(b) Notwithstanding subsection (a), a Federal agency, Inspectors General, or GAO may conduct or arrange for additional audits which are necessary to carry out its responsibilities under Federal statute or regulation. The provisions of this part do not authorize any non-Federal entity to constrain, in any manner, such Federal agency from carrying out or arranging for such additional audits, except that the Federal agency must plan such audits to not be duplicative of other audits of Federal awards. Prior to commencing such an audit, the Federal agency or pass-through entity must review the FAC for recent audits submitted by the non-Federal entity, and to the extent such audits meet a Federal agency or pass-through entity's needs, the Federal agency or pass-through entity must rely upon and use such audits. Any additional audits must be planned and performed in such a way as to build upon work performed, including the audit documentation, sampling, and testing already performed, by other auditors.

(c) The provisions of this part do not limit the authority of Federal agencies to conduct, or arrange for the conduct of, audits and evaluations of Federal awards, nor limit the authority of any Federal agency Inspector General or other Federal official. For example, requirements that may be applicable under the FAR or CAS and the terms and conditions of a cost-reimbursement contract may include additional applicable audits to be conducted or arranged for by Federal agencies.

(d) Federal agency to pay for additional audits. A Federal agency that conducts or arranges for additional audits must, consistent with other applicable Federal statutes and regulations, arrange for funding the full cost of such additional audits.

(e) Request for a program to be audited as a major program. A Federal awarding agency may request that an auditee have a particular Federal program audited as a major program in lieu of the Federal awarding agency conducting or arranging for the additional audits. To allow for planning, such requests should be made at least 180 calendar days prior to the end of the fiscal year to be audited. The auditee, after consultation with its auditor, should promptly respond to such a request by informing the Federal awarding agency whether the program would otherwise be audited as a major program using the risk-based audit approach described in §200.518 Major program determination and, if not, the estimated incremental cost. The Federal awarding agency must then promptly confirm to the auditee whether it wants the program audited as a major program. If the program is to be audited as a major program based upon this Federal awarding agency request, and the Federal awarding agency agrees to pay the full incremental costs, then the auditee must have the program audited as a major program. A pass-through entity may use the provisions of this paragraph for a subrecipient.

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§200.504 Frequency of audits.

Except for the provisions for biennial audits provided in paragraphs (a) and (b) of this section, audits required by this part must be performed annually. Any biennial audit must cover both years within the biennial period.

(a) A state, local government, or Indian tribe that is required by constitution or statute, in effect on January 1, 1987, to undergo its audits less frequently than annually, is permitted to undergo its audits pursuant to this part biennially. This requirement must still be in effect for the biennial period.

(b) Any nonprofit organization that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, is permitted to undergo its audits pursuant to this part biennially.

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§200.505 Sanctions.

In cases of continued inability or unwillingness to have an audit conducted in accordance with this part, Federal agencies and pass-through entities must take appropriate action as provided in §200.338 Remedies for noncompliance.

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§200.506 Audit costs.

See §200.425 Audit services.

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§200.507 Program-specific audits.

(a) *Program-specific audit guide available.* In many cases, a program-specific audit guide will be available to provide specific guidance to the auditor with respect to internal controls, compliance requirements, suggested audit procedures, and audit reporting requirements. A listing of current program-specific audit guides can be found in the compliance supplement beginning with the 2014 supplement including Federal awarding agency contact information and a Web site where a copy of the guide can be obtained. When a current program-specific audit guide is available, the auditor must follow GAGAS and the guide when performing a program-specific audit.

(b) *Program-specific audit guide not available.* (1) When a current program-specific audit guide is not available, the auditee and auditor must have basically the same responsibilities for the Federal program as they would have for an audit of a major program in a single audit.

(2) The auditee must prepare the financial statement(s) for the Federal program that includes, at a minimum, a schedule of expenditures of Federal awards for the program and notes that describe the significant accounting policies used in preparing the schedule, a summary schedule of prior audit findings consistent with the requirements of §200.511 Audit findings follow-up, paragraph (b), and a corrective action plan consistent with the requirements of §200.511 Audit findings follow-up, paragraph (c).

(3) The auditor must:

(i) Perform an audit of the financial statement(s) for the Federal program in accordance with GAGAS;

(ii) Obtain an understanding of internal controls and perform tests of internal controls over the Federal program consistent with the requirements of §200.514 Scope of audit, paragraph (c) for a major program;

(iii) Perform procedures to determine whether the auditee has complied with Federal statutes, regulations, and the terms and conditions of Federal awards that could have a direct and material effect on the Federal program consistent with the requirements of §200.514 Scope of audit, paragraph (d) for a major program;

(iv) Follow up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with the requirements of §200.511 Audit findings follow-up, and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding; and

(v) Report any audit findings consistent with the requirements of §200.516 Audit findings.

(4) The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) must state that the audit was conducted in accordance with this part and include the following:

(i) An opinion (or disclaimer of opinion) as to whether the financial statement(s) of the Federal program is presented fairly in all material respects in accordance with the stated accounting policies;

(ii) A report on internal control related to the Federal program, which must describe the scope of testing of internal control and the results of the tests;

(iii) A report on compliance which includes an opinion (or disclaimer of opinion) as to whether the auditee complied with laws, regulations, and the terms and conditions of Federal awards which could have a direct and material effect on the Federal program; and

(iv) A schedule of findings and questioned costs for the Federal program that includes a summary of the auditor's results relative to the Federal program in a format consistent with §200.515 Audit reporting, paragraph (d)(1) and findings and questioned costs consistent with the requirements of §200.515 Audit reporting, paragraph (d)(3).

(c) *Report submission for program-specific audits.* (1) The audit must be completed and the reporting required by paragraph (c)(2) or (c)(3) of this section submitted within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a different period is specified in a program-specific audit guide. Unless restricted by Federal law or regulation, the auditee must make report copies available for public inspection. Auditees and auditors must ensure that their respective parts of the reporting package do not include protected personally identifiable information.

(2) When a program-specific audit guide is available, the auditee must electronically submit to the FAC the data collection form prepared in accordance with §200.512 Report submission, paragraph (b), as applicable to a program-specific audit, and the reporting required by the program-specific audit guide.

(3) When a program-specific audit guide is not available, the reporting package for a program-specific audit must consist of the financial statement(s) of the Federal program, a summary schedule of prior audit findings, and a corrective action plan as

described in paragraph (b)(2) of this section, and the auditor's report(s) described in paragraph (b)(4) of this section. The data collection form prepared in accordance with §200.512 Report submission, paragraph (b), as applicable to a program-specific audit, and one copy of this reporting package must be electronically submitted to the FAC.

(d) *Other sections of this part may apply.* Program-specific audits are subject to:

(1) 200.500 Purpose through 200.503 Relation to other audit requirements, paragraph (d);

(2) 200.504 Frequency of audits through 200.506 Audit costs;

(3) 200.508 Auditee responsibilities through 200.509 Auditor selection;

(4) 200.511 Audit findings follow-up;

(5) 200.512 Report submission, paragraphs (e) through (h);

(6) 200.513 Responsibilities;

(7) 200.516 Audit findings through 200.517 Audit documentation;

(8) 200.521 Management decision, and

(9) Other referenced provisions of this part unless contrary to the provisions of this section, a program-specific audit guide, or program statutes and regulations.

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Auditees

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§200.508 Auditee responsibilities.

The auditee must:

(a) Procure or otherwise arrange for the audit required by this part in accordance with §200.509 Auditor selection, and ensure it is properly performed and submitted when due in accordance with §200.512 Report submission.

(b) Prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with §200.510 Financial statements.

(c) Promptly follow up and take corrective action on audit findings, including preparation of a summary schedule of prior audit findings and a corrective action plan in accordance with §200.511 Audit findings follow-up, paragraph (b) and §200.511 Audit findings follow-up, paragraph (c), respectively.

(d) Provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by this part.

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§200.509 Auditor selection.

(a) *Auditor procurement.* In procuring audit services, the auditee must follow the procurement standards prescribed by the Procurement Standards in §§200.317 Procurement by states through 20.326 Contract provisions of Subpart D- Post Federal Award Requirements of this part or the FAR (48 CFR part 42), as applicable. When procuring audit services, the objective is to obtain high-quality audits. In requesting proposals for audit services, the objectives and scope of the audit must be made clear and the non-Federal entity must request a copy of the audit organization's peer review report which the auditor is required to provide under GAGAS. Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of peer and external quality control reviews, and price. Whenever possible, the auditee must make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, in procuring audit services as stated in §200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms, or the FAR (48 CFR part 42), as applicable.

(b) *Restriction on auditor preparing indirect cost proposals.* An auditor who prepares the indirect cost proposal or cost allocation plan may not also be selected to perform the audit required by this part when the indirect costs recovered by the auditee during the prior year exceeded $1 million. This restriction applies to the base year used in the preparation of the indirect cost proposal or cost allocation plan and any subsequent years in which the resulting indirect cost agreement or cost allocation plan is used to recover costs.

(c) *Use of Federal auditors.* Federal auditors may perform all or part of the work required under this part if they comply fully with the requirements of this part.

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§200.510 Financial statements.

(a) *Financial statements.* The auditee must prepare financial statements that reflect its financial position, results of operations or changes in net assets, and, where appropriate, cash flows for the fiscal year audited. The financial statements must be for the same organizational unit and fiscal year that is chosen to meet the requirements of this part. However, non-Federal entity-wide financial statements may also include departments, agencies, and other organizational units that have separate audits in accordance with §200.514 Scope of audit, paragraph (a) and prepare separate financial statements.

(b) *Schedule of expenditures of Federal awards.* The auditee must also prepare a schedule of expenditures of Federal awards for the period covered by the auditee's financial statements which must include the total Federal awards expended as determined in accordance with §200.502 Basis for determining Federal awards expended. While not required, the auditee may choose to provide information requested by Federal awarding agencies and pass-through entities to make the schedule easier to use. For example, when a Federal program has multiple Federal award years, the auditee may list the amount of Federal awards expended for each Federal award year separately. At a minimum, the schedule must:

(1) List individual Federal programs by Federal agency. For a cluster of programs, provide the cluster name, list individual Federal programs within the cluster of programs, and provide the applicable Federal agency name. For R&D, total Federal awards expended must be shown either by individual Federal award or by Federal agency and major subdivision within the Federal agency. For example, the National Institutes of Health is a major subdivision in the Department of Health and Human Services.

(2) For Federal awards received as a subrecipient, the name of the pass-through entity and identifying number assigned by the pass-through entity must be included.

(3) Provide total Federal awards expended for each individual Federal program and the CFDA number or other identifying number when the CFDA information is not available. For a cluster of programs also provide the total for the cluster.

(4) Include the total amount provided to subrecipients from each Federal program.

(5) For loan or loan guarantee programs described in §200.502 Basis for determining Federal awards expended, paragraph (b), identify in the notes to the schedule the balances outstanding at the end of the audit period. This is in addition to including the total Federal awards expended for loan or loan guarantee programs in the schedule.

(6) Include notes that describe that significant accounting policies used in preparing the schedule, and note whether or not the auditee elected to use the 10% de minimis cost rate as covered in §200.414 Indirect (F&A) costs.

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§200.511 Audit findings follow-up.

(a) *General.* The auditee is responsible for follow-up and corrective action on all audit findings. As part of this responsibility, the auditee must prepare a summary schedule of prior audit findings. The auditee must also prepare a corrective action plan for current year audit findings. The summary schedule of prior audit findings and the corrective action plan must include the reference numbers the auditor assigns to audit findings under §200.516 Audit findings, paragraph (c). Since the summary schedule may include audit findings from multiple years, it must include the fiscal year in which the finding initially occurred. The corrective action plan and summary schedule of prior audit findings must include findings relating to the financial statements which are required to be reported in accordance with GAGAS.

(b) *Summary schedule of prior audit findings.* The summary schedule of prior audit findings must report the status of all audit findings included in the prior audit's schedule of findings and questioned costs. The summary schedule must also include audit findings reported in the prior audit's summary schedule of prior audit findings except audit findings listed as corrected in

accordance with paragraph (b)(1) of this section, or no longer valid or not warranting further action in accordance with paragraph (b)(3) of this section.

(1) When audit findings were fully corrected, the summary schedule need only list the audit findings and state that corrective action was taken.

(2) When audit findings were not corrected or were only partially corrected, the summary schedule must describe the reasons for the finding's recurrence and planned corrective action, and any partial corrective action taken. When corrective action taken is significantly different from corrective action previously reported in a corrective action plan or in the Federal agency's or pass-through entity's management decision, the summary schedule must provide an explanation.

(3) When the auditee believes the audit findings are no longer valid or do not warrant further action, the reasons for this position must be described in the summary schedule. A valid reason for considering an audit finding as not warranting further action is that all of the following have occurred:

(i) Two years have passed since the audit report in which the finding occurred was submitted to the FAC;

(ii) The Federal agency or pass-through entity is not currently following up with the auditee on the audit finding; and

(iii) A management decision was not issued.

(c) *Corrective action plan.* At the completion of the audit, the auditee must prepare, in a document separate from the auditor's findings described in §200.516 Audit findings, a corrective action plan to address each audit finding included in the current year auditor's reports. The corrective action plan must provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date. If the auditee does not agree with the audit findings or believes corrective action is not required, then the corrective action plan must include an explanation and specific reasons.

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§200.512 Report submission.

(a) *General.* (1) The audit must be completed and the data collection form described in paragraph (b) of this section and reporting package described in paragraph (c) of this section must be submitted within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period. If the due date falls on a Saturday, Sunday, or Federal holiday, the reporting package is due the next business day.

(2) Unless restricted by Federal statutes or regulations, the auditee must make copies available for public inspection. Auditees and auditors must ensure that their respective parts of the reporting package do not include protected personally identifiable information.

(b) *Data Collection.* The FAC is the repository of record for Subpart F—Audit Requirements of this part reporting packages and the data collection form. All Federal agencies, pass-through entities and others interested in a reporting package and data collection form must obtain it by accessing the FAC.

(1) The auditee must submit required data elements described in Appendix X to Part 200—Data Collection Form (Form SF-SAC), which state whether the audit was completed in accordance with this part and provides information about the auditee, its Federal programs, and the results of the audit. The data must include information available from the audit required by this part that is necessary for Federal agencies to use the audit to ensure integrity for Federal programs. The data elements and format must be approved by OMB, available from the FAC, and include collections of information from the reporting package described in paragraph (c) of this section. A senior level representative of the auditee (e.g., state controller, director of finance, chief executive officer, or chief financial officer) must sign a statement to be included as part of the data collection that says that the auditee complied with the requirements of this part, the data were prepared in accordance with this part (and the instructions accompanying the form), the reporting package does not include protected personally identifiable information, the information included in its entirety is accurate and complete, and that the FAC is authorized to make the reporting package and the form publicly available on a Web site.

(2) *Exception for Indian Tribes and Tribal Organizations.* An auditee that is an Indian tribe or a tribal organization (as defined in the Indian Self-Determination, Education and Assistance Act (ISDEAA), 25 U.S.C. 450b(l)) may opt not to authorize the FAC to make the reporting package publicly available on a Web site, by excluding the authorization for the FAC publication in the statement described in paragraph (b)(1) of this section. If this option is exercised, the auditee becomes responsible for submitting the reporting package directly to any pass-through entities through which it has received a Federal award and to pass-through entities for which the summary schedule of prior audit findings reported the status of any findings related to Federal awards that the pass-through entity provided. Unless restricted by Federal statute or regulation, if the auditee opts not to authorize publication, it must make copies of the reporting package available for public inspection.

(3) Using the information included in the reporting package described in paragraph (c) of this section, the auditor must complete the applicable data elements of the data collection form. The auditor must sign a statement to be included as part of the data collection form that indicates, at a minimum, the source of the information included in the form, the auditor's responsibility for the information, that the form is not a substitute for the reporting package described in paragraph (c) of this section, and that the content of the form is limited to the collection of information prescribed by OMB.

(c) *Reporting package.* The reporting package must include the:

(1) Financial statements and schedule of expenditures of Federal awards discussed in §200.510 Financial statements, paragraphs (a) and (b), respectively;

(2) Summary schedule of prior audit findings discussed in §200.511 Audit findings follow-up, paragraph (b);

(3) Auditor's report(s) discussed in §200.515 Audit reporting; and

(4) Corrective action plan discussed in §200.511 Audit findings follow-up, paragraph (c).

(d) *Submission to FAC.* The auditee must electronically submit to the FAC the data collection form described in paragraph (b) of this section and the reporting package described in paragraph (c) of this section.

(e) *Requests for management letters issued by the auditor.* In response to requests by a Federal agency or pass-through entity, auditees must submit a copy of any management letters issued by the auditor.

(f) *Report retention requirements.* Auditees must keep one copy of the data collection form described in paragraph (b) of this section and one copy of the reporting package described in paragraph (c) of this section on file for three years from the date of submission to the FAC.

(g) *FAC responsibilities.* The FAC must make available the reporting packages received in accordance with paragraph (c) of this section and §200.507 Program-specific audits, paragraph (c) to the public, except for Indian tribes exercising the option in (b)(2) of this section, and maintain a data base of completed audits, provide appropriate information to Federal agencies, and follow up with known auditees that have not submitted the required data collection forms and reporting packages.

(h) *Electronic filing.* Nothing in this part must preclude electronic submissions to the FAC in such manner as may be approved by OMB.

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Federal Agencies

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§200.513 Responsibilities.

(a)(1) Cognizant agency for audit responsibilities. A non-Federal entity expending more than $50 million a year in Federal awards must have a cognizant agency for audit. The designated cognizant agency for audit must be the Federal awarding agency that provides the predominant amount of direct funding to a non-Federal entity unless OMB designates a specific cognizant agency for audit.

(2) To provide for continuity of cognizance, the determination of the predominant amount of direct funding must be based upon direct Federal awards expended in the non-Federal entity's fiscal years ending in 2009, 2014, 2019 and every fifth year thereafter. For example, audit cognizance for periods ending in 2011 through 2015 will be determined based on Federal awards expended in 2009.

(3) Notwithstanding the manner in which audit cognizance is determined, a Federal awarding agency with cognizance for an auditee may reassign cognizance to another Federal awarding agency that provides substantial funding and agrees to be the cognizant agency for audit. Within 30 calendar days after any reassignment, both the old and the new cognizant agency for audit must provide notice of the change to the FAC, the auditee, and, if known, the auditor. The cognizant agency for audit must:

(i) Provide technical audit advice and liaison assistance to auditees and auditors.

(ii) Obtain or conduct quality control reviews on selected audits made by non-Federal auditors, and provide the results to other interested organizations. Cooperate and provide support to the Federal agency designated by OMB to lead a governmentwide project to determine the quality of single audits by providing a statistically reliable estimate of the extent that

single audits conform to applicable requirements, standards, and procedures; and to make recommendations to address noted audit quality issues, including recommendations for any changes to applicable requirements, standards and procedures indicated by the results of the project. This governmentwide audit quality project must be performed once every 6 years beginning in 2018 or at such other interval as determined by OMB, and the results must be public.

(iii) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any direct reporting by the auditee or its auditor required by GAGAS or statutes and regulations.

(iv) Advise the community of independent auditors of any noteworthy or important factual trends related to the quality of audits stemming from quality control reviews. Significant problems or quality issues consistently identified through quality control reviews of audit reports must be referred to appropriate state licensing agencies and professional bodies.

(v) Advise the auditor, Federal awarding agencies, and, where appropriate, the auditee of any deficiencies found in the audits when the deficiencies require corrective action by the auditor. When advised of deficiencies, the auditee must work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency for audit must notify the auditor, the auditee, and applicable Federal awarding agencies and pass-through entities of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance by auditors must be referred to appropriate state licensing agencies and professional bodies for disciplinary action.

(vi) Coordinate, to the extent practical, audits or reviews made by or for Federal agencies that are in addition to the audits made pursuant to this part, so that the additional audits or reviews build upon rather than duplicate audits performed in accordance with this part.

(vii) Coordinate a management decision for cross-cutting audit findings (as defined in §200.30 Cross-cutting audit finding) that affect the Federal programs of more than one agency when requested by any Federal awarding agency whose awards are included in the audit finding of the auditee.

(viii) Coordinate the audit work and reporting responsibilities among auditors to achieve the most cost-effective audit.

(ix) Provide advice to auditees as to how to handle changes in fiscal years.

(b) Oversight agency for audit responsibilities. An auditee who does not have a designated cognizant agency for audit will be under the general oversight of the Federal agency determined in accordance with §200.73 Oversight agency for audit. A Federal agency with oversight for an auditee may reassign oversight to another Federal agency that agrees to be the oversight agency for audit. Within 30 calendar days after any reassignment, both the old and the new oversight agency for audit must provide notice of the change to the FAC, the auditee, and, if known, the auditor. The oversight agency for audit:

(1) Must provide technical advice to auditees and auditors as requested.

(2) May assume all or some of the responsibilities normally performed by a cognizant agency for audit.

(c) Federal awarding agency responsibilities. The Federal awarding agency must perform the following for the Federal awards it makes (See also the requirements of §200.210 Information contained in a Federal award):

(1) Ensure that audits are completed and reports are received in a timely manner and in accordance with the requirements of this part.

(2) Provide technical advice and counsel to auditees and auditors as requested.

(3) Follow-up on audit findings to ensure that the recipient takes appropriate and timely corrective action. As part of audit follow-up, the Federal awarding agency must:

(i) Issue a management decision as prescribed in §200.521 Management decision;

(ii) Monitor the recipient taking appropriate and timely corrective action;

(iii) Use cooperative audit resolution mechanisms (see §200.25 Cooperative audit resolution) to improve Federal program outcomes through better audit resolution, follow-up, and corrective action; and

(iv) Develop a baseline, metrics, and targets to track, over time, the effectiveness of the Federal agency's process to follow-up on audit findings and on the effectiveness of Single Audits in improving non-Federal entity accountability and their use by Federal awarding agencies in making award decisions.

(4) Provide OMB annual updates to the compliance supplement and work with OMB to ensure that the compliance supplement focuses the auditor to test the compliance requirements most likely to cause improper payments, fraud, waste, abuse or generate audit finding for which the Federal awarding agency will take sanctions.

(5) Provide OMB with the name of a single audit accountable official from among the senior policy officials of the Federal awarding agency who must be:

(i) Responsible for ensuring that the agency fulfills all the requirements of paragraph (c) of this section and effectively uses the single audit process to reduce improper payments and improve Federal program outcomes.

(ii) Held accountable to improve the effectiveness of the single audit process based upon metrics as described in paragraph (c)(3)(iv) of this section.

(iii) Responsible for designating the Federal agency's key management single audit liaison.

(6) Provide OMB with the name of a key management single audit liaison who must:

(i) Serve as the Federal awarding agency's management point of contact for the single audit process both within and outside the Federal Government.

(ii) Promote interagency coordination, consistency, and sharing in areas such as coordinating audit follow-up; identifying higher-risk non-Federal entities; providing input on single audit and follow-up policy; enhancing the utility of the FAC; and studying ways to use single audit results to improve Federal award accountability and best practices.

(iii) Oversee training for the Federal awarding agency's program management personnel related to the single audit process.

(iv) Promote the Federal awarding agency's use of cooperative audit resolution mechanisms.

(v) Coordinate the Federal awarding agency's activities to ensure appropriate and timely follow-up and corrective action on audit findings.

(vi) Organize the Federal cognizant agency for audit's follow-up on cross-cutting audit findings that affect the Federal programs of more than one Federal awarding agency.

(vii) Ensure the Federal awarding agency provides annual updates of the compliance supplement to OMB.

(viii) Support the Federal awarding agency's single audit accountable official's mission.

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Auditors

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§200.514 Scope of audit.

(a) *General.* The audit must be conducted in accordance with GAGAS. The audit must cover the entire operations of the auditee, or, at the option of the auditee, such audit must include a series of audits that cover departments, agencies, and other organizational units that expended or otherwise administered Federal awards during such audit period, provided that each such audit must encompass the financial statements and schedule of expenditures of Federal awards for each such department, agency, and other organizational unit, which must be considered to be a non-Federal entity. The financial statements and schedule of expenditures of Federal awards must be for the same audit period.

(b) *Financial statements.* The auditor must determine whether the financial statements of the auditee are presented fairly in all material respects in accordance with generally accepted accounting principles. The auditor must also determine whether the schedule of expenditures of Federal awards is stated fairly in all material respects in relation to the auditee's financial statements as a whole.

(c) *Internal control.* (1) The compliance supplement provides guidance on internal controls over Federal programs based upon the guidance in Standards for Internal Control in the Federal Government issued by the Comptroller General of the United States and the Internal Control—Integrated Framework, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

(2) In addition to the requirements of GAGAS, the auditor must perform procedures to obtain an understanding of internal control over Federal programs sufficient to plan the audit to support a low assessed level of control risk of noncompliance for major programs.

(3) Except as provided in paragraph (c)(4) of this section, the auditor must:

(i) Plan the testing of internal control over compliance for major programs to support a low assessed level of control risk for the assertions relevant to the compliance requirements for each major program; and

(ii) Perform testing of internal control as planned in paragraph (c)(3)(i) of this section.

(4) When internal control over some or all of the compliance requirements for a major program are likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing described in paragraph (c)(3) of this section are not required for those compliance requirements. However, the auditor must report a significant deficiency or material weakness in accordance with §200.516 Audit findings, assess the related control risk at the maximum, and consider whether additional compliance tests are required because of ineffective internal control.

(d) *Compliance.* (1) In addition to the requirements of GAGAS, the auditor must determine whether the auditee has complied with Federal statutes, regulations, and the terms and conditions of Federal awards that may have a direct and material effect on each of its major programs.

(2) The principal compliance requirements applicable to most Federal programs and the compliance requirements of the largest Federal programs are included in the compliance supplement.

(3) For the compliance requirements related to Federal programs contained in the compliance supplement, an audit of these compliance requirements will meet the requirements of this part. Where there have been changes to the compliance requirements and the changes are not reflected in the compliance supplement, the auditor must determine the current compliance requirements and modify the audit procedures accordingly. For those Federal programs not covered in the compliance supplement, the auditor must follow the compliance supplement's guidance for programs not included in the supplement.

(4) The compliance testing must include tests of transactions and such other auditing procedures necessary to provide the auditor sufficient appropriate audit evidence to support an opinion on compliance.

(e) *Audit follow-up.* The auditor must follow-up on prior audit findings, perform procedures to assess the reasonableness of the summary schedule of prior audit findings prepared by the auditee in accordance with §200.511 Audit findings follow-up paragraph (b), and report, as a current year audit finding, when the auditor concludes that the summary schedule of prior audit findings materially misrepresents the status of any prior audit finding. The auditor must perform audit follow-up procedures regardless of whether a prior audit finding relates to a major program in the current year.

(f) *Data Collection Form.* As required in §200.512 Report submission paragraph (b)(3), the auditor must complete and sign specified sections of the data collection form.

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§200.515 Audit reporting.

The auditor's report(s) may be in the form of either combined or separate reports and may be organized differently from the manner presented in this section. The auditor's report(s) must state that the audit was conducted in accordance with this part and include the following:

(a) An opinion (or disclaimer of opinion) as to whether the financial statements are presented fairly in all material respects in accordance with generally accepted accounting principles and an opinion (or disclaimer of opinion) as to whether the schedule of expenditures of Federal awards is fairly stated in all material respects in relation to the financial statements as a whole.

(b) A report on internal control over financial reporting and compliance with provisions of laws, regulations, contracts, and award agreements, noncompliance with which could have a material effect on the financial statements. This report must describe the scope of testing of internal control and compliance and the results of the tests, and, where applicable, it will refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(c) A report on compliance for each major program and a report on internal control over compliance. This report must describe the scope of testing of internal control over compliance, include an opinion or disclaimer of opinion as to whether the auditee complied with Federal statutes, regulations, and the terms and conditions of Federal awards which could have a direct and material effect on each major program and refer to the separate schedule of findings and questioned costs described in paragraph (d) of this section.

(d) A schedule of findings and questioned costs which must include the following three components:

(1) A summary of the auditor's results, which must include:

(i) The type of report the auditor issued on whether the financial statements audited were prepared in accordance with GAAP (i.e., unmodified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(ii) Where applicable, a statement about whether significant deficiencies or material weaknesses in internal control were disclosed by the audit of the financial statements;

(iii) A statement as to whether the audit disclosed any noncompliance that is material to the financial statements of the auditee;

(iv) Where applicable, a statement about whether significant deficiencies or material weaknesses in internal control over major programs were disclosed by the audit;

(v) The type of report the auditor issued on compliance for major programs (i.e., unmodified opinion, qualified opinion, adverse opinion, or disclaimer of opinion);

(vi) A statement as to whether the audit disclosed any audit findings that the auditor is required to report under §200.516 Audit findings paragraph (a);

(vii) An identification of major programs by listing each individual major program; however in the case of a cluster of programs only the cluster name as shown on the Schedule of Expenditures of Federal Awards is required;

(viii) The dollar threshold used to distinguish between Type A and Type B programs, as described in §200.518 Major program determination paragraph (b)(1), or (b)(3) when a recalculation of the Type A threshold is required for large loan or loan guarantees; and

(ix) A statement as to whether the auditee qualified as a low-risk auditee under §200.520 Criteria for a low-risk auditee.

(2) Findings relating to the financial statements which are required to be reported in accordance with GAGAS.

(3) Findings and questioned costs for Federal awards which must include audit findings as defined in §200.516 Audit findings, paragraph (a).

(i) Audit findings (e.g., internal control findings, compliance findings, questioned costs, or fraud) that relate to the same issue must be presented as a single audit finding. Where practical, audit findings should be organized by Federal agency or pass-through entity.

(ii) Audit findings that relate to both the financial statements and Federal awards, as reported under paragraphs (d)(2) and (d)(3) of this section, respectively, must be reported in both sections of the schedule. However, the reporting in one section of the schedule may be in summary form with a reference to a detailed reporting in the other section of the schedule.

(e) Nothing in this part precludes combining of the audit reporting required by this section with the reporting required by §200.512 Report submission, paragraph (b) Data Collection when allowed by GAGAS and Appendix X to Part 200—Data Collection Form (Form SF-SAC).

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§200.516 Audit findings.

(a) *Audit findings reported.* The auditor must report the following as audit findings in a schedule of findings and questioned costs:

(1) Significant deficiencies and material weaknesses in internal control over major programs and significant instances of abuse relating to major programs. The auditor's determination of whether a deficiency in internal control is a significant deficiency or material weakness for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the Compliance Supplement.

(2) Material noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards related to a major program. The auditor's determination of whether a noncompliance with the provisions of Federal statutes, regulations, or the terms and conditions of Federal awards is material for the purpose of reporting an audit finding is in relation to a type of compliance requirement for a major program identified in the compliance supplement.

(3) Known questioned costs that are greater than $25,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor must also report known questioned costs when likely questioned costs are greater than $25,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor must include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.

(4) Known questioned costs that are greater than $25,000 for a Federal program which is not audited as a major program. Except for audit follow-up, the auditor is not required under this part to perform audit procedures for such a Federal program; therefore, the auditor will normally not find questioned costs for a program that is not audited as a major program. However, if the auditor does become aware of questioned costs for a Federal program that is not audited as a major program (e.g., as part of audit follow-up or other audit procedures) and the known questioned costs are greater than $25,000, then the auditor must report this as an audit finding.

(5) The circumstances concerning why the auditor's report on compliance for each major program is other than an unmodified opinion, unless such circumstances are otherwise reported as audit findings in the schedule of findings and questioned costs for Federal awards.

(6) Known or likely fraud affecting a Federal award, unless such fraud is otherwise reported as an audit finding in the schedule of findings and questioned costs for Federal awards. This paragraph does not require the auditor to report publicly information which could compromise investigative or legal proceedings or to make an additional reporting when the auditor confirms that the fraud was reported outside the auditor's reports under the direct reporting requirements of GAGAS.

(7) Instances where the results of audit follow-up procedures disclosed that the summary schedule of prior audit findings prepared by the auditee in accordance with §200.511 Audit findings follow-up, paragraph (b) materially misrepresents the status of any prior audit finding.

(b) *Audit finding detail and clarity.* Audit findings must be presented in sufficient detail and clarity for the auditee to prepare a corrective action plan and take corrective action, and for Federal agencies and pass-through entities to arrive at a management decision. The following specific information must be included, as applicable, in audit findings:

(1) Federal program and specific Federal award identification including the CFDA title and number, Federal award identification number and year, name of Federal agency, and name of the applicable pass-through entity. When information, such as the CFDA title and number or Federal award identification number, is not available, the auditor must provide the best information available to describe the Federal award.

(2) The criteria or specific requirement upon which the audit finding is based, including the Federal statutes, regulations, or the terms and conditions of the Federal awards. Criteria generally identify the required or desired state or expectation with respect to the program or operation. Criteria provide a context for evaluating evidence and understanding findings.

(3) The condition found, including facts that support the deficiency identified in the audit finding.

(4) A statement of cause that identifies the reason or explanation for the condition or the factors responsible for the difference between the situation that exists (condition) and the required or desired state (criteria), which may also serve as a basis for recommendations for corrective action.

(5) The possible asserted effect to provide sufficient information to the auditee and Federal agency, or pass-through entity in the case of a subrecipient, to permit them to determine the cause and effect to facilitate prompt and proper corrective action. A statement of the effect or potential effect should provide a clear, logical link to establish the impact or potential impact of the difference between the condition and the criteria.

(6) Identification of questioned costs and how they were computed. Known questioned costs must be identified by applicable CFDA number(s) and applicable Federal award identification number(s).

(7) Information to provide proper perspective for judging the prevalence and consequences of the audit findings, such as whether the audit findings represent an isolated instance or a systemic problem. Where appropriate, instances identified must be related to the universe and the number of cases examined and be quantified in terms of dollar value. The auditor should report whether the sampling was a statistically valid sample.

(8) Identification of whether the audit finding was a repeat of a finding in the immediately prior audit and if so any applicable prior year audit finding numbers.

(9) Recommendations to prevent future occurrences of the deficiency identified in the audit finding.

(10) Views of responsible officials of the auditee.

(c) *Reference numbers.* Each audit finding in the schedule of findings and questioned costs must include a reference number in the format meeting the requirements of the data collection form submission required by §200.512 Report submission, paragraph (b) to allow for easy referencing of the audit findings during follow-up.

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§200.517 Audit documentation.

(a) *Retention of audit documentation.* The auditor must retain audit documentation and reports for a minimum of three years after the date of issuance of the auditor's report(s) to the auditee, unless the auditor is notified in writing by the cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period. When the auditor is aware that the Federal agency, pass-through entity, or auditee is contesting an audit finding, the auditor must contact the parties contesting the audit finding for guidance prior to destruction of the audit documentation and reports.

(b) *Access to audit documentation.* Audit documentation must be made available upon request to the cognizant or oversight agency for audit or its designee, cognizant agency for indirect cost, a Federal agency, or GAO at the completion of the audit, as part of a quality review, to resolve audit findings, or to carry out oversight responsibilities consistent with the purposes of this part. Access to audit documentation includes the right of Federal agencies to obtain copies of audit documentation, as is reasonable and necessary.

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§200.518 Major program determination.

(a) *General.* The auditor must use a risk-based approach to determine which Federal programs are major programs. This risk-based approach must include consideration of: current and prior audit experience, oversight by Federal agencies and pass-through entities, and the inherent risk of the Federal program. The process in paragraphs (b) through (h) of this section must be followed.

(b) *Step one.* (1) The auditor must identify the larger Federal programs, which must be labeled Type A programs. Type A programs are defined as Federal programs with Federal awards expended during the audit period exceeding the levels outlined in the table in this paragraph (b)(1):

Total Federal awards expended	Type A/B threshold
Equal to or exceed $750,000 but less than or equal to $25 million	$750,000.
Exceed $25 million but less than or equal to $100 million	Total Federal awards expended times .03.
Exceed $100 million but less than or equal to $1 billion	$3 million.
Exceed $1 billion but less than or equal to $10 billion	Total Federal awards expended times .003.
Exceed $10 billion but less than or equal to $20 billion	$30 million.
Exceed $20 billion	Total Federal awards expended times .0015.

(2) Federal programs not labeled Type A under paragraph (b)(1) of this section must be labeled Type B programs.

(3) The inclusion of large loan and loan guarantees (loans) must not result in the exclusion of other programs as Type A programs. When a Federal program providing loans exceeds four times the largest non-loan program it is considered a large loan program, and the auditor must consider this Federal program as a Type A program and exclude its values in determining other Type A programs. This recalculation of the Type A program is performed after removing the total of all large loan programs. For the purposes of this paragraph a program is only considered to be a Federal program providing loans if the value of Federal awards expended for loans within the program comprises fifty percent or more of the total Federal awards expended for the program. A cluster of programs is treated as one program and the value of Federal awards expended under a loan program is determined as described in §200.502 Basis for determining Federal awards *expended.*

(4) For biennial audits permitted under §200.504 Frequency of audits, the determination of Type A and Type B programs must be based upon the Federal awards expended during the two-year period.

(c) *Step two.* (1) The auditor must identify Type A programs which are low-risk. In making this determination, the auditor must consider whether the requirements in §200.519 Criteria for Federal program risk paragraph (c), the results of audit follow-up, or any changes in personnel or systems affecting the program indicate significantly increased risk and preclude the program from being low risk. For a Type A program to be considered low-risk, it must have been audited as a major program in at least one of the two most recent audit periods (in the most recent audit period in the case of a biennial audit), and, in the most recent audit period, the program must have not had:

(i) Internal control deficiencies which were identified as material weaknesses in the auditor's report on internal control for major programs as required under §200.515 Audit reporting, paragraph (c);

(ii) A modified opinion on the program in the auditor's report on major programs as required under §200.515 Audit reporting, paragraph (c); or

(iii) Known or likely questioned costs that exceed five percent of the total Federal awards expended for the program.

(2) Notwithstanding paragraph (c)(1) of this section, OMB may approve a Federal awarding agency's request that a Type A program may not be considered low risk for a certain recipient. For example, it may be necessary for a large Type A program to be audited as a major program each year at a particular recipient to allow the Federal awarding agency to comply with 31 U.S.C. 3515. The Federal awarding agency must notify the recipient and, if known, the auditor of OMB's approval at least 180 calendar days prior to the end of the fiscal year to be audited.

(d) *Step three.* (1) The auditor must identify Type B programs which are high-risk using professional judgment and the criteria in §200.519 Criteria for Federal program risk. However, the auditor is not required to identify more high-risk Type B programs than at least one fourth the number of low-risk Type A programs identified as low-risk under Step 2 (paragraph (c) of this section). Except for known material weakness in internal control or compliance problems as discussed in §200.519 Criteria for Federal program risk paragraphs (b)(1), (b)(2), and (c)(1), a single criteria in risk would seldom cause a Type B program to be considered high-risk. When identifying which Type B programs to risk assess, the auditor is encouraged to use an approach which provides an opportunity for different high-risk Type B programs to be audited as major over a period of time.

(2) The auditor is not expected to perform risk assessments on relatively small Federal programs. Therefore, the auditor is only required to perform risk assessments on Type B programs that exceed twenty-five percent (0.25) of the Type A threshold determined in Step 1 (paragraph (b) of this section).

(e) *Step four.* At a minimum, the auditor must audit all of the following as major programs:

(1) All Type A programs not identified as low risk under step two (paragraph (c)(1) of this section).

(2) All Type B programs identified as high-risk under step three (paragraph (d) of this section).

(3) Such additional programs as may be necessary to comply with the percentage of coverage rule discussed in paragraph (f) of this section. This may require the auditor to audit more programs as major programs than the number of Type A programs.

(f) *Percentage of coverage rule.* If the auditee meets the criteria in §200.520 Criteria for a low-risk auditee, the auditor need only audit the major programs identified in Step 4 (paragraph (e)(1) and (2) of this section) and such additional Federal programs with Federal awards expended that, in aggregate, all major programs encompass at least 20 percent (0.20) of total Federal awards expended. Otherwise, the auditor must audit the major programs identified in Step 4 (paragraphs (e)(1) and (2) of this section) and such additional Federal programs with Federal awards expended that, in aggregate, all major programs encompass at least 40 percent (0.40) of total Federal awards expended.

(g) *Documentation of risk.* The auditor must include in the audit documentation the risk analysis process used in determining major programs.

(h) *Auditor's judgment.* When the major program determination was performed and documented in accordance with this Subpart, the auditor's judgment in applying the risk-based approach to determine major programs must be presumed correct. Challenges by Federal agencies and pass-through entities must only be for clearly improper use of the requirements in this part. However, Federal agencies and pass-through entities may provide auditors guidance about the risk of a particular Federal program and the auditor must consider this guidance in determining major programs in audits not yet completed.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014]

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§200.519 Criteria for Federal program risk.

(a) *General.* The auditor's determination should be based on an overall evaluation of the risk of noncompliance occurring that could be material to the Federal program. The auditor must consider criteria, such as described in paragraphs (b), (c), and (d) of this section, to identify risk in Federal programs. Also, as part of the risk analysis, the auditor may wish to discuss a particular Federal program with auditee management and the Federal agency or pass-through entity.

(b) *Current and prior audit experience.* (1) Weaknesses in internal control over Federal programs would indicate higher risk. Consideration should be given to the control environment over Federal programs and such factors as the expectation of

management's adherence to Federal statutes, regulations, and the terms and conditions of Federal awards and the competence and experience of personnel who administer the Federal programs.

(i) A Federal program administered under multiple internal control structures may have higher risk. When assessing risk in a large single audit, the auditor must consider whether weaknesses are isolated in a single operating unit (e.g., one college campus) or pervasive throughout the entity.

(ii) When significant parts of a Federal program are passed through to subrecipients, a weak system for monitoring subrecipients would indicate higher risk.

(2) Prior audit findings would indicate higher risk, particularly when the situations identified in the audit findings could have a significant impact on a Federal program or have not been corrected.

(3) Federal programs not recently audited as major programs may be of higher risk than Federal programs recently audited as major programs without audit findings.

(c) *Oversight exercised by Federal agencies and pass-through entities.* (1) Oversight exercised by Federal agencies or pass-through entities could be used to assess risk. For example, recent monitoring or other reviews performed by an oversight entity that disclosed no significant problems would indicate lower risk, whereas monitoring that disclosed significant problems would indicate higher risk.

(2) Federal agencies, with the concurrence of OMB, may identify Federal programs that are higher risk. OMB will provide this identification in the compliance supplement.

(d) *Inherent risk of the Federal program.* (1) The nature of a Federal program may indicate risk. Consideration should be given to the complexity of the program and the extent to which the Federal program contracts for goods and services. For example, Federal programs that disburse funds through third party contracts or have eligibility criteria may be of higher risk. Federal programs primarily involving staff payroll costs may have high risk for noncompliance with requirements of §200.430 Compensation—personal services, but otherwise be at low risk.

(2) The phase of a Federal program in its life cycle at the Federal agency may indicate risk. For example, a new Federal program with new or interim regulations may have higher risk than an established program with time-tested regulations. Also, significant changes in Federal programs, statutes, regulations, or the terms and conditions of Federal awards may increase risk.

(3) The phase of a Federal program in its life cycle at the auditee may indicate risk. For example, during the first and last years that an auditee participates in a Federal program, the risk may be higher due to start-up or closeout of program activities and staff.

(4) Type B programs with larger Federal awards expended would be of higher risk than programs with substantially smaller Federal awards expended.

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§200.520 Criteria for a low-risk auditee.

An auditee that meets all of the following conditions for each of the preceding two audit periods must qualify as a low-risk auditee and be eligible for reduced audit coverage in accordance with §200.518 Major program determination.

(a) Single audits were performed on an annual basis in accordance with the provisions of this Subpart, including submitting the data collection form and the reporting package to the FAC within the timeframe specified in §200.512 Report submission. A non-Federal entity that has biennial audits does not qualify as a low-risk auditee.

(b) The auditor's opinion on whether the financial statements were prepared in accordance with GAAP, or a basis of accounting required by state law, and the auditor's in relation to opinion on the schedule of expenditures of Federal awards were unmodified.

(c) There were no deficiencies in internal control which were identified as material weaknesses under the requirements of GAGAS.

(d) The auditor did not report a substantial doubt about the auditee's ability to continue as a going concern.

(e) None of the Federal programs had audit findings from any of the following in either of the preceding two audit periods in which they were classified as Type A programs:

(1) Internal control deficiencies that were identified as material weaknesses in the auditor's report on internal control for major programs as required under §200.515 Audit reporting, paragraph (c);

(2) A modified opinion on a major program in the auditor's report on major programs as required under §200.515 Audit reporting, paragraph (c); or

(3) Known or likely questioned costs that exceeded five percent of the total Federal awards expended for a Type A program during the audit period.

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Management Decisions

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§200.521 Management decision.

(a) *General.* The management decision must clearly state whether or not the audit finding is sustained, the reasons for the decision, and the expected auditee action to repay disallowed costs, make financial adjustments, or take other action. If the auditee has not completed corrective action, a timetable for follow-up should be given. Prior to issuing the management decision, the Federal agency or pass-through entity may request additional information or documentation from the auditee, including a request for auditor assurance related to the documentation, as a way of mitigating disallowed costs. The management decision should describe any appeal process available to the auditee. While not required, the Federal agency or pass-through entity may also issue a management decision on findings relating to the financial statements which are required to be reported in accordance with GAGAS.

(b) *Federal agency.* As provided in §200.513 Responsibilities, paragraph (a)(7), the cognizant agency for audit must be responsible for coordinating a management decision for audit findings that affect the programs of more than one Federal agency. As provided in §200.513 Responsibilities, paragraph (c)(3), a Federal awarding agency is responsible for issuing a management decision for findings that relate to Federal awards it makes to non-Federal entities.

(c) *Pass-through entity.* As provided in §200.331 Requirements for pass-through entities, paragraph (d), the pass-through entity must be responsible for issuing a management decision for audit findings that relate to Federal awards it makes to subrecipients.

(d) *Time requirements.* The Federal awarding agency or pass-through entity responsible for issuing a management decision must do so within six months of acceptance of the audit report by the FAC. The auditee must initiate and proceed with corrective action as rapidly as possible and corrective action should begin no later than upon receipt of the audit report.

(e) *Reference numbers.* Management decisions must include the reference numbers the auditor assigned to each audit finding in accordance with §200.516 Audit findings paragraph (c).

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Appendix I to Part 200—Full Text of Notice of Funding Opportunity

The full text of the notice of funding opportunity is organized in sections. The required format outlined in this appendix indicates immediately following the title of each section whether that section is required in every announcement or is a Federal awarding agency option. The format is designed so that similar types of information will appear in the same sections in announcements of different Federal funding opportunities. Toward that end, there is text in each of the following sections to describe the types of information that a Federal awarding agency would include in that section of an actual announcement.

A Federal awarding agency that wishes to include information that the format does not specifically discuss may address that subject in whatever section(s) is most appropriate. For example, if a Federal awarding agency chooses to address performance goals in the announcement, it might do so in the funding opportunity description, the application content, or the reporting requirements.

Similarly, when this format calls for a type of information to be in a particular section, a Federal awarding agency wishing to address that subject in other sections may elect to repeat the information in those sections or use cross references between the sections (there should be hyperlinks for cross-references in any electronic versions of the announcement). For example, a Federal awarding agency may want to include Section A information about the types of non-Federal entities who are eligible to apply. The format specifies a standard location for that information in Section C.1 but does not preclude repeating the information in Section A or creating a cross reference between Section A and C.1, as long as a potential applicant can find the information quickly and easily from the standard location.

The sections of the full text of the announcement are described in the following paragraphs.

A. Program Description—Required

This section contains the full program description of the funding opportunity. It may be as long as needed to adequately communicate to potential applicants the areas in which funding may be provided. It describes the Federal awarding agency's funding priorities or the technical or focus areas in which the Federal awarding agency intends to provide assistance. As appropriate, it may include any program history (e.g., whether this is a new program or a new or changed area of program emphasis). This section may communicate indicators of successful projects (e.g., if the program encourages collaborative efforts) and may include examples of projects that have been funded previously. This section also may include other information the Federal awarding agency deems necessary, and must at a minimum include citations for authorizing statutes and regulations for the funding opportunity.

B. Federal Award Information—Required

This section provides sufficient information to help an applicant make an informed decision about whether to submit a proposal. Relevant information could include the total amount of funding that the Federal awarding agency expects to award through the announcement; the anticipated number of Federal awards; the expected amounts of individual Federal awards (which may be a range); the amount of funding per Federal award, on average, experienced in previous years; and the anticipated start dates and periods of performance for new Federal awards. This section also should address whether applications for renewal or supplementation of existing projects are eligible to compete with applications for new Federal awards.

This section also must indicate the type(s) of assistance instrument (e.g., grant, cooperative agreement) that may be awarded if applications are successful. If cooperative agreements may be awarded, this section either should describe the "substantial involvement" that the Federal awarding agency expects to have or should reference where the potential applicant can find that information (e.g., in the funding opportunity description in A. Program Description—Required or Federal award administration information in Section D. Application and Submission Information). If procurement contracts also may be awarded, this must be stated.

C. Eligibility Information

This section addresses the considerations or factors that determine applicant or application eligibility. This includes the eligibility of particular types of applicant organizations, any factors affecting the eligibility of the principal investigator or project director, and any criteria that make particular projects ineligible. Federal agencies should make clear whether an applicant's failure to meet an eligibility criterion by the time of an application deadline will result in the Federal awarding agency returning the application without review or, even though an application may be reviewed, will preclude the Federal awarding agency from making a Federal award. Key elements to be addressed are:

1. *Eligible Applicants—Required.* Announcements must clearly identify the types of entities that are eligible to apply. If there are no restrictions on eligibility, this section may simply indicate that all potential applicants are eligible. If there are restrictions on eligibility, it is important to be clear about the specific types of entities that are eligible, not just the types that are ineligible. For example, if the program is limited to nonprofit organizations subject to 26 U.S.C. 501(c)(3) of the tax code (26 U.S.C. 501(c)(3)), the announcement should say so. Similarly, it is better to state explicitly that Native American tribal organizations are eligible than to assume that they can unambiguously infer that from a statement that nonprofit organizations may apply. Eligibility also can be expressed by exception, (e.g., open to all types of domestic applicants other than individuals). This section should refer to any portion of Section D specifying documentation that must be submitted to support an eligibility determination (e.g., proof of 501(c)(3) status as determined by the Internal Revenue Service or an authorizing tribal resolution). To the extent that any funding restriction in Section D.6 could affect the eligibility of an applicant or project, the announcement must either restate that restriction in this section or provide a cross-reference to its description in Section D.6.

2. *Cost Sharing or Matching—Required.* Announcements must state whether there is required cost sharing, matching, or cost participation without which an application would be ineligible (if cost sharing is not required, the announcement must explicitly say so). Required cost sharing may be a certain percentage or amount, or may be in the form of contributions of specified items or activities (e.g., provision of equipment). It is important that the announcement be clear about any restrictions on the types of cost (e.g., in-kind contributions) that are acceptable as cost sharing. Cost sharing as an eligibility criterion includes requirements based in statute or regulation, as described in §200.306 Cost sharing or matching of this Part. This section should refer to the appropriate portion(s) of section D. Application and Submission Information stating any pre-award requirements for submission of letters or other documentation to verify commitments to meet cost-sharing requirements if a Federal award is made.

3. *Other—Required, if applicable.* If there are other eligibility criteria (i.e., criteria that have the effect of making an application or project ineligible for Federal awards, whether referred to as "responsiveness" criteria, "go-no go" criteria, "threshold" criteria, or in other ways), must be clearly stated and must include a reference to the regulation of requirement that describes the restriction, as applicable. For example, if entities that have been found to be in violation of a particular Federal statute are ineligible, it is important to say so. This section must also state any limit on the number of applications an applicant may submit under the announcement and make clear whether the limitation is on the submitting organization, individual

investigator/program director, or both. This section should also address any eligibility criteria for beneficiaries or for program participants other than Federal award recipients.

D. Application and Submission Information

1. *Address to Request Application Package—Required.* Potential applicants must be told how to get application forms, kits, or other materials needed to apply (if this announcement contains everything needed, this section need only say so). An Internet address where the materials can be accessed is acceptable. However, since high-speed Internet access is not yet universally available for downloading documents, and applicants may have additional accessibility requirements, there also should be a way for potential applicants to request paper copies of materials, such as a U.S. Postal Service mailing address, telephone or FAX number, Telephone Device for the Deaf (TDD), Text Telephone (TTY) number, and/or Federal Information Relay Service (FIRS) number.

2. *Content and Form of Application Submission—Required.* This section must identify the required content of an application and the forms or formats that an applicant must use to submit it. If any requirements are stated elsewhere because they are general requirements that apply to multiple programs or funding opportunities, this section should refer to where those requirements may be found. This section also should include required forms or formats as part of the announcement or state where the applicant may obtain them.

This section should specifically address content and form or format requirements for:

i. Pre-applications, letters of intent, or white papers required or encouraged (see Section D.4), including any limitations on the number of pages or other formatting requirements similar to those for full applications.

ii. The application as a whole. For all submissions, this would include any limitations on the number of pages, font size and typeface, margins, paper size, number of copies, and sequence or assembly requirements. If electronic submission is permitted or required, this could include special requirements for formatting or signatures.

iii. Component pieces of the application (e.g., if all copies of the application must bear original signatures on the face page or the program narrative may not exceed 10 pages). This includes any pieces that may be submitted separately by third parties (e.g., references or letters confirming commitments from third parties that will be contributing a portion of any required cost sharing).

iv. Information that successful applicants must submit after notification of intent to make a Federal award, but prior to a Federal award. This could include evidence of compliance with requirements relating to human subjects or information needed to comply with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321-4370h).

3. *Unique entity identifier and System for Award Management (SAM)—Required.*

This paragraph must state clearly that each applicant (unless the applicant is an individual or Federal awarding agency that is excepted from those requirements under 2 CFR §25.110(b) or (c), or has an exception approved by the Federal awarding agency under 2 CFR §25.110(d)) is required to: (i) Be registered in SAM before submitting its application; (ii) provide a a valid unique entity identifier in its application; and (iii) continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency. It also must state that the Federal awarding agency may not make a Federal award to an applicant until the applicant has complied with all applicable unique entity identifier and SAM requirements and, if an applicant has not fully complied with the requirements by the time the Federal awarding agency is ready to make a Federal award, the Federal awarding agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

4. *Submission Dates and Times—Required.* Announcements must identify due dates and times for all submissions. This includes not only the full applications but also any preliminary submissions (e.g., letters of intent, white papers, or pre-applications). It also includes any other submissions of information before Federal award that are separate from the full application. If the funding opportunity is a general announcement that is open for a period of time with no specific due dates for applications, this section should say so. Note that the information on dates that is included in this section also must appear with other overview information in a location preceding the full text of the announcement (see §200.203 Notices of funding opportunities of this Part).

Each type of submission should be designated as encouraged or required and, if required, any deadline date (or dates, if the Federal awarding agency plans more than one cycle of application submission, review, and Federal award under the announcement) should be specified. The announcement must state (or provide a reference to another document that states):

i. Any deadline in terms of a date and local time. If the due date falls on a Saturday, Sunday, or Federal holiday, the reporting package is due the next business day.

ii. What the deadline means (e.g., whether it is the date and time by which the Federal awarding agency must receive the application, the date by which the application must be postmarked, or something else) and how that depends, if at all, on the submission method (e.g., mail, electronic, or personal/courier delivery).

iii. The effect of missing a deadline (e.g., whether late applications are neither reviewed nor considered or are reviewed and considered under some circumstances).

iv. How the receiving Federal office determines whether an application or pre-application has been submitted before the deadline. This includes the form of acceptable proof of mailing or system-generated documentation of receipt date and time.

This section also may indicate whether, when, and in what form the applicant will receive an acknowledgement of receipt. This information should be displayed in ways that will be easy to understand and use. It can be difficult to extract all needed information from narrative paragraphs, even when they are well written. A tabular form for providing a summary of the information may help applicants for some programs and give them what effectively could be a checklist to verify the completeness of their application package before submission.

5. *Intergovernmental Review—Required, if applicable.* If the funding opportunity is subject to Executive Order 12372, "Intergovernmental Review of Federal Programs," the notice must say so. In alerting applicants that they must contact their state's Single Point of Contact (SPOC) to find out about and comply with the state's process under Executive Order 12372, it may be useful to inform potential applicants that the names and addresses of the SPOCs are listed in the Office of Management and Budget's Web site. *www.whitehouse.gov/omb/grants/spoc.html*.

6. *Funding Restrictions—Required.* Notices must include information on funding restrictions in order to allow an applicant to develop an application and budget consistent with program requirements. Examples are whether construction is an allowable activity, if there are any limitations on direct costs such as foreign travel or equipment purchases, and if there are any limits on indirect costs (or facilities and administrative costs). Applicants must be advised if Federal awards will not allow reimbursement of pre-Federal award costs.

7. *Other Submission Requirements— Required.* This section must address any other submission requirements not included in the other paragraphs of this section. This might include the format of submission, i.e., paper or electronic, for each type of required submission. Applicants should not be required to submit in more than one format and this section should indicate whether they may choose whether to submit applications in hard copy or electronically, may submit only in hard copy, or may submit only electronically.

This section also must indicate where applications (and any pre-applications) must be submitted if sent by postal mail, electronic means, or hand-delivery. For postal mail submission, this must include the name of an office, official, individual or function (e.g., application receipt center) and a complete mailing address. For electronic submission, this must include the URL or email address; whether a password(s) is required; whether particular software or other electronic capabilities are required; what to do in the event of system problems and a point of contact who will be available in the event the applicant experiences technical difficulties.[1]

[1]With respect to electronic methods for providing information about funding opportunities or accepting applicants' submissions of information, each Federal awarding agency is responsible for compliance with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

E. Application Review Information

1. *Criteria—Required.* This section must address the criteria that the Federal awarding agency will use to evaluate applications. This includes the merit and other review criteria that evaluators will use to judge applications, including any statutory, regulatory, or other preferences (e.g., minority status or Native American tribal preferences) that will be applied in the review process. These criteria are distinct from eligibility criteria that are addressed before an application is accepted for review and any program policy or other factors that are applied during the selection process, after the review process is completed. The intent is to make the application process transparent so applicants can make informed decisions when preparing their applications to maximize fairness of the process. The announcement should clearly describe all criteria, including any sub-criteria. If criteria vary in importance, the announcement should specify the relative percentages, weights, or other means used to distinguish among them. For statutory, regulatory, or other preferences, the announcement should provide a detailed explanation of those preferences with an explicit indication of their effect (e.g., whether they result in additional points being assigned).

If an applicant's proposed cost sharing will be considered in the review process (as opposed to being an eligibility criterion described in Section C.2), the announcement must specifically address how it will be considered (e.g., to assign a certain number of additional points to applicants who offer cost sharing, or to break ties among applications with equivalent scores after evaluation against all other factors). If cost sharing will not be considered in the evaluation, the announcement should say so, so that there is no ambiguity for potential applicants. Vague statements that cost sharing is encouraged, without clarification as to what that means, are unhelpful to applicants. It also is important that the announcement be clear about any restrictions on the types of cost (e.g., in-kind contributions) that are acceptable as cost sharing.

2. *Review and Selection Process—Required.* This section may vary in the level of detail provided. The announcement must list any program policy or other factors or elements, other than merit criteria, that the selecting official may use in selecting applications for Federal award (e.g., geographical dispersion, program balance, or diversity). The Federal awarding agency may also include other appropriate details. For example, this section may indicate who is responsible for evaluation against the merit criteria (e.g., peers external to the Federal awarding agency or Federal awarding agency personnel) and/or who makes the final selections for Federal awards. If there is a multi-phase review process (e.g., an external panel advising internal Federal awarding agency personnel who make final recommendations to the deciding official), the announcement may describe the phases. It also may include: the number of people on an evaluation panel and how it operates, the way reviewers are selected, reviewer qualifications, and the way that conflicts of interest are avoided. With respect to electronic methods for providing information about funding opportunities or accepting applicants' submissions of information, each Federal awarding agency is responsible for compliance with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d).

In addition, if the Federal awarding agency permits applicants to nominate suggested reviewers of their applications or suggest those they feel may be inappropriate due to a conflict of interest, that information should be included in this section.

3. For any Federal award under a notice of funding opportunity, if the Federal awarding agency anticipates that the total Federal share will be greater than the simplified acquisition threshold on any Federal award under a notice of funding opportunity may include, over the period of performance (see §200.88 Simplified Acquisition Threshold), this section must also inform applicants:

i. That the Federal awarding agency, prior to making a Federal award with a total amount of Federal share greater than the simplified acquisition threshold, is required to review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently FAPIIS) (see 41 U.S.C. 2313);

ii. That an applicant, at its option, may review information in the designated integrity and performance systems accessible through SAM and comment on any information about itself that a Federal awarding agency previously entered and is currently in the designated integrity and performance system accessible through SAM;

iii. That the Federal awarding agency will consider any comments by the applicant, in addition to the other information in the designated integrity and performance system, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in §200.205 Federal awarding agency review of risk posed by applicants.

4. *Anticipated Announcement and Federal Award Dates—Optional.* This section is intended to provide applicants with information they can use for planning purposes. If there is a single application deadline followed by the simultaneous review of all applications, the Federal awarding agency can include in this section information about the anticipated dates for announcing or notifying successful and unsuccessful applicants and for having Federal awards in place. If applications are received and evaluated on a “rolling” basis at different times during an extended period, it may be appropriate to give applicants an estimate of the time needed to process an application and notify the applicant of the Federal awarding agency's decision.

F. Federal Award Administration Information

1. Federal Award Notices—Required. This section must address what a successful applicant can expect to receive following selection. If the Federal awarding agency's practice is to provide a separate notice stating that an application has been selected before it actually makes the Federal award, this section would be the place to indicate that the letter is not an authorization to begin performance (to the extent that it allows charging to Federal awards of pre-award costs at the non-Federal entity's own risk). This section should indicate that the notice of Federal award signed by the grants officer (or equivalent) is the authorizing document, and whether it is provided through postal mail or by electronic means and to whom. It also may address the timing, form, and content of notifications to unsuccessful applicants. See also §200.210 Information contained in a Federal award.

2. Administrative and National Policy Requirements—Required. This section must identify the usual administrative and national policy requirements the Federal awarding agency's Federal awards may include. Providing this information lets a potential applicant identify any requirements with which it would have difficulty complying if its application is successful. In those cases, early notification about the requirements allows the potential applicant to decide not to apply or to take needed actions before receiving the Federal award. The announcement need not include all of the terms and conditions of the Federal award, but may refer to a document (with information about how to obtain it) or Internet site where applicants can see the terms and conditions. If this funding opportunity will lead to Federal awards with some special terms and conditions that differ from the Federal awarding agency's usual (sometimes called “general”) terms and conditions, this section should highlight those special terms and conditions. Doing so will alert applicants that have received Federal awards from the Federal awarding agency previously and might not otherwise expect different terms and conditions. For the same reason, the announcement should inform potential applicants about special requirements that could apply to particular Federal awards after the review of applications and other information, based on the particular circumstances of the effort to be supported (e.g., if human subjects

were to be involved or if some situations may justify special terms on intellectual property, data sharing or security requirements).

3. *Reporting—Required.* This section must include general information about the type (*e.g.,* financial or performance), frequency, and means of submission (paper or electronic) of post-Federal award reporting requirements. Highlight any special reporting requirements for Federal awards under this funding opportunity that differ (*e.g.,* by report type, frequency, form/format, or circumstances for use) from what the Federal awarding agency's Federal awards usually require. Federal awarding agencies must also describe in this section all relevant requirements such as those at 2 CFR 180.335 and 2 CFR 180.350.

If the Federal share of any Federal award may include more than $500,000 over the period of performance, this section must inform potential applicants about the post award reporting requirements reflected in Appendix XII—Award Term and Condition for Recipient Integrity and Performance Matters.

G. Federal Awarding Agency Contact(s)—Required

The announcement must give potential applicants a point(s) of contact for answering questions or helping with problems while the funding opportunity is open. The intent of this requirement is to be as helpful as possible to potential applicants, so the Federal awarding agency should consider approaches such as giving:

i. Points of contact who may be reached in multiple ways (e.g., by telephone, FAX, and/or email, as well as regular mail).

ii. A fax or email address that multiple people access, so that someone will respond even if others are unexpectedly absent during critical periods.

iii. Different contacts for distinct kinds of help (e.g., one for questions of programmatic content and a second for administrative questions).

H. Other Information—Optional

This section may include any additional information that will assist a potential applicant. For example, the section might:

i. Indicate whether this is a new program or a one-time initiative.

ii. Mention related programs or other upcoming or ongoing Federal awarding agency funding opportunities for similar activities.

iii. Include current Internet addresses for Federal awarding agency Web sites that may be useful to an applicant in understanding the program.

iv. Alert applicants to the need to identify proprietary information and inform them about the way the Federal awarding agency will handle it.

v. Include certain routine notices to applicants (e.g., that the Federal Government is not obligated to make any Federal award as a result of the announcement or that only grants officers can bind the Federal Government to the expenditure of funds).

[78 FR 78608, Dec. 26, 2013, as amended at 80 FR 43310, July 22, 2015]

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Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at $150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3

CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See §200.322 Procurement of recovered materials.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014]

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Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs)

A. General

This appendix provides criteria for identifying and computing indirect (or indirect (F&A)) rates at IHEs (institutions). Indirect (F&A) costs are those that are incurred for common or joint objectives and therefore cannot be identified readily and specifically with a particular sponsored project, an instructional activity, or any other institutional activity. See subsection B.1, Definition of Facilities and Administration, for a discussion of the components of indirect (F&A) costs.

1. Major Functions of an Institution

Refers to instruction, organized research, other sponsored activities and other institutional activities as defined in this section:

a. *Instruction* means the teaching and training activities of an institution. Except for research training as provided in subsection b, this term includes all teaching and training activities, whether they are offered for credits toward a degree or certificate or on a non-credit basis, and whether they are offered through regular academic departments or separate divisions, such as a summer school division or an extension division. Also considered part of this major function are departmental research, and, where agreed to, university research.

(1) *Sponsored instruction and training* means specific instructional or training activity established by grant, contract, or cooperative agreement. For purposes of the cost principles, this activity may be considered a major function even though an institution's accounting treatment may include it in the instruction function.

(2) *Departmental research* means research, development and scholarly activities that are not organized research and, consequently, are not separately budgeted and accounted for. Departmental research, for purposes of this document, is not considered as a major function, but as a part of the instruction function of the institution.

(3) Only mandatory cost sharing or cost sharing specifically committed in the project budget must be included in the organized research base for computing the indirect (F&A) cost rate or reflected in any allocation of indirect costs. Salary costs above statutory limits are not considered cost sharing.

b. *Organized research* means all research and development activities of an institution that are separately budgeted and accounted for. It includes:

(1) *Sponsored research* means all research and development activities that are sponsored by Federal and non-Federal agencies and organizations. This term includes activities involving the training of individuals in research techniques (commonly called research training) where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(2) *University research* means all research and development activities that are separately budgeted and accounted for by the institution under an internal application of institutional funds. University research, for purposes of this document, must be combined with sponsored research under the function of organized research.

c. *Other sponsored activities* means programs and projects financed by Federal and non-Federal agencies and organizations which involve the performance of work other than instruction and organized research. Examples of such programs and projects are health service projects and community service programs. However, when any of these activities are undertaken by the institution without outside support, they may be classified as other institutional activities.

d. *Other institutional activitie*s means all activities of an institution except for instruction, departmental research, organized research, and other sponsored activities, as defined in this section; indirect (F&A) cost activities identified in this Appendix paragraph B, Identification and assignment of indirect (F&A) costs; and specialized services facilities described in §200.468 Specialized service facilities of this Part.

Examples of other institutional activities include operation of residence halls, dining halls, hospitals and clinics, student unions, intercollegiate athletics, bookstores, faculty housing, student apartments, guest houses, chapels, theaters, public museums, and other similar auxiliary enterprises. This definition also includes any other categories of activities, costs of which are “unallowable” to Federal awards, unless otherwise indicated in an award.

2. Criteria for Distribution

a. *Base period.* A base period for distribution of indirect (F&A) costs is the period during which the costs are incurred. The base period normally should coincide with the fiscal year established by the institution, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

b. *Need for cost groupings.* The overall objective of the indirect (F&A) cost allocation process is to distribute the indirect (F&A) costs described in Section B, Identification and assignment of indirect (F&A) costs, to the major functions of the institution in proportions reasonably consistent with the nature and extent of their use of the institution's resources. In order to achieve this objective, it may be necessary to provide for selective distribution by establishing separate groupings of cost within one or more of the indirect (F&A) cost categories referred to in subsection B.1, Definition of Facilities and Administration. In general, the cost groupings established within a category should constitute, in each case, a pool of those items of expense that are considered to be of like nature in terms of their relative contribution to (or degree of remoteness from) the particular cost objectives to which distribution is appropriate. Cost groupings should be established considering the general guides provided in subsection c of this section. Each such pool or cost grouping should then be distributed individually to the related cost objectives, using the distribution base or method most appropriate in light of the guidelines set forth in subsection d of this section.

c. *General considerations on cost groupings.* The extent to which separate cost groupings and selective distribution would be appropriate at an institution is a matter of judgment to be determined on a case-by-case basis. Typical situations which may warrant the establishment of two or more separate cost groupings (based on account classification or analysis) within an indirect (F&A) cost category include but are not limited to the following:

(1) If certain items or categories of expense relate solely to one of the major functions of the institution or to less than all functions, such expenses should be set aside as a separate cost grouping for direct assignment or selective allocation in accordance with the guides provided in subsections b and d.

(2) If any types of expense ordinarily treated as general administration or departmental administration are charged to Federal awards as direct costs, expenses applicable to other activities of the institution when incurred for the same purposes in like circumstances must, through separate cost groupings, be excluded from the indirect (F&A) costs allocable to those Federal awards and included in the direct cost of other activities for cost allocation purposes.

(3) If it is determined that certain expenses are for the support of a service unit or facility whose output is susceptible of measurement on a workload or other quantitative basis, such expenses should be set aside as a separate cost grouping for distribution on such basis to organized research, instructional, and other activities at the institution or within the department.

(4) If activities provide their own purchasing, personnel administration, building maintenance or similar service, the distribution of general administration and general expenses, or operation and maintenance expenses to such activities should be accomplished through cost groupings which include only that portion of central indirect (F&A) costs (such as for overall management) which are properly allocable to such activities.

(5) If the institution elects to treat fringe benefits as indirect (F&A) charges, such costs should be set aside as a separate cost grouping for selective distribution to related cost objectives.

(6) The number of separate cost groupings within a category should be held within practical limits, after taking into consideration the materiality of the amounts involved and the degree of precision attainable through less selective methods of distribution.

d. Selection of distribution method.

(1) Actual conditions must be taken into account in selecting the method or base to be used in distributing individual cost groupings. The essential consideration in selecting a base is that it be the one best suited for assigning the pool of costs to cost objectives in accordance with benefits derived; with a traceable cause-and-effect relationship; or with logic and reason, where neither benefit nor a cause-and-effect relationship is determinable.

(2) If a cost grouping can be identified directly with the cost objective benefitted, it should be assigned to that cost objective.

(3) If the expenses in a cost grouping are more general in nature, the distribution may be based on a cost analysis study which results in an equitable distribution of the costs. Such cost analysis studies may take into consideration weighting factors, population, or space occupied if appropriate. Cost analysis studies, however, must (a) be appropriately documented in sufficient detail for subsequent review by the cognizant agency for indirect costs, (b) distribute the costs to the related cost objectives in accordance with the relative benefits derived, (c) be statistically sound, (d) be performed specifically at the institution at which the results are to be used, and (e) be reviewed periodically, but not less frequently than rate negotiations, updated if necessary, and used consistently. Any assumptions made in the study must be stated and explained. The use of cost analysis studies and periodic changes in the method of cost distribution must be fully justified.

(4) If a cost analysis study is not performed, or if the study does not result in an equitable distribution of the costs, the distribution must be made in accordance with the appropriate base cited in Section B, Identification and assignment of indirect (F&A) costs, unless one of the following conditions is met:

(a) It can be demonstrated that the use of a different base would result in a more equitable allocation of the costs, or that a more readily available base would not increase the costs charged to Federal awards, or

(b) The institution qualifies for, and elects to use, the simplified method for computing indirect (F&A) cost rates described in Section D, Simplified method for small institutions.

(5) Notwithstanding subsection (3), effective July 1, 1998, a cost analysis or base other than that in Section B must not be used to distribute utility or student services costs. Instead, subsections B.4.c Operation and maintenance expenses, may be used in the recovery of utility costs.

e. Order of distribution.

(1) Indirect (F&A) costs are the broad categories of costs discussed in Section B.1, Definitions of Facilities and Administration

(2) Depreciation, interest expenses, operation and maintenance expenses, and general administrative and general expenses should be allocated in that order to the remaining indirect (F&A) cost categories as well as to the major functions and specialized service facilities of the institution. Other cost categories may be allocated in the order determined to be most appropriate by the institutions. When cross allocation of costs is made as provided in subsection (3), this order of allocation does not apply.

(3) Normally an indirect (F&A) cost category will be considered closed once it has been allocated to other cost objectives, and costs may not be subsequently allocated to it. However, a cross allocation of costs between two or more indirect (F&A) cost categories may be used if such allocation will result in a more equitable allocation of costs. If a cross allocation is used, an appropriate modification to the composition of the indirect (F&A) cost categories described in Section B is required.

B. Identification and Assignment of Indirect (F&A) Costs

1. Definition of Facilities and Administration

See §200.414 Indirect (F&A) costs which provides the basis for these indirect cost requirements.

2. Depreciation

a. The expenses under this heading are the portion of the costs of the institution's buildings, capital improvements to land and buildings, and equipment which are computed in accordance with §200.436 Depreciation.

b. In the absence of the alternatives provided for in Section A.2.d, Selection of distribution method, the expenses included in this category must be allocated in the following manner:

(1) Depreciation on buildings used exclusively in the conduct of a single function, and on capital improvements and equipment used in such buildings, must be assigned to that function.

(2) Depreciation on buildings used for more than one function, and on capital improvements and equipment used in such buildings, must be allocated to the individual functions performed in each building on the basis of usable square feet of space, excluding common areas such as hallways, stairwells, and rest rooms.

(3) Depreciation on buildings, capital improvements and equipment related to space (e.g., individual rooms, laboratories) used jointly by more than one function (as determined by the users of the space) must be treated as follows. The cost of each jointly used unit of space must be allocated to benefitting functions on the basis of:

(a) The employee full-time equivalents (FTEs) or salaries and wages of those individual functions benefitting from the use of that space; or

(b) Institution-wide employee FTEs or salaries and wages applicable to the benefitting major functions (see Section A.1) of the institution.

(4) Depreciation on certain capital improvements to land, such as paved parking areas, fences, sidewalks, and the like, not included in the cost of buildings, must be allocated to user categories of students and employees on a full-time equivalent basis. The amount allocated to the student category must be assigned to the instruction function of the institution. The amount allocated to the employee category must be further allocated to the major functions of the institution in proportion to the salaries and wages of all employees applicable to those functions.

3. Interest

Interest on debt associated with certain buildings, equipment and capital improvements, as defined in §200.449 Interest, must be classified as an expenditure under the category Facilities. These costs must be allocated in the same manner as the depreciation on the buildings, equipment and capital improvements to which the interest relates.

4. Operation and Maintenance Expenses

a. The expenses under this heading are those that have been incurred for the administration, supervision, operation, maintenance, preservation, and protection of the institution's physical plant. They include expenses normally incurred for such items as janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; care of grounds; maintenance and operation of buildings and other plant facilities; security; earthquake and disaster preparedness; environmental safety; hazardous waste disposal; property, liability and all other insurance relating to property; space and capital leasing; facility planning and management; and central receiving. The operation and maintenance expense category should also include its allocable share of fringe benefit costs, depreciation, and interest costs.

b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated in the same manner as described in subsection 2.b for depreciation.

c. A utility cost adjustment of up to 1.3 percentage points may be included in the negotiated indirect cost rate of the IHE for organized research, per the computation alternatives in paragraphs (c)(1) and (2) of this section:

(1) Where space is devoted to a single function and metering allows unambiguous measurement of usage related to that space, costs must be assigned to the function located in that space.

(2) Where space is allocated to different functions and metering does not allow unambiguous measurement of usage by function, costs must be allocated as follows:

(i) Utilities costs should be apportioned to functions in the same manner as depreciation, based on the calculated difference between the site or building actual square footage for monitored research laboratory space (site, building, floor, or room), and a separate calculation prepared by the IHE using the “effective square footage” described in subsection (c)(2)(ii) of this section.

(ii) “Effective square footage” allocated to research laboratory space must be calculated as the actual square footage times the relative energy utilization index (REUI) posted on the OMB Web site at the time of a rate determination.

A. This index is the ratio of a laboratory energy use index (lab EUI) to the corresponding index for overall average college or university space (college EUI).

B. In July 2012, values for these two indices (taken respectively from the Lawrence Berkeley Laboratory “Labs for the 21st Century” benchmarking tool *http://labs21benchmarking.lbl.gov/CompareData.php* and the US Department of Energy “Buildings Energy Databook” and *http://buildingsdatabook.eren.doe.gov/CBECS.aspx*) were 310 kBtu/sq ft-yr. and 155 kBtu/sq ft-yr., so that the adjustment ratio is 2.0 by this methodology. To retain currency, OMB will adjust the EUI numbers from time to time (no more often than annually nor less often than every 5 years), using reliable and publicly disclosed data. Current values of both the EUIs and the REUI will be posted on the OMB Web site.

5. General Administration and General Expenses

a. The expenses under this heading are those that have been incurred for the general executive and administrative offices of educational institutions and other expenses of a general character which do not relate solely to any major function of the institution; i.e., solely to (1) instruction, (2) organized research, (3) other sponsored activities, or (4) other institutional activities. The general administration and general expense category should also include its allocable share of fringe benefit costs, operation and maintenance expense, depreciation, and interest costs. Examples of general administration and general expenses include: those expenses incurred by administrative offices that serve the entire university system of which the institution is a part; central offices of the institution such as the President's or Chancellor's office, the offices for institution-wide financial management, business services, budget and planning, personnel management, and safety and risk management; the office of the General Counsel; and the operations of the central administrative management information systems. General administration and general expenses must not include expenses incurred within non-university-wide deans' offices, academic departments, organized research units, or similar organizational units. (See subsection 6, Departmental administration expenses.)

b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be grouped first according to common major functions of the institution to which they render services or provide benefits. The aggregate expenses of each group must then be allocated to serviced or benefitted functions on the modified total cost basis. Modified total costs consist of the same elements as those in Section C.2. When an activity included in this indirect (F&A) cost category

provides a service or product to another institution or organization, an appropriate adjustment must be made to either the expenses or the basis of allocation or both, to assure a proper allocation of costs.

6. Departmental Administration Expenses

a. The expenses under this heading are those that have been incurred for administrative and supporting services that benefit common or joint departmental activities or objectives in academic deans' offices, academic departments and divisions, and organized research units. Organized research units include such units as institutes, study centers, and research centers. Departmental administration expenses are subject to the following limitations.

(1) Academic deans' offices. Salaries and operating expenses are limited to those attributable to administrative functions.

(2) Academic departments:

(a) Salaries and fringe benefits attributable to the administrative work (including bid and proposal preparation) of faculty (including department heads) and other professional personnel conducting research and/or instruction, must be allowed at a rate of 3.6 percent of modified total direct costs. This category does not include professional business or professional administrative officers. This allowance must be added to the computation of the indirect (F&A) cost rate for major functions in Section C, Determination and application of indirect (F&A) cost rate or rates; the expenses covered by the allowance must be excluded from the departmental administration cost pool. No documentation is required to support this allowance.

(b) Other administrative and supporting expenses incurred within academic departments are allowable provided they are treated consistently in like circumstances. This would include expenses such as the salaries of secretarial and clerical staffs, the salaries of administrative officers and assistants, travel, office supplies, stockrooms, and the like.

(3) Other fringe benefit costs applicable to the salaries and wages included in subsections (1) and (2) are allowable, as well as an appropriate share of general administration and general expenses, operation and maintenance expenses, and depreciation.

(4) Federal agencies may authorize reimbursement of additional costs for department heads and faculty only in exceptional cases where an institution can demonstrate undue hardship or detriment to project performance.

b. The following guidelines apply to the determination of departmental administrative costs as direct or indirect (F&A) costs.

(1) In developing the departmental administration cost pool, special care should be exercised to ensure that costs incurred for the same purpose in like circumstances are treated consistently as either direct or indirect (F&A) costs. For example, salaries of technical staff, laboratory supplies (e.g., chemicals), telephone toll charges, animals, animal care costs, computer costs, travel costs, and specialized shop costs must be treated as direct costs wherever identifiable to a particular cost objective. Direct charging of these costs may be accomplished through specific identification of individual costs to benefitting cost objectives, or through recharge centers or specialized service facilities, as appropriate under the circumstances. See §§200.413 Direct costs, paragraph (c) and 200.468 Specialized service facilities.

(2) Items such as office supplies, postage, local telephone costs, and memberships must normally be treated as indirect (F&A) costs.

c. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated as follows:

(1) The administrative expenses of the dean's office of each college and school must be allocated to the academic departments within that college or school on the modified total cost basis.

(2) The administrative expenses of each academic department, and the department's share of the expenses allocated in subsection (1) must be allocated to the appropriate functions of the department on the modified total cost basis.

7. Sponsored Projects Administration

a. The expenses under this heading are limited to those incurred by a separate organization(s) established primarily to administer sponsored projects, including such functions as grant and contract administration (Federal and non-Federal), special security, purchasing, personnel, administration, and editing and publishing of research and other reports. They include the salaries and expenses of the head of such organization, assistants, and immediate staff, together with the salaries and expenses of personnel engaged in supporting activities maintained by the organization, such as stock rooms, print shops, and the like. This category also includes an allocable share of fringe benefit costs, general administration and general expenses, operation and maintenance expenses, and depreciation. Appropriate adjustments will be made for services provided to other functions or organizations.

b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated to the major functions of the institution under which the sponsored projects are conducted on the basis of the modified total cost of sponsored projects.

c. An appropriate adjustment must be made to eliminate any duplicate charges to Federal awards when this category includes similar or identical activities as those included in the general administration and general expense category or other indirect (F&A) cost items, such as accounting, procurement, or personnel administration.

8. Library Expenses

a. The expenses under this heading are those that have been incurred for the operation of the library, including the cost of books and library materials purchased for the library, less any items of library income that qualify as applicable credits under §200.406 Applicable credits. The library expense category should also include the fringe benefits applicable to the salaries and wages included therein, an appropriate share of general administration and general expense, operation and maintenance expense, and depreciation. Costs incurred in the purchases of rare books (museum-type books) with no value to Federal awards should not be allocated to them.

b. In the absence of the alternatives provided for in Section A.2.d, the expenses included in this category must be allocated first on the basis of primary categories of users, including students, professional employees, and other users.

(1) The student category must consist of full-time equivalent students enrolled at the institution, regardless of whether they earn credits toward a degree or certificate.

(2) The professional employee category must consist of all faculty members and other professional employees of the institution, on a full-time equivalent basis. This category may also include post-doctorate fellows and graduate students.

(3) The other users category must consist of a reasonable factor as determined by institutional records to account for all other users of library facilities.

c. Amount allocated in paragraph b of this section must be assigned further as follows:

(1) The amount in the student category must be assigned to the instruction function of the institution.

(2) The amount in the professional employee category must be assigned to the major functions of the institution in proportion to the salaries and wages of all faculty members and other professional employees applicable to those functions.

(3) The amount in the other users category must be assigned to the other institutional activities function of the institution.

9. Student Administration and Services

a. The expenses under this heading are those that have been incurred for the administration of student affairs and for services to students, including expenses of such activities as deans of students, admissions, registrar, counseling and placement services, student advisers, student health and infirmary services, catalogs, and commencements and convocations. The salaries of members of the academic staff whose responsibilities to the institution require administrative work that benefits sponsored projects may also be included to the extent that the portion charged to student administration is determined in accordance with Subpart E—Cost Principles of this Part. This expense category also includes the fringe benefit costs applicable to the salaries and wages included therein, an appropriate share of general administration and general expenses, operation and maintenance, interest expense, and depreciation.

b. In the absence of the alternatives provided for in Section A.2.d, the expenses in this category must be allocated to the instruction function, and subsequently to Federal awards in that function.

10. Offset for Indirect (F&A) Expenses Otherwise Provided for by the Federal Government

a. The items to be accumulated under this heading are the reimbursements and other payments from the Federal Government which are made to the institution to support solely, specifically, and directly, in whole or in part, any of the administrative or service activities described in subsections 2 through 9.

b. The items in this group must be treated as a credit to the affected individual indirect (F&A) cost category before that category is allocated to benefitting functions.

C. Determination and Application of Indirect (F&A) Cost Rate or Rates

1. Indirect (F&A) Cost Pools

a. (1) Subject to subsection b, the separate categories of indirect (F&A) costs allocated to each major function of the institution as prescribed in paragraph B of this paragraph C.1 Identification and assignment of indirect (F&A) costs, must be aggregated and treated as a common pool for that function. The amount in each pool must be divided by the distribution base described in subsection 2 to arrive at a single indirect (F&A) cost rate for each function.

(2) The rate for each function is used to distribute indirect (F&A) costs to individual Federal awards of that function. Since a common pool is established for each major function of the institution, a separate indirect (F&A) cost rate would be established for each of the major functions described in Section A.1 under which Federal awards are carried out.

(3) Each institution's indirect (F&A) cost rate process must be appropriately designed to ensure that Federal sponsors do not in any way subsidize the indirect (F&A) costs of other sponsors, specifically activities sponsored by industry and foreign governments. Accordingly, each allocation method used to identify and allocate the indirect (F&A) cost pools, as described in Sections A.2, Criteria for distribution, and B.2 through B.9, must contain the full amount of the institution's modified total costs or other appropriate units of measurement used to make the computations. In addition, the final rate distribution base (as defined in subsection 2) for each major function (organized research, instruction, etc., as described in Section A.1, Major functions of an institution) must contain all the programs or activities which utilize the indirect (F&A) costs allocated to that major function. At the time an indirect (F&A) cost proposal is submitted to a cognizant agency for indirect costs, each institution must describe the process it uses to ensure that Federal funds are not used to subsidize industry and foreign government funded programs.

b. In some instances a single rate basis for use across the board on all work within a major function at an institution may not be appropriate. A single rate for research, for example, might not take into account those different environmental factors and other conditions which may affect substantially the indirect (F&A) costs applicable to a particular segment of research at the institution. A particular segment of research may be that performed under a single sponsored agreement or it may consist of research under a group of Federal awards performed in a common environment. The environmental factors are not limited to the physical location of the work. Other important factors are the level of the administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. If a particular segment of a sponsored agreement is performed within an environment which appears to generate a significantly different level of indirect (F&A) costs, provisions should be made for a separate indirect (F&A) cost pool applicable to such work. The separate indirect (F&A) cost pool should be developed during the regular course of the rate determination process and the separate indirect (F&A) cost rate resulting therefrom should be utilized; provided it is determined that (1) such indirect (F&A) cost rate differs significantly from that which would have been obtained under subsection a, and (2) the volume of work to which such rate would apply is material in relation to other Federal awards at the institution.

2. The Distribution Basis

Indirect (F&A) costs must be distributed to applicable Federal awards and other benefitting activities within each major function (see section A.1, Major functions of an institution) on the basis of modified total direct costs (MTDC), consisting of all salaries and wages, fringe benefits, materials and supplies, services, travel, and up to the first $25,000 of each subaward (regardless of the period covered by the subaward). MTDC is defined in §200.68 Modified Total Direct Cost (MTDC). For this purpose, an indirect (F&A) cost rate should be determined for each of the separate indirect (F&A) cost pools developed pursuant to subsection 1. The rate in each case should be stated as the percentage which the amount of the particular indirect (F&A) cost pool is of the modified total direct costs identified with such pool.

3. Negotiated Lump Sum for Indirect (F&A) Costs

A negotiated fixed amount in lieu of indirect (F&A) costs may be appropriate for self-contained, off-campus, or primarily subcontracted activities where the benefits derived from an institution's indirect (F&A) services cannot be readily determined. Such negotiated indirect (F&A) costs will be treated as an offset before allocation to instruction, organized research, other sponsored activities, and other institutional activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

4. Predetermined Rates for Indirect (F&A) Costs

Public Law 87-638 (76 Stat. 437) as amended (41 U.S.C. 4708) authorizes the use of predetermined rates in determining the “indirect costs” (indirect (F&A) costs) applicable under research agreements with educational institutions. The stated objectives of the law are to simplify the administration of cost-type research and development contracts (including grants) with educational institutions, to facilitate the preparation of their budgets, and to permit more expeditious closeout of such contracts when the work is completed. In view of the potential advantages offered by this procedure, negotiation of predetermined rates for indirect (F&A) costs for a period of two to four years should be the norm in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of indirect (F&A) costs during the ensuing accounting periods.

5. Negotiated Fixed Rates and Carry-Forward Provisions

When a fixed rate is negotiated in advance for a fiscal year (or other time period), the over- or under-recovery for that year may be included as an adjustment to the indirect (F&A) cost for the next rate negotiation. When the rate is negotiated before the carry-forward adjustment is determined, the carry-forward amount may be applied to the next subsequent rate negotiation. When such adjustments are to be made, each fixed rate negotiated in advance for a given period will be computed by applying the expected indirect (F&A) costs allocable to Federal awards for the forecast period plus or minus the carry-forward adjustment (over- or under-recovery) from the prior period, to the forecast distribution base. Unrecovered amounts under lump-sum agreements or cost-sharing provisions of prior years must not be carried forward for consideration in the new rate negotiation. There must, however, be an advance understanding in each case between the institution and the cognizant agency for indirect costs as to whether these differences will be considered in the rate negotiation rather than making the determination after the differences are known. Further, institutions electing to use this carry-forward provision may not subsequently change without prior approval of the cognizant agency for indirect costs. In the event that an institution returns to a post-determined rate, any over- or under-recovery during the period in which negotiated fixed rates and carry-forward provisions were followed will be included in the subsequent post-determined rates. Where multiple rates are used, the same procedure will be applicable for determining each rate.

6. Provisional and Final Rates for Indirect (F&A) Costs

Where the cognizant agency for indirect costs determines that cost experience and other pertinent facts do not justify the use of predetermined rates, or a fixed rate with a carry-forward, or if the parties cannot agree on an equitable rate, a provisional rate must be established. To prevent substantial overpayment or underpayment, the provisional rate may be adjusted by the cognizant agency for indirect costs during the institution's fiscal year. Predetermined or fixed rates may replace provisional rates at any time prior to the close of the institution's fiscal year. If a provisional rate is not replaced by a predetermined or fixed rate prior to the end of the institution's fiscal year, a final rate will be established and upward or downward adjustments will be made based on the actual allowable costs incurred for the period involved.

7. Fixed Rates for the Life of the Sponsored Agreement

7. Except as provided in paragraph (c)(1) of §200.414 Indirect (F&A) costs, Federal agencies must use the negotiated rates in effect at the time of the initial award throughout the life of the Federal award. Award levels for Federal awards may not be adjusted in future years as a result of changes in negotiated rates. “Negotiated rates” per the rate agreement include final, fixed, and predetermined rates and exclude provisional rates. “Life” for the purpose of this subsection means each competitive segment of a project. A competitive segment is a period of years approved by the Federal awarding agency at the time of the Federal award. If negotiated rate agreements do not extend through the life of the Federal award at the time of the initial award, then the negotiated rate for the last year of the Federal award must be extended through the end of the life of the Federal award.

b. Except as provided in §200.414 Indirect (F&A) costs, when an educational institution does not have a negotiated rate with the Federal Government at the time of an award (because the educational institution is a new recipient or the parties cannot reach agreement on a rate), the provisional rate used at the time of the award must be adjusted once a rate is negotiated and approved by the cognizant agency for indirect costs.

8. Limitation on Reimbursement of Administrative Costs

a. Notwithstanding the provisions of subsection C.1.a, the administrative costs charged to Federal awards awarded or amended (including continuation and renewal awards) with effective dates beginning on or after the start of the institution's first fiscal year which begins on or after October 1, 1991, must be limited to 26% of modified total direct costs (as defined in subsection 2) for the total of General Administration and General Expenses, Departmental Administration, Sponsored Projects Administration, and Student Administration and Services (including their allocable share of depreciation, interest costs, operation and maintenance expenses, and fringe benefits costs, as provided by Section B, Identification and assignment of indirect (F&A) costs, and all other types of expenditures not listed specifically under one of the subcategories of facilities in Section B.

b. Institutions should not change their accounting or cost allocation methods if the effect is to change the charging of a particular type of cost from F&A to direct, or to reclassify costs, or increase allocations from the administrative pools identified in paragraph B.1 of this Appendix to the other F&A cost pools or fringe benefits. Cognizant agencies for indirect cost are authorized to allow changes where an institution's charging practices are at variance with acceptable practices followed by a substantial majority of other institutions.

9. Alternative Method for Administrative Costs

a. Notwithstanding the provisions of subsection C.1.a, an institution may elect to claim a fixed allowance for the “Administration” portion of indirect (F&A) costs. The allowance could be either 24% of modified total direct costs or a percentage equal to 95% of the most recently negotiated fixed or predetermined rate for the cost pools included under “Administration” as defined in Section B.1, whichever is less. Under this alternative, no cost proposal need be prepared for the

“Administration” portion of the indirect (F&A) cost rate nor is further identification or documentation of these costs required (see subsection c). Where a negotiated indirect (F&A) cost agreement includes this alternative, an institution must make no further charges for the expenditure categories described in Section B.5, General administration and general expenses, Section B.6, Departmental administration expenses, Section B.7, Sponsored projects administration, and Section B.9, Student administration and services.

b. In negotiations of rates for subsequent periods, an institution that has elected the option of subsection a may continue to exercise it at the same rate without further identification or documentation of costs.

c. If an institution elects to accept a threshold rate as defined in subsection a of this section, it is not required to perform a detailed analysis of its administrative costs. However, in order to compute the facilities components of its indirect (F&A) cost rate, the institution must reconcile its indirect (F&A) cost proposal to its financial statements and make appropriate adjustments and reclassifications to identify the costs of each major function as defined in Section A.1, as well as to identify and allocate the facilities components. Administrative costs that are not identified as such by the institution's accounting system (such as those incurred in academic departments) will be classified as instructional costs for purposes of reconciling indirect (F&A) cost proposals to financial statements and allocating facilities costs.

10. Individual Rate Components

In order to provide mutually agreed-upon information for management purposes, each indirect (F&A) cost rate negotiation or determination must include development of a rate for each indirect (F&A) cost pool as well as the overall indirect (F&A) cost rate.

11. Negotiation and Approval of Indirect (F&A) Rate

a. Cognizant agency for indirect costs is defined in Subpart A—Acronyms and Definitions.

(1) Cost negotiation cognizance is assigned to the Department of Health and Human Services (HHS) or the Department of Defense's Office of Naval Research (DOD), normally depending on which of the two agencies (HHS or DOD) provides more funds to the educational institution for the most recent three years. Information on funding must be derived from relevant data gathered by the National Science Foundation. In cases where neither HHS nor DOD provides Federal funding to an educational institution, the cognizant agency for indirect costs assignment must default to HHS. Notwithstanding the method for cognizance determination described in this section, other arrangements for cognizance of a particular educational institution may also be based in part on the types of research performed at the educational institution and must be decided based on mutual agreement between HHS and DOD. Where a non-Federal entity only receives funds as a subrecipient, see §200.331 Requirements for pass-through entities.

(2) After cognizance is established, it must continue for a five-year period.

b. Acceptance of rates. See §200.414 Indirect (F&A) costs.

c. Correcting deficiencies. The cognizant agency for indirect costs must negotiate changes needed to correct systems deficiencies relating to accountability for Federal awards. Cognizant agencies for indirect costs must address the concerns of other affected agencies, as appropriate, and must negotiate special rates for Federal agencies that are required to limit recovery of indirect costs by statute.

d. Resolving questioned costs. The cognizant agency for indirect costs must conduct any necessary negotiations with an educational institution regarding amounts questioned by audit that are due the Federal Government related to costs covered by a negotiated agreement.

e. Reimbursement. Reimbursement to cognizant agencies for indirect costs for work performed under this Part may be made by reimbursement billing under the Economy Act, 31 U.S.C. 1535.

f. Procedure for establishing facilities and administrative rates must be established by one of the following methods:

(1) Formal negotiation. The cognizant agency for indirect costs is responsible for negotiating and approving rates for an educational institution on behalf of all Federal agencies. Federal awarding agencies that do not have cognizance for indirect costs must notify the cognizant agency for indirect costs of specific concerns (i.e., a need to establish special cost rates) which could affect the negotiation process. The cognizant agency for indirect costs must address the concerns of all interested agencies, as appropriate. A pre-negotiation conference may be scheduled among all interested agencies, if necessary. The cognizant agency for indirect costs must then arrange a negotiation conference with the educational institution.

(2) Other than formal negotiation. The cognizant agency for indirect costs and educational institution may reach an agreement on rates without a formal negotiation conference; for example, through correspondence or use of the simplified method described in this section D of this Appendix.

g. Formalizing determinations and agreements. The cognizant agency for indirect costs must formalize all determinations or agreements reached with an educational institution and provide copies to other agencies having an interest. Determinations should include a description of any adjustments, the actual amount, both dollar and percentage adjusted, and the reason for making adjustments.

h. Disputes and disagreements. Where the cognizant agency for indirect costs is unable to reach agreement with an educational institution with regard to rates or audit resolution, the appeal system of the cognizant agency for indirect costs must be followed for resolution of the disagreement.

12. Standard Format for Submission

For facilities and administrative (indirect (F&A)) rate proposals, educational institutions must use the standard format, shown in section E of this appendix, to submit their indirect (F&A) rate proposal to the cognizant agency for indirect costs. The cognizant agency for indirect costs may, on an institution-by-institution basis, grant exceptions from all or portions of Part II of the standard format requirement. This requirement does not apply to educational institutions that use the simplified method for calculating indirect (F&A) rates, as described in Section D of this Appendix.

As provided in section C.10 of this appendix, each F&A cost rate negotiation or determination must include development of a rate for each F&A cost pool as well as the overall F&A rate.

D. Simplified Method for Small Institutions

1. General

a. Where the total direct cost of work covered by this Part at an institution does not exceed $10 million in a fiscal year, the simplified procedure described in subsections 2 or 3 may be used in determining allowable indirect (F&A) costs. Under this simplified procedure, the institution's most recent annual financial report and immediately available supporting information must be utilized as a basis for determining the indirect (F&A) cost rate applicable to all Federal awards. The institution may use either the salaries and wages (see subsection 2) or modified total direct costs (see subsection 3) as the distribution basis.

b. The simplified procedure should not be used where it produces results which appear inequitable to the Federal Government or the institution. In any such case, indirect (F&A) costs should be determined through use of the regular procedure.

2. Simplified Procedure—Salaries and Wages Base

a. Establish the total amount of salaries and wages paid to all employees of the institution.

b. Establish an indirect (F&A) cost pool consisting of the expenditures (exclusive of capital items and other costs specifically identified as unallowable) which customarily are classified under the following titles or their equivalents:

(1) General administration and general expenses (exclusive of costs of student administration and services, student activities, student aid, and scholarships).

(2) Operation and maintenance of physical plant and depreciation (after appropriate adjustment for costs applicable to other institutional activities).

(3) Library.

(4) Department administration expenses, which will be computed as 20 percent of the salaries and expenses of deans and heads of departments.

In those cases where expenditures classified under subsection (1) have previously been allocated to other institutional activities, they may be included in the indirect (F&A) cost pool. The total amount of salaries and wages included in the indirect (F&A) cost pool must be separately identified.

c. Establish a salary and wage distribution base, determined by deducting from the total of salaries and wages as established in subsection a from the amount of salaries and wages included under subsection b.

d. Establish the indirect (F&A) cost rate, determined by dividing the amount in the indirect (F&A) cost pool, subsection b, by the amount of the distribution base, subsection c.

e. Apply the indirect (F&A) cost rate to direct salaries and wages for individual agreements to determine the amount of indirect (F&A) costs allocable to such agreements.

3. Simplified Procedure—Modified Total Direct Cost Base

a. Establish the total costs incurred by the institution for the base period.

b. Establish an indirect (F&A) cost pool consisting of the expenditures (exclusive of capital items and other costs specifically identified as unallowable) which customarily are classified under the following titles or their equivalents:

(1) General administration and general expenses (exclusive of costs of student administration and services, student activities, student aid, and scholarships).

(2) Operation and maintenance of physical plant and depreciation (after appropriate adjustment for costs applicable to other institutional activities).

(3) Library.

(4) Department administration expenses, which will be computed as 20 percent of the salaries and expenses of deans and heads of departments. In those cases where expenditures classified under subsection (1) have previously been allocated to other institutional activities, they may be included in the indirect (F&A) cost pool. The modified total direct costs amount included in the indirect (F&A) cost pool must be separately identified.

c. Establish a modified total direct cost distribution base, as defined in Section C.2, The distribution basis, that consists of all institution's direct functions.

d. Establish the indirect (F&A) cost rate, determined by dividing the amount in the indirect (F&A) cost pool, subsection b, by the amount of the distribution base, subsection c.

e. Apply the indirect (F&A) cost rate to the modified total direct costs for individual agreements to determine the amount of indirect (F&A) costs allocable to such agreements.

E. Documentation Requirements

The standard format for documentation requirements for indirect (indirect (F&A)) rate proposals for claiming costs under the regular method is available on the OMB Web site here: *http://www.whitehouse.gov/omb/grants__forms.*

F. Certification

1. Certification of Charges

To assure that expenditures for Federal awards are proper and in accordance with the agreement documents and approved project budgets, the annual and/or final fiscal reports or vouchers requesting payment under the agreements will include a certification, signed by an authorized official of the university, which reads “By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and intent set forth in the award documents. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code, Title 18, Section 1001 and Title 31, Sections 3729-3733 and 3801-3812)”.

2. Certification of Indirect (F&A) Costs

a. *Policy.* Cognizant agencies must not accept a proposed indirect cost rate unless such costs have been certified by the educational institution using the Certificate of indirect (F&A) Costs set forth in subsection F.2.c

b. The certificate must be signed on behalf of the institution by the chief financial officer or an individual designated by an individual at a level no lower than vice president or chief financial officer.

An indirect (F&A) cost rate is not binding upon the Federal Government if the most recent required proposal from the institution has not been certified. Where it is necessary to establish indirect (F&A) cost rates, and the institution has not submitted a certified proposal for establishing such rates in accordance with the requirements of this section, the Federal Government must unilaterally establish such rates. Such rates may be based upon audited historical data or such other data that have been furnished to the cognizant agency for indirect costs and for which it can be demonstrated that all unallowable costs have been excluded. When indirect (F&A) cost rates are unilaterally established by the Federal Government because of failure of the institution to submit a certified proposal for establishing such rates in accordance with this section, the rates established will be set at a level low enough to ensure that potentially unallowable costs will not be reimbursed.

c. *Certificate.* The certificate required by this section must be in the following form:

Certificate of Indirect (F&A) Costs

This is to certify that to the best of my knowledge and belief:

(1) I have reviewed the indirect (F&A) cost proposal submitted herewith;

(2) All costs included in this proposal [identify date] to establish billing or final indirect (F&A) costs rate for [identify period covered by rate] are allowable in accordance with the requirements of the Federal agreement(s) to which they apply and with the cost principles applicable to those agreements.

(3) This proposal does not include any costs which are unallowable under applicable cost principles such as (without limitation): public relations costs, contributions and donations, entertainment costs, fines and penalties, lobbying costs, and defense of fraud proceedings; and

(4) All costs included in this proposal are properly allocable to Federal agreements on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements.

I declare that the foregoing is true and correct.

Institution of Higher Education:

Signature:_____

Name of Official:_____

Title:_____

Date of Execution:_____

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75888, Dec. 19, 2014; 80 FR 54409, Sept. 10, 2015]

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Appendix IV to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations

A. General

1. Indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. Direct cost of minor amounts may be treated as indirect costs under the conditions described in §200.413 Direct costs paragraph (d) of this Part. After direct costs have been determined and assigned directly to awards or other work as appropriate, indirect costs are those remaining to be allocated to benefitting cost objectives. A cost may not be allocated to a Federal award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal award as a direct cost.

2. “Major nonprofit organizations” are defined in paragraph (a) of §200.414 Indirect (F&A) costs. See indirect cost rate reporting requirements in sections B.2.e and B.3.g of this Appendix.

B. Allocation of Indirect Costs and Determination of Indirect Cost Rates

1. General

a. If a nonprofit organization has only one major function, or where all its major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures, as described in section B.2 of this Appendix.

b. If an organization has several major functions which benefit from its indirect costs in varying degrees, allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefitting functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual Federal awards and other activities included in that function by means of an indirect cost rate(s).

c. The determination of what constitutes an organization's major functions will depend on its purpose in being; the types of services it renders to the public, its clients, and its members; and the amount of effort it devotes to such activities as fundraising, public information and membership activities.

d. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in section B.2 through B.5 of this Appendix.

e. The base period for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to work performed in that period. The base period normally should coincide with the organization's fiscal year but, in

any event, must be so selected as to avoid inequities in the allocation of the costs.

2. Simplified Allocation Method

a. Where an organization's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by (i) separating the organization's total costs for the base period as either direct or indirect, and (ii) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual Federal awards. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. This method should also be used where an organization has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to an organization is relatively small.

b. Both the direct costs and the indirect costs must exclude capital expenditures and unallowable costs. However, unallowable costs which represent activities must be included in the direct costs under the conditions described in §200.413 Direct costs, paragraph (e) of this Part.

c. The distribution base may be total direct costs (excluding capital expenditures and other distorting items, such as subawards for $25,000 or more), direct salaries and wages, or other base which results in an equitable distribution. The distribution base must exclude participant support costs as defined in §200.75 Participant support costs.

d. Except where a special rate(s) is required in accordance with section B.5 of this Appendix, the indirect cost rate developed under the above principles is applicable to all Federal awards of the organization. If a special rate(s) is required, appropriate modifications must be made in order to develop the special rate(s).

e. For an organization that receives more than $10 million in direct Federal funding in a fiscal year, a breakout of the indirect cost component into two broad categories, Facilities and Administration as defined in paragraph (a) of §200.414 Indirect (F&A) costs, is required. The rate in each case must be stated as the percentage which the amount of the particular indirect cost category (i.e., Facilities or Administration) is of the distribution base identified with that category.

3. Multiple Allocation Base Method

a. General. Where an organization's indirect costs benefit its major functions in varying degrees, indirect costs must be accumulated into separate cost groupings, as described in subparagraph b. Each grouping must then be allocated individually to benefitting functions by means of a base which best measures the relative benefits. The default allocation bases by cost pool are described in section B.3.c of this Appendix.

b. Identification of indirect costs. Cost groupings must be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping must constitute a pool of expenses that are of like character in terms of functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The groupings are classified within the two broad categories: “Facilities” and “Administration,” as described in section A.3 of this Appendix. The indirect cost pools are defined as follows:

(1) Depreciation. The expenses under this heading are the portion of the costs of the organization's buildings, capital improvements to land and buildings, and equipment which are computed in accordance with §200.436 Depreciation.

(2) Interest. Interest on debt associated with certain buildings, equipment and capital improvements are computed in accordance with §200.449 Interest.

(3) Operation and maintenance expenses. The expenses under this heading are those that have been incurred for the administration, operation, maintenance, preservation, and protection of the organization's physical plant. They include expenses normally incurred for such items as: janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; care of grounds; maintenance and operation of buildings and other plant facilities; security; earthquake and disaster preparedness; environmental safety; hazardous waste disposal; property, liability and other insurance relating to property; space and capital leasing; facility planning and management; and central receiving. The operation and maintenance expenses category must also include its allocable share of fringe benefit costs, depreciation, and interest costs.

(4) General administration and general expenses. The expenses under this heading are those that have been incurred for the overall general executive and administrative offices of the organization and other expenses of a general nature which do not relate solely to any major function of the organization. This category must also include its allocable share of fringe benefit costs, operation and maintenance expense, depreciation, and interest costs. Examples of this category include central offices, such as the director's office, the office of finance, business services, budget and planning, personnel, safety and risk management, general counsel, management information systems, and library costs.

In developing this cost pool, special care should be exercised to ensure that costs incurred for the same purpose in like circumstances are treated consistently as either direct or indirect costs. For example, salaries of technical staff, project

supplies, project publication, telephone toll charges, computer costs, travel costs, and specialized services costs must be treated as direct costs wherever identifiable to a particular program. The salaries and wages of administrative and pooled clerical staff should normally be treated as indirect costs. Direct charging of these costs may be appropriate as described in §200.413 Direct Costs. Items such as office supplies, postage, local telephone costs, periodicals and memberships should normally be treated as indirect costs.

c. Allocation bases. Actual conditions must be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefitting functions. The essential consideration in selecting a method or a base is that it is the one best suited for assigning the pool of costs to cost objectives in accordance with benefits derived; a traceable cause and effect relationship; or logic and reason, where neither the cause nor the effect of the relationship is determinable. When an allocation can be made by assignment of a cost grouping directly to the function benefitted, the allocation must be made in that manner. When the expenses in a cost grouping are more general in nature, the allocation must be made through the use of a selected base which produces results that are equitable to both the Federal Government and the organization. The distribution must be made in accordance with the bases described herein unless it can be demonstrated that the use of a different base would result in a more equitable allocation of the costs, or that a more readily available base would not increase the costs charged to Federal awards. The results of special cost studies (such as an engineering utility study) must not be used to determine and allocate the indirect costs to Federal awards.

(1) Depreciation. Depreciation expenses must be allocated in the following manner:

(a) Depreciation on buildings used exclusively in the conduct of a single function, and on capital improvements and equipment used in such buildings, must be assigned to that function.

(b) Depreciation on buildings used for more than one function, and on capital improvements and equipment used in such buildings, must be allocated to the individual functions performed in each building on the basis of usable square feet of space, excluding common areas, such as hallways, stairwells, and restrooms.

(c) Depreciation on buildings, capital improvements and equipment related space (e.g., individual rooms, and laboratories) used jointly by more than one function (as determined by the users of the space) must be treated as follows. The cost of each jointly used unit of space must be allocated to the benefitting functions on the basis of:

(i) the employees and other users on a full-time equivalent (FTE) basis or salaries and wages of those individual functions benefitting from the use of that space; or

(ii) organization-wide employee FTEs or salaries and wages applicable to the benefitting functions of the organization.

(d) Depreciation on certain capital improvements to land, such as paved parking areas, fences, sidewalks, and the like, not included in the cost of buildings, must be allocated to user categories on a FTE basis and distributed to major functions in proportion to the salaries and wages of all employees applicable to the functions.

(2) Interest. Interest costs must be allocated in the same manner as the depreciation on the buildings, equipment and capital equipment to which the interest relates.

(3) Operation and maintenance expenses. Operation and maintenance expenses must be allocated in the same manner as the depreciation.

(4) General administration and general expenses. General administration and general expenses must be allocated to benefitting functions based on modified total costs (MTC). The MTC is the modified total direct costs (MTDC), as described in Subpart A—Acronyms and Definitions of Part 200, plus the allocated indirect cost proportion. The expenses included in this category could be grouped first according to major functions of the organization to which they render services or provide benefits. The aggregate expenses of each group must then be allocated to benefitting functions based on MTC.

d. Order of distribution.

(1) Indirect cost categories consisting of depreciation, interest, operation and maintenance, and general administration and general expenses must be allocated in that order to the remaining indirect cost categories as well as to the major functions of the organization. Other cost categories should be allocated in the order determined to be most appropriate by the organization. This order of allocation does not apply if cross allocation of costs is made as provided in section B.3.d.2 of this Appendix.

(2) Normally, an indirect cost category will be considered closed once it has been allocated to other cost objectives, and costs must not be subsequently allocated to it. However, a cross allocation of costs between two or more indirect costs categories could be used if such allocation will result in a more equitable allocation of costs. If a cross allocation is used, an appropriate modification to the composition of the indirect cost categories is required.

e. Application of indirect cost rate or rates. Except where a special indirect cost rate(s) is required in accordance with section B.5 of this Appendix, the separate groupings of indirect costs allocated to each major function must be aggregated and treated as a common pool for that function. The costs in the common pool must then be distributed to individual Federal awards included in that function by use of a single indirect cost rate.

f. Distribution basis. Indirect costs must be distributed to applicable Federal awards and other benefitting activities within each major function on the basis of MTDC (see definition in §200.68 Modified Total Direct Cost (MTDC) of Part 200.

g. Individual Rate Components. An indirect cost rate must be determined for each separate indirect cost pool developed. The rate in each case must be stated as the percentage which the amount of the particular indirect cost pool is of the distribution base identified with that pool. Each indirect cost rate negotiation or determination agreement must include development of the rate for each indirect cost pool as well as the overall indirect cost rate. The indirect cost pools must be classified within two broad categories: “Facilities” and “Administration,” as described paragraph (a) of §200.414 Indirect (F&) costs.

4. Direct Allocation Method

a. Some nonprofit organizations treat all costs as direct costs except general administration and general expenses. These organizations generally separate their costs into three basic categories: (i) General administration and general expenses, (ii) fundraising, and (iii) other direct functions (including projects performed under Federal awards). Joint costs, such as depreciation, rental costs, operation and maintenance of facilities, telephone expenses, and the like are prorated individually as direct costs to each category and to each Federal award or other activity using a base most appropriate to the particular cost being prorated.

b. This method is acceptable, provided each joint cost is prorated using a base which accurately measures the benefits provided to each Federal award or other activity. The bases must be established in accordance with reasonable criteria, and be supported by current data. This method is compatible with the Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations issued jointly by the National Health Council, Inc., the National Assembly of Voluntary Health and Social Welfare Organizations, and the United Way of America.

c. Under this method, indirect costs consist exclusively of general administration and general expenses. In all other respects, the organization's indirect cost rates must be computed in the same manner as that described in section B.2 Simplified allocation method of this Appendix.

5. Special Indirect Cost Rates

In some instances, a single indirect cost rate for all activities of an organization or for each major function of the organization may not be appropriate, since it would not take into account those different factors which may substantially affect the indirect costs applicable to a particular segment of work. For this purpose, a particular segment of work may be that performed under a single Federal award or it may consist of work under a group of Federal awards performed in a common environment. These factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. When a particular segment of work is performed in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to such work. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used, provided it is determined that (i) the rate differs significantly from that which would have been obtained under sections B.2, B.3, and B.4 of this Appendix, and (ii) the volume of work to which the rate would apply is material.

C. Negotiation and Approval of Indirect Cost Rates

1. Definitions

As used in this section, the following terms have the meanings set forth in this section:

a. *Cognizant agency for indirect costs* means the Federal agency responsible for negotiating and approving indirect cost rates for a nonprofit organization on behalf of all Federal agencies.

b. *Predetermined rate* means an indirect cost rate, applicable to a specified current or future period, usually the organization's fiscal year. The rate is based on an estimate of the costs to be incurred during the period. A predetermined rate is not subject to adjustment.

c. *Fixed rate* means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.

d. *Final rate* means an indirect cost rate applicable to a specified past period which is based on the actual costs of the period. A final rate is not subject to adjustment.

e. *Provisional rate or billing rate* means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on Federal awards pending the establishment of a final rate for the period.

f. *Indirect cost proposal* means the documentation prepared by an organization to substantiate its claim for the reimbursement of indirect costs. This proposal provides the basis for the review and negotiation leading to the establishment of an organization's indirect cost rate.

g. *Cost objective* means a function, organizational subdivision, contract, Federal award, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, projects, jobs and capitalized projects.

2. Negotiation and Approval of Rates

a. Unless different arrangements are agreed to by the Federal agencies concerned, the Federal agency with the largest dollar value of Federal awards with an organization will be designated as the cognizant agency for indirect costs for the negotiation and approval of the indirect cost rates and, where necessary, other rates such as fringe benefit and computer charge-out rates. Once an agency is assigned cognizance for a particular nonprofit organization, the assignment will not be changed unless there is a shift in the dollar volume of the Federal awards to the organization for at least three years. All concerned Federal agencies must be given the opportunity to participate in the negotiation process but, after a rate has been agreed upon, it will be accepted by all Federal agencies. When a Federal agency has reason to believe that special operating factors affecting its Federal awards necessitate special indirect cost rates in accordance with section B.5 of this Appendix, it will, prior to the time the rates are negotiated, notify the cognizant agency for indirect costs. (See also §200.414 Indirect (F&A) costs of Part 200.) Where a non-Federal entity only receives funds as a subrecipient, see the requirements of §200.331 Requirements for pass-through entities.

b. Except as otherwise provided in §200.414 Indirect (F&A) costs paragraph (f) of this Part, a nonprofit organization which has not previously established an indirect cost rate with a Federal agency must submit its initial indirect cost proposal immediately after the organization is advised that a Federal award will be made and, in no event, later than three months after the effective date of the Federal award.

c. Unless approved by the cognizant agency for indirect costs in accordance with §200.414 Indirect (F&A) costs paragraph (g) of this Part, organizations that have previously established indirect cost rates must submit a new indirect cost proposal to the cognizant agency for indirect costs within six months after the close of each fiscal year.

d. A predetermined rate may be negotiated for use on Federal awards where there is reasonable assurance, based on past experience and reliable projection of the organization's costs, that the rate is not likely to exceed a rate based on the organization's actual costs.

e. Fixed rates may be negotiated where predetermined rates are not considered appropriate. A fixed rate, however, must not be negotiated if (i) all or a substantial portion of the organization's Federal awards are expected to expire before the carry-forward adjustment can be made; (ii) the mix of Federal and non-Federal work at the organization is too erratic to permit an equitable carry-forward adjustment; or (iii) the organization's operations fluctuate significantly from year to year.

f. Provisional and final rates must be negotiated where neither predetermined nor fixed rates are appropriate. Predetermined or fixed rates may replace provisional rates at any time prior to the close of the organization's fiscal year. If that event does not occur, a final rate will be established and upward or downward adjustments will be made based on the actual allowable costs incurred for the period involved.

g. The results of each negotiation must be formalized in a written agreement between the cognizant agency for indirect costs and the nonprofit organization. The cognizant agency for indirect costs must make available copies of the agreement to all concerned Federal agencies.

h. If a dispute arises in a negotiation of an indirect cost rate between the cognizant agency for indirect costs and the nonprofit organization, the dispute must be resolved in accordance with the appeals procedures of the cognizant agency for indirect costs.

i. To the extent that problems are encountered among the Federal agencies in connection with the negotiation and approval process, OMB will lend assistance as required to resolve such problems in a timely manner.

D. Certification of Indirect (F&A) Costs

(1) Required Certification. No proposal to establish indirect (F&A) cost rates must be acceptable unless such costs have been certified by the non-profit organization using the Certificate of Indirect (F&A) Costs set forth in section j. of this appendix. The certificate must be signed on behalf of the organization by an individual at a level no lower than vice president or chief financial officer for the organization.

(2) Each indirect cost rate proposal must be accompanied by a certification in the following form:

Certificate of Indirect (F&A) Costs

This is to certify that to the best of my knowledge and belief:

(1) I have reviewed the indirect (F&A) cost proposal submitted herewith;

(2) All costs included in this proposal [identify date] to establish billing or final indirect (F&A) costs rate for [identify period covered by rate] are allowable in accordance with the requirements of the Federal awards to which they apply and with Subpart E—Cost Principles of Part 200.

(3) This proposal does not include any costs which are unallowable under Subpart E—Cost Principles of Part 200 such as (without limitation): public relations costs, contributions and donations, entertainment costs, fines and penalties, lobbying costs, and defense of fraud proceedings; and

(4) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the Federal awards to which they are allocated in accordance with applicable requirements.

I declare that the foregoing is true and correct.

Nonprofit Organization:_____

Signature:_____

Name of Official:_____

Title:_____

Date of Execution:_____

[78 FR 78608, Dec. 26, 2013, as amended at 80 FR 54410, Sept. 10, 2015]

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Appendix V to Part 200—State/Local Governmentwide Central Service Cost Allocation Plans

A. General

1. Most governmental units provide certain services, such as motor pools, computer centers, purchasing, accounting, etc., to operating agencies on a centralized basis. Since federally-supported awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan provides that process. All costs and other data used to distribute the costs included in the plan should be supported by formal accounting and other records that will support the propriety of the costs assigned to Federal awards.

2. Guidelines and illustrations of central service cost allocation plans are provided in a brochure published by the Department of Health and Human Services entitled "*A Guide for State, Local and Indian Tribal Governments: Cost Principles and Procedures for Developing Cost Allocation Plans and Indirect Cost Rates for Agreements with the Federal Government*." A copy of this brochure may be obtained from the HHS Cost Allocation Services or at their Web site at *https://rates.psc.gov.*

B. Definitions

1. *Agency or operating agency* means an organizational unit or sub-division within a governmental unit that is responsible for the performance or administration of Federal awards or activities of the governmental unit.

2. *Allocated central services* means central services that benefit operating agencies but are not billed to the agencies on a fee-for-service or similar basis. These costs are allocated to benefitted agencies on some reasonable basis. Examples of such services might include general accounting, personnel administration, purchasing, etc.

3. *Billed central services* means central services that are billed to benefitted agencies or programs on an individual fee-for-service or similar basis. Typical examples of billed central services include computer services, transportation services,

insurance, and fringe benefits.

4. *Cognizant agency for indirect costs* is defined in §200.19 Cognizant agency for indirect costs of this Part. The determination of cognizant agency for indirect costs for states and local governments is described in section F.1, Negotiation and Approval of Central Service Plans.

5. *Major local government* means local government that receives more than $100 million in direct Federal awards subject to this Part.

C. Scope of the Central Service Cost Allocation Plans

The central service cost allocation plan will include all central service costs that will be claimed (either as a billed or an allocated cost) under Federal awards and will be documented as described in section E. Costs of central services omitted from the plan will not be reimbursed.

D. Submission Requirements

1. Each state will submit a plan to the Department of Health and Human Services for each year in which it claims central service costs under Federal awards. The plan should include (a) a projection of the next year's allocated central service cost (based either on actual costs for the most recently completed year or the budget projection for the coming year), and (b) a reconciliation of actual allocated central service costs to the estimated costs used for either the most recently completed year or the year immediately preceding the most recently completed year.

2. Each major local government is also required to submit a plan to its cognizant agency for indirect costs annually.

3. All other local governments claiming central service costs must develop a plan in accordance with the requirements described in this Part and maintain the plan and related supporting documentation for audit. These local governments are not required to submit their plans for Federal approval unless they are specifically requested to do so by the cognizant agency for indirect costs. Where a local government only receives funds as a subrecipient, the pass-through entity will be responsible for monitoring the subrecipient's plan.

4. All central service cost allocation plans will be prepared and, when required, submitted within six months prior to the beginning of each of the governmental unit's fiscal years in which it proposes to claim central service costs. Extensions may be granted by the cognizant agency for indirect costs on a case-by-case basis.

E. Documentation Requirements for Submitted Plans

The documentation requirements described in this section may be modified, expanded, or reduced by the cognizant agency for indirect costs on a case-by-case basis. For example, the requirements may be reduced for those central services which have little or no impact on Federal awards. Conversely, if a review of a plan indicates that certain additional information is needed, and will likely be needed in future years, it may be routinely requested in future plan submissions. Items marked with an asterisk (*) should be submitted only once; subsequent plans should merely indicate any changes since the last plan.

1. General

All proposed plans must be accompanied by the following: an organization chart sufficiently detailed to show operations including the central service activities of the state/local government whether or not they are shown as benefitting from central service functions; a copy of the Comprehensive Annual Financial Report (or a copy of the Executive Budget if budgeted costs are being proposed) to support the allowable costs of each central service activity included in the plan; and, a certification (see subsection 4.) that the plan was prepared in accordance with this Part, contains only allowable costs, and was prepared in a manner that treated similar costs consistently among the various Federal awards and between Federal and non-Federal awards/activities.

2. Allocated Central Services

For each allocated central service*, the plan must also include the following: a brief description of the service, an identification of the unit rendering the service and the operating agencies receiving the service, the items of expense included in the cost of the service, the method used to distribute the cost of the service to benefitted agencies, and a summary schedule showing the allocation of each service to the specific benefitted agencies. If any self-insurance funds or fringe benefits costs are treated as allocated (rather than billed) central services, documentation discussed in subsections 3.b. and c. must also be included.

3. Billed Services

a. *General.* The information described in this section must be provided for all billed central services, including internal service funds, self-insurance funds, and fringe benefit funds.

b. Internal service funds.

(1) For each internal service fund or similar activity with an operating budget of $5 million or more, the plan must include: a brief description of each service; a balance sheet for each fund based on individual accounts contained in the governmental unit's accounting system; a revenue/expenses statement, with revenues broken out by source, e.g., regular billings, interest earned, etc.; a listing of all non-operating transfers (as defined by Generally Accepted Accounting Principles (GAAP)) into and out of the fund; a description of the procedures (methodology) used to charge the costs of each service to users, including how billing rates are determined; a schedule of current rates; and, a schedule comparing total revenues (including imputed revenues) generated by the service to the allowable costs of the service, as determined under this Part, with an explanation of how variances will be handled.

(2) Revenues must consist of all revenues generated by the service, including unbilled and uncollected revenues. If some users were not billed for the services (or were not billed at the full rate for that class of users), a schedule showing the full imputed revenues associated with these users must be provided. Expenses must be broken out by object cost categories (e.g., salaries, supplies, etc.).

c. *Self-insurance funds.* For each self-insurance fund, the plan must include: the fund balance sheet; a statement of revenue and expenses including a summary of billings and claims paid by agency; a listing of all non-operating transfers into and out of the fund; the type(s) of risk(s) covered by the fund (e.g., automobile liability, workers' compensation, etc.); an explanation of how the level of fund contributions are determined, including a copy of the current actuarial report (with the actuarial assumptions used) if the contributions are determined on an actuarial basis; and, a description of the procedures used to charge or allocate fund contributions to benefitted activities. Reserve levels in excess of claims (1) submitted and adjudicated but not paid, (2) submitted but not adjudicated, and (3) incurred but not submitted must be identified and explained.

d. *Fringe benefits.* For fringe benefit costs, the plan must include: a listing of fringe benefits provided to covered employees, and the overall annual cost of each type of benefit; current fringe benefit policies; and procedures used to charge or allocate the costs of the benefits to benefitted activities. In addition, for pension and post-retirement health insurance plans, the following information must be provided: the governmental unit's funding policies, e.g., legislative bills, trust agreements, or state-mandated contribution rules, if different from actuarially determined rates; the pension plan's costs accrued for the year; the amount funded, and date(s) of funding; a copy of the current actuarial report (including the actuarial assumptions); the plan trustee's report; and, a schedule from the activity showing the value of the interest cost associated with late funding.

4. Required Certification

Each central service cost allocation plan will be accompanied by a certification in the following form:

CERTIFICATE OF COST ALLOCATION PLAN

This is to certify that I have reviewed the cost allocation plan submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal [identify date] to establish cost allocations or billings for [identify period covered by plan] are allowable in accordance with the requirements of this Part and the Federal award(s) to which they apply. Unallowable costs have been adjusted for in allocating costs as indicated in the cost allocation plan.

(2) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the Federal awards to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently.

I declare that the foregoing is true and correct.

Governmental Unit:_____

Signature:_____

Name of Official:_____

Title:_____

Date of Execution:_____

F. Negotiation and Approval of Central Service Plans

1. Federal Cognizant Agency for Indirect Costs Assignments for Cost Negotiation

In general, unless different arrangements are agreed to by the concerned Federal agencies, for central service cost allocation plans, the cognizant agency responsible for review and approval is the Federal agency with the largest dollar value of total Federal awards with a governmental unit. For indirect cost rates and departmental indirect cost allocation plans, the cognizant agency is the Federal agency with the largest dollar value of direct Federal awards with a governmental unit or component, as appropriate. Once designated as the cognizant agency for indirect costs, the Federal agency must remain so for a period of five years. In addition, the following Federal agencies continue to be responsible for the indicated governmental entities:

Department of Health and Human Services—Public assistance and state-wide cost allocation plans for all states (including the District of Columbia and Puerto Rico), state and local hospitals, libraries and health districts.

Department of the Interior—Indian tribal governments, territorial governments, and state and local park and recreational districts.

Department of Labor—State and local labor departments.

Department of Education—School districts and state and local education agencies.

Department of Agriculture—State and local agriculture departments.

Department of Transportation—State and local airport and port authorities and transit districts.

Department of Commerce—State and local economic development districts.

Department of Housing and Urban Development—State and local housing and development districts.

Environmental Protection Agency—State and local water and sewer districts.

2. Review

All proposed central service cost allocation plans that are required to be submitted will be reviewed, negotiated, and approved by the cognizant agency for indirect costs on a timely basis. The cognizant agency for indirect costs will review the proposal within six months of receipt of the proposal and either negotiate/approve the proposal or advise the governmental unit of the additional documentation needed to support/evaluate the proposed plan or the changes required to make the proposal acceptable. Once an agreement with the governmental unit has been reached, the agreement will be accepted and used by all Federal agencies, unless prohibited or limited by statute. Where a Federal awarding agency has reason to believe that special operating factors affecting its Federal awards necessitate special consideration, the funding agency will, prior to the time the plans are negotiated, notify the cognizant agency for indirect costs.

3. Agreement

The results of each negotiation must be formalized in a written agreement between the cognizant agency for indirect costs and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The results of the negotiation must be made available to all Federal agencies for their use.

4. Adjustments

Negotiated cost allocation plans based on a proposal later found to have included costs that: (a) are unallowable (i) as specified by law or regulation, (ii) as identified in subpart F, General Provisions for selected Items of Cost of this Part, or (iii) by the terms and conditions of Federal awards, or (b) are unallowable because they are clearly not allocable to Federal awards, must be adjusted, or a refund must be made at the option of the cognizant agency for indirect costs, including earned or imputed interest from the date of transfer and debt interest, if applicable, chargeable in accordance with applicable Federal cognizant agency for indirect costs regulations. Adjustments or cash refunds may include, at the option of the cognizant agency for indirect costs, earned or imputed interest from the date of expenditure and delinquent debt interest, if applicable, chargeable in accordance with applicable cognizant agency claims collection regulations. These adjustments or refunds are designed to correct the plans and do not constitute a reopening of the negotiation.

G. Other Policies

1. Billed Central Service Activities

Each billed central service activity must separately account for all revenues (including imputed revenues) generated by the service, expenses incurred to furnish the service, and profit/loss.

2. Working Capital Reserves

Internal service funds are dependent upon a reasonable level of working capital reserve to operate from one billing cycle to the next. Charges by an internal service activity to provide for the establishment and maintenance of a reasonable level of working capital reserve, in addition to the full recovery of costs, are allowable. A working capital reserve as part of retained earnings of up to 60 calendar days cash expenses for normal operating purposes is considered reasonable. A working capital reserve exceeding 60 calendar days may be approved by the cognizant agency for indirect costs in exceptional cases.

3. Carry-Forward Adjustments of Allocated Central Service Costs

Allocated central service costs are usually negotiated and approved for a future fiscal year on a “fixed with carry-forward” basis. Under this procedure, the fixed amounts for the future year covered by agreement are not subject to adjustment for that year. However, when the actual costs of the year involved become known, the differences between the fixed amounts previously approved and the actual costs will be carried forward and used as an adjustment to the fixed amounts established for a later year. This “carry-forward” procedure applies to all central services whose costs were fixed in the approved plan. However, a carry-forward adjustment is not permitted, for a central service activity that was not included in the approved plan, or for unallowable costs that must be reimbursed immediately.

4. Adjustments of Billed Central Services

Billing rates used to charge Federal awards must be based on the estimated costs of providing the services, including an estimate of the allocable central service costs. A comparison of the revenue generated by each billed service (including total revenues whether or not billed or collected) to the actual allowable costs of the service will be made at least annually, and an adjustment will be made for the difference between the revenue and the allowable costs. These adjustments will be made through one of the following adjustment methods: (a) a cash refund including earned or imputed interest from the date of transfer and debt interest, if applicable, chargeable in accordance with applicable Federal cognizant agency for indirect costs regulations to the Federal Government for the Federal share of the adjustment, (b) credits to the amounts charged to the individual programs, (c) adjustments to future billing rates, or (d) adjustments to allocated central service costs. Adjustments to allocated central services will not be permitted where the total amount of the adjustment for a particular service (Federal share and non-Federal) share exceeds $500,000. Adjustment methods may include, at the option of the cognizant agency, earned or imputed interest from the date of expenditure and delinquent debt interest, if applicable, chargeable in accordance with applicable cognizant agency claims collection regulations.

5. Records Retention

All central service cost allocation plans and related documentation used as a basis for claiming costs under Federal awards must be retained for audit in accordance with the records retention requirements contained in Subpart D—Post Federal Award Requirements, of Part 200.

6. Appeals

If a dispute arises in the negotiation of a plan between the cognizant agency for indirect costs and the governmental unit, the dispute must be resolved in accordance with the appeals procedures of the cognizant agency for indirect costs.

7. OMB Assistance

To the extent that problems are encountered among the Federal agencies or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

[78 FR 78608, Dec. 26, 2013, as amended at 80 FR 54410, Sept. 10, 2015]

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Appendix VI to Part 200—Public Assistance Cost Allocation Plans

A. General

Federally-financed programs administered by state public assistance agencies are funded predominately by the Department of Health and Human Services (HHS). In support of its stewardship requirements, HHS has published requirements for the development, documentation, submission, negotiation, and approval of public assistance cost allocation plans in Subpart E of 45 CFR Part 95. All administrative costs (direct and indirect) are normally charged to Federal awards by implementing the public assistance cost allocation plan. This Appendix extends these requirements to all Federal awarding agencies whose programs are administered by a state public assistance agency. Major federally-financed programs typically administered by state public assistance agencies include: Temporary Aid to Needy Families (TANF), Medicaid, Food Stamps, Child Support Enforcement, Adoption Assistance and Foster Care, and Social Services Block Grant.

B. Definitions

1. *State public assistance agency* means a state agency administering or supervising the administration of one or more public assistance programs operated by the state as identified in Subpart E of 45 CFR Part 95. For the purpose of this Appendix, these programs include all programs administered by the state public assistance agency.

2. *State public assistance agency costs* means all costs incurred by, or allocable to, the state public assistance agency, except expenditures for financial assistance, medical contractor payments, food stamps, and payments for services and goods provided directly to program recipients.

C. Policy

State public assistance agencies will develop, document and implement, and the Federal Government will review, negotiate, and approve, public assistance cost allocation plans in accordance with Subpart E of 45 CFR Part 95. The plan will include all programs administered by the state public assistance agency. Where a letter of approval or disapproval is transmitted to a state public assistance agency in accordance with Subpart E, the letter will apply to all Federal agencies and programs. The remaining sections of this Appendix (except for the requirement for certification) summarize the provisions of Subpart E of 45 CFR Part 95.

D. Submission, Documentation, and Approval of Public Assistance Cost Allocation Plans

1. State public assistance agencies are required to promptly submit amendments to the cost allocation plan to HHS for review and approval.

2. Under the coordination process outlined in section E, Review of Implementation of Approved Plans, affected Federal agencies will review all new plans and plan amendments and provide comments, as appropriate, to HHS. The effective date of the plan or plan amendment will be the first day of the calendar quarter following the event that required the amendment, unless another date is specifically approved by HHS. HHS, as the cognizant agency for indirect costs acting on behalf of all affected Federal agencies, will, as necessary, conduct negotiations with the state public assistance agency and will inform the state agency of the action taken on the plan or plan amendment.

E. Review of Implementation of Approved Plans

1. Since public assistance cost allocation plans are of a narrative nature, the review during the plan approval process consists of evaluating the appropriateness of the proposed groupings of costs (cost centers) and the related allocation bases. As such, the Federal Government needs some assurance that the cost allocation plan has been implemented as approved. This is accomplished by reviews by the Federal awarding agencies, single audits, or audits conducted by the cognizant agency for indirect costs.

2. Where inappropriate charges affecting more than one Federal awarding agency are identified, the cognizant HHS cost negotiation office will be advised and will take the lead in resolving the issue(s) as provided for in Subpart E of 45 CFR Part 95.

3. If a dispute arises in the negotiation of a plan or from a disallowance involving two or more Federal awarding agencies, the dispute must be resolved in accordance with the appeals procedures set out in 45 CFR Part 16. Disputes involving only one Federal awarding agency will be resolved in accordance with the Federal awarding agency's appeal process.

4. To the extent that problems are encountered among the Federal awarding agencies or governmental units in connection with the negotiation and approval process, the Office of Management and Budget will lend assistance, as required, to resolve such problems in a timely manner.

F. Unallowable Costs

Claims developed under approved cost allocation plans will be based on allowable costs as identified in this Part. Where unallowable costs have been claimed and reimbursed, they will be refunded to the program that reimbursed the unallowable cost using one of the following methods: (a) a cash refund, (b) offset to a subsequent claim, or (c) credits to the amounts charged to individual Federal awards. Cash refunds, offsets, and credits may include at the option of the cognizant agency for indirect cost, earned or imputed interest from the date of expenditure and delinquent debt interest, if applicable, chargeable in accordance with applicable cognizant agency for indirect cost claims collection regulations.

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Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals

A. General

1. Indirect costs are those that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned directly to Federal awards and other activities as appropriate, indirect costs are those remaining to be allocated to benefitted cost objectives. A cost may not be allocated to a Federal award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal award as a direct cost.

2. Indirect costs include (a) the indirect costs originating in each department or agency of the governmental unit carrying out Federal awards and (b) the costs of central governmental services distributed through the central service cost allocation plan (as described in Appendix V to Part 200—State/Local Government and Indian Tribe-Wide Central Service Cost Allocation Plans) and not otherwise treated as direct costs.

3. Indirect costs are normally charged to Federal awards by the use of an indirect cost rate. A separate indirect cost rate(s) is usually necessary for each department or agency of the governmental unit claiming indirect costs under Federal awards. Guidelines and illustrations of indirect cost proposals are provided in a brochure published by the Department of Health and Human Services entitled "*A Guide for States and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government.*" A copy of this brochure may be obtained from HHS Cost Allocation Services or at their Web site at *https://rates.psc.gov*.

4. Because of the diverse characteristics and accounting practices of governmental units, the types of costs which may be classified as indirect costs cannot be specified in all situations. However, typical examples of indirect costs may include certain state/local-wide central service costs, general administration of the non-Federal entity accounting and personnel services performed within the non-Federal entity, depreciation on buildings and equipment, the costs of operating and maintaining facilities.

5. This Appendix does not apply to state public assistance agencies. These agencies should refer instead to Appendix VI to Part 200—Public Assistance Cost Allocation Plans.

B. Definitions

1. *Base* means the accumulated direct costs (normally either total direct salaries and wages or total direct costs exclusive of any extraordinary or distorting expenditures) used to distribute indirect costs to individual Federal awards. The direct cost base selected should result in each Federal award bearing a fair share of the indirect costs in reasonable relation to the benefits received from the costs.

2. *Base period* for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to activities performed in that period. The base period normally should coincide with the governmental unit's fiscal year, but in any event, must be so selected as to avoid inequities in the allocation of costs.

3. *Cognizant agency for indirect costs* means the Federal agency responsible for reviewing and approving the governmental unit's indirect cost rate(s) on the behalf of the Federal Government. The cognizant agency for indirect costs assignment is described in Appendix V, section F, Negotiation and Approval of Central Service Plans.

4. *Final rate* means an indirect cost rate applicable to a specified past period which is based on the actual allowable costs of the period. A final audited rate is not subject to adjustment.

5. *Fixed rate* means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual, allowable costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.

6. *Indirect cost pool* is the accumulated costs that jointly benefit two or more programs or other cost objectives.

7. *Indirect cost rate* is a device for determining in a reasonable manner the proportion of indirect costs each program should bear. It is the ratio (expressed as a percentage) of the indirect costs to a direct cost base.

8. *Indirect cost rate proposal* means the documentation prepared by a governmental unit or subdivision thereof to substantiate its request for the establishment of an indirect cost rate.

9. *Predetermined rate* means an indirect cost rate, applicable to a specified current or future period, usually the governmental unit's fiscal year. This rate is based on an estimate of the costs to be incurred during the period. Except under very unusual circumstances, a predetermined rate is not subject to adjustment. (Because of legal constraints, predetermined rates are not permitted for Federal contracts; they may, however, be used for grants or cooperative agreements.) Predetermined rates may not be used by governmental units that have not submitted and negotiated the rate with the cognizant agency for indirect costs. In view of the potential advantages offered by this procedure, negotiation of predetermined rates for indirect costs for a period of two to four years should be the norm in those situations where the cost experience and other

pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of indirect costs during the ensuing accounting periods.

10. *Provisional rate* means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on Federal awards pending the establishment of a “final” rate for that period.

C. Allocation of Indirect Costs and Determination of Indirect Cost Rates

1. General

a. Where a governmental unit's department or agency has only one major function, or where all its major functions benefit from the indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures as described in subsection 2.

b. Where a governmental unit's department or agency has several major functions which benefit from its indirect costs in varying degrees, the allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefitted functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual Federal awards and other activities included in that function by means of an indirect cost rate(s).

c. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in subsections 2, 3 and 4.

2. Simplified Method

a. Where a non-Federal entity's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by (1) classifying the non-Federal entity's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual Federal awards. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. This method should also be used where a governmental unit's department or agency has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to that department or agency is relatively small.

b. Both the direct costs and the indirect costs must exclude capital expenditures and unallowable costs. However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

c. The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, subcontracts in excess of $25,000, participant support costs, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

3. Multiple Allocation Base Method

a. Where a non-Federal entity's indirect costs benefit its major functions in varying degrees, such costs must be accumulated into separate cost groupings. Each grouping must then be allocated individually to benefitted functions by means of a base which best measures the relative benefits.

b. The cost groupings should be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping should constitute a pool of expenses that are of like character in terms of the functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The number of separate groupings should be held within practical limits, taking into consideration the materiality of the amounts involved and the degree of precision needed.

c. Actual conditions must be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefitted functions. When an allocation can be made by assignment of a cost grouping directly to the function benefitted, the allocation must be made in that manner. When the expenses in a grouping are more general in nature, the allocation should be made through the use of a selected base which produces results that are equitable to both the Federal Government and the governmental unit. In general, any cost element or related factor associated with the governmental unit's activities is potentially adaptable for use as an allocation base provided that: (1) it can readily be expressed in terms of dollars or other quantitative measures (total direct costs, direct salaries and wages, staff hours applied, square feet used, hours of usage, number of documents processed, population served, and the like), and (2) it is common to the benefitted functions during the base period.

d. Except where a special indirect cost rate(s) is required in accordance with paragraph (C)(4) of this Appendix, the separate groupings of indirect costs allocated to each major function must be aggregated and treated as a common pool for

that function. The costs in the common pool must then be distributed to individual Federal awards included in that function by use of a single indirect cost rate.

e. The distribution base used in computing the indirect cost rate for each function may be (1) total direct costs (excluding capital expenditures and other distorting items such as pass-through funds, subawards in excess of $25,000, participant support costs, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution. An indirect cost rate should be developed for each separate indirect cost pool developed. The rate in each case should be stated as the percentage relationship between the particular indirect cost pool and the distribution base identified with that pool.

4. Special Indirect Cost Rates

a. In some instances, a single indirect cost rate for all activities of a non-Federal entity or for each major function of the agency may not be appropriate. It may not take into account those different factors which may substantially affect the indirect costs applicable to a particular program or group of programs. The factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the organizational arrangements used, or any combination thereof. When a particular Federal award is carried out in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to that Federal award. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used, provided that: (1) The rate differs significantly from the rate which would have been developed under paragraphs (C)(2) and (C)(3) of this Appendix, and (2) the Federal award to which the rate would apply is material in amount.

b. Where Federal statutes restrict the reimbursement of certain indirect costs, it may be necessary to develop a special rate for the affected Federal award. Where a “restricted rate” is required, the same procedure for developing a non-restricted rate will be used except for the additional step of the elimination from the indirect cost pool those costs for which the law prohibits reimbursement.

D. Submission and Documentation of Proposals

1. Submission of Indirect Cost Rate Proposals

a. All departments or agencies of the governmental unit desiring to claim indirect costs under Federal awards must prepare an indirect cost rate proposal and related documentation to support those costs. The proposal and related documentation must be retained for audit in accordance with the records retention requirements contained in §200.333 Retention Requirements for Records.

b. A governmental department or agency unit that receives more than $35 million in direct Federal funding must submit its indirect cost rate proposal to its cognizant agency for indirect costs. Other governmental department or agency must develop an indirect cost proposal in accordance with the requirements of this Part and maintain the proposal and related supporting documentation for audit. These governmental departments or agencies are not required to submit their proposals unless they are specifically requested to do so by the cognizant agency for indirect costs. Where a non-Federal entity only receives funds as a subrecipient, the pass-through entity will be responsible for negotiating and/or monitoring the subrecipient's indirect costs.

c. Each Indian tribal government desiring reimbursement of indirect costs must submit its indirect cost proposal to the Department of the Interior (its cognizant agency for indirect costs).

d. Indirect cost proposals must be developed (and, when required, submitted) within six months after the close of the governmental unit's fiscal year, unless an exception is approved by the cognizant agency for indirect costs. If the proposed central service cost allocation plan for the same period has not been approved by that time, the indirect cost proposal may be prepared including an amount for central services that is based on the latest federally-approved central service cost allocation plan. The difference between these central service amounts and the amounts ultimately approved will be compensated for by an adjustment in a subsequent period.

2. Documentation of Proposals

The following must be included with each indirect cost proposal:

a. The rates proposed, including subsidiary work sheets and other relevant data, cross referenced and reconciled to the financial data noted in subsection b. Allocated central service costs will be supported by the summary table included in the approved central service cost allocation plan. This summary table is not required to be submitted with the indirect cost proposal if the central service cost allocation plan for the same fiscal year has been approved by the cognizant agency for indirect costs and is available to the funding agency.

b. A copy of the financial data (financial statements, comprehensive annual financial report, executive budgets, accounting reports, etc.) upon which the rate is based. Adjustments resulting from the use of unaudited data will be recognized, where

appropriate, by the Federal cognizant agency for indirect costs in a subsequent proposal.

c. The approximate amount of direct base costs incurred under Federal awards. These costs should be broken out between salaries and wages and other direct costs.

d. A chart showing the organizational structure of the agency during the period for which the proposal applies, along with a functional statement(s) noting the duties and/or responsibilities of all units that comprise the agency. (Once this is submitted, only revisions need be submitted with subsequent proposals.)

3. Required certification.

Each indirect cost rate proposal must be accompanied by a certification in the following form:

Certificate of Indirect Costs

This is to certify that I have reviewed the indirect cost rate proposal submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal [identify date] to establish billing or final indirect costs rates for [identify period covered by rate] are allowable in accordance with the requirements of the Federal award(s) to which they apply and the provisions of this Part. Unallowable costs have been adjusted for in allocating costs as indicated in the indirect cost proposal

(2) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently and the Federal Government will be notified of any accounting changes that would affect the predetermined rate.

I declare that the foregoing is true and correct.

Governmental Unit:_____

Signature:_____

Name of Official:_____

Title:_____

Date of Execution:_____

E. Negotiation and Approval of Rates.

1. Indirect cost rates will be reviewed, negotiated, and approved by the cognizant agency on a timely basis. Once a rate has been agreed upon, it will be accepted and used by all Federal agencies unless prohibited or limited by statute. Where a Federal awarding agency has reason to believe that special operating factors affecting its Federal awards necessitate special indirect cost rates, the funding agency will, prior to the time the rates are negotiated, notify the cognizant agency for indirect costs.

2. The use of predetermined rates, if allowed, is encouraged where the cognizant agency for indirect costs has reasonable assurance based on past experience and reliable projection of the non-Federal entity's costs, that the rate is not likely to exceed a rate based on actual costs. Long-term agreements utilizing predetermined rates extending over two or more years are encouraged, where appropriate.

3. The results of each negotiation must be formalized in a written agreement between the cognizant agency for indirect costs and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute, or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The agreed upon rates must be made available to all Federal agencies for their use.

4. Refunds must be made if proposals are later found to have included costs that (a) are unallowable (i) as specified by law or regulation, (ii) as identified in §200.420 Considerations for selected items of cost, of this Part, or (iii) by the terms and conditions of Federal awards, or (b) are unallowable because they are clearly not allocable to Federal awards. These adjustments or refunds will be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).

F. Other Policies

1. Fringe Benefit Rates

If overall fringe benefit rates are not approved for the governmental unit as part of the central service cost allocation plan, these rates will be reviewed, negotiated and approved for individual recipient agencies during the indirect cost negotiation process. In these cases, a proposed fringe benefit rate computation should accompany the indirect cost proposal. If fringe benefit rates are not used at the recipient agency level (i.e., the agency specifically identifies fringe benefit costs to individual employees), the governmental unit should so advise the cognizant agency for indirect costs.

2. Billed Services Provided by the Recipient Agency

In some cases, governmental departments or agencies (components of the governmental unit) provide and bill for services similar to those covered by central service cost allocation plans (e.g., computer centers). Where this occurs, the governmental departments or agencies (components of the governmental unit)should be guided by the requirements in Appendix V relating to the development of billing rates and documentation requirements, and should advise the cognizant agency for indirect costs of any billed services. Reviews of these types of services (including reviews of costing/billing methodology, profits or losses, etc.) will be made on a case-by-case basis as warranted by the circumstances involved.

3. Indirect Cost Allocations Not Using Rates

In certain situations, governmental departments or agencies (components of the governmental unit), because of the nature of their Federal awards, may be required to develop a cost allocation plan that distributes indirect (and, in some cases, direct) costs to the specific funding sources. In these cases, a narrative cost allocation methodology should be developed, documented, maintained for audit, or submitted, as appropriate, to the cognizant agency for indirect costs for review, negotiation, and approval.

4. Appeals

If a dispute arises in a negotiation of an indirect cost rate (or other rate) between the cognizant agency for indirect costs and the governmental unit, the dispute must be resolved in accordance with the appeals procedures of the cognizant agency for indirect costs.

5. Collection of Unallowable Costs and Erroneous Payments

Costs specifically identified as unallowable and charged to Federal awards either directly or indirectly will be refunded (including interest chargeable in accordance with applicable Federal cognizant agency for indirect costs regulations).

6. OMB Assistance

To the extent that problems are encountered among the Federal agencies or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75889, Dec. 19, 2014]

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Appendix VIII to Part 200—Nonprofit Organizations Exempted From Subpart E—Cost Principles of Part 200

1. Advance Technology Institute (ATI), Charleston, South Carolina

2. Aerospace Corporation, El Segundo, California

3. American Institutes of Research (AIR), Washington, DC

4. Argonne National Laboratory, Chicago, Illinois

5. Atomic Casualty Commission, Washington, DC

6. Battelle Memorial Institute, Headquartered in Columbus, Ohio

7. Brookhaven National Laboratory, Upton, New York

8. Charles Stark Draper Laboratory, Incorporated, Cambridge, Massachusetts

9. CNA Corporation (CNAC), Alexandria, Virginia

10. Environmental Institute of Michigan, Ann Arbor, Michigan

11. Georgia Institute of Technology/Georgia Tech Applied Research Corporation/Georgia Tech Research Institute, Atlanta, Georgia

12. Hanford Environmental Health Foundation, Richland, Washington

13. IIT Research Institute, Chicago, Illinois

14. Institute of Gas Technology, Chicago, Illinois

15. Institute for Defense Analysis, Alexandria, Virginia

16. LMI, McLean, Virginia

17. Mitre Corporation, Bedford, Massachusetts

18. Noblis, Inc., Falls Church, Virginia

19. National Radiological Astronomy Observatory, Green Bank, West Virginia

20. National Renewable Energy Laboratory, Golden, Colorado

21. Oak Ridge Associated Universities, Oak Ridge, Tennessee

22. Rand Corporation, Santa Monica, California

23. Research Triangle Institute, Research Triangle Park, North Carolina

24. Riverside Research Institute, New York, New York

25. South Carolina Research Authority (SCRA), Charleston, South Carolina

26. Southern Research Institute, Birmingham, Alabama

27. Southwest Research Institute, San Antonio, Texas

28. SRI International, Menlo Park, California

29. Syracuse Research Corporation, Syracuse, New York

30. Universities Research Association, Incorporated (National Acceleration Lab), Argonne, Illinois

31. Urban Institute, Washington DC

32. Non-profit insurance companies, such as Blue Cross and Blue Shield Organizations

33. Other non-profit organizations as negotiated with Federal awarding agencies

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Appendix IX to Part 200—Hospital Cost Principles

Based on initial feedback, OMB proposes to establish a review process to consider existing hospital cost determine how best to update and align them with this Part. Until such time as revised guidance is proposed and implemented for hospitals, the existing principles located at 45 CFR Part 75 Appendix E, entitled “Principles for Determining Cost Applicable to Research and Development Under Grants and Contracts with Hospitals,” remain in effect.

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Appendix X to Part 200—Data Collection Form (Form SF-SAC)

The Data Collection Form SF-SAC is available on the FAC Web site.

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Appendix XI to Part 200—Compliance Supplement

The compliance supplement is available on the OMB Web site: (e.g. for 2013 here *http://www.whitehouse.gov/omb/circulars/)*

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Appendix XII to Part 200—Award Term and Condition for Recipient Integrity and Performance Matters

A. Reporting of Matters Related to Recipient Integrity and Performance

1. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds $10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

2. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;

b. Reached its final disposition during the most recent five year period; and

c. Is one of the following:

(1) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;

(2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of $5,000 or more;

(3) An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of $5,000 or more or reimbursement, restitution, or damages in excess of $100,000; or

(4) Any other criminal, civil, or administrative proceeding if:

(i) It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;

(ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

(iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

3. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

4. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than $10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

5. Definitions

For purposes of this award term and condition:

a. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (*e.g.,* Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

b. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo

contendere.

c. Total value of currently active grants, cooperative agreements, and procurement contracts includes—

(1) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and

(2) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

B. [Reserved]

[80 FR 43310, July 22, 2015]

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rulemaking, procurement actions, and agency programs to the extent feasible. Further, when notice and comment rulemaking is otherwise required, each agency should provide the opportunity for public comment on the rationale for the agency's conformity assessment decision.

(d) Work with other Federal agencies to avoid unnecessary duplication and complexity in Federal conformity assessment activities.

(e) Consider leveraging the activities and results of other governmental agency and private sector programs in lieu of creating government-unique programs or to enhance the effectiveness of proposed new and existing conformity assessment.

(f) Give a preference for using voluntary consensus standards, guides, and recommendations related to conformity assessment in agency operations. Each agency retains responsibility for determining which, if any, of these documents are relevant to its needs. See OMB Circular A–119 for a description of voluntary consensus standards and recommendations for their development and use by Federal agencies.

(g) Participate, as needed, representing agency and Federal viewpoints, in efforts to develop voluntary consensus standards, guideline, and recommendations related to conformity assessment.

(h) Participate, as needed, representing agency and Federal viewpoints in efforts designed to improve coordination among governmental and private sector conformity assessment activities.

(i) Work with NIST, other Federal agencies, ICSP members, and the private sector to coordinate U.S. conformity assessment needs, practices, and requirements in support of the efforts of the U.S. Government and U.S. industry to increase international trade of U.S. products and services.

(j) Assign an Agency Standards Executive the responsibility for coordinating agency-wide implementation of the guidance in this part who is situated in the agency's organizational structure such that the Agency Standards Executive is kept regularly apprised of the agency's regulatory, procurement, and other mission-related activities, and has sufficient authority within the agency to ensure implementation of the guidance in this part.

§ 287.5 Responsibilities of Agency Standards Executives.

Each Agency Standards Executive should:

(a) Carry out the duties in OMB Circular A–119 related to conformity assessment activities.

(b) Encourage effective use of agency conformity assessment related resources.

(c) Provide ongoing assistance and policy guidance to the agency on significant issues in conformity assessment.

(d) Contribute to the development and dissemination of:

(1) Internal agency policies related to conformity assessment issues; and

(2) Agency positions on conformity assessment related issues that are in the public interest.

(e) Work with other parts of the agency to develop and implement improvements in agency conformity assessment activities.

(f) Participate in the Interagency Committee on Standards Policy (ICSP) as the agency representative and member.

(g) Promote agency participation in ICSP working groups related to conformity assessment issues, as needed.

(h) Encourage agency participation in efforts related to the development of voluntary consensus standards, recommendations, and guidelines related to conformity assessment consistent with agency missions, authorities, priorities, and resources.

(i) Establish an ongoing process for reviewing the agency's conformity assessment programs and identify areas where efficiencies can be achieved through coordination within the agency and among other agencies and private sector conformity assessment activities.

Kevin A. Kimball,

Chief of Staff.

[FR Doc. 2020–18745 Filed 9–28–20; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 75

[Docket No. FR–6085–N–04]

Section 3 Benchmarks for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses

AGENCY: Office of the Assistant Deputy Secretary for Field Policy and Management, HUD.

ACTION: Notification of benchmarks.

SUMMARY: Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992 (Section 3), contributes to the establishment of stronger, more sustainable communities by ensuring that employment and other economic opportunities generated by Federal financial assistance for housing and community development programs are, to the greatest extent feasible, directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing. HUD is statutorily charged with the authority and responsibility to implement and enforce Section 3. Elsewhere in this issue of the **Federal Register**, HUD published a final rule that would amend the Section 3 regulations to, among other things, increase Section 3's impact, and streamline and update HUD's reporting and tracking requirements. The final rule includes a requirement that HUD set Section 3 benchmarks by publishing a notification, subject to public comment, in the **Federal Register**. If a recipient complies with the statutory priorities regarding effort and meets the outcome benchmarks in this document, HUD will presume the recipient is following Section 3 requirements, absent evidence to the contrary.

DATES: *Effective Date.* October 29, 2020.

FOR FURTHER INFORMATION CONTACT: Alastair W. McFarlane, Director, Economic Development and Public Finance Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street SW, Room 8216, Washington, DC 20410; telephone 202–402–5845 (voice/TDD) (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the Federal Relay Service, toll-free at, 800–877–8339. General email inquiries regarding Section 3 may be sent to: *section3@hud.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 3 of the Housing and Urban Development Act of 1968 (Pub. L. 90–448, approved August 1, 1968) (Section 3) (12 U.S.C. 1701u) was enacted to ensure, to the greatest extent feasible, that economic opportunities generated by certain HUD financial assistance expenditures are directed to low- and very low-income persons, particularly those who receive Federal financial assistance for housing and those residing in communities where the financial assistance is expended.

In accordance with statutory authority, HUD is charged with the responsibility to implement and enforce

Section 3. HUD's regulations implementing the requirements of Section 3 have not been updated since 1994 and are not as effective as HUD believes they could be. Furthermore, significant legislation has been enacted that affects HUD programs that are subject to Section 3 and that are not adequately addressed in the current Section 3 regulations. On April 4, 2019, HUD proposed a rule to update the Section 3 regulations. *See* 84 FR 13177. The proposed rule incorporated a change from tracking the number of Section 3 qualified new hires in public housing financial assistance and Section 3 projects, to tracking the total labor hours worked. In connection with the proposed rule, HUD issued a proposed benchmark notification. *See* 84 FR 13199. The proposed benchmark notification included a proposed benchmark number and the methodology for determining the benchmarks.

Benchmarks

For public housing financial assistance, the proposed benchmark notification provided that PHAs and other recipients would meet the safe harbor in the new § 75.13 by certifying to the prioritization of effort in the new § 75.9 and meeting or exceeding Section 3 benchmarks for total number of labor hours worked by Section 3 workers and by Targeted Section 3 workers. (See the definitions of these two categories of workers at the end of Section II of this preamble, below.) The benchmark for Section 3 workers was set at 25 percent or more of the total number of labor hours worked by all workers employed with public housing financial assistance in the PHA's or other recipient's fiscal year. The benchmark for Targeted Section 3 workers was set at 5 percent or more of the total number of labor hours worked by all workers employed with public housing financial assistance in the PHA's or other recipient's fiscal year.

For Section 3 projects, the proposed benchmark notification set the same benchmarks but with regards to the project itself rather than the recipient's fiscal year. The proposed benchmark notification provided that recipients would meet the safe harbor in the new § 75.23 by certifying to the prioritization of effort in the new § 75.19 and meeting or exceeding Section 3 benchmarks for total number of labor hours worked by Section 3 workers and by Targeted Section 3 workers. The benchmark for Section 3 workers was set at 25 percent or more of the total number of labor hours worked by all workers on a Section 3 project. The benchmark for Targeted Section 3 workers was set at 5 percent or more of the total number of labor hours worked by all workers on a Section 3 project.

Methodology

To determine these benchmarks, HUD looked at the total hours worked on a construction or development project, the total number of workers that would likely qualify as Section 3 workers, and the potential pool of Targeted Section 3 workers. In order for the Section 3 employment goal to be attainable, HUD determined a labor-hour threshold that is congruent with the labor market for low-income workers by examining the lower end of the wage distribution of the relevant industries. Based on the wage distribution data for on-site construction and building services, HUD set the threshold for Section 3 labor hours at 25 percent of all labor hours to encourage recipients, subrecipients, contractors, and subcontractors to hire more Section 3 workers for construction. For the Targeted Section 3 benchmarks, HUD estimated the number of residents of public housing or Section 8-assisted housing, of current YouthBuild participants, and of workers employed by Section 3 business concerns. HUD also examined commuting times based on U.S. Census data. Finally, HUD reviewed Community Development Block Grant program (CDBG) and HOME Investment Partnerships Program (HOME) projects to estimate the number of potential Targeted Section 3 workers available for Section 3 projects. Based on these data, HUD determined that 5 percent of all labor hours, or, in other words, 20 percent of the Section 3 labor hour threshold, was a reasonable goal for both public housing financial assistance and for Section 3 projects.

HUD sought public comment on both the proposed rule and benchmark notification and received 187 public comments, 163 public comments on the proposed rule and 24 public comments on the proposed benchmark notification. Comments on the proposed rule and notification covered both content on the rule and the benchmark numbers. Therefore, all public comments received on both the proposed rule and the proposed benchmark notification are addressed in HUD's Section 3 final rule.

II. Section 3 Final Rule

The Section 3 final rule creates new Section 3 regulations in 24 CFR part 75; the public can find the final rule issued elsewhere in today's **Federal Register**. The Section 3 final rule aims to make Section 3 goals and reporting more meaningful and more aligned with statutory requirements. The final rule, consistent with HUD's Section 3 proposed rule, includes new metrics for compliance safe harbors and provides that these benchmarks will be set by notification in the **Federal Register**. The final rule separates out the new requirements and benchmarks by the type of funding, as follows:

(1) *Public housing program:* Subpart B, Additional Provisions for Public Housing Financial Assistance, covers development assistance provided pursuant to section 5 of the U.S. Housing Act of 1937 (1937 Act) and Operating Fund and Capital Fund assistance provided pursuant to section 9 of the 1937 Act, collectively; these are defined as public housing financial assistance in the proposed rule.

(2) *Other HUD programs:* Subpart C, Additional Provisions for Section 3 Projects, covers housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the amount of assistance to the project exceeds a threshold of $200,000, and is defined as a Section 3 project. A $100,000 project threshold applies to grants under HUD's Lead Hazard Control and Healthy Homes programs.

As for new metrics, the final rule provides, consistent with the Section 3 proposed rule, that HUD will establish the Section 3 benchmarks, through a **Federal Register** notification. The final rule provides that HUD may establish a single nationwide benchmark for work performed by Section 3 workers and a single nationwide benchmark for work performed by Targeted Section 3 workers, or may establish multiple benchmarks based on geography, the type of public housing financial assistance, or other variables. The final rule also provides, in establishing the benchmarks, that HUD may consider the industry averages worked by specific categories of workers or in different localities or regions; prior Section 3 reports by recipients; and any other factors HUD deems important. In establishing the Section 3 benchmarks, HUD would exclude professional services, which would be defined as non-construction services that require an advanced degree or professional licensing, including, but not limited to, contracts for legal services, financial consulting, accounting services, environmental assessment, architectural services, and civil engineering services. Lastly, HUD commits to updating the benchmarks no less frequently than once every three years through notice,

subject to public comment, in the **Federal Register**.

HUD created the Section 3 worker and Targeted Section 3 worker concepts so that HUD could track and set benchmarks to target selected categories of workers and to recognize the statutory requirements pertaining to contracting opportunities for business concerns employing low- and very-low income persons.

In the final Section 3 rule, HUD defines a Section 3 worker for both public housing financial assistance and Section 3 projects as a worker that meets one of the following requirements:

- The worker's income is below the income limit established by HUD.
- The worker is employed by a Section 3 business concern.
- The worker is a YouthBuild participant.

HUD defines a Targeted Section 3 worker differently for public housing financial assistance and Section 3 projects. For § 75.11, public housing financial assistance, a Targeted Section 3 worker includes any worker who is employed by a Section 3 business concern or is a:

- Resident of public housing or Section 8-assisted housing;
- Resident of another project managed by the PHA that is expending assistance; or
- YouthBuild participant.

For § 75.21, Section 3 projects, a Targeted Section 3 worker includes any worker who is employed by a Section 3 business concern or is a Section 3 worker who is:

- Living within the service area or neighborhood of the project; or
- A YouthBuild participant.

HUD defines a Section 3 business concern as a business concern that meets one of the following requirements:

- It is at least 51 percent owned by low- or very low-income persons;
- Over 75 percent of the labor hours performed for the business are performed by low- or very low-income persons; or
- It is a business at least 51 percent owned by current public housing residents or residents who currently live in Section 8-assisted housing.

For more information about the final rule, HUD refers readers to the final rule published elsewhere in this issue of the **Federal Register**.

III. Section 3 Benchmarks

This document finalizes the benchmarks with regards to labor hours for both public housing financial assistance and Section 3 projects without changes from what was included in the proposed benchmark notification. In the final rule, HUD is not adopting the new hires formula as proposed as an alternative in the proposed rule, so the new hires formula is accordingly not reflected in this document. HUD is finalizing the same benchmarks for all public housing financial assistance and Section 3 projects. The methodology in determining the Section 3 benchmarks, as discussed above in the Background section, did not change from what was described in the proposed benchmark notification because the definitions of Section 3 Workers, Targeted Section 3 Workers, and Section 3 Business concerns provided in the proposed rule and adopted in the Section 3 final rule were not substantially different. Once HUD has more data, it may determine whether different benchmarks are appropriate. Please see the above summary in the Background section of this document and the proposed benchmark notification for more information.

The following benchmarks apply to recipients subject to Section 3 upon the effective date in the Section 3 final rule:

Public Housing Financial Assistance

For meeting the safe harbor in § 75.13, PHAs and other recipients that certify to following the prioritization of effort in § 75.9 and meet or exceed the following Section 3 benchmarks will be considered to have complied with requirements in proposed 24 CFR part 75, subpart B, in the absence of evidence to the contrary:

(1) Twenty-five (25) percent or more of the total number of labor hours worked by all workers employed with public housing financial assistance in the PHA's or other recipient's fiscal year are Section 3 workers;

$$\frac{\text{Section 3 Labor Hours}}{\text{Total Labor Hours}} = 25\%$$

and

(2) Five (5) percent or more of the total number of labor hours worked by all workers employed with public housing financial assistance in the PHA's or other recipient's fiscal year are Targeted Section 3 workers, as defined at § 75.11.

$$\frac{\text{Targeted Section 3 Labor Hours}}{\text{Total Labor Hours}} = 5\%$$

Section 3 Project

For meeting the safe harbor in § 75.23, recipients that certify to following the prioritization in § 75.19 and meet or exceed the following Section 3 benchmarks will be considered to have complied with requirements in proposed 24 CFR part 75, subpart C, in the absence of evidence to the contrary:

(1) Twenty-five (25) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Section 3 workers;

$$\frac{\text{Targeted Section 3 Labor Hours}}{\text{Total Labor Hours}} = 25\%$$

and

(2) Five (5) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Targeted Section 3 workers, as defined at § 75.21.

$$\frac{\text{Targeted Section 3 Labor Hours}}{\text{Total Labor Hours}} = 5\%$$

IV. Environmental Impact

This document involves the establishment of new Section 3 benchmarks for creating economic opportunities for low- and very low-income persons and eligible businesses, and does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction; or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this document is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Benjamin S. Carson, Sr.,

Secretary.

[FR Doc. 2020–19183 Filed 9–28–20; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9901]

RIN 1545–BO55

Deduction for Foreign-Derived Intangible Income and Global Intangible Low-Taxed Income; Correcting Amendment

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendments.

ENHANCED CONTENT - TABLE OF CONTENTS

Title 24

PART 75 - ECONOMIC OPPORTUNITIES FOR LOW- AND VERY LOW-INCOME PERSONS

Authority: 12 U.S.C. 1701u; 42 U.S.C. 3535(d).

Source: 85 FR 61562, Sept. 29, 2020, unless otherwise noted.

Subpart A - General Provisions

§ 75.1 Purpose.

This part establishes the requirements to be followed to ensure the objectives of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Section 3) are met. The purpose of Section 3 is to ensure that economic opportunities, most importantly employment, generated by certain HUD financial assistance shall be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing or residents of the community in which the Federal assistance is spent.

§ 75.3 Applicability.

(a) ***General applicability.*** Section 3 applies to public housing financial assistance and Section 3 projects, as follows:

(1) ***Public housing financial assistance.*** Public housing financial assistance means:

(i) Development assistance provided pursuant to section 5 of the United States Housing Act of 1937 (the 1937 Act);

(ii) Operations and management assistance provided pursuant to section 9(e) of the 1937 Act;

(iii) Development, modernization, and management assistance provided pursuant to section 9(d) of the 1937 Act; and

(iv) The entirety of a mixed-finance development project as described in 24 CFR 905.604, regardless of whether the project is fully or partially assisted with public housing financial assistance as defined in paragraphs (a)(1)(i) through (iii) of this section.

(2) ***Section 3 projects.***

(i) Section 3 projects means housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds a threshold of $200,000. The threshold is $100,000 where the assistance is from the Lead Hazard Control and Healthy Homes programs, as authorized by Sections 501 or 502 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z-1 or 1701z-2), the Lead-Based Paint Poisoning Prevention Act (42 U.S.C 4801 *et seq.*); and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851 *et seq.*). The project is the site or sites together with any building(s) and improvements located on the site(s) that are under common ownership, management, and financing.

(ii) The Secretary must update the thresholds provided in paragraph (a)(2)(i) of this section not less than once every 5 years based on a national construction cost inflation factor through Federal Register notice not subject to public comment. When the Secretary finds it is warranted to ensure compliance with Section 3, the Secretary may adjust, regardless of the national construction cost factor, such thresholds through Federal Register notice, subject to public comment.

(iii) The requirements in this part apply to an entire Section 3 project, regardless of whether the project is fully or partially assisted under HUD programs that provide housing and community development financial assistance.

(b) ***Contracts for materials.*** Section 3 requirements do not apply to material supply contracts.

(c) ***Indian and Tribal preferences.*** Contracts, subcontracts, grants, or subgrants subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)) or subject to tribal preference requirements as authorized under 101(k) of the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4111(k)) must provide preferences in employment, training, and business opportunities to Indians and Indian organizations, and are therefore not subject to the requirements of this part.

(d) ***Other HUD assistance and other Federal assistance.*** Recipients that are not subject to Section 3 are encouraged to consider ways to support the purpose of Section 3.

§ 75.5 Definitions.

The terms *HUD, Public housing,* and *Public Housing Agency (PHA)* are defined in 24 CFR part 5. The following definitions also apply to this part:

1937 Act means the United States Housing Act of 1937, 42 U.S.C. 1437 *et seq.*

Contractor means any entity entering into a contract with:

(1) A recipient to perform work in connection with the expenditure of public housing financial assistance or for work in connection with a Section 3 project; or

(2) A subrecipient for work in connection with a Section 3 project.

Labor hours means the number of paid hours worked by persons on a Section 3 project or by persons employed with funds that include public housing financial assistance.

Low-income person means a person as defined in Section 3(b)(2) of the 1937 Act.

Material supply contracts means contracts for the purchase of products and materials, including, but not limited to, lumber, drywall, wiring, concrete, pipes, toilets, sinks, carpets, and office supplies.

Professional services means non-construction services that require an advanced degree or professional licensing, including, but not limited to, contracts for legal services, financial consulting, accounting services, environmental assessment, architectural services, and civil engineering services.

Public housing financial assistance means assistance as defined in § 75.3(a)(1).

Public housing project is defined in 24 CFR 905.108.

Recipient means any entity that receives directly from HUD public housing financial assistance or housing and community development assistance that funds Section 3 projects, including, but not limited to, any State, local government, instrumentality, PHA, or other public agency, public or private nonprofit organization.

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:

(1) A business concern meeting at least one of the following criteria, documented within the last six-month period:

(i) It is at least 51 percent owned and controlled by low- or very low-income persons;

(ii) Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers; or

(iii) It is a business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

(2) The status of a Section 3 business concern shall not be negatively affected by a prior arrest or conviction of its owner(s) or employees.

(3) Nothing in this part shall be construed to require the contracting or subcontracting of a Section 3 business concern. Section 3 business concerns are not exempt from meeting the specifications of the contract.

Section 3 project means a project defined in § 75.3(a)(2).

Section 3 worker means:

(1) Any worker who currently fits or when hired within the past five years fit at least one of the following categories, as documented:

(i) The worker's income for the previous or annualized calendar year is below the income limit established by HUD.

(ii) The worker is employed by a Section 3 business concern.

(iii) The worker is a YouthBuild participant.

(2) The status of a Section 3 worker shall not be negatively affected by a prior arrest or conviction.

(3) Nothing in this part shall be construed to require the employment of someone who meets this definition of a Section 3 worker. Section 3 workers are not exempt from meeting the qualifications of the position to be filled.

Section 8-assisted housing refers to housing receiving project-based rental assistance or tenant-based assistance under Section 8 of the 1937 Act.

Service area or the neighborhood of the project means an area within one mile of the Section 3 project or, if fewer than 5,000 people live within one mile of a Section 3 project, within a circle centered on the Section 3 project that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census.

Small PHA means a public housing authority that manages or operates fewer than 250 public housing units.

Subcontractor means any entity that has a contract with a contractor to undertake a portion of the contractor's obligation to perform work in connection with the expenditure of public housing financial assistance or for a Section 3 project.

Subrecipient has the meaning provided in the applicable program regulations or in 2 CFR 200.93.

Targeted Section 3 worker has the meanings provided in §§ 75.11, 75.21, or 75.29, and does not exclude an individual that has a prior arrest or conviction.

Very low-income person means the definition for this term set forth in section 3(b)(2) of the 1937 Act.

YouthBuild programs refers to YouthBuild programs receiving assistance under the Workforce Innovation and Opportunity Act (29 U.S.C. 3226).

§ 75.7 Requirements applicable to HUD NOFAs for Section 3 covered programs.

All notices of funding availability (NOFAs) issued by HUD that announce the availability of funding covered by § 75.3 will include notice that this part is applicable to the funding and may include, as appropriate for the specific NOFA, points or bonus points for the quality of Section 3 plans.

Subpart B - Additional Provisions for Public Housing Financial Assistance

§ 75.9 Requirements.

(a) ***Employment and training.***

(1) Consistent with existing Federal, state, and local laws and regulations, PHAs or other recipients receiving public housing financial assistance, and their contractors and subcontractors, must make their best efforts to provide employment and training opportunities generated by the public housing financial assistance to Section 3 workers.

(2) PHAs or other recipients, and their contractors and subcontractors, must make their best efforts described in paragraph (a)(1) of this section in the following order of priority:

(i) To residents of the public housing projects for which the public housing financial assistance is expended;

(ii) To residents of other public housing projects managed by the PHA that is providing the assistance or for residents of Section 8-assisted housing managed by the PHA;

(iii) To participants in YouthBuild programs; and

(iv) To low- and very low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the assistance is expended.

(b) ***Contracting.***

(1) Consistent with existing Federal, state, and local laws and regulations, PHAs and other recipients of public housing financial assistance, and their contractors and subcontractors, must make their best efforts to award contracts and subcontracts to business concerns that provide economic opportunities to Section 3 workers.

(2) PHAs and other recipients, and their contractors and subcontractors, must make their best efforts described in paragraph (b)(1) of this section in the following order of priority:

(i) To Section 3 business concerns that provide economic opportunities for residents of the public housing projects for which the assistance is provided;

(ii) To Section 3 business concerns that provide economic opportunities for residents of other public housing projects or Section-8 assisted housing managed by the PHA that is providing the assistance;

(iii) To YouthBuild programs; and

(iv) To Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the assistance is provided.

§ 75.11 Targeted Section 3 worker for public housing financial assistance.

(a) ***Targeted Section 3 worker.*** A Targeted Section 3 worker for public housing financial assistance means a Section 3 worker who is:

(1) A worker employed by a Section 3 business concern; or

(2) A worker who currently fits or when hired fit at least one of the following categories, as documented within the past five years:

(i) A resident of public housing or Section 8-assisted housing;

(ii) A resident of other public housing projects or Section 8-assisted housing managed by the PHA that is providing the assistance; or

(iii) A YouthBuild participant.

(b) [Reserved]

§ 75.13 Section 3 safe harbor.

(a) ***General.*** PHAs and other recipients will be considered to have complied with requirements in this part, in the absence of evidence to the contrary, if they:

(1) Certify that they have followed the prioritization of effort in § 75.9; and

(2) Meet or exceed the applicable Section 3 benchmarks as described in paragraph (b) of this section.

(b) ***Establishing benchmarks.***

(1) HUD will establish Section 3 benchmarks for Section 3 workers or Targeted Section 3 workers or both through a document published in the Federal Register. HUD may establish a single nationwide benchmark for Section 3 workers and a single nationwide benchmark for Targeted Section 3 workers, or may establish multiple benchmarks based on geography, the type of public housing financial assistance, or other variables. HUD will update the benchmarks through a document published in the Federal Register, subject to public comment, not less frequently than once every 3 years. Such notice shall include aggregate data on labor hours and the proportion of PHAs and other recipients meeting benchmarks, as well as other metrics reported pursuant to § 75.15 as deemed appropriate by HUD, for the 3 most recent reporting years.

(2) In establishing the Section 3 benchmarks, HUD may consider the industry averages for labor hours worked by specific categories of workers or in different localities or regions; averages for labor hours worked by Section 3 workers and Targeted Section 3 workers as reported by recipients pursuant to this section; and any other factors HUD deems important. In establishing the Section 3 benchmarks, HUD will exclude professional services from the total number of labor hours as such hours are excluded from the total number of labor hours to be reported per § 75.15(a)(4).

(3) Section 3 benchmarks will consist of the following two ratios:

(i) The number of labor hours worked by Section 3 workers divided by the total number of labor hours worked by all workers funded by public housing financial assistance in the PHA's or other recipient's fiscal year.

(ii) The number of labor hours worked by Targeted Section 3 workers, as defined in § 75.11(a), divided by the total number of labor hours worked by all workers funded by public housing financial assistance in the PHA's or other recipient's fiscal year.

§ 75.15 Reporting.

(a) ***Reporting of labor hours.***

(1) For public housing financial assistance, PHAs and other recipients must report in a manner prescribed by HUD:

(i) The total number of labor hours worked;

(ii) The total number of labor hours worked by Section 3 workers; and

(iii) The total number of labor hours worked by Targeted Section 3 workers.

(2) Section 3 workers' and Targeted Section 3 workers' labor hours may be counted for five years from when their status as a Section 3 worker or Targeted Section 3 worker is established pursuant to § 75.31.

(3) The labor hours reported under paragraph (a)(1) of this section must include the total number of labor hours worked with public housing financial assistance in the fiscal year of the PHA or other recipient, including labor hours worked by any contractors and subcontractors that the PHA or other recipient is required, or elects pursuant to paragraph (a)(4) of this section, to report.

(4) PHAs and other recipients reporting under this section, as well as contractors and subcontractors who report to PHAs and recipients, may report labor hours by Section 3 workers, under paragraph (a)(1)(ii) of this section, and labor hours by Targeted Section 3 workers, under paragraph (a)(1)(iii) of this section, from professional services without including labor hours from professional services in the total number of labor hours worked under paragraph (a)(1)(i) of this section. If a contract covers both professional services and other work and the PHA, other recipient, contractor, or subcontractor chooses not to report labor hours from professional services, the labor hours under the contract that are not from professional services must still be reported.

(5) PHAs and other recipients may report on the labor hours of the PHA, the recipient, a contractor, or a subcontractor based on the employer's good faith assessment of the labor hours of a full-time or part-time employee informed by the employer's existing salary or time and attendance based payroll systems, unless the project or activity is otherwise subject to requirements specifying time and attendance reporting.

(b) ***Additional reporting if Section 3 benchmarks are not met.*** If the PHA's or other recipient's reporting under paragraph (a) of this section indicates that the PHA or other recipient has not met the Section 3 benchmarks described in § 75.13, the PHA or other recipient must report in a form prescribed by HUD on the qualitative nature of its Section 3 compliance activities and those of its contractors and subcontractors. Such qualitative efforts may, for example, include but are not limited to the following:

(1) Engaged in outreach efforts to generate job applicants who are Targeted Section 3 workers.

(2) Provided training or apprenticeship opportunities.

(3) Provided technical assistance to help Section 3 workers compete for jobs (*e.g.,* resume assistance, coaching).

(4) Provided or connected Section 3 workers with assistance in seeking employment including: drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services.

(5) Held one or more job fairs.

(6) Provided or referred Section 3 workers to services supporting work readiness and retention (*e.g.,* work readiness activities, interview clothing, test fees, transportation, child care).

(7) Provided assistance to apply for/or attend community college, a four-year educational institution, or vocational/technical training.

(8) Assisted Section 3 workers to obtain financial literacy training and/or coaching.

(9) Engaged in outreach efforts to identify and secure bids from Section 3 business concerns.

(10) Provided technical assistance to help Section 3 business concerns understand and bid on contracts.

(11) Divided contracts into smaller jobs to facilitate participation by Section 3 business concerns.

(12) Provided bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.

(13) Promoted use of business registries designed to create opportunities for disadvantaged and small businesses.

(14) Outreach, engagement, or referrals with the state one-stop system as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act.

(c) ***Reporting frequency.*** Unless otherwise provided, PHAs or other recipients must report annually to HUD under paragraph (a) of this section, and, where required, under paragraph (b) of this section, in a manner consistent with reporting requirements for the applicable HUD program.

(d) ***Reporting by Small PHAs.*** Small PHAs may elect not to report under paragraph (a) of this section. Small PHAs that make such election are required to report on their qualitative efforts, as described in paragraph (b) of this section, in a manner consistent with reporting requirements for the applicable HUD program.

§ 75.17 Contract provisions.

(a) PHAs or other recipients must include language in any agreement or contract to apply Section 3 to contractors.

(b) PHAs or other recipients must require contractors to include language in any contract or agreement to apply Section 3 to subcontractors.

(c) PHAs or other recipients must require all contractors and subcontractors to meet the requirements of § 75.9, regardless of whether Section 3 language is included in contracts.

Subpart C - Additional Provisions for Housing and Community Development Financial Assistance

§ 75.19 Requirements.

(a) ***Employment and training.***

(1) To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, recipients covered by this subpart shall ensure that employment and training opportunities arising in connection with Section 3 projects are provided to Section 3 workers within the metropolitan area (or nonmetropolitan county) in which the project is located.

(2) Where feasible, priority for opportunities and training described in paragraph (a)(1) of this section should be given to:

(i) Section 3 workers residing within the service area or the neighborhood of the project, and

(ii) Participants in YouthBuild programs.

(b) ***Contracting.***

(1) To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, recipients covered by this subpart shall ensure contracts for work awarded in connection with Section 3 projects are provided to business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the project is located.

(2) Where feasible, priority for contracting opportunities described in paragraph (b)(1) of this section should be given to:

(i) Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the service area or the neighborhood of the project, and

(ii) YouthBuild programs.

§ 75.21 Targeted Section 3 worker for housing and community development financial assistance.

(a) ***Targeted Section 3 worker.*** A Targeted Section 3 worker for housing and community development financial assistance means a Section 3 worker who is:

(1) A worker employed by a Section 3 business concern; or

(2) A worker who currently fits or when hired fit at least one of the following categories, as documented within the past five years:

(i) Living within the service area or the neighborhood of the project, as defined in § 75.5; or

(ii) A YouthBuild participant.

(b) [Reserved]

§ 75.23 Section 3 safe harbor.

(a) ***General.*** Recipients will be considered to have complied with requirements in this part, in the absence of evidence to the contrary if they:

(1) Certify that they have followed the prioritization of effort in § 75.19; and

(2) Meet or exceed the applicable Section 3 benchmark as described in paragraph (b) of this section.

(b) ***Establishing benchmarks.***

(1) HUD will establish Section 3 benchmarks for Section 3 workers or Targeted Section 3 workers or both through a document published in the Federal Register. HUD may establish a single nationwide benchmark for Section 3 workers and a single nationwide benchmark for Targeted Section 3 workers, or may establish multiple benchmarks based on geography, the nature of the Section 3 project, or other variables. HUD will update the benchmarks through a document published in the Federal Register, subject to public comment, not less frequently than once every 3 years. Such notice shall include aggregate data on labor hours and the proportion of recipients meeting benchmarks, as well as other metrics reported pursuant to § 75.25 as deemed appropriate by HUD, for the 3 most recent reporting years.

(2) In establishing the Section 3 benchmarks, HUD may consider the industry averages for labor hours worked by specific categories of workers or in different localities or regions; averages for labor hours worked by Section 3 workers and Targeted Section 3 workers as reported by recipients pursuant to this section; and any other factors HUD deems important. In establishing the Section 3 benchmarks, HUD will exclude professional services from the total number of labor hours as such hours are excluded from the total number of labor hours to be reported per § 75.25(a)(4).

(3) Section 3 benchmarks will consist of the following two ratios:

(i) The number of labor hours worked by Section 3 workers divided by the total number of labor hours worked by all workers on a Section 3 project in the recipient's program year.

(ii) The number of labor hours worked by Targeted Section 3 workers as defined in § 75.21(a), divided by the total number of labor hours worked by all workers on a Section 3 project in the recipient's program year.

§ 75.25 Reporting.

(a) ***Reporting of labor hours.***

(1) For Section 3 projects, recipients must report in a manner prescribed by HUD:

(i) The total number of labor hours worked;

(ii) The total number of labor hours worked by Section 3 workers; and

(iii) The total number of labor hours worked by Targeted Section 3 workers.

(2) Section 3 workers' and Targeted Section 3 workers' labor hours may be counted for five years from when their status as a Section 3 worker or Targeted Section 3 worker is established pursuant to § 75.31.

(3) The labor hours reported under paragraph (a)(1) of this section must include the total number of labor hours worked on a Section 3 project, including labor hours worked by any subrecipients, contractors and subcontractors that the recipient is required, or elects pursuant to paragraph (a)(4) of this section, to report.

(4) Recipients reporting under this section, as well as subrecipients, contractors and subcontractors who report to recipients, may report labor hours by Section 3 workers, under paragraph (a)(1)(ii) of this section, and labor hours by Targeted Section 3 workers, under paragraph (a)(1)(iii) of this section, from professional services without including labor hours from professional services in the total number of labor hours worked under paragraph (a)(1)(i) of this section. If a contract covers both professional services and other work and the recipient or contractor or subcontractor chooses not to report labor hours from professional services, the labor hours under the contract that are not from professional services must still be reported.

(5) Recipients may report their own labor hours or that of a subrecipient, contractor, or subcontractor based on the employer's good faith assessment of the labor hours of a full-time or part-time employee informed by the employer's existing salary or time and attendance based payroll systems, unless the project or activity is otherwise subject to requirements specifying time and attendance reporting.

(b) ***Additional reporting if Section 3 benchmarks are not met.*** If the recipient's reporting under paragraph (a) of this section indicates that the recipient has not met the Section 3 benchmarks described in § 75.23, the recipient must report in a form prescribed by HUD on the qualitative nature of its activities and those its contractors and subcontractors pursued. Such qualitative efforts may, for example, include but are not limited to the following:

(1) Engaged in outreach efforts to generate job applicants who are Targeted Section 3 workers.

(2) Provided training or apprenticeship opportunities.

(3) Provided technical assistance to help Section 3 workers compete for jobs (*e.g.,* resume assistance, coaching).

(4) Provided or connected Section 3 workers with assistance in seeking employment including: drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services.

(5) Held one or more job fairs.

(6) Provided or referred Section 3 workers to services supporting work readiness and retention (*e.g.,* work readiness activities, interview clothing, test fees, transportation, child care).

(7) Provided assistance to apply for/or attend community college, a four-year educational institution, or vocational/technical training.

(8) Assisted Section 3 workers to obtain financial literacy training and/or coaching.

(9) Engaged in outreach efforts to identify and secure bids from Section 3 business concerns.

(10) Provided technical assistance to help Section 3 business concerns understand and bid on contracts.

(11) Divided contracts into smaller jobs to facilitate participation by Section 3 business concerns.

(12) Provided bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.

(13) Promoted use of business registries designed to create opportunities for disadvantaged and small businesses.

(14) Outreach, engagement, or referrals with the state one-stop system as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act.

(c) ***Reporting frequency.*** Unless otherwise provided, recipients must report annually to HUD under paragraph (a) of this section, and, where required, under paragraph (b) of this section, on all projects completed within the reporting year in a manner consistent with reporting requirements for the applicable HUD program.

§ 75.27 Contract provisions.

(a) Recipients must include language applying Section 3 requirements in any subrecipient agreement or contract for a Section 3 project.

(b) Recipients of Section 3 funding must require subrecipients, contractors, and subcontractors to meet the requirements of § 75.19, regardless of whether Section 3 language is included in recipient or subrecipient agreements, program regulatory agreements, or contracts.

Subpart D - Provisions for Multiple Funding Sources, Recordkeeping, and Compliance

§ 75.29 Multiple funding sources.

(a) If a housing rehabilitation, housing construction or other public construction project is subject to Section 3 pursuant to § 75.3(a)(1) and (2), the recipient must follow subpart B of this part for the public housing financial assistance and may follow either subpart B or C of this part for the housing and community development financial assistance. For such a project, the following applies:

(1) For housing and community development financial assistance, a Targeted Section 3 worker is any worker who meets the definition of a Targeted Section 3 worker in either subpart B or C of this part; and

(2) The recipients of both sources of funding shall report on the housing rehabilitation, housing construction, or other public construction project as a whole and shall identify the multiple associated recipients. PHAs and other recipients must report the following information:

(i) The total number of labor hours worked on the project;

(ii) The total number of labor hours worked by Section 3 workers on the project; and

(iii) The total number of labor hours worked by Targeted Section 3 workers on the project.

(b) If a housing rehabilitation, housing construction, or other public construction project is subject to Section 3 because the project is assisted with funding from multiple sources of housing and community development assistance that exceed the thresholds in § 75.3(a)(2), the recipient or recipients must follow subpart C of this part, and must report to the applicable HUD program office, as prescribed by HUD.

§ 75.31 Recordkeeping.

(a) 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 by which the Section 3 project is governed, or the public housing financial assistance is provided or otherwise made available to the recipient, subrecipient, contractor, or subcontractor.

(b) Recipients must maintain documentation, or ensure that a subrecipient, contractor, or subcontractor that employs the worker maintains documentation, to ensure that workers meet the definition of a Section 3 worker or Targeted Section 3 worker, at the time of hire or the first reporting period, as follows:

(1) For a worker to qualify as a Section 3 worker, one of the following must be maintained:

(i) A worker's self-certification that their income is below the income limit from the prior calendar year;

(ii) A worker's self-certification of participation in a means-tested program such as public housing or Section 8-assisted housing;

(iii) Certification from a PHA, or the owner or property manager of project-based Section 8-assisted housing, or the administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs;

(iv) An employer's certification that the worker's income from that employer is below the income limit when based on an employer's calculation of what the worker's wage rate would translate to if annualized on a full-time basis; or

(v) An employer's certification that the worker is employed by a Section 3 business concern.

(2) For a worker to qualify as a Targeted Section 3 worker, one of the following must be maintained:

(i) For a worker to qualify as a Targeted Section 3 worker under subpart B of this part:

(A) A worker's self-certification of participation in public housing or Section 8-assisted housing programs;

(B) Certification from a PHA, or the owner or property manager of project-based Section 8-assisted housing, or the administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs;

(C) An employer's certification that the worker is employed by a Section 3 business concern; or

(D) A worker's certification that the worker is a YouthBuild participant.

(ii) For a worker to qualify as a Targeted Section 3 worker under subpart C of this part:

(A) An employer's confirmation that a worker's residence is within one mile of the work site or, if fewer than 5,000 people live within one mile of a work site, within a circle centered on the work site that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census;

(B) An employer's certification that the worker is employed by a Section 3 business concern; or

(C) A worker's self-certification that the worker is a YouthBuild participant.

(c) The documentation described in paragraph (b) of this section must be maintained for the time period required for record retentions in accordance with applicable program regulations or, in the absence of applicable program regulations, in accordance with 2 CFR part 200.

(d) A PHA or recipient may report on Section 3 workers and Targeted Section 3 workers for five years from when their certification as a Section 3 worker or Targeted Section 3 worker is established.

§ 75.33 Compliance.

(a) ***Records of compliance.*** Each recipient shall maintain adequate records demonstrating compliance with this part, consistent with other recordkeeping requirements in 2 CFR part 200.

(b) ***Complaints.*** Complaints alleging failure of compliance with this part may be reported to the HUD program office responsible for the public housing financial assistance or the Section 3 project, or to the local HUD field office.

(c) ***Monitoring.*** HUD will monitor compliance with the requirements of this part. The applicable HUD program office will determine appropriate methods by which to oversee Section 3 compliance. HUD may impose appropriate remedies and sanctions in accordance with the laws and regulations for the program under which the violation was found.

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 awards 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.

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) are subject to compliance with regulations in 2Part 75.

Additional provisions for Housing and Community Development Financial Assistance.
§ 75.19 Requirements.
(a) Employment and training.

(1) To the greatest extent feasible and consistent with e isting federal state and local laws and regulations recipients covered by this subpart shall ensure that employment and training opportunities arising in connection with Section 3 projects are provided to Section 3 workers within the metropolitan area (or nonmetropolitan county) in which the pro ect is located.

(2) Where feasible priority for opportunities and training described in paragraph (a)(1) of this section should be given to:

(i) Section 3 workers residing within the service area or the neighborhood of the project , and

(ii) Participants in YouthBuild programs.

(3) Contracting.

(1) To the greatest extent feasible and consistent with existing, Federal, state, and local laws and regulations recipients covered by this subpart shall ensure contracts for work awarded in connection with Section 3 projects are provided to business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the project is located.

(2) Where feasible, priority for contracting opportunities described in paragraph (b)(1) of this section should be given to:

(i) Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the service area or the neighborhood of the project, and

(ii) YouthBuild programs.

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 prior to contract execution:

- 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% owned by low or very low-income residents or is certifying as a 75% workforce 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
. 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)
. 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

. 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.

. 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.

. 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 75 of the Code of Federal Regulations—24 CFR Part 75 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 Section 3 Business concern. 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 75, 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 75 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 75, 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 75. 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 75.

(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 75 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 75.

(f) Noncompliance with HUD's regulations in 24 CFR Part 75 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. 51% or more owned and controlled by low or very-low income persons
2. Over 75 %of the labor hours performed for the business over the prior three-month period are performed by Section 3 wor ers
3. 51% or more owned and controlled by current residents of public housing or Section 8-assisted housing

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

Georgia Department of Community Affairs
Required Submittal - Section 3 Self-Certification and Action Plan

All firms and individuals intending to do business with DCA, its recipients, sub-recipients and contractors MUST complete and submit this Action Plan and submit it with the bid, offer, or proposal in order to claim a preference on any contract or prior to award of a contract when pro ects involve more than $200,000 in CDBG funds.

Business Name:		
D.B.A. (if different from above):		
Address:	City:	State/Zip:
Business Phone: ( )	Fax: ( )	
E-Mail:	Business Website:	
Federal Employer Identification Number:	Owner Social Security Number (if no EIN):	
Contact Person & Title:	Contact Phone:	

Trade Description:

☐ Carpentry	☐ Heating (HVAC)	☐ Electrical	☐ Painting
☐ Masonry Restoration	☐ Asbestos	☐ Plumbing	☐ Roofing
☐ Lead (Abatement)	☐ General Contractor	☐ Concrete	☐ Ironwork
☐ Carpet/Flooring	☐ Rubbish Removal/Hauling	☐ Appraisal Services	☐ Landscaping
☐ Demolition	☐ Other:		

Date Business was established (MM/DD/YYYY): _____

Type of Business (Check One): ☐Corporation ☐ Partnership ☐ Sole Proprietorship
☐ Limited Liability Corporation (LLC) ☐ Limited Liability Partnership (LLP) ☐ Joint Venture
☐ Other (Describe):

Number of employees: Full-time: _____ Part-time: _____ Contract: _____ **Total:** _____

Section 3 wor ers: Full-time: _____ Part-time: _____ Contract: _____ **Total:** _____

I am Certifying as a Section 3 Business Concern and requesting Preference accordingly (Select only One Option):

Option 1

☐A business claiming status as 51% or more owned and controlled by low or very-low income persons

Option 2

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

Option 3

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

Business Concern Affirmation

I, affirm that the above statements of this form in its entirety are true complete and correct to the best of my nowledge and belief. I understand that businesses who misrepresent themselves as Section 3 business concerns and report false information to insert name of recipient/grantee may have their contracts terminated as default and be barred from ongoing and future considerations for contracting opportunities. Thereby certify under penalty of law that the following information is correct to the best of my knowledge.

.Print name: Signature: Date:

Certification expires within six (6) months of the date of signature
Information regarding Section 3 Business Concerns can be found at 2 Part 75.5

FOR ADMINISTRATIVE USE ONLY

☐ Yes the business a Section 3 business concern based upon their certification

EMPLOYERS MUST RETAIN THIS FORM IN THEIR SECTION 3 COMPLIANCE FILE FOR FIVE YEARS.

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)

Georgia Department of Community Affairs
Required Submittal - Previous Section 3 Compliance Certification

Name of Business: _____

Address of Business: _____

Type of Business (Check One): ☐ Corporation ☐ Partnership

☐ Sole Proprietorship ☐ Other

Business Activity: _____

All firms and individuals intending to do business with DCA, its recipients, sub-recipients, or contractors **MUST** complete and submit this certification of prior compliance prior to award of any contract for a project involving $200,000 or more in CDBG assistance. Please check the appropriate line box below and sign and date the form.

1. I am certifying that I have complied with the HUD Section 3 Regulations, when triggered by new hiring or contracting opportunities, in my past contracts **when required** by the recipient, sub-recipient or contractor by either:

i. Certifying as a Section 3 Business Concern because at least 51 percent of the business is owned and controlled by low- or very low-income persons;
ii. Certifying as a Section 3 Business Concern because over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers;
iii. Certifying as a Section 3 Business Concern because at least 51 percent of the business is owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing;
iv. Hiring or contracting to the "greatest extent feasible" with Section 3 Residents or Section 3 Businesses.

☐ Check this box

2. I have never done any HUD funded contracting.

☐ Check this box

3. I completed HUD Section 3 covered contracts in the past three years but the regulation was not triggered because either there were no new hires on the contract(s) and/or I did not do any new contracting or subcontracting.

☐ Check this box

Signature: _____

Print Name: _____

Title: _____

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 75 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 wor ers 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 a*nticipated workforce list may be provided on a separate sheet or in a different format.*

List All Employees	Date Hired	Section 3 Worker (Yes/No)	Job Title/Trade	Salary Range
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 wor ers.

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 service 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 service area or neighborhood of the project:

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, shall ensure contracts for wor awarded in connection with Section 3 pro ects are provided to business concerns that provide economic opportunities to Section 3 wor ers residing within the metropolitan area (or nonmetropolitan county) in which the pro ect is located.

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. The U.S. Department of Housing and Urban Development (HUD) re uires that recipients of federal funds capture record and report the total number of labor hours the total amount of Section 3 worker hours and the total amount of Section 3 Target worker hours.

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 75 require employment opportunities to be directed, were not filled to circumvent the subcontractor's obligations under 24 CFR Part 75.

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

RESIDENT SECTION 3 SELF-CERTIFICATION AND SKILLS DATA FORM

The purpose of this form is to comply with HUD Section 3 administration and certification regulations. **Certification for Section 3 Workers or other Low-Income Persons Seeking Employment, Training or Contracting**

I, _____, am a legal resident of the United States and meet the income eligibility and federal guidelines for a Section 3 Resident as defined within this Certification.

My home address is: _____
Must be a **Street** address not a P O Box # Apt Number

_____
City State Zip Home # Cell #

_____
County of Residence

Graduated High School or GED (month/year): _____ I Read and Speak English Fluently: Yes or No

Attended College, Trade, or Technical School: Yes or No Graduated? Yes or No Year Graduated:_____

Check the Skills, Trades, and/or Professions in which you have been employed or contracted to do for others:

☐Drywall Hanging	☐Drywall Finishing	☐Interior Painting	☐Framing
☐HVAC	☐Electrical	☐Interior Plumbing	☐Exterior Plumbing
☐Siding	☐Cabinet Hanging	☐Door Replacement	☐Trim/Carpentry
☐Stucco	☐Window/Door Replacement	☐Construction Cleaning	☐Exterior Framing
☐Data Entry	☐Receptionist	☐ Sales	☐Telephone Customer Service
☐Administrative	☐Teaching/Training	☐Personal Care Aide	☐Landscaping
☐CDL License	☐Roofing	☐Concrete/Asphalt Work	☐Heavy Equipment Operator
☐Fencing	☐Metal/Steel Work	☐Welding	
☐Other		☐Other	

I am certifying as a Section 3 or er: ☐ **Person seeking Training** **or** ☐ **Person seeking employment**
(Check all that apply):

☐ A low or very-low income resident ☐Employed by a Section 3 Business Concern ☐YouthBuild Participant

☐I live in the service area or neighborhood -one-mile radius of project site or if fewer than 5,000 people a radius of project containing 5,000 people.

My total annual income is $_____.

I certify that all of the information given on this Certification is true and correct. If found to be inaccurate, I understand that I may be disqualified as an applicant and/or a certified Section 3 individual which may be grounds for termination of training, employment, or contracts that resulted from this certification. I attest under penalty of perjury that my income annually is at or below the income amount at the time of this document is being signed and notarized. I understand that proof of this statement may be requested in the future.

_____ _____
Signature Date

Printed Name: _____

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 low- and very low-income persons and YouthBuild participants.

A Section 3 worker as defined by §75.5 is any worker who currently fits or when hired within the past five years fit at least one of the following criteria:

(1) The worker s income for the previous or annualized calendar year is below the income limit established by HUD.

(2) The worker is employed by a Section 3 business concern.

(3) The worker is a YouthBuild participant.

A person seeking the training and employment preference provided by section 3 bears the responsibility of providing evidence (if re uested) that the person is eligible for the preference. Low- and very low-income limits are defined in Section 3(b)(2) of the Housing Act of 1937 and are determined annually by HUD. These limits are typically established at 80 percent and 50 percent of the area median individual income. HUD income limits may be obtained from: https://www.huduser.gov/portal/datasets/il.html.

(§75.21) A Targeted Section 3 worker for housing and community development financial assistance means a Section 3 wor er who is:

(1) A worker employed by a Section 3 business concern or
(2) A worker who currently fits or when hired fit at least one of the following categories as documented within the past five years:
(i) Living within the service area or the neighborhood of the project as defined in 75.5 or
(ii) A YouthBuild participant.

Service area or the neighborhood of the project means an area within one mile of the Section 3 project or if fewer than 5,000 people live within one mile of a Section 3 project within a circle centered on the Section 3 project that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census.

§75.19 Requirements.

(a) Employment and training.

(1) To the greatest extent feasible and consistent with existing Federal, state, and local laws and regulations recipients covered by this subpart shall ensure that employment and training opportunities arising in connection with Section 3 projects are provided to Section 3 workers within the metropolitan area (or nonmetropolitan county) in which the project is located.

(2) Where feasible priority for opportunities and training described in paragraph (a)(1) of this section should be given to:

(i) Section 3 workers residing within the service area or the neighborhood of the project and

(ii) Participants in YouthBuild programs.

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 low or very-low-income residents, then complete **Form A, "Section 3 Business Concern – Resident Business Owner(s) Verification"; OR**

2. If your company is qualified because over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 wor ers, then complete **Form B, "Section 3 Business Concern – 75% + Workforce".**
   OR

3. If at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing, then complete **Form C, "Section 3 Business Concern-Housing Residents".**

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 low or very-low-income residents.

Name of Owner:_____

Home Street Address:_____

Home City, County, & Zip Code:_____

Name of Business:_____

Percentage of Ownership: _____%

Low- and very low-income limits are defined in Section 3(b)(2) of the Housing Act of 1937 and are determined annually by HUD. These limits are typically established at 80 percent and 50 percent of the area median individual income. HUD income limits may be obtained from: https://www.huduser.gov/portal/datasets/il.html.

Individual Income Limits

FY 20 Income Limit Area	Income Limits Category	FY 202_Income Limits
	Extremely Low Income Limits	
	Very Low Income Limits (50%)	
	Low Income Limits (80%)	

If the business is owned by more than one low to very-low-income residents, list each owner below and each should submit a separate Resident Business Owner Verification Form (Form A).

Name	Position	% Percentage of Ownership

I certify that I am a resident of the State of Georgia and my total income last year was not more than the amount shown above. 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

75% + Workforce

A business can be certified as a Section 3 Business Concern if over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers. 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 Worker**	**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:				
Total Number of Employees:	**Full-Time:** _____	**Part-Time:** _____	**Contract:** _____	
Number of Section 3 or ers:				
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
Public Housing Residents

To qualify the business must be at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing

Business Information
Name of Business:_____

Address of Business: _____

Name of Business Owner: _____

Phone Number of Business Owner: _____

Email Address of Business Owner: _____

Preferred Contact Information:_____

Name of Preferred Contact:_____

Phone Number of Preferred Contact:_____

Type of Business (select from the following options):

☐Corporation ☐Partnership ☐Sole Proprietorship ☐Joint Venture

- **Percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing:_____%**

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: _____

FREQUENTLY ASKED QUESTIONS
for
SECTION 3

Published: March 25, 2021

The following is a guidance document published by the Department of Housing and Urban Development Office of Field Policy and Management for the purpose of providing answers to frequently asked questions about Section 3 of the HUD Act of 1968 (12 U.S.C § 1701u) and its associated regulations (24 C.F.R. Part 75). This document is intended to provide guidance for Section 3 funding recipients, subrecipients, contractors, subcontractors, workers, and other stakeholders.

This guidance document covers questions in several topic areas and is divided into parts that contain questions on that part's topic.

I. GENERAL QUESTIONS REGARDING SECTION 3:

II. APPLICABILITY:

8. Does the reduction and abatement of lead-based paint hazards constitute housing rehabilitation?
9. Are demolition projects covered by the requirements of Section 3?
10. Are professional service contracts required to be reported under Section 3?
11. Does Section 3 apply to labor hours by a CDBG-Entitlement recipient?
12. Does Section 3 apply to labor hours by a Public Housing Authority?

III. CONSISTENCY WITH OTHER LAWS:

1. Are recipients required to comply with Federal/state/local laws in addition to Section 3
2. What is the relationship between Section 3 and Davis Bacon requirements?
3. What does the new rule mean for Tribes and Tribally Designated Housing Entities?

IV. RECIPIENT RESPONSIBILITIES:

1. What are the responsibilities of recipient agencies under Section 3?
2. What are the reporting requirements for legacy contracts entered into under the old Part 135 rule?
3. What are the reporting requirements for Section 3 projects for which assistance or funds are committed during the transition period?
4. What is the reporting timeline for Public Housing Authorities and other recipients of public housing financial assistance?
5. What are the reporting requirements for Public Housing Authorities and other recipients of public housing financial assistance during the transition period?
6. What are good strategies for targeting Section 3 workers and businesses?
7. Are funds provided to recipients so that they can comply with the requirements of Section 3?
8. Are Section 3 workers or business concerns guaranteed employment or contracting opportunities under Section 3?
9. Are recipients, developers, and contractors required to provide long- term employment opportunities, and not simply seasonal or temporary employment?
10. When might a recipient agency be exempt from the quantitative reporting requirements of Section 3?
11. Are recipients required to request developers or contractors to make payments into Section 3 training or implementation funds?

V. SECTION 3 CERTIFICATION:

1. How can a prospective Section 3 worker or business concern certify that they meet the eligibility requirements?
2. What documentation must be maintained by HUD recipients, contractors and subcontractors certifying that low- and very-low individuals and business concerns meet the regulatory definitions under Section 3?
3. What are examples of acceptable evidence to determine eligibility as a Section 3 worker?
4. What are examples of acceptable evidence for determining eligibility as a Section 3 business concern?
5. Are all public housing residents considered Section 3 workers regardless of their income?
6. Does qualifying as a Section 3 businesses mean that the business will be selected if it meets the technical requirements of the bid, regardless of bid price?
7. Can contracting with MBE/WBE businesses count towards Section 3 benchmarks?
8. Does a business have to be incorporated to be considered a Section 3 eligible business?

VI. ECONOMIC OPPORTUNITIES NUMERICAL BENCHMARKS:

1. How can low- and very low-income persons and businesses locate recipient agencies that are required to comply with Section 3 in their area?
2. How can I find Section 3 business concerns in my area?
3. Do the benchmark requirements only count toward new hires?
4. Should PHA's report on staff hours?
5. What category of PHA Staff should be included?
6. Are recipient agencies required to meet the Section 3 benchmarks, or are they optional?
7. Will there be changes to the benchmark requirements?
8. What is considered "other" public construction?
9. What is the meaning of the safe harbor determination?

VII. SECTION 3 COMPLAINTS:

1. How should complaints be made?
2. Where else can I file complaints alleging denied employment and contracting opportunities?

I. GENERAL QUESTIONS REGARDING SECTION 3:

1. What is Section 3?

Section 3 is a provision of the Housing and Urban Development Act of 1968. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by certain HUD 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.

2. What Do "Best Efforts" and "to the Greatest Extent Feasible" Mean?

"Best efforts" and "greatest extent feasible" are statutory terms, used in the statute in different contexts. As such, HUD uses both terms to track compliance, and there are many ways to interpret the language. Traditionally, HUD has used the terms interchangeably, as referenced in the statute, and will continue to be consistent with the statutory language. *See* 12 U.S.C. 1701u(b)-(d). These terms are integral to the statutory intent and provide flexibility, rather than administrative burden, to grantees or recipients of HUD funding.

HUD acknowledges that some perceive "best efforts" to be the more rigorous standard, while others perceive "greatest extent feasible" to be the more rigorous standard. HUD has determined not to define the difference between these two terms but rather to increase the emphasis on outcomes as a result of these efforts. A recipient's reported results will be compared to the outcome metrics defined in the benchmark notice. HUD program staff will evaluate the level of effort expended by those recipients that fail to meet the benchmark safe harbor, and thus will ensure that the statutory terms are being properly enforced. HUD included a list of examples in the regulation at 24 CFR §§ 75.15 and 75.25, including engagement in outreach efforts to generate job applicants who are Targeted Section 3

workers, providing training or apprenticeship opportunities, and providing technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).

3. What Does "Section 3 Worker" Mean?

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

1. The worker's income for the previous or annualized calendar year is below the income limit established by HUD (see Question 6 of this part I of these FAQs, below);
2. The worker is employed by a Section 3 business concern (see Question 5 of part I, below); or
3. The worker is a YouthBuild participant.

4. What Does "Targeted Section 3 Worker" Mean?

A Section 3 targeted worker for Public Housing Financial Assistance projects is a Section 3 worker who:

(1) is employed by a Section 3 business concern; or

(2) currently fits or when hired fit at least one of the following categories, as documented within the past five years:

(i) A resident of public housing or Section 8-assisted housing;

(ii) A resident of other public housing projects or Section 8-assisted housing managed by the PHA that is providing the assistance; or

(iii) A YouthBuild participant.

A Section 3 targeted worker for Housing and Community Development Financial Assistance projects is a Section 3 worker who:

(1) is employed by a Section 3 business concern; or

(2) currently fits or when hired fit at least one of the following categories, as documented within the past five years:

(i) Living within the service area or the neighborhood of the project, as defined in 24 CFR § 75.5; or

(ii) A YouthBuild participant.

5. What Does "Section 3 Business Concern" mean?

A Section 3 business concern is a business that meets at least one of the following criteria, documented within the last six-month period:

1. At least 51 percent owned and controlled by low- or very low-income persons;
2. Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers; or

3. A business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

6. How are low-income and very low-income determined?

Low- and very low-income limits are defined in Section 3(b)(2) of the Housing Act of 1937 and are determined annually by HUD. These limits are typically established at 80 percent and 50 percent of the area median individual income. HUD income limits may be obtained from: https://www.huduser.gov/portal/datasets/il.html.

7. What is YouthBuild?

YouthBuild is a community-based pre-apprenticeship program that provides job training and educational opportunities for at-risk youth ages 16-24 who have previously dropped out of high school.

YouthBuild participants learn vocational skills in construction, as well as in other in-demand industries that include health care, information technology, and hospitality. Youth also provide community service through the required construction or rehabilitation of affordable housing for low-income or homeless families in their own neighborhoods.

The Division of Youth Services within the Employment and Training Administration's Office of Workforce Investment at the U.S. Department of Labor administers the YouthBuild program. Each year, more than 6,000 youth participate in approximately 210 YouthBuild programs in more than 40 states. More information can be found here: https://www.dol.gov/agencies/eta/youth/youthbuild.

8. As a funding recipient, what are my Section 3 reporting goals?

Your Section 3 reporting goals depend on the type of assistance you are receiving, whether public housing financial assistance or housing and community development financial assistance.

For public housing financial assistance, the benchmark for Section 3 workers is set at *25 percent* or more of the total number of labor hours worked by all workers employed with public housing financial assistance in the PHA's or other recipient's fiscal year. The benchmark for Targeted Section 3 workers is set at *5 percent* or more of the total number of labor hours worked by all workers employed with public housing financial assistance in the PHA's or other recipient's fiscal year. This means that the *5 percent* is included as part of the *25 percent* threshold.

For housing and community development financial assistance projects, the benchmark for Section 3 workers is set at *25 percent* or more of the total number of labor hours worked by all workers on a Section 3 project. The benchmark for Targeted Section 3 workers is set at *5 percent* or more of the total number of labor hours worked by all workers on a Section 3 project. This means that the *5 percent* is included as part of the *25 percent* threshold.

9. How does Section 3 differ from the Minority Business Enterprise/Women Business Enterprise programs?

Section 3 is both race and gender neutral. The standards provided under this regulation are based on income-level and location. Section 3 regulations were designed to encourage recipients of HUD

funding to direct employment, training, and contracting opportunities to low-income individuals, and the businesses that employ these persons within their community regardless of race and/or gender.

Minority Business Enterprise (MBE) means a business enterprise that is at least 51% owned and controlled by one or more minority or socially and economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or other similar causes.

Women's Business Enterprise (WBE) is an independent business concern that is at least 51% owned and controlled by one or more women who are U.S. citizens or Legal Resident Aliens; whose business formation and principal place of business are in the U.S. or its territories; and whose management and daily operation is controlled by a woman with industry expertise.

Section 3 standards are race and gender neutral. A minority and/or woman owned business enterprise must provide evidence that it meets at least one criterion of a Section 3 business concern outlined above in order to receive preference under Section 3. However, the Department anticipates that Section 3 will serve to support, and not impede, contract opportunities for minority business enterprises.

The MBE designation may provide preferences promoted by other statutes and regulations, such as goals for MBEs and other socially and economically disadvantaged businesses.

To learn more about the Minority Business Enterprise and Women Business Enterprise programs, please contact HUD's Office of Small and Disadvantaged Business Utilization at 202-708-1428, or visit their website, located at: https://www.hud.gov/program_offices/sdb.

10. What is a Section 3 project?

Section 3 projects are housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds a threshold of $200,000. The threshold is $100,000 where the assistance is from the Lead Hazard Control and Healthy Homes programs, as authorized by Sections 501 or 502 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z–1 or 1701z–2), the Lead-Based Paint Poisoning Prevention Act (42 U.S.C 4801 *et seq.*,; and/or the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851 *et seq.*). (See Question 12 of this part I of these FAQs for more detail regarding Lead Hazard Control and Healthy Homes programs.)

The project is the site or sites together with any building(s) and improvements located on the site(s) that are under common ownership, management, and financing. The requirements of Part 75 apply to an entire Section 3 project, regardless of whether the project is fully or partially assisted under HUD programs that provide housing and community development financial assistance.

11. Who is considered a recipient of Section 3 funding?

A recipient is any entity that receives directly from HUD public housing financial assistance or housing and community development assistance that funds Section 3 projects, including, but not limited to, any State, local government, instrumentality, PHA, or other public agency, public or private nonprofit organization. It does not include contractors or any intended beneficiary under the HUD program to which Section 3 applies, such as a homeowner or a Section 3 worker.

12. What are funding thresholds and how do they apply to Section 3 covered financial assistance?

Funding thresholds are minimum dollar amounts that trigger Section 3 requirements. There are no thresholds for public housing programs. The requirements of Section 3 apply to all programs receiving public housing financial assistance regardless of the amount of assistance received from HUD. Section 3 also applies to the entirety of a mixed-finance development project as described in 24 CFR 905.604, regardless of whether the project is fully or partially assisted with public housing financial assistance.

Section 3 projects are housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds a threshold of $200,000 (Lead Hazard Control and Healthy Homes (LHCHH) assistance is not included in calculating whether the assistance exceeds the $200,000 threshold).

The threshold is $100,000 when the assistance is from the Lead Hazard Control and Healthy Homes programs, as authorized by Sections 501 or 502 of the Housing and Urban Development Act of 1970, the Lead-Based Paint Poisoning Prevention Act, and the Residential Lead-Based Paint Hazard Reduction Act of 1992. LHCHH programs require Section 3 compliance if there is over $100,000 of LHCHH funding for the project (neither HUD public housing financial assistance nor HUD housing and community development financial assistance is included in calculating whether the assistance exceeds the $100,000 threshold). Recipients of LHCHH funding will also be required to comply with Section 3 regulations and report on the entirety of the project when the total amount of HUD housing and community development financial assistance to the project exceeds $200,000 (LHCHH funding is not included in calculating whether the total assistance exceeds the $200,000 threshold), or if any public housing financial assistance is provided.

13. Which recipient agencies (or sources of HUD financial assistance) are required to comply with Section 3?

For public housing financial assistance, Public Housing Authorities (PHAs), regardless of size or number of public housing units, are required to comply with Section 3 and its reporting requirements. However, small PHAs (fewer than 250 units) are permitted to report qualitatively as permitted under 24 CFR § 75.15(d). Some examples of those qualitative efforts are listed in the answer to Question 15.

As previously stated, Section 3 also applies to projects with more than $200,000 in funding from housing and community development financial assistance programs. The following is a list of examples of such funds:

- Community Development Block Grant (CDBG)
- HOME Investment Partnership
- Housing Trust Fund (HTF)
- Neighborhood Stabilization Program Grants (NSP 1, 2 & 3)
- Housing Opportunities for Persons with AIDS (HOPWA)
- Emergency Solutions Grants (ESG)
- University Partnership Grants

- Economic Stimulus Funds
- 202/811 Grants
- Lead Hazard Control Grants ($100,000 threshold; see Question 12, above, in this part I of these FAQs)
- Healthy Homes Production Grants ($100,000 threshold; see Question 12, above, in this part I)
- Rental Assistance Demonstration (RAD) (see most recent RAD Notice, found through HUD's RAD website, www.hud.gov/rad/)

*Note: The requirements of Section 3 typically apply to recipients of HUD funds that will be used for housing construction, rehabilitation, or other public construction. Contact Section3@hud.gov to determine applicability to a particular project/activity.

14. Can a non-profit organization be considered a business concern for the purposes of Section 3?

Yes. A non-profit organization can be a business concern. Non-profit organizations must meet the criteria of a Section 3 business concern as defined at 24 CFR § 75.5 in order to receive Section 3 preference. See response to Question 5 above.

15. What is a "Service Area" or "Neighborhood of the project"?

"Service area" or the "neighborhood of the project" means an area within one mile of the Section 3 project or, if fewer than 5,000 people live within one mile of a Section 3 project, within a circle centered on the Section 3 project that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census.

16. What if my agency does not meet all benchmark goals for employment or contracting?

If reporting indicates that the agency has not met the Section 3 benchmarks, the agency must report in a method prescribed by HUD program offices on the qualitative nature of its activities and those its contractors and subcontractors pursued per 24 CFR § 75.15(b) and § 75.25(b).

Such qualitative efforts may, for example, include but are not limited to the following:

- Engaged in outreach efforts to generate job applicants who are Targeted Section 3 workers.
- Provided training or apprenticeship opportunities.
- Provided technical assistance to help Section 3 workers compete for jobs (e.g., resume assistance, coaching).
- Provided or connected Section 3 workers with assistance in seeking employment including: drafting resumes, preparing for interviews, and finding job opportunities connecting residents to job placement services.
- Held one or more job fairs.
- Provided or referred Section 3 workers to services supporting work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, childcare).
- Provided assistance to apply for/or attend community college, a four-year educational institution, or vocational/technical training.

- Assisted Section 3 workers to obtain financial literacy training and/or coaching.
- Engaged in outreach efforts to identify and secure bids from Section 3 business concerns.
- Provided technical assistance to help Section 3 business concerns understand and bid on contracts.
- Divided contracts into smaller jobs to facilitate participation by Section 3 business concerns.
- Provided bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.
- Promoted use of business registries designed to create opportunities for disadvantaged and small businesses.
- Outreach, engagement, or referrals with the state one-stop system as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act

17. My agency has met all benchmark goals for employment and contracting, does this mean that we are considered in compliance with Section 3?

Yes. Recipients will be considered to have complied with Section 3 requirements, in the absence of evidence to the contrary, if they meet all benchmark goals and certify compliance with prioritization requirements found in 24 CFR § 75.9 or §75.19. However, if subsequent HUD enforcement activities reveal that the recipient has failed to comply with the recipient responsibilities set forth at 24 CFR §75.13 or §75.23, this compliance determination may be rescinded.

II. APPLICABILITY:/

1. What HUD assistance does Section 3 apply to?

Section 3 applies to both:

a) Public Housing Financial Assistance –

(i) Development assistance provided pursuant to Section 5 of the United States Housing Act of 1937 (the 1937 Act);

(ii) Operations and management assistance provided pursuant to Section 9(e) of the 1937 Act;

(iii) Development, modernization, and management assistance provided pursuant to Section 9(d) of the 1937 Act; and

(iv) The entirety of a mixed-finance development project as described in 24 CFR 905.604, regardless of whether the project is fully or partially assisted with public housing financial assistance as defined in subsections (i) through (iii).

b) Housing and Community Development Financial Assistance expended for housing rehabilitation, housing construction, or other public construction. See Question #2 below for applicability thresholds.

2. Do the requirements of Section 3 apply to grantees on a per project basis?

Yes, for housing and community development financial assistance projects. Section 3 projects are housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the total amount of assistance to the project exceeds a threshold of $200,000. The threshold is $100,000 where the assistance is from the Lead Hazard Control and Healthy Homes programs. See Question 12 of part I of these FAQs.

Section 3 applies to all public housing financial assistance funds, regardless of the amount of assistance from HUD.

3. If a project is funded with non-HUD assistance, do the requirements of Section 3 still apply?

Section 3 applies to projects that are fully or partially funded with HUD financial assistance. Projects that are financed with state, local or private matching or leveraged funds used in conjunction with HUD funds are covered by Section 3 if the amount of HUD funding for the project exceeds the regulatory thresholds (listed in Section I, Question #11).

For RAD projects, Section 3 applies regardless of what money is used to pay for repairs. Per the RAD Notice, "While most RAD conversions do not utilize funding covered by Section 3, HUD has established the alternative requirement that any Work required by the conversion after the RAD Closing that involves housing rehabilitation or housing construction is subject to the Section 3 requirements applicable to housing and community development activities as set forth in 12 U.S.C. 1701u(c)(2) and (d)(2) and the regulations derived from such provisions except that, with the exception of transactions receiving HUD housing and community development assistance, such as CDBG (24 CFR part 570) or HOME (24 CFR part 92), first priority for employment and other economic

opportunities shall be given to residents of public housing or Section 8 assisted housing. Otherwise, the receipt of Section 8 rental assistance does not, in itself, trigger the applicability of Section 3."

4. What recordkeeping responsibilities do contractors/subcontractors have if they receive Section 3 covered contracts?

Recordkeeping requirements for recipients are found at 24 CFR § 75.31. Recipients are required to maintain documentation to demonstrate compliance with the regulations and are responsible for requiring their contractors/subcontractors to maintain or provide any documentation that will assist recipients in demonstrating compliance, including documentation that shows hours worked by Section 3 workers, Targeted Section 3 workers, and any qualitative efforts to comply with Section 3. Examples of documentation can be found in 24 CFR §75.31.

5. Do the Section 3 requirements apply to material only contracts?

No. Section 3 does not apply to material only contracts or those that do not require any labor. For example, a contract for office or janitorial supplies would not be covered by Section 3. In this example, Section 3 would be encouraged but not required. However, a contract to replace windows that includes the removal of existing windows and the installation of new windows would be covered due to the involvement of labor.

6. Do the Section 3 requirements apply to Section 8 project-based rental assistance contracts?

No. Section 8 project-based voucher or project-based rental assistance housing assistance payment contracts, are not covered by the statute, including properties converted through the Rental Assistance Demonstration (RAD).

7. Are maintenance projects covered by Section 3?

Yes, but only for PIH funded programs administered by Public Housing Authorities.

8. Does the reduction and abatement of lead-based paint hazards constitute housing rehabilitation?

No, reduction and abatement of lead-based paint hazards focuses on mitigating lead paint hazards only, not conducting general rehabilitation activities.

9. Are demolition projects covered by the requirements of Section 3?

Yes. Recipients of assistance covered by Section 3 should, where feasible, comply with Section 3 benchmarks.

10. Are professional service contracts required to be reported under Section 3?

No, professional service contracts for non-construction services that require an advanced degree or professional licensing are not required to be reported as a part of total Section 3 labor hours. However, this exclusion does not cover all non-construction services.

However, professional services staff labor hours are permitted to be reported and PHAs will be given credit for reporting opportunities created for professional services by including professional services labor hours in the numerator, and not in the denominator, of the reported outcome ratios. The reporting structure in the rule allows a recipient to count any work performed by a professional services Section 3 worker or Targeted Section 3 worker as Section 3 labor hours and as Targeted Section 3 labor hours (i.e., in the numerator of the calculation), even when the professional services as a whole are not counted in the baseline reporting (i.e., in the denominator of the calculation). The effect of this reporting structure is to give a recipient a bonus if they are able to report Section 3 hires in the professional services context.

11. Does Section 3 apply to labor hours by a CDBG-Entitlement recipient?

Yes. If the recipient intends to use its HUD grant to perform housing construction, rehabilitation, or other public construction and the total HUD assistance to the project exceeds $200,000, then Section 3 applies to the project.

12. Does Section 3 apply to labor hours by a Public Housing Authority?

Yes. Section 3 applies to all Public Housing capital, operating, or development funds.

III. CONSISTENCY WITH OTHER LAWS:

1. Are recipients required to comply with Federal/state/local laws in addition to Section 3?

Yes. Compliance with Section 3 shall be achieved, to the greatest extent feasible, consistent with existing Federal, state and local laws and regulations. Accordingly, recipients of Section 3-covered assistance are required to develop strategies for meeting both the regulatory requirements at 24 CFR part 75 and any other applicable statutes or regulations.

2. What is the relationship between Section 3 and Davis Bacon requirements?

Compliance with Section 3 must be achieved consistent with the requirements of Davis-Bacon. Certain construction contracts are subject to compliance with the requirement to pay prevailing wages determined under the Davis-Bacon Act (40 U.S.C. 3141 et seq.) and implementing U.S. Department of Labor regulations in 29 CFR Part 5. Additionally, certain HUD-assisted rehabilitation and maintenance activities on public housing projects 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. (24 CFR § 965.101).

3. What does the new rule mean for Tribes and Tribally Designated Housing Entities?

After the Section 3 new rule went into effect on November 30, 2020, Tribes and Tribally Designated Housing Entities under the Indian Housing Block Grant and Indian Community Development Block Grant programs are no longer required comply with Section 3 requirements.

The new rule at 24 CFR part 75 provides that contracts, subcontracts, grants, or subgrants subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)) or subject to tribal preference requirements as authorized under 101(k) of the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4111(k)) must provide preferences in employment, training, and business opportunities to Indians and Indian organizations, and are therefore not subject to the requirements of 24 CFR Part 75.

IV. RECIPIENT RESPONSIBILITIES:

1. What are the responsibilities of recipient agencies under Section 3?

Recipients are required to ensure their own compliance and the compliance of their contractors/subcontractors with the Section 3 regulations, as outlined at 24 CFR part 75. These responsibilities include but are not limited to the following:

Designing and implementing procedures to comply with the requirements of Section 3: Recipient agencies must take an ***active role*** in ensuring Section 3 compliance. The first step is implementing procedures to ensure that all parties, including residents, businesses, contractors, and subcontractors, comply with Section 3 and maintain records verifying that compliance.

Facilitating the training and employment of Section 3 workers: The recipient agency must act as a facilitator, connecting Section 3 workers to training and employment opportunities.

Facilitating the award of contracts to Section 3 business concerns: The recipient agency must also work to link developers and contractors with capable Section 3 business concerns. Additionally, recipient agencies, when necessary, may direct Section 3 business concerns to organizations that provide capacity-building training.

Ensuring Contractor and Subcontractor Awareness of and Compliance with Section 3 Benchmarks and responsibilities: The recipient agency is responsible for ensuring that contractors and subcontractors are aware of, and in compliance with, Section 3 requirements.

Ensuring Compliance and Meeting Numerical Benchmarks: Recipient agencies shall ensure compliance with Section 3 by assessing the hiring and subcontracting needs of contractors; regularly monitoring contractor compliance; assisting and actively cooperating with the Secretary of HUD in obtaining the compliance of contractors; penalizing non-compliance; providing incentives for good performance; and refraining from entering into contracts with any contractor that previously failed to comply with the requirements of Section 3.

Reporting Requirements: Recipient agencies must document all actions taken to comply with the requirements of Section 3 and report these activities either through the Section 3 Performance Evaluation and Registration System (SPEARS), for Public Housing financial assistance, or any reporting system designated by program areas overseeing other funding.

2. What are the reporting requirements for legacy contracts entered into under the old Part 135 rule?

On and after November 30, 2020, Section 3 regulations codified at 24 CFR Part 135 (the old rule) have not applied and will not apply to new grants, commitments, contracts, or projects. Contracts executed or projects for which assistance or funds were committed prior to November 30, 2020 are still required to adhere to the requirements of the old rule. Recipients of such assistance or funds will still be expected to maintain records of Section 3 statutory, regulatory, and contractual compliance but will no longer be required to report Section 3 compliance to HUD in SPEARS.

HUD does not require funding recipients to change or alter contracts that were in place prior to the new Section 3 requirements becoming effective on November 30, 2020.

3. What are the reporting requirements for Section 3 projects for which assistance or funds are committed during the transition period?

Projects for which assistance or funds are committed between November 30, 2020 and July 1, 2021 are subject to the new Section 3 regulations found in 24 CFR part 75, and HUD expects that funding recipients will begin following this final rule's requirements for new grants, commitments, and contracts. Recipients will be expected to maintain records of statutory, regulatory, and contractual compliance with Section 3 for these projects but will not be required to report to HUD on the requirements found in 24 CFR part 75.

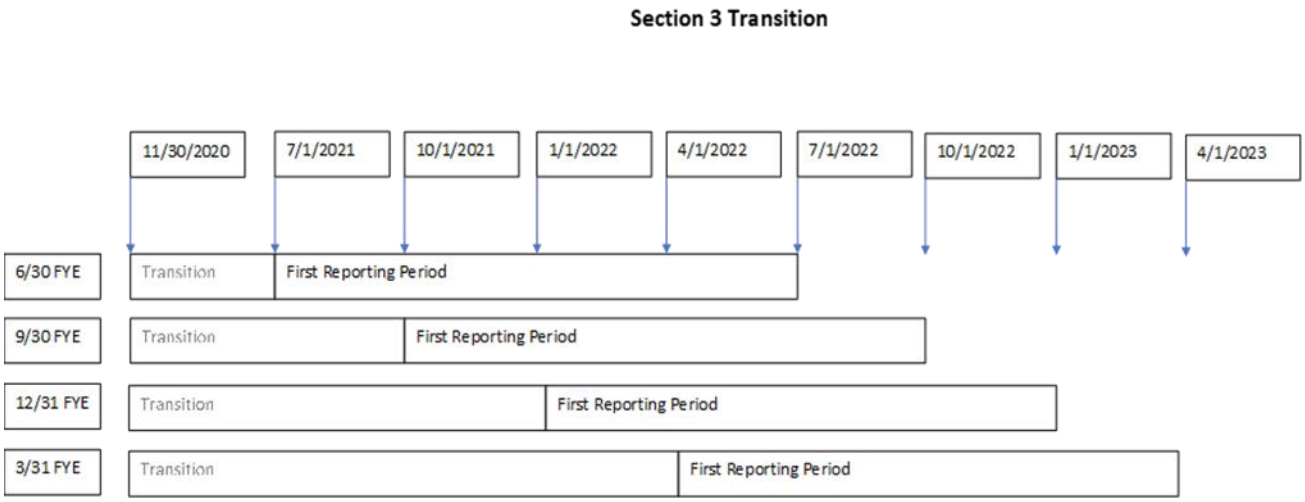
During the transition period between November 30, 2020 and July 1, 2021, recipients are expected to plan and revise processes, systems, and documents to comply with the new rule's requirements. During this time, funding recipients are still required to comply with Section 3's statutory requirements by ensuring that, to the greatest extent feasible, recipients continue to direct economic opportunities generated by certain HUD financial assistance to low- and very low-income persons and businesses that provide economic opportunities to low- and very low-income persons.

Recipients and employers should use this time to update policies and procedures for tracking labor hours and other requirements to ensure compliance with the new rules for projects for which funds are committed on or after July 1, 2021.

4. What is the reporting timeline for Public Housing Authorities and other recipients of public housing financial assistance?

As of November 30, 2020, PHAs' requirement to report their Section 3 activities and efforts starts 60 days after the end of their first fiscal year that begins after July 1, 2021. Please see the charts below for examples of PHA reporting schedules:

Fiscal Year End	New Reporting Period Begins	New Reporting Period Ends
6/30/21	7/1/21	6/30/22
9/30/21	10/1/21	9/30/22
12/31/21	1/1/22	12/13/22
3/31/22	4/1/22	3/31/23



5. What are the reporting requirements for Public Housing Authorities and other recipients of public housing financial assistance during the transition period?

All recipients of public housing financial assistance are required to follow the new Section 3 regulations found in 24 CFR part 75 beginning on November 30, 2020, and HUD expects that funding recipients and employers will begin following this final rule's requirements for new grants, commitments, and contracts on and after this date. Recipients will be expected to maintain records of statutory, regulatory, and contractual compliance with Section 3 but will not be required to report in SPEARS on the requirements found in 24 CFR part 75 until the recipient's first full fiscal year after July 1, 2021, as indicated in Question #4 above.

During the transition period between November 30, 2020 and a PHA or other recipient's required reporting start date, employers and grantees are expected to plan and revise processes, systems, and documents to comply with the new rule's requirements. During this time, PHAs and other recipients are still required to comply with Section 3's statutory requirements by ensuring that, to the greatest extent feasible, PHA's continue to direct economic opportunities generated by certain HUD financial assistance to low- and very low-income persons, tenants of public and assisted housing, and businesses that provide economic opportunities to low- and very low-income persons.

6. What are good strategies for targeting Section 3 workers and businesses?

In order to successfully target Section 3 workers and businesses for employment and contracting opportunities, recipients must establish and maintain an effective Section 3 program. HUD has found that hiring a Section 3 coordinator or assigning one individual the responsibility of coordinating all Section 3 related activities is instrumental in reaching Section 3's employment and contracting goals.

It is recommended that recipient agencies establish procedures to certify Section 3 workers and Section 3 business concerns for employment and contracting opportunities. Thereafter, they should maintain a list of eligible workers and businesses by skill, capacity or interest and contact them on a periodic basis when employment and contracting opportunities are available. Refer to the Section 3 regulations at 24 CFR § 75.15(b) and § 75.25(b) for a listing of qualitative efforts.

7. Are funds provided to recipients so that they can comply with the requirements of Section 3?

No. Funding has not been appropriated for Section 3 compliance. Section 3 requirements are only triggered when the normal expenditure of covered funds results in employment, training, or contracting opportunities.

8. Are Section 3 workers or business concerns guaranteed employment or contracting opportunities under Section 3?

Section 3 is not an entitlement program; therefore, employment and contracts are not guaranteed. Low- and very low-income individuals and Section 3 business concerns must be able to demonstrate that they have the ability or capacity to perform the specific job or successfully complete the contract that they are seeking.

9. Are recipients, developers, and contractors required to provide long- term employment opportunities, and not simply seasonal or temporary employment?

Recipients, developers, and contractors are required, to the greatest extent feasible, to direct employment opportunities to low- and very low-income persons, including seasonal and temporary employment opportunities. Benchmark goals include the calculation of all Section 3 worker and Targeted Section 3 Worker labor hours as a percentage of all labor hours worked on a project.

Recipients, developers, and contractors are encouraged to provide long-term employment to ensure that they meet the benchmark goals.

10. When might a recipient agency be exempt from the quantitative reporting requirements of Section 3?

A Small Public Housing Agency (less than 250 units) may elect to not report on labor hours. If the agency does elect not to report on labor hours, it is required to report solely on qualitative efforts as permitted in 24 CFR § 75.15(d).

11. Are recipients required to request developers or contractors to make payments into Section 3 training or implementation funds?

No. Recipients are not required to request contractors to make payments into a fund.

V. SECTION 3 CERTIFICATION:

1. How can a prospective Section 3 worker or business concern certify that they meet the eligibility requirements?

The individual or business must contact the agency or developer from which they are seeking employment or contracting opportunities (e.g.., the PHA, city, or local government). They should identify themselves as a Section 3 worker, Targeted Section 3 worker, or Section 3 business concern and provide whatever documentation that the recipient agency requires under their certification procedures. Prospective Section 3 workers and business concerns may self-certify that they meet the requirements as defined in the regulations. HUD recipients, contractors and subcontractors may also establish their own system to certify Section 3 workers and business concerns.

2. What documentation must be maintained by HUD recipients, subrecipients, contractors, and/or subcontractors certifying that low- and very-low individuals and business concerns meet the regulatory definitions under Section 3?

There are many ways that a worker can be certified as either a Section 3 Worker or Targeted Section 3 Worker under 24 CFR part 75:

For a worker to qualify as a *Section 3 worker*, one of the following must be maintained:

(i) A worker's self-certification that their income is below the income limit from the prior calendar year;
(ii) A worker's self-certification of participation in a means-tested program such as public housing or Section 8-assisted housing;
(iii) Certification from a PHA, or the owner or property manager of project-based Section 8-assisted housing, or the administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs;
(iv) An employer's certification that the worker's income from that employer is below the income limit when based on an employer's calculation of what the worker's wage rate would translate to if annualized on a full-time basis; or
(v) An employer's certification that the worker is employed by a Section 3 business concern.

(2) For a worker to qualify as a *Targeted Section 3 worker*, one of the following must be maintained:

For Public Housing Financial Assistance projects:

(i) A worker's self-certification of participation in public housing or Section 8-assisted housing programs;
(ii) Certification from a PHA, or the owner or property manager of project-based Section 8-assisted housing, or the administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs;
(iii) An employer's certification that the worker is employed by a Section 3 business concern; or
(iv) A worker's certification that the worker is a YouthBuild participant.

For Housing and Community Development Financial Assistance projects:

(i) An employer's confirmation that a worker's residence is within one mile of the work site or, if fewer than 5,000 people live within one mile of a work site, within a circle centered on the work site that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census;
(ii) An employer's certification that the worker is employed by a Section 3 business concern; or
(iii) A worker's self-certification that the worker is a YouthBuild participant.

The documentation must be maintained for the time period required for record retentions in accordance with applicable program regulations or, in the absence of applicable program regulations, in accordance with 2 CFR § 200.334, Retention Requirements for Records (www.ecfr.gov/cgi-bin/retrieveECFR?n=se2.1.200_1334), which provides for retaining records for at least three years, as described in detail in that regulation..

A PHA or recipient may report on Section 3 workers and Targeted Section 3 workers for five years from when their certification as a Section 3 worker or Targeted Section 3 worker is established.

3. What are examples of acceptable evidence to determine eligibility as a Section 3 worker?

HUD does not prescribe that any specific forms of evidence to establish Section 3 eligibility. Acceptable documentation includes, but is not limited to the following:

- Proof of residency in a public housing project; or
- Evidence of participation in the YouthBuild program.

4. What are examples of acceptable evidence for determining eligibility as a Section 3 business concern?

HUD does not prescribe that any specific forms of evidence be required to establish Section 3 eligibility. The business seeking the preference must be able to demonstrate that they meet one of the following criteria:

1. At least 51 percent owned and controlled by low- or very low-income persons;
2. Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers; or
3. A business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

5. Are all public housing residents considered Section 3 workers regardless of their income?

No. To qualify as a Section 3 Worker, an individual must meet one of the following criteria:

1. The worker's income for the previous or annualized calendar year is below the income limit established by HUD;
2. The worker is employed by a Section 3 business concern; or
3. The worker is a YouthBuild participant.

6. Does qualifying as a Section 3 businesses mean that the business will be selected if it meets the technical requirements of the bid, regardless of bid price?

No. As provided in 2 CFR 200.318, contract awards shall only be made to responsible contractors possessing the ability to perform under the terms and conditions of the proposed contract. In order to meet the requirements of Section 3 and Federal and state procurement laws, recipient agencies must develop procedures that are consistent with all applicable regulations.

7. Can contracting with MBE/WBE businesses count towards Section 3 benchmarks?

It depends. Section 3 is race and gender neutral. Only MBEs/WBEs that meet the eligibility criteria as a Section 3 business concern set forth in the regulation can be counted towards the Section 3 labor hour calculation.

8. Does a business have to be incorporated to be considered a Section 3 eligible business?

No. A Section 3 business concern can be any type of business, such as a sole proprietorship, partnership, or a corporation, properly licensed and meeting all legal requirements to perform the contract under consideration.

VI. ECONOMIC OPPORTUNITIES NUMERICAL BENCHMARKS:

1. How can low- and very low-income persons and businesses locate recipient agencies that are required to comply with Section 3 in their area?

To find local recipients' agencies, Section 3 residents or businesses should contact their local HUD office. To find your closest office, visit: www.hud.gov/localoffices.

2. How can I find Section 3 business concerns in my area?

Contact local recipient agencies to find Section 3 business concerns in your area. Section 3 business concerns that have registered in the Section 3 Business Registry are also available at: https://portalapps.hud.gov/Sec3BusReg/BRegistry/BRegistryHome.

3. Do the benchmark requirements only count toward new hires?

No, the rule does not apply to only new hires, but if someone is currently on staff and qualifies as a Section 3 resident under 24 CFR part 135, they will need to re-certify as either a Section 3 worker or Targeted Section 3 worker under 24 CFR part 75.

4. Should PHA's report on staff hours?

Yes, but not all PHA staff qualify as Section 3 workers. Only PHA staff that meet the definition of a Section 3 worker or Targeted Section 3 worker would qualify to be counted toward total Section 3 or Targeted Section 3 labor hours. Once a PHA determines that a Section 3 worker or Targeted Section 3 worker is hired or currently employed, the PHA would just report those hours as the numerator over the total labor hours funded with public housing financial assistance as the denominator.

5. What category of PHA Staff should be included?

Both salaried and hourly workers need to be reported. There is a limited good faith assessment exception for PHAs and other recipient employers of hourly and salaried workers that are not subject to requirements specifying time and attendance reporting and do not have systems already in place to track labor hours. This exception is to address employers that do not already track labor hours without making changes in time and attendance or payroll.

6. Are recipient agencies required to meet the Section 3 benchmarks, or are they optional?

The Section 3 benchmarks are minimum targets that must be reached in order for the Department to consider a recipient in compliance. Recipient agencies are required to make best efforts, or to the greatest extent feasible, to achieve the benchmarks required for the number of labor hours performed by both Section 3 workers and Targeted Section 3 workers. If an agency fails to fully meet the Section 3 benchmarks, they must adequately document the efforts taken to meet the numerical goals (see Question #9 for a discussion of safe harbor.)

7. Will there be changes to the benchmark requirements?

The Secretary of Housing and Urban Development is required in the Benchmark Notice published in the Federal Register to review and update the Benchmarks by Federal Register notice no less frequently than once every three years.

8. What is considered "other" public construction?

Other public construction includes infrastructure work, such as extending water and sewage lines, sidewalk repairs, site preparation, and installing conduits for utility services.

9. What is the meaning of the safe harbor determination?

Recipients will be considered to have complied with the Section 3 requirements and met the safe harbor, in the absence of evidence to the contrary, if they certify that they have followed the required prioritization of effort and met or exceeded the applicable Section 3 benchmarks.

If a recipient agency or contractor does not meet the benchmark requirements but can provide evidence that they have made a number of qualitative efforts to assist low- and very low-income persons with employment and training opportunities, the recipient or contractor is considered to be in compliance with Section 3, absent evidence to the contrary (i.e., evidence or findings obtained from a Section 3 compliance review).

VII. SECTION 3 COMPLAINTS:

1. How should complaints be made?

Complaints alleging failure of compliance with this part may be reported to the HUD program office responsible for the public housing financial assistance or the Section 3 project, or to the local HUD field office. These offices can be found through the HUD website, www.hud.gov/.

2. Where else can I file complaints alleging denied employment and contracting opportunities?

You may be eligible to bring complaints under other federal laws. The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information (medical history or predisposition to disease). For more information about your rights, please contact EEOC at: www.EEOC.gov.

The Department of Labor Office of Federal Contract Compliance Programs (OFCCP) enforces, for the benefit of job seekers and wage earners, the contractual promise of affirmative action and equal employment opportunity required of those who do business with the Federal government. More information about the services they provide can be obtained at: http://www.dol.gov/ofccp/.

Georgia Department of Community Affairs

Language Access Plan

2016-2021

DCA Language Access Plan (LAP)

Table of Contents

Section 1: INTRODUCTION

Signed on August 11, 2000, Executive Order 13166 mandated that federal agencies must publish guidance on how persons whose primary language is not English and those who have a limited ability to speak, read, write, or understand English will be provided Meaningful Access to federally funded assistance programs. On the same date, the Department of Justice issued guidance in accordance with the Executive Order which clarified the Limited English Proficiency (LEP) requirements under Title VI of the Civil Rights Act of 1964. Pursuant to Executive Order 13166, each federal agency was mandated to provide guidance specifically tailored to its recipients consistent with the LEP Guidance issued by the Department of Justice to explain how the general standards established in the LEP Guidance will be applied to the agency's recipients. On September 15, 2016, the Office of General Counsel (OGC) issued Guidance on Fair Housing Act Protections for Persons with Limited English Proficiency. In that Guidance, the OGC states that the Fair Housing Act prohibits housing providers from using LEP selectively based on a protected class or as a pretext for discrimination because of a protected class. The Act also prohibits housing providers from using LEP in a way that causes an unjustified discriminatory effect.

The Georgia Department of Community Affairs ("DCA" or "Agency") is a recipient of federal financial assistance and is therefore obligated to reduce language barriers that could preclude Meaningful Access by LEP persons to DCA programs that are funded with such federal financial assistance. DCA has prepared this Language Access Plan ("LAP" or "Plan"), which defines the actions to be taken to ensure Meaningful Access to Agency services, programs, and activities on the part of LEP persons. In preparing this Plan, DCA conducted a Four-Factor Analysis, considering (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; (2) the frequency with which LEP persons come into contact with the Agency's programs; (3) the nature and importance of the programs, activities, or services to people's lives; and (4) resources available to execute the programs and the costs of providing the LEP services.

Section 2: BACKGROUND

DCA was created in 1977 to serve as an advocate for local governments. On July 1, 1996, the Governor and General Assembly merged the Georgia Housing and Finance Authority (GHFA) with DCA. Today, DCA operates a host of state and federal grant programs; serves as the state's lead agency in housing finance and development; promulgates building codes to be adopted by local governments; provides comprehensive planning, technical, and research assistance to local governments; and provides rental assistance for eligible households.

DCA administers all federally funded programs in compliance with federal statutes and regulations. Federally funded programs administered by DCA include, but are not limited to: Housing Choice Voucher (HCV) Program, Section 811, Community Development Block Grants (CDBG), HOME, Housing Opportunities for Persons with AIDS/HIV (HOPWA), Emergency Solutions Grants (ESG), and Neighborhood Stabilization Program (NSP).

Section 3: POLICY

It is the policy of DCA to comply with all federal statutes and regulations in the administration of federally funded programs. DCA will take timely and reasonable steps to provide LEP persons with Meaningful Access to programs and activities conducted by DCA. Access to DCA programs and services should not be impeded as a result of an individual's inability to speak, read, write or understand English. DCA will review and update its LEP Four-Factor Analysis at least every five years.

DCA will train staff, contractors, and Sub-recipient administrators (program administrators who are expected to conduct a Four-Factor Analysis and other efforts described within this LAP), and local government officials on procedures to implement and continuously monitor and evaluate the implementation of LAPs in the State of Georgia.

Pursuant to the requirements of Title VI, sub-recipients of federal funds received through an administration grant/award made by DCA are also required to make reasonable efforts to provide timely, Meaningful Access for LEP persons to programs and activities. In order to do so, Sub-recipients should first conduct an assessment to determine the need for language assistance within their service area. This is accomplished by conducting the Four-Factor Analysis, which is described in this Plan. After completion of the Four-Factor Analysis, the Sub-Recipient Type IIs will understand the languages spoken by LEP persons in their service area, and can determine how to provide needed language assistance.

Based upon the findings of the Four-Factor Analysis, and when deemed necessary, the Sub-Recipient Type IIs should prepare an LAP addressing the Sub-recipient's plan for ensuring Meaningful Access to programs and activities for LEP persons. A Sub-Recipient Type II may conclude that different language assistance measures are sufficient for the different types of programs or activities in which it engages. For instance, a Sub-Recipient Type II may determine that certain activities are more important and/or have greater impact on or contact with LEP persons, and thus such programs or activities require enhanced language assistance. Although DCA is providing Sub-Recipient Type IIs with a template from which to develop a LAP, Sub-Recipient Type IIs have flexibility in determining how to appropriately address the needs of the LEP populations they serve.

The Sub-Recipient Type II is also required to select an individual responsible for coordination of LEP compliance, train staff involved in programs and activities on LEP requirements, keep records of assistance provided and actions taken, and update the Four-Factor Analysis and LAP, as needed.

DCA will monitor all Sub-Recipients to ensure LEP individuals receive meaningful access to federally funded programs in accordance with the terms identified in Section 12 of this LAP.

Section 4: PURPOSE AND PLAN OVERVIEW

The purpose of this Plan is to analyze the location and needs of Georgia's LEP population through the Four-Factor Analysis of Census data. The Plan establishes guidelines in accordance with Executive Order 13166, Improving Access to Services for Persons with Limited English

Proficiency, 65 Fed. Reg. 50,121 (Aug. 16, 2000). The Plan will also describe how DCA and its Sub-recipients will provide Meaningful Access to programs, eliminate or reduce LEP as a barrier to receipt of services offered by DCA programs and activities, and provide substantially equal and meaningfully effective access to DCA programs and services.

DCA has outlined the reasonable steps to provide Meaningful Access to federally funded programs for LEP persons based on the classification of each federally funded program. Federally funded programs that DCA directly administers as a Direct Beneficiary (e.g., HCV program, Section 811, etc.) will provide written translations of vital documents in accordance with the results of DCA's Four-Factor Analysis.

DCA will monitor the reasonable steps taken to ensure LEP individuals have Meaningful Access to federally funded Sub-Recipient programs. Sub-recipient administrators (operating programs including Community Development Block Grants (CDBG), HOME, Housing Opportunities for Persons with AIDS/HIV (HOPWA), Emergency Solutions Grants (ESG), and Neighborhood Stabilization Program (NSP)), will be monitored based on their independent LAPs as directed by their independently conducted Four-Factor Analyses.

For Direct Sub-recipient programs (where DCA awards funds to organizations to conduct services (e.g. housing counseling agencies or housing developers)), DCA will monitor language access strategies and provide training and support language access activities.

Under this Plan, DCA and its Sub-recipients will provide two primary types of language access services: oral and written. Both oral language access services and written language access services will meet the standards for Meaningful Access as described in this Plan, including interpretation and translation services being conducted by a demonstrably qualified bilingual staff member communicating directly in an LEP person's language or a qualified contractor providing interpretation or translation services.

DCA will continually monitor compliance with this Plan and the effectiveness of the Plan in eliminating barriers to Meaningful Access for LEP individuals.

DCA and its Sub-recipients will engage in outreach efforts to ensure that LEP persons are aware of the language access services available to them.

DCA will also provide training to Program-level LAP Coordinators, Sub-recipient grant administrators, local government officials, and direct service staff on methods of assistance available to LEP individuals in the implementation of this Plan. This training will be periodically updated and delivered as DCA’s LEP needs and language access services evolve.

Section 5: REGULATORY AND LEGAL AUTHORITY

A. Section 109 of the Housing & Community Development Act of 1974

Section 109 states that "no person in the United States shall, on the grounds of race, color, national origin, religion, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with Federal financial assistance."

B. Title VI of the Civil Rights Act of 1964 and Implementing Regulations

Title VI of the Civil Rights Act of 1964, Section 601, 42 USC 200d, provides that no person shall "on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving federal financial assistance. Section 602 authorizes and directs federal agencies that are empowered to extend federal financial assistance to any program or activity "to effectuate the provision of [Section 601]… by issuing rules, regulations, or orders of general applicability."

The regulations in Section 602 prohibit recipients from utilizing "criteria or methods of administration which have the effect of subjecting persons to discrimination based on their race, color or national origin, or have the effect of defeating or substantially impairing accomplishments of the objectives of the program or activity as respect to persons of a particular race, color or national origin." On January 22, 2007, the Department of Housing and Urban Development (HUD) published the final rule "Notice of Guidance to Federal Financial Assistance Recipients, regarding Title VI Prohibition against National Origin Discrimination – Affecting Limited English Proficient Person" (HUD LEP Guidance).

C. Title II of the Americans with Disabilities Act of 1990 and Implementing Regulations

Subtitle A of Title II of the Americans with Disabilities Act of 1990 protects qualified individuals with Disabilities on the basis of disability in the services, programs or activities of all state and local governments.

D. Section 504 of the Rehabilitation Act of 1973 and Implementing Regulations

Section 504 of the Rehabilitation Act of 1973 states that, "No otherwise qualified individual with a disability in the United States, as defined in section 705 (20) of this title, shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance"

Section 6: DEFINITIONS

Beneficiary: The ultimate consumer of federally funded programs who receives benefits from a federally funded recipient.

Bilingual: A person who is bilingual is fluent in two languages and is able to conduct the business of the workplace in either of those languages. This is to be distinguished from proficiency in more

than one language. Interpretation and translation require the interpreter or translator to be fluently bilingual and also require additional specific skills for interpretation and translation.

Customer: Any individual or organization communicating with a DCA program.

DCA LAP Coordinator: DCA's 504 Coordinator.

Direct "In-Language" Communication: Monolingual communication in a language other than English between a multilingual staff and an LEP person (e.g., Korean to Korean).

Effective Communication: Communication sufficient to provide an LEP individual with substantially equivalent levels of service access received by non-LEP individuals. Staff must take reasonable steps to ensure communication with an LEP individual is as effective as communication with non-LEP individuals when providing similar programs and services.

External Stakeholder: A person who is not a DCA employee and who has contact with, or is seeking information or services from, DCA programs or activities. External stakeholders include, but are not limited to, members of the general public, renters, homeowners, and small business owners.

Federal Financial Assistance: Grants, loans, and advances of federal funds, the grant or donation of federal property and interests in property, or any other assistance as specified in 24 CFR Part I § 1.2(e).

Focus Languages: Languages, specifically Chinese, Korean, Spanish, and Vietnamese, identified through the Four-Factor Analysis as having a sufficient level of prevalence amongst LEP individuals in Georgia to warrant statewide efforts for written translations of vital documents.

Four-Factor Analysis: The analysis that Recipients of federal funding are required to use to determine what language assistance measures are sufficient to assist LEP persons in the different programs and activities in which the Recipient engages, as described in "Final Guidance to Federal Financial Assistant Recipients regarding Title VI Prohibition against National Origin Discrimination, affecting Limited English Proficient Persons" published in the Federal Register (January 22, 2007). The four factors include:

1.) The number or proportion of LEP persons eligible to be served or likely to be encountered in the service population ("served or encountered" includes those persons who would be served or encountered by the Recipient if the persons received adequate education and outreach and the 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 to execute the program and costs of providing the LEP services.

Fluent: A person who is able to express oneself easily and articulately in conversations and public speaking.

Interpretation: The act of listening to a communication in one language (source language) and orally converting it to another language (target language) while retaining the same meaning.

Language Access Plan (LAP): A written implementation plan that addresses identified needs of the LEP persons served.

Language Assistance Services: Oral and written language services needed to assist LEP individuals to communicate effectively with staff, and to provide LEP individuals with Meaningful Access to, and an equal opportunity to participate fully in, the services, activities, or other programs administered by DCA.

Limited English Proficient (LEP) Individuals: Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English because of their national origin. 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. (HUD LEP Guidance). LEP individuals may be competent in English for certain types of communication (e.g., speaking or understanding), but still demonstrate LEP for other purposes (e.g., reading or writing).

Meaningful Access: LEP individuals' accurate, timely, and effective participation in, or benefit from, federally funded programs that is meaningfully equivalent to that of non-LEP individuals, at no cost to the LEP individual.

Multilingual staff or employee: A staff person or employee who has demonstrated fluency in English and reading, writing, speaking, or understanding at least one other language as authorized by his or her Division.

Primary Language: An individual's primary language is the language in which an individual most effectively communicates.

Proficient: The ability of a person to speak, read, write, and understand a language. An individual who is proficient in a language may, for example, be able to greet an LEP individual in his or her language or facilitate access to translation services, but not conduct Agency business in that language.

Qualified Translator or Interpreter: An in-house or contracted translator or interpreter who has demonstrated his or her competence to interpret or translate.

Recipient: Qualified applicants in compliance with 24 CFR §1.2(f) who are awarded federal financial assistance. The Voluntary Compliance Agreement defines Recipient as "the meaning specified at 24 CFR §1.2(0)." 24 CFR §1.2(f) defines Recipient as "any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program or activity, or who otherwise participates in carrying out such program or activity (such as a redeveloper in the Urban Renewal Program), including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program or activity."

Sight Translation: Oral rendering of written text into spoken language by an interpreter without change in meaning based on a visual review of the original text or document.

Sub-recipient: Any public or private agency, institution, organization, or other entity to whom federal financial assistance is extended, through DCA 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.

Translation: The replacement of written text from one language (source language) into an equivalent written text in another language (target language).

VCA: Voluntary Compliance Agreement

Vital Document: Any document that is critical for ensuring Meaningful Access to the 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 any consequences the LEP person might face if the information in question 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 recipient were its recreational program, documents related to those programs would be considered vital. Where appropriate, 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.

Section 7: FOUR-FACTOR ANALYSIS

As described in HUD's 72 FR 2732, the starting point for ensuring Meaningful Access is to conduct an individualized assessment (Four-Factor Analysis) that takes into account the following four factors:

1. Number or proportion of LEP persons in the eligible service population,
2. Frequency with which LEP individuals come in contact with the programs,
3. Nature and importance of the service provided by the programs, and
4. Resources available to execute the programs and the costs of providing the LEP services.

Below is DCA's analysis across all 159 counties and 626 cities identified by the U.S. Census. DCA identified 46 counties and the 93 cities as being most impacted in regards to LEP access. Counties and cities considered most impacted are those in which at least one language for LEP individuals exceeded the thresholds discussed below.

Classifying Federally Funded Programs

To determine what reasonable steps DCA must take to provide Meaningful Access to federally funded programs for LEP persons, DCA first determined which of its programs were federally funded. DCA then characterized the federally funded programs accordingly:

(1) Direct Beneficiary – Programs administered by DCA
(2) Sub-Recipient Type I – DCA awards funds to organizations to conduct services (e.g. housing counseling agencies or housing developers)
(3) Sub-Recipient Type II – Awards to local governments, non-profits and other non-entitlement/sub-recipients who are expected to independently conduct a Four-Factor Analysis and other efforts described within this LAP.

The Four-Factor Analysis is applied to DCA's Direct Beneficiary programs for the purpose of identifying DCA's vital documents for written translation.

DCA will ensure language access is provided to LEP persons to ensure Meaningful Access to DCA's Sub-Recipient Type I and Sub-Recipient Type II programs accordingly:

- Sub-recipient Type I (e.g. developers or non-profits) are awarded federal funds from DCA to conduct services.
- For both DCA's Sub-recipient Types I and II, DCA will monitor whether its sub-recipients have taken reasonable steps to ensure Meaningful Access for LEP persons to Sub-recipient-operated, federally funded programs.
- DCA will serve as a resource to provide recommendations and technical guidance to Sub-recipient entities in their language access activities.
- DCA's strategy for monitoring Sub-Recipient Type II implementation of their own analyses is included in Section 10.

Table 1. Federally Funded DCA Programs and Services

Category	Federally Funded Programs
Direct Beneficiary	HomeSafe Georgia
Direct Beneficiary	Radon Education program
Direct Beneficiary	Section 8 Housing Choice Voucher Program (Rental Assistance)
Direct Beneficiary	Section 811 Project Rental Assistance Demonstration
Sub-Recipient Type I	Georgia Commission for Service and Volunteerism/AmeriCorps
Sub-Recipient Type I	HOME Multifamily Affordable Housing Development
Sub-Recipient Type I	HUD Housing Counseling Program
Sub-Recipient Type I	NFMC Foreclosure Counseling Program
Sub-Recipient Type I	National Housing Trust Fund
Sub-Recipient Type II	Appalachian Regional Commission
Sub-Recipient Type II	Continuum of Care Program
Sub-Recipient Type II	Emergency Solutions Grants (Homeless Program)
Sub-Recipient Type II	Housing Opportunities for Persons with AIDS (HOPWA)
Sub-Recipient Type II	Shelter Plus Care (S+C) Program
Sub-Recipient Type II	Community Development Block Grant
Sub-Recipient Type II	Community HOME Investment Program (CHIP)
Sub-Recipient Type II	Neighborhood Stabilization Program (NSP)

This Four-Factor Analysis thus determines what reasonable steps DCA must take to provide LEP individuals with Meaningful Access to those federally funded programs operated directly by DCA.

Factor 1: Number or Proportion of LEP Persons Served or Encountered in Eligible Service Population

To determine the number or proportion of LEP persons served or encountered in any service area in Georgia, DCA's analysis of Factor 1 uses a demographic examination of LEP persons in the State of Georgia.

DCA reviewed LEP data for all counties and Census-recognized cities in Georgia, identifying those that exceeded 5% of the area population (if greater than 50 individuals) or 1,000 individuals within a geographic area (both county and city in this case). Those counties and cities with a number of LEP language speakers exceeding these thresholds are listed in Table 5 and Table 6 in Appendix 4. All data used to estimate the proportion of LEP persons across Georgia's 159 counties and Census-recognized cities comes from the Census Bureau's American Community Survey (ACS) 5-year file (2010–2014) – Table "B16001: Language Spoken at Home by Ability to Speak English for the Population 5 Years and Older."

For all counties in Georgia, including the 46 most impacted counties found in Table 5, no LEP population other than Spanish speakers exceeds 5% of the county's population. Six counties, however, have more than 1,000 individuals who speak a language other than Spanish and that do not speak English well. These counties are all found in the Atlanta region and all but one is a Participating Jurisdiction/Entitlement Area: Clayton, Cobb, DeKalb, Forsyth, Fulton, and Gwinnett. DCA identified 17 qualifying languages or language groups across these six counties, with African Languages (a Census grouping), Chinese, Korean, Spanish, and Vietnamese being the most prevalent. Upon further outreach, DCA has determined that the most prevalent African Languages in DeKalb County—the only county for which this grouping exceeds the threshold—are Somali, Amharic, Kinyarwanda, and Tigrinya.

For all cities in Georgia recognized by both Census and the State, including the 93 most impacted cities, only nine cities had LEP populations exceeding the safe harbor thresholds for a language besides Spanish. These cities are: Atlanta, Berkeley Lake, Clarkston, Duluth, Forest Park, John's Creek, Lake City, Lumpkin, and Morrow. All of these cities fall within the counties identified in the previous paragraph except Lumpkin, which is in Stewart County. DCA identified nine languages or language groups across these nine cities that met the above thresholds: African Languages (a Census grouping), Chinese, Hindi, Korean, Other Asian Languages (a Census grouping), Other Indic Languages (a Census grouping), Russian, Spanish, and Vietnamese. The only city in which a language grouping rather than individual languages met the threshold requirement was Clarkston. As such, DCA identified the need for further outreach and research to better understand the city's LEP population. Upon further outreach, DCA has determined that, in Clarkston, the most prevalent African Language is likely Amharic, there is not a clearly prevalent Other Indic Language, and the most prevalent Other Asian Language is likely Burmese. This is significant because a language group that meets the threshold may not contain any individual language that meets the threshold.

DCA observed that Chinese, Korean, Spanish, and Vietnamese are the only languages to exceed 1% of the total county population for LEP languages. While African Language speakers do exceed the 1% threshold in Gwinnett County, DCA determined upon further outreach and research that no individual language in this grouping would have exceeded this 1% threshold. These four languages are DCA's focus languages for the remainder of this analysis.

Table 2. DCA Focus Languages

Languages Exceeding 1% of the Total County Population
Chinese
Korean
Spanish
Vietnamese

In addition to these four focus languages, the city data would add African Languages, Hindi, Other Asian Languages, Other Indic Languages, and Russian to the focus list, but these groupings only exceed the safe harbor thresholds in a single city each—Berkeley Lake (population 1,694) for Russian; Clarkston (population 6,841) for African Languages, Other Asian Languages, and Other Indic Languages; and Lumpkin (population 1,131) for Hindi. Community outreach efforts in the city of Lumpkin support a conclusion that the size of the LEP population in Lumpkin was not accurately reflected in the Census data; and, in fact, the number of LEP persons in the city of Lumpkin was well below the acceptable threshold. Rather than add these languages as focus languages for the entire state, DCA will provide targeted translation and outreach in each area, which is further described in Section 11 of this LAP.

Table 3. Targeted Outreach Areas: Languages Exceeding Safe Harbor Thresholds in a Single City

City	Language Exceeding Threshold
Berkeley Lake (population 1,694)	Russian
Clarkston (population 6,841)	African Languages, Other Asian Languages and Other Indic Languages

While the affirmative efforts of this LAP will be on the focus languages identified above, DCA seeks and takes steps to provide access to services necessary for direct communication in any language. DCA has compiled data on the focus languages listed above at the county, city, and census tract level into an interactive online map available to Sub-recipients and the public. The instructions included in Attachment 1 visually illustrate this information with shading to represent the relative cumulative percentage of LEP individuals in each tract. This LAP mapping tool allows DCA and Sub-recipients to analyze where the greatest numbers of LEP individuals by language are located in each county by census tract and can aid in the completion of each Sub-recipient's own analysis.

DCA will update this data every five years in accordance with the overall update of the LAP policy, utilizing the same data source and methodology outlined in Appendix 4.

To help analyze Factors 2, 3, and 4, DCA disseminated a survey to all DCA Program Points of Contact (POCs). This survey utilized the Language Assistance Self-Assessment and Planning Tool for Recipients of Federal Financial Assistance at https://www.lep.gov/selfassesstool.htm. For each program, this survey asked POCs to discuss the program's frequency of contact with both the general public and LEP individuals, the importance of the program, and what vital documents were necessary to ensure an individual's Meaningful Access to the program. The results for this survey for directly DCA-operated, federally funded programs are discussed below.

Factor 2: Frequency with which LEP Individuals Come into Contact with the Programs

All programs stated through the survey whether they directly assisted members of the public as well as the frequency with which members of the general public accessed their programs. DCA thus assumes that the frequency with which LEP persons access these programs in relation to that of all individuals is proportional to the number of LEP persons in the State of Georgia, as discussed in Factor 1. Only those programs which directly serve Beneficiaries in the general public—and thus LEP individuals—will be the focus for the subsequent steps of DCA's Four-Factor Analysis.

Table 4. Federally Funded, Direct Beneficiary Programs' Frequency of Public Contact

Program Name	Direct Client Assistance?	Frequency of Public Contact
HomeSafe Georgia	Yes	Daily
Radon Education program	Yes	Weekly
Section 8 Housing Choice Voucher Program	Yes	Daily
Section 811 Project Rental Assistance Demonstration	Yes	Daily

LEP individuals will receive direct language assistance commensurate with the frequency with which these individuals interact with the programs. For example, homeowners and renters who apply for various DCA programs are likely to have frequent contact with the program and should therefore have Meaningful Access to those programs. This may include such interactions as completing applications, award notices, and public comment notices. For program activities such as these, DCA's strategy—which is laid out in this Plan—will seek to ensure that these populations have Meaningful Access throughout the process.

Factor 3: Nature and Importance of the Program, Activity, or Service Provided by Programs

The nature and importance of the programs, activities, or services provided by the programs to LEP individuals is informed by conclusions from the analysis in Factor 2, program participation requirements, and program managers' responses as to whether a delay in service provision would significantly, negatively impact the wellness of an individual.

While DCA will provide outreach regarding services available to LEP individuals across all Agency programs, DCA will prioritize vital document translation and subsequent LEP outreach based on

importance of the activity, information, service, or program or possible consequences of a lack of service to the LEP persons.

LEP outreach will focus on the programs that provide critical services to program recipients, including but not limited to: homeowners, landlords, renters, and small business owners. Those programs that provide a means of helping individuals obtain or rehabilitate housing or supporting businesses are critically important to LEP individuals. For DCA, these programs are identified below.

Table 5. Determining Programs' Critical Importance to LEP Individuals

Program	Nature of Program	Freq. of Public Contact	Application necessary for participation?	Delay in service provision sig., neg. impact individual?
Section 8 Housing Choice Voucher Program	A tenant-based rental assistance program that assists extremely low and low-income individuals and families rent safe, decent, and affordable dwelling units in the private rental market.	Daily	Yes	Yes
Section 811 Project Rental Assistance Demonstration	DCA uses the HUD 811 Project Rental Assistance grant to increase the number of housing units available to individuals with a disability who are extremely low-income and between the ages of 18-61.	Daily	Yes	Yes
HomeSafe Georgia	This government mortgage assistance program offers three types of no-interest, forgivable loans for Georgia homeowners: mortgage payment assistance, mortgage reinstatement assistance, and mortgage payment reduction. Underwater Georgia joins this program as a limited-time program that allows homeowners to receive a one-time payment of up to $50,000 to reduce the home's principal balance.	Daily	Yes	Yes
Radon Education Program	A statewide education program to help homeowners and builders reduce airborne radon levels.	Weekly	No	No

Factor 4: Resources Available to DCA and Costs of Providing LEP Services

DCA takes all reasonable steps to ensure Meaningful Access for LEP persons to DCA programs and activities. The availability of resources, however, may limit the provision of language services in some instances. "Reasonable steps" may cease to be reasonable when the costs imposed substantially exceed the benefits. DCA's LAP balances the needs of the LEP community with the funding resources available.

DCA has identified those vital documents for each DCA-operated, federally funded program that directly faces LEP individuals and for which a delay in service provision might significantly, negatively impact the wellness of any individual that program serves. DCA has prioritized those

documents for which either the following statements are true, according to direct program contacts: 1) Without this document, an individual could not access the program; 2) This document allows access to a major activity within the program. In addition to any vital documents, DCA will also disseminate federally provided fair housing documents and brochures to clients, whenever applicable.

The table below lists these vital documents by program, as well as the languages into which the documents will be translated. As the coverage area of each program listed below includes counties in which more than 1,000 LEP individuals live who speak Spanish, Chinese, Korean and/or Vietnamese, all vital documents must be translated into these four focus languages. This table also lists the timetable for translation as the number of days following HUD's approval of this Plan.

Table 6. Identification of Vital Documents and Translation Strategy

Program	Vital documents	Language(s) into which document(s) will be translated	Timetable
Section 8 Housing Choice Voucher Program (Rental Assistance)	Pre-Application	Spanish, Chinese, Korean, Vietnamese	90 days
	Application	Spanish, Chinese, Korean, Vietnamese	90 days
	Lead Warning Statement (Contract Attachment)	Spanish, Chinese, Korean, Vietnamese	180 days
	Federally provided vital documents: • "Protect Your Family from Lead in Your Home" • "A Good Place to Live" booklet • "Fair Housing: Equal Opportunity for All" • HUD 52641-A Tenancy Addendum • Housing Assistance Payment Contract • Voucher • Request for Tenancy Approval • HUD- 52675 Debts Owed to Public Housing Agencies and Termination	All federal documents, with the exception of "Protect Your Family from Lead in Your Home" and HUD-52675 Debts Owed, are already translated into Chinese, Spanish, Vietnamese, and Korean. Under the Lead Disclosure Rule, sellers and landlords must "give an EPA-approved information pamphlet on identifying and controlling lead-based paint hazards ('Protect Your Family from Lead in your Home,' currently available in Spanish, Vietnamese, Russian, Arabic and Somali)." DCA will request EPA assistance in translating this information pamphlet. DCA will also work with HUD to locate additional translations of form HUD-52675.	180 days
Section 811 Project Rental Assistance Demonstration	HUD 811 Tenant Information Booklet	Spanish, Chinese, Korean, Vietnamese	180 days
	HUD 811 Property Inventory	Spanish, Chinese, Korean, Vietnamese	180 days
	Tenant Eligibility Criteria	Spanish, Chinese, Korean, Vietnamese	180 days
	HUD Income Charts	Spanish, Chinese, Korean, Vietnamese	180 days
	HUD 811 Wait List Referral Form & Authorization to Release Information	Spanish, Chinese, Korean, Vietnamese	120 days
HomeSafe Georgia	Application	Chinese, Korean, Vietnamese; Document currently exists in Spanish	90 days

Activities aimed at ensuring Meaningful Access to the LEP population will be incorporated and funded across all of the DCA programs outlined in DCA's Action Plans as well as the new programs outlined in the VCA.

At this time, each program area will independently fund language access services from its own allocated funding. If resources limit the provision of services already laid out in this document, DCA will keep record of both the service requested and financial reasoning for the limitation.

Section 8: STAFF TRAINING ON LEP NEEDS AND LAP

DCA has undertaken or will undertake the following tasks in order to ensure Meaningful Access to federally funded services, programs, and activities to LEP individuals. These tasks are predominantly focused on addressing the needs of LEP individuals accessing DCA-administered housing assistance and other programs.

Naming Staff as Resources

DCA's compliance with the LAP will entail the appointment of an LAP Coordinator as well as one primary and one secondary point of contact (POC) per Division (and program as necessary). General staff will also be invited to list their language proficiencies in a Language Bank, maintained and updated by the LAP Coordinator.

Appointment of LAP Coordinator

DCA has designated the 504 Coordinator position to serve as the LAP Coordinator and be the primary point of contact responsible for the implementation of the LAP across all federally funded programs. These language assistance programs include, but are not limited to: provision of language assistance services, training programs, outreach activities, support for programs translating vital documents, maintenance of the language bank described below, and review of data collected on individuals needing LEP assistance. The DCA LAP Coordinator's contact information is listed below:

Christy Barnes
DCA 504 Coordinator
fairhousing@dca.ga.gov
404-679-5291

Sub-Recipient Point of Contact

All Sub-recipients will be required to identify a Program Level LAP Coordinator responsible for securing language access services as applicable for their federally funded program(s). Each Sub-recipient is responsible for sending the name and contact information of each Sub-recipient's LAP Coordinator to DCA as part of its Grant Contract.

Division Points of Contact

Each Division at DCA will have a primary and secondary POC who has received additional training to support the LAP Coordinator. The Division POC will support the DCA LAP Coordinator in responding to language access questions related to that specific program. This individual is responsible for collecting data on LEP requests and contacts and forwarding this information to the LAP Coordinator as requested. The Division POC also assists their Agency staff with all language access issues. If the need for language access services is identified by phone, email, mail correspondence, or in person, staff are instructed to immediately contact their Division POC. The Division POC in turn takes appropriate action to ensure meaningful communication through the methods described in this LAP, with support from the DCA LAP Coordinator.

If, for any reason, the Division POCs are not available for a particular program, center or agency, program staff should contact the DCA LAP Coordinator at the telephone/email listed above. The DCA LAP Coordinator is also available as a resource in identifying personnel for providing LEP services.

DCA will maintain a list of primary and secondary POCs by Division (and specific programs as needed), which will be available to all staff. This list is available in Appendix 1.

Development of a Language Bank

DCA and all Sub-recipients identify staff who are professionally proficient or fluent in a language other than English. The DCA LAP Coordinator maintains a roster of DCA staff, along with their contact name, Division, office location, language proficiency (using language proficiency levels used by the US Department of State: https://careers.state.gov/gateway/lang_prof_def.html) for each self-identified language, work schedule, telephone number, and email address. Human resource staff and DCA management will create a form reflecting this listed information that all new DCA employees will complete through their onboarding process. The DCA LAP Coordinator will continue to coordinate with the appropriate human resource staff and DCA management to ensure the Language Bank is up-to-date and reflects the most recent staffing changes for all DCA employees who are bilingual or professionally proficient in a language besides English. The DCA LAP Coordinator disseminates this list to all programs having direct contact with the public and is responsible for verifying and revising it as needed, depending on changes in staff and demand for LEP services. DCA's current Language Bank is included in Appendix 3. The Language Bank will be used to facilitate the provision of interpreter services in all locations that have regular interactions with the public.

All staff professionally proficient in a language besides English receive training in providing language assistance support. Bilingual staff members wishing to serve as translators or interpreters may receive additional training in translation or interpretation. Those staff members are assessed and receive regular training on the following:

- Role and responsibility of a Language Bank Interpreter;
- Interpretation ethics;
- Specialized terminology; and
- Program specific information as needed.

If there are significant populations in areas where no staff fluent in the language is available, the Program Level LAP Coordinator for that location/program works with the DCA LAP Coordinator to identify locally available interpretation services. DCA will provide guidance to individuals identified in the language bank to insure the appropriate level of interaction with LEP individuals. DCA recognizes that the use of the language bank does not supplant the need for certified translation services but augments the availability of immediate LEP services.

Training Staff as Resources

Mandatory training on LEP awareness and current protocols will be developed for all staff. This training will be conducted on-line and in-person with the option for teleconference participation for

staff in the field. The goal of this mandatory training will be to provide an overview of the state and federal regulations regarding language access and explain DCA language access procedures.

DCA will develop two mandatory training courses for LAP and LEP issues: Basic LEP/LAP and Advanced LEP/LAP. DCA staff who do not frequently come into contact with the public will receive only the Basic LEP/LAP training online. DCA staff who frequently interact with the public as well as Division and program POCs will receive Advanced LEP/LAP training. The LAP Coordinator will track and maintain a list of required training and training schedules.

(i) The Basic LEP/LAP Training will cover an overview of the definition of LEP persons, overview of the state and federal regulations governing language access, roles and responsibilities of DCA staff, DCA language access procedures, and the LAP complaints/appeals process.

(ii) The Advanced LEP/LAP Training will cover an overview of the definition of LEP persons, overview of state and federal regulations governing language access, basic customer service skills and telephone etiquette, cultural sensitivity, roles and responsibilities of DCA staff, how to identify the language needs of an LEP individual, use of the "I Speak" card, DCA language access procedures, how to track the use of language services, and the LAP complaints/appeals process.

In addition to creating the LEP/LAP courses, DCA will also develop and deliver training specifically for the individuals in DCA's Language Bank. Language Bank training will cover an overview of the role and responsibility of Language Bank Interpreters and translation and interpretation ethics.

DCA will also incorporate LEP awareness and LAP protocol modules in new hire orientation offerings for all new DCA staff, including the online Basic LEP/LAP Training. Staff will be informed of upcoming trainings with the exact date, time and location of training. All trainings will be overseen by the DCA LAP Coordinator. Upon completion of the training, the trainer will provide a list of the staff in attendance to the DCA LAP Coordinator. Staff completing basic training online will certify that they completed the training.

Each DCA program should assess the extent to which non-English language proficiency is necessary to fulfill the program's mission. DCA values the multilingual skills of its employees. Multilingual employees with frequent interaction with LEP individuals or whose work plan includes the provision of language assistance services will be identified by their manager and undergo language assessments in oral and written proficiency coordinated by the LAP Coordinator. All Divisions should take reasonable steps to develop quality control procedures to ensure that DCA employees who communicate or correspond in a non-English language with LEP individuals do so in an accurate and competent manner. Managers are also encouraged to take into account the amount of time an employee has spent providing language assistance services when assessing employee goals and performance.

Section 9: LANGUAGE ASSISTANCE MEASURES

Provision of Language Access Services

All programs with direct contact with the public are responsible for providing written or oral language services. “I Speak” cards are used by all staff who may have direct interaction with LEP individuals to identify language needs and begin the provision of access services. The “I Speak” card used by DCA is included in Appendix 2.

Plan for Providing Interpreters and Spoken Translation

For oral encounters, program staff have access to three contracted translation service providers that can interpret program information into the applicant’s native language:

- Interpreters Unlimited (In person only – 800-726-9891)
- Language Line Services (Telephonic or recording – 800-752-6096)
- LATN, Inc. (In-person or telephonic – 800-943-5286)

The program applicant will identify him/herself as an LEP individual. By way of this designation, public-facing program staff are instructed to call a toll-free number and assist applicants with the help of the telephone operator and interpreters available through this service.

For all focus languages, a state-contracted entity provides written translation services on demand for DCA and its Sub-recipient partners. The contact information of the approved contractor is provided to all Sub-recipient agencies and updated as needed. DCA will partner with organizations to develop additional translating resources for written materials and maintain a list of such organizations available to all Divisions.

Plan for Providing Language Access Services to Meeting Participants and Attendees

DCA and Sub-recipients will leverage the contracted translation services and bilingual staff to provide interpretation services as needed for all meetings related to program eligibility determinations. DCA is committed to providing interpreters for large, medium, small, and one-on-one DCA meetings with any LEP individuals or organizational representatives as needed and as appropriate.

DCA will include a statement in its meeting notices indicating that 1) DCA is prepared to provide appropriate language services for LEP individuals and 2) requesting that the respondent identify any language services needed within a specified period of time, including which language(s) such services are required.

DCA’s ability to provide an in-person interpreter upon request is limited by available resources and the scheduling availability of the translation service(s). DCA will provide interpretation services in a meeting in the following manner:

- If the meeting is small (less than 10 people), telephone interpreter services will be provided.

- If the meeting is medium (11-20 people) or large (21 or more people), an in-person interpreter will be provided upon request.

When the meeting is off-site and/or open to the public, DCA will include the sentence, “Translation of the notice and interpretation services for this event are available upon request” in both Spanish and English in communication about the meeting.

Plan for Translating Informational Materials Detailing Provided Services and Activities

DCA will ensure that all important documents—whether “vital” or relating to public engagement —are translated into the relevant languages.

Translation of Vital Documents

Those programs identified in step three of the Four-Factor Analysis (in which LEP individuals may directly interact with DCA programs or staff) are prioritized in the translation of vital documents, identified in step four. Classification of a document as “vital” depends upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. The determination of what documents are considered “vital” is left to the discretion of individual Divisions and programs at DCA, which are in the best position to evaluate their circumstances and services within their language access planning materials. While guided by HUD’s definition of “vital” documents, each Division and program exercises its discretion in creating a process for identifying and prioritizing vital documents or texts to translate. Divisions and programs also ensure that all translations are completed by qualified translators.

Documents that may be considered “vital” may include, but are not limited to:

- Administrative release or waiver forms;
- Application forms;
- Public outreach or educational materials (including web-based material);
- Forms or written material related to individual rights; and
- Any other document for which either the following statements are true, according to direct program contacts: 1) Without this document, an individual could not access the program; 2) This document allows access to a major activity within the program.

Translation of all written materials requesting input and participation from the public is addressed in the following section.

Under most circumstances, materials primarily directed to developers, local governments, non-profits, lenders, or other professionals will not be considered “vital” for these purposes. Recognizing that preparing translations can be a resource- and time-intensive process, Divisions and programs are encouraged to seek stakeholder input in determining which documents should be prioritized for translation. Divisions and programs are also encouraged to pursue resource-sharing and cost-saving initiatives across DCA when translating documents. Ultimately, DCA will assess the considerations in this Plan, including the Four-Factor Analysis, and make decisions

within agency discretion and consistent with component language access plans as to how to provide Meaningful Access to written texts.

Translation of Notices, Public Hearings, and Citizen Participation Periods

All written materials requesting input and participation from the public for any HUD-funded activity will be translated into Spanish. These documents will also be made available in the other three focus languages upon request. This includes materials distributed during Citizen Participation periods when Substantial Action Plan Amendments are being considered. A "language disclaimer" in the three remaining focus languages, where applicable, will be included at the bottom of all printed materials intended for public outreach.

Notices of public hearings will be translated into Spanish and made available in the other three focus languages upon request. Notices of public hearings will also indicate that interpreters in any one of the four focus languages can be made available upon request to attend the public hearings to provide interpretation services to attendees. This includes public hearings about HUD-funded programs as well as public hearings regarding Substantial Action Plan Amendments.

DCA will monitor Sub-recipients' compliance of this task through its monitoring of all Sub-recipient responsibilities under Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, 65 Fed. Reg. 50,121 (Aug. 16, 2000).

Section 10: SUB-RECIPIENT OVERSIGHT AND MONITORING

The programs identified in Table 7 below represent the federally funded programs for which DCA awards or sub-grants funds to Sub-recipients. The following sections lay out the oversight and monitoring for those Sub-recipient delineated as Sub-Recipient Type IIs of DCA programs, such as a local government participating in the CDBG program. For programs delineated as working through a Sub-Recipient Type I, such as a housing developer or housing counseling agency, DCA will include specific requirements for Sub-recipient outreach and Meaningful Access measure in the program-level policies for those programs.

Table 7. Federally Funded DCA Sub-recipient Programs and Services

Category	Federally Funded Programs
Sub-Recipient Type I	Georgia Commission for Service and Volunteerism/AmeriCorps
Sub-Recipient Type I	HOME Multifamily Affordable Housing Development
Sub-Recipient Type I	HUD Housing Counseling Program
Sub-Recipient Type I	NFMC Foreclosure Counseling Program
Sub-Recipient Type I	National Housing Trust Fund
Sub-Recipient Type II	Appalachian Regional Commission
Sub-Recipient Type II	Continuum of Care Program
Sub-Recipient Type II	Emergency Solutions Grant (Homeless Program)
Sub-Recipient Type II	Housing Opportunities for People with AIDS (HOPWA)
Sub-Recipient Type II	Shelter Plus Care (S+C) Program
Sub-Recipient Type II	Community Development Block Grant
Sub-Recipient Type II	Community HOME Investment Program (CHIP)
Sub-Recipient Type II	Neighborhood Stabilization Program (NSP)

Guidance and Technical Assistance for Sub-Recipient Type IIs

DCA will develop guidance and technical assistance, including webinar training, in providing language access services for Sub-recipient grant administrators. This training will cover components of a meaningful LAP, LAP file review, LAP reporting requirements, and the LAP complaints/appeals process.

Sub-Recipient Type II Language Access Plans

DCA will provide a sample LAP for Sub-Recipient Type IIs of federally funded programs.

Sub-Recipient Type II Notice

DCA staff will provide information about language assistance planning requirements to Sub-Recipient Type IIs in all phases of the grant process including:

- Notices of funding availability (NOFAs)
- Grant application webinars and workshops
- Grant contracts
- Post award training
- Grant close out monitoring

Sub-Recipient Type II Training

DCA staff will provide Language Access Plan training to Sub-Recipient Type IIs as part of the pre-application and post award webinars and workshops. Training topics will include:

- General information about Language Access Plans
- How to perform the four factor analysis
- How to provide Meaningful Access to programs and activities
- Technical assistance for translation and interpretation services
- How to maintain records for close out monitoring

Sub-Recipient Type II Technical Assistance

DCA staff will provide ongoing technical assistance to Sub-recipients to ensure compliance with the LAP requirements. Technical assistance will include informational webinars posted to the DCA website about LAP requirements, review of Sub-recipients plans and Four-Factor Analyses to determine if they meet HUD standards, and access to resources for translation and interpretation services.

Sub-Recipient Type II Monitoring

DCA will monitor Sub-Recipient Type IIs to ensure that they have completed policies in line with the sample LAP and related guidance materials and are taking reasonable steps to provide Meaningful Access to LEP persons.

DCA intends to meet its responsibilities to ensure Sub-Recipient Type II compliance with Title VI and the Title VI regulations through the process of Sub-Recipient Type II monitoring, provision of technical assistance, and referral of complaints to HUD for further investigation. DCA will include as part of a regular Sub-Recipient Type II project monitoring, an evaluation of a Sub-Recipient Type II's compliance with LEP requirements.

This will include the following:

1) Determining whether the Sub-Recipient Type II has identified a LEP contact person;
2) Determining whether the Sub-Recipient Type II completed a Four-Factor Analysis;
3) Determining whether the Sub-Recipient Type II has a LAP;
4) Determining whether and how LEP persons are being provided Meaningful Access to programs and activities; and
5) Whether the Sub-Recipient Type II is maintaining records regarding their efforts to comply with Title VI LEP obligations.

DCA will inform a Sub-Recipient Type II of any findings of compliance or noncompliance in writing. DCA will attempt to resolve the findings by informal means such as seeking corrective action. If DCA determines that compliance cannot be secured by voluntary means, DCA may require repayment of Sub-Recipient Type II funding received, refer the matter to HUD, or use any other appropriate enforcement mechanism.

Section 11: LEP OUTREACH

Outreach and Notice to LEP Individuals

DCA shall maintain notices on its website of the availability of translation and interpretation services. DCA regional staff will also provide information relating to DCA's translation and interpretative services to industry partners. Staff who use email messaging services to keep participants informed of available resources will add a link to DCA's website which will contain information related to the availability of interpretative services offered by DCA and will inform LEP persons of the availability of language assistance, free of charge, by providing written notice in languages LEP persons will understand. DCA will monitor, maintain, and update LEP requirements as required by HUD at least annually and/or as changes occur. The LEP plan will be provided to any person or agency requesting a copy.

DCA is in the process of updating the Agency website. As part of this update, DCA will provide a clear, targeted link for LEP individuals to access the DCA fair housing page, where translated notices, program descriptions, fair housing brochures, and Vital Documents will be available.

Georgia Housing Search

DCA continues to sponsor a web-based, housing database that provides detailed information about available rental properties and units and helps people find housing to best fit their needs. The service can be accessed at no cost online 24 hours a day or through a toll-free, bilingual call center at 1-877-428-8844, available M-F, 9:00 am - 8:00 pm EDT. The information contained on

the site is available through 103 languages, including those referenced in this plan. The current database is available through http://www.georgiahousingsearch.org. At this time, the site lists more than 200,000 properties throughout Georgia.

The fast, easy-to-use free search lets people look for rental housing using a wide variety of criteria and special mapping features. Housing listings display detailed information about each unit. The service also provides links to housing resources and helpful tools for renters such as an affordability calculator, rental checklist, and information about renter rights and responsibilities.

Complaints and Appeals

Any person who believes they have been denied the benefits of this LAP or that DCA has not complied with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d) and Executive Order 13166 regulations may file a complaint with the DCA LAP Coordinator. The Division or program POC may be the first point of contact for any complaints or appeals, but the DCA LAP Coordinator must be informed of all complaints and appeals. The LAP Coordinator will provide oversight of the complaint/appeal resolution process. To file a complaint, submit the written complaint to:

DCA 504 Coordinator
fairhousing@dca.ga.gov
60 Executive Park South, N.E.
Atlanta, Georgia 30329-2231

Additional Outreach

Additional Outreach for Partnerships in LEP Communities

DCA will leverage existing relationships with community organizations including faith-based service groups, community associations, and service nonprofits to notify LEP individuals of DCA's language access services. Potential partners include, but are not limited to, Latin American Associations, Community Development Centers and Regional Commissions. The LAP Coordinator will maintain this list of partners. DCA also anticipates that community partnerships will be shared with Sub-recipients and Local Governments to coordinate language access services in their jurisdictions/areas.

Additional Outreach in Cities Exceeding Threshold for Written Translations

For the two cities that exceed the threshold for written document translation, Berkeley Lake, and Clarkston, DCA will undertake targeted outreach to ensure access for LEP individuals in those areas. DCA will pursue agreements, such as a memorandum of understanding (MOU), with local service providers and other organizations that can assist in marketing DCA programs and facilitate in providing language access services. DCA will provide outreach materials translated into prevalent languages in each area and will work with the local partners to identify any need for further translation of written documents or other forms of translation that can achieve an equal level of language access. As the population groups in these areas are small compared to the entire state, DCA believes that this more focused approach will provide better, more reasonable language access.

Section 12: MONITORING, EVALUATING AND UPDATING THE LAP

For our language access program to continue to be effective, DCA will periodically monitor, evaluate, and update the plan, policies and procedures. The DCA LAP Coordinator will be responsible for monitoring, evaluating, and updating the LAP. On an annual basis the LAP will be updated to reflect any change in the plan based on the prior year's activity, as needed. DCA will annually review the U.S. Census Bureau's American Community Survey (ACS) to assess the population of Limited English Proficient residents within the state of Georgia and update the LAP, as necessary. DCA will continue to conduct the Four-Factor Analysis every five years. As part of this monitoring and evaluation effort, DCA will review procedures for providing language access services, existing training programs, outreach activities, the Language Bank, and the language access data to periodically update the language access program. The DCA LAP Coordinator is responsible for evaluating, and updating the language access plan, as well as coordinating monitoring for CDBG, the 811 program, Continuum of Care Program (including Shelter Plus Care), HOPWA and ESG programs. This LAP is a living document that, through monitoring and evaluation, may be updated as the needs of the LEP population and the demands on DCA to service this population evolve.

DCA will have in place processes to regularly identify and assess what the LAP is providing to our current customers as well as potential customers and how we can better meet their needs. Monitoring and evaluating the LAP will include:

- Tracking and assessing DCA's interactions with LEP individuals
- Soliciting feedback from community-based organizations about the effectiveness and performance in ensuring Meaningful Access to our LEP customers.
- Maintaining current community demographics and needs by engaging with local resources who can assist with demographic changes.
- Monitoring DCA's response rate to complaints and/or suggestions offered by LEP individuals and employees regarding the language assistance services provided.
- Considering new resources, including funding, collaborations with other agencies, human resources, emerging technologies and other mechanisms for ensuring improved access for LEP individuals.
- Reviewing and evaluating the translation invoices from the language services to determine if translation requests are made for languages other than Spanish, Chinese, Korean or Vietnamese, numbering more than 5% of the eligible population.
- Tracking categorized language interpretations requested of staff interpreters.
- Maintaining digital folders, organized by language for all vital documents in SharePoint.

Creating a record of language assistance services can help inform programs whether there should be changes to the quantity or type of language assistance services. The monitoring and review of current policies and the types of language assistance services provided should occur on an annual basis.

Sub-Recipients will be required to comply with LEP obligations as a condition of award. DCA will monitor all sub-recipients for LEP compliance, including:

1. Sub-Recipient Acknowledgement Statement

Sub-Recipients will be required to acknowledge LAP obligations at application as a condition of award. Applicants for federal funds through DCA must include an executed statement acknowledging their LAP obligations with their applications. This statement must include the applicant's agreement to provide a LAP to DCA within sixty (60) days of notification of award and agreement to provide evidence of compliance with the locally adopted LAP to DCA during on-site and file review monitoring activities. Applicants who fail to execute and submit a LAP acknowledgement may be deemed ineligible for the award.

2. Submission of a Language Access Plan (LAP)

Sub-Recipients I will be required to comply with DCA's LAP. Sub-Recipients II will be required to submit a locally adopted LAP, including the four-factor analysis conducted for the project/program area.

DCA will provide this LAP to all Sub-Recipients I and monitor compliance with the LAP in accordance with regularly scheduled performance monitoring. Any Sub-Recipient I found to be out of compliance with DCA's LAP, will be provided immediate instructions to cure the non-compliance. If the Sub-Recipient I does not cure the non-compliance or continues to have repeated instances of non-compliance, DCA may impose a range of penalties, including, but not limited to, required additional LAP training to the Sub-Recipient I and discontinuance of current or future work with the Sub-Recipient I.

The Sub-Recipient II's LAP must include:

- The name of the individual responsible for coordination of LEP compliance;
- LEP training plan for all staff involved in programs and activities on LEP requirements;
- Languages identified from the Four-Factor Analysis;
- Schedule for translating and disseminating vital documents;
- Policy for Updating the Four-Factor Analysis and the LAP.

DCA program staff will monitor Sub-Recipients II for compliance with the submitted LAP during monitoring events performed in association with the award. DCA program staff will document findings in the monitoring file and report any non-compliance to the DCA VCA Coordinator.

Sub-Recipients who have documented non-compliance with the LAP will be provided a plan to remedy the non-compliance or to reduce the likelihood of future recurrence of non-compliance. Any Sub-Recipient II who remains in non-compliance by violating the compliance agreement may incur a range of penalties, including, but not limited to, required, additional LAP training and ineligibility for continued or future funding.

APPENDICES

Appendix 1: LAP Program Contacts

Division/Program	LAP Point of Contact	Office Number	Office Email	Secondary LAP Point of Contact	Office Number	Office Email
Housing Finance and Development	Samanta Carvalho	404-679-0567	Samanta.Carvalho@dca.ga.gov	December Thompson	(404) 327-6830	december.thompson@dca.ga.gov
Community Development	Linda Thompson	404-679-1584	linda.thompson@dca.ga.gov	Brian Johnson	(404) 679-3105	brian.johnson@dca.ga.gov
Finance Division	Christine Antaya	404-679-4846	christine.antaya@dca.ga.gov	Michael Richardson	(404) 679-0574	michael.richardson@dca.ga.gov
Administration	Jared Hill	404-679-4839	jared.hill@dca.ga.gov	Robert Rego	404-679-5266	robert.rego@dca.ga.gov
Homeownership Division-Homeownership Finance	Tracey Turman	404-679-4847	tracey.turman@dca.ga.gov	Jamilla Byrd	404-327-6858	jamilla.byrd@dca.ga.gov
Homeownership Division-HomeSafe Georgia	Brenda McGee	770-806-2088	brenda.mcgee@dca.ga.gov	Diane Hester	770-806-7024	diane.hester@dca.ga.gov
Housing Assistance Division-Athens	Krista Mitchell	770-414-3211	krista.mitchell@dca.ga.gov	Patricia Tacuri	706 369-5698	Patricia.tacuri@dca.ga.gov
Housing Assistance Division-Eastman	Krista Mitchell	770-414-3211	krista.mitchell@dca.ga.gov	Donna Culverhouse	478 867-3057	donna.culverhouse@dca.ga.gov
Housing Assistance Division-Tucker	Krista Mitchell	770-414-3211	krista.mitchell@dca.ga.gov	Ella Gee	770 414 -3248	ella.gee@dca.ga.gov
Housing Assistance Division-Waycross	Krista Mitchell	770-414-3211	krista.mitchell@dca.ga.gov	Stacy Griffin	912 285-6211	stacy.griffin@dca.ga.gov
Community Services	John VanBrunt	706-825-1356	john.vanbrunt@dca.ga.gov	Beth Eavenson	404-387-6977	beth.eavenson@dca.ga.gov
Executive	Grant Cagle	404-327-6846	grant.cagle@dca.ga.gov	Alyssa Justice	404-679-3154	alyssa.justice@dca.ga.gov
Community Finance Division	Pam Truitt	404-679-5240	pam.truitt@dca.ga.gov	Dana Mykytyn	404-679-0629	dana.mykytyn@dca.ga.gov
Housing Assistance Division-Atlanta	Krista Mitchell	770-414-3211	krista.mitchell@dca.ga.gov	Theresa Renfroe	404-327-6815	theresa.renfroe@dca.ga.gov

Appendix 2: "I Speak" Card

Europe

70 **Albanian** — Shqip
Tregoni me gisht gjuhën që flitni.
Do të gjejmë një përkthyes për ju.

72 **Armenian** — Հայերէն
Ցոյց տուէք ո՞ր մէկ լեզուն կը խօսիք՝
որպէսզի թարգմանիչ մը կանչել տանք.

136 **Basque** — Euzkera
Zeure izkuntza atzamarragaz erakutzi.
Euzkeratzail bateri deituko deutsagu.

69 **Bulgarian** — Български език
Посочете Вашия език.
Ние ще извикаме преводач за Вас.

132 **Catalan** — Català
Assenyali amb el dit el seu idioma.
Es trucarà a un intèrpret.

67 **Croatian** — Hrvatski
Molim Vas, pokažite nam Vaš jezik.
Zvat ćemo tumača za Vas.

63 **Czech** — Česky
Ukažte, který je váš jazyk.
Zavoláme tlumočníka.

55 **Danish** — Dansk
Peg på dit sprog.
En tolk vil blive tilkaldt.

56 **Dutch** — Nederlands
Wijs uw taal aan.
Wij zullen u een tolk geven.

77 **Estonian** — Eesti Keel
Näidake oma emakeelele.
Me muretseme teile tõlgi.

52 **Finnish** — Suomi
Osoittakaa teidän kielenne.
Tulkki kutsutaan auttamaan teitä.

58 **French** — Français
Montrez-nous quelle langue vous parlez.
Nous vous fournirons un/e interprète.

57 **German** — Deutsch
Zeigen Sie auf Ihre Sprache.
Wir rufen einen Dolmetscher an.

71 **Greek** — Ελληνικά
Δείξτε ποιά γλώσσα μιλάτε και
θα κληθεί ένας διερμηνέας.

65 **Hungarian** — Magyar
Válassza ki az ön által beszélt nyelvet.
Kapcsoljuk a tolmácsot.

133 **Icelandic** — Íslenska
Bentu á þitt tungumál.
Það verður hringt í túlk.

59 **Italian** — Italiano
Faccia vedere qual è la sua lingua.
Un interprete sarà chiamato.

75 **Lithuanian** — Lietuvių Kalba
Parodyk tavo kalbamą kalbą.
Vertėjas bus pakviestas.

68 **Macedonian** — Makedonski
Посочете молим Ваш јазик.
Ке викаме prevodilac Vas da doide.

54 **Norwegian** — Norsk
Pek på ditt språk.
En tolk vil bli tilkalt.

62 **Polish** — Polski
Proszę wskazać na swój język ojczysty.
Tłumacz zostanie poproszony do telefonu.

61 **Portugucse** — Português
Aponte seu idioma.
Providenciaremos um intérprete.

66 **Romanian** — Românește
Indicați limba pe care o vorbiți.
Veți fi pus în legătură cu un interpret.

78 **Russian** — Русский Язык
Укажите, на каком языке Вы говорите.
Сейчас Вам вызовут переводчика.

148 **Serbian** — Српски
Молим Вас, покажите нам Ваш језик.
Звaћемо тумача за Вас.

64 **Slovak** — Slovensky
Ukážte na vašu reč.
Zavoláme tlmočníka.

60 **Spanish** — Español
Señale su idioma.
Se llamará a un intérprete.

53 **Swedish** — Svenska
Peka ut Ert språk.
En tolk kommer att tillkallas.

76 **Ukrainian** — Українська Мова
Покажіть, якою мовою ви говорите.
Зараз викличуть вам перекладача.

135 **Yiddish** — ייִדיש
ווײַזט אָן אויף אײַער שפּראַך.
מע וועט אָנרופן אַן איבערזעצער.

Pacific Islands

120 **Aklan** — Aklanon
Ituro mo ro atong hambae.
Magtawag kami et mag-interprete.

127 **Fijian** — Kaiviti
Dusia na nomu vosa.
Ena qai kacivi edua mi vakavaka dewa.

113 **Ilocano** — Ilokano
Itudom iti saom.
Umayah kam iti interprete.

50 **Indonesian** — Bahasa Indonesia
Tunjukkan bahasamu.
Jurubahasa akan disediakan.

51 **Malay** — Bahasa Malaysia
Tunjukkan yang mana bahasa anda.
Seorang jurubahasa akan diberitahu.

126 **Samoan** — Gagana Samoa
Tusi lou 'a'ao i lau gagana.
O le a vala'auina se tasi e fa'amatala 'upu mo 'oe.

117 **Tagalog** — Tagalog
Pakituro mo nga ang iyong wika.
Magpapatawag ako ng interprete.

128 **Tongan** — Tonga
Tuhu kihe lea 'oku ke lea 'aki.
'E fetu'utaki kihe fakatonulea.

North America, South America, and Caribbean

58 **French** — Français
Montrez-nous quelle langue vous parlez.
Nous vous fournirons un/e interprète.

129 **Haitian Creole** — Kreyòl Ayisyen
Montre lang ou-a.
Yap voye chèche yon entèprèt.

144 **Navajo** — Diné
Saad béé honisinígíí nílaʼ bee bikʼidiiłnííh.
Ataʼ halneʼé łaʼ nábichʼį́ hodoonih.

61 **Portuguese** — Português
Aponte seu idioma.
Providenciaremos um intérprete.

60 **Spanish** — Español
Señale su idioma.
Se llamará a un intérprete.

Language Line services

Language Identification Card

As a Language Line Services customer you have access to over-the-phone interpretation 24 hours a day, 7 days a week. Use this Language Identification Card in a face-to-face situation, to determine which language a person speaks. The Language ID Card lists the languages most frequently encountered in North America, grouped by the geographical region where they are commonly spoken.

- To use the Language ID Card efficiently, locate the geographical region where you believe the non-English speaker may be from. (Pacific Islands, Europe, etc.)
- Show the person the languages listed for that region. The message underneath each language says: "Point to your language. An Interpreter will be called."

Sample:

00 **English** — English
Point to your language.
An Interpreter will be called.

- Refer to your Quick Reference Guide (QRG) to access an interpreter through Language Line Services. In most cases, an interpreter is available within seconds.
- If you are unable to identify the language, our representative will help you.

Please note: Listing of languages within this card does not guarantee availability of interpreters in these languages. Language Line Services interprets from English into more than 140 languages, only the most requested languages are listed here. This list is subject to change based upon demand.

India, Pakistan, and Southwest Asia

84 **Bengali** বাংলা
আপনি কোন ভাষায় কথা বলেন · জানান ।
আপনার সেবার জন্যে একজন অনুবাদক আসবেন ।

85 **Bhojpuri** भोजपुरी
रौआके मातृभासा का बा ?
रौआलेल एगो दुभासिया बोलादेल जाईत ।

83 **Gujarati** ગુજરાતી
તમારી ભાષા ઈશારાથી બતાવો.
તમારા માટે ભાષાંતર કરનાર બોલાવી અપાશે.

82 **Hindi** हिन्दी
अपनी भाषा इशारे से दिखाइये ।
आपके लिए दुभाषिया बुलाया जाऐगा ।

88 **Malayalam** മലയാളം
[illegible]
[illegible]

81 **Nepali** नेपाली
आफ्नो भाषा चिनाउनु होस् ।
तपाईको भाषा बोल्ने व्यक्ति बोलाइने छ ।

80 **Punjabi** ਪੰਜਾਬੀ
ਅਪਣੀ ਬੋਲੀ ਇਸ਼ਾਰੇ ਨਾਲ ਦਸੋ ।
ਤੁਹਾਡੇ ਵਾਸਤੇ ਪੰਜਾਬੀ ਬੋਲਣ ਵਾਲਾ ਬੁਲਾਇਆ ਜਾਏਗਾ ।

89 **Sinhalese** සිංහල
ඔබේ භාෂාව පෙන්වන්න.
සිංහල කතා කරන කෙනෙක් හොයනවා

137 **Tamil** ஆங்கிலம
எந்த மொழியில் துவிபாஷிகள் வேண்டுமோ
அதை விரலால் காண்பிக்கவும்.
தகுந்த துவிபாஷிகளுடன் இணைப்பு விரைவில் செய்யப்படும்.

79 **Urdu** اُردو
آپ کون سی زبان میں بات کرنا پسند کرینگی؟
آپ کی مدد کیئے ابھی کی ترجمان کو بلاپ جائے گا.

Africa

27 **Amharic** አማርኛ
ወደቋንቋዎ ያመልክቱ
አስተርጓሚ ሲመጣሎ

90 **Arabic** اللغة العربية
أشر الى لغتك
وسننادي المترجم حالاً.

19 **Bambara** Bamanankan
I bolo da i fakan kan.
An benna kuma yelemabaga do wele.

58 **French** Français
Montrez-nous quelle langue vous parlez.
Nous vous fournirons un/e interprète.

22 **Hausa** Hausa
Nùna yàrenkà/yàrenkì.
A à kirà tafintà.

59 **Italian** Italiano
Faccia vedere qual è la sua lingua.
Un interprete sarà chiamato.

61 **Portuguese** Português
Aponte seu idioma.
Providenciaremos um intérprete.

141 **Portuguese Creole** Cabo Verdiano
Ponta pa bu lingua.
Un intrepeto ta ser chumado.

142 **Somali** Afsomali
Tilmaan afka aad ku hadasho.
Tarjumaan ayaa la wacayaaye.

26 **Swahili** Kiswahili
Onyesha lugha yako.
Tutamwita mtu atakayekufasiria.

28 **Tigrinya** ትግርኛ
ናብቋንቋኻ ኣመልክቶ
ተርጓሚ መጸልካ

20 **Wolof** Wolof
Wan ñu sa làkk.
Negal dinañu la wutal ab tekkikat.

21 **Yoruba** Yorùbá
Tọ́ka si èdè rẹ.
À ó pe ògbifọ̀ wà.

Middle East

90 **Arabic** اللغة العربية
أشر الى لغتك
وسننادي المترجم حالاً.

72 **Armenian** Հայերէն
Ցոյց տուէք ո՞ր մէկ լեզուն կը խօսիք՝
որպէսզի թարգմանիչ մը կանչել տանք.

139 **Assyrian** ܐܬܘܪܝܐ
[illegible]
[illegible]

111 **Dari** دری
شما بکدام زبان گپ میزنید؟
یگ ترجمان میاید.

107 **Farsi** فارسی
بزبانی که صحبت میکنید نشان دهید.
برای شما مترجم میاوریم.

106 **Hebrew** עברית
הצבע על השפה שלך.
נקרא למתרגם מיד.

140 **Kurdish** کوردی
زمانی خۆت دەستیشان بکە
تەرجومانێکت بۆ بانگ دەکەینە سەر تەلەفۆن

110 **Pashto** پشتو
خپله ژبه وبینه.
ژبه ترجمان در سره خبری وکری.

112 **Turkish** Türkçe
Kendi anadilinizi gösterin.
Size bir tercüman çağırıyoruz.

Asia

China	請指認您的語言 以便爲您請翻譯	请指认您的语言 以使为您请翻译	
31 **Cantonese**	廣東話	广东话	
38 **Chaochow**	潮州話	潮州话	
32 **Fukienese**	福建話	福建话	
35 **Mandarin**	國語	国语	
37 **Shanghai**	上海話	上海话	
33 **Taiwanese**	台灣話	台湾话	
36 **Toishanese**	台山話	台山话	

Asia

42 **Burmese** မြန်မာစကား၊
ခင်ဗျားရဲ့ဘာသာစကားကို ထောက်ပြပါ၊
စကားပြန် ခေါ်ပေးမယ်။

48 **Cambodian** ភាសាខ្មែរ
សូមចង្អុលភាសាអ្នក
យើងនឹងហៅអ្នកបកប្រែមកជូន

46 **Hmong** Hmoob
Thov taw tes rau koj yam lus.
Peb yuav hu ib tug neeg txhais lus rau koj.

50 **Indonesian** Bahasa Indonesia
Tunjukkan bahasamu.
Jurubahasa akan disediakan.

40 **Japanese** 日本語
あなたの話す言葉を指さしてください。
通訳を呼びます。

41 **Korean** 한국말
당신이 쓰는 말을 지적하세요.
통역관을 불러 드리겠어요.

43 **Laotian** ພາສາລາວ
ຊີ້ບອກພາສາທີ່ເຈົ້າເວົ້າໄດ້
ພວກເຮົາຈະຕິດຕໍ່ນາຍພາສາໃຫ້

51 **Malay** Bahasa Malaysia
Tunjukkan yang mana bahasa anda.
Seorang jurubahasa akan diberitahu.

45 **Mien** Mienh
Nuqv meih nyei waac mbuox yie liuz,
yie heuc faan waac mienh bun meih oc.

47 **Thai** ภาษาไทย
ช่วยกรุณาชี้ให้เราดูหน่อยว่าภาษาไหนคือภาษาที่ท่านพูด
แล้วเราจะจัดหาล่ามให้ท่าน

49 **Vietnamese** Tiếng Việt
Chỉ rõ tiếng bạn nói.
Sẽ có một thông dịch viên nói chuyện với bạn ngay.

Language Line Services also offers Document Translation
For more information contact us:
Phone: 1 888 763-3364 • Fax: 1 800 648-0170
E-mail: translation@languageline.com
Web: www.LanguageLine.com

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Appendix 3: Current Language Bank

Staff Member	Division	Location	Translation Training Date	Interpreter Training Date	Language 1	Reading (1-5)	Speaking (1-5)	Language 2	Reading (1-5)	Speaking (1-5)	Language 3	Reading (1-5)	Speaking (1-5)	Office Hours (*Flex Day)	Office Number
Samanta Carvalho	Housing Finance and Development	DCA Central Office			Spanish	3	2	Portuguese	3	2				8:00-5:00 M-F	404-679-0567
Patricia Tacuri	Housing Assistance Div.	Athens			Spanish	4	5							8:00-5:00 M-F	706-369-5698
Doris Suero	Homeownership Div-HomeSafe Georgia	Norcross			Spanish	5	5	French	2	2				8:00-4:30 M-F	770-806-2082
Amber Keller	Planning and Environmental Management	DCA Central Office			Spanish	2	2							8:30-5:30 M-F	404-679-4946
Beth Eavenson	Community Services	Region 5			Spanish	3	2							7:00-5:00 M-F*	404-387-6977
Nathan Christiansen	Homeownership Div-Homeownership Finance	DCA Central Office			Spanish	2	2							7:30-4:30 M-F	404-679-3126
Fenice Taylor	Homeownership Div-Homeownership Finance	DCA Central Office			Chinese	5	5							8:30-5:30 M-F	404-679-0647
Grace Baranowski	Housing Finance and Development	DCA Central Office			Spanish	3	3							8:00-5:30 M-F*	
Eldhose Baby	Administration	DCA Central Office			Malayalam	5	5	Hindi	3	1	Tamil	1	3	7:00-4:30 M*-F	404-679-4906
Mathew P John	Administration	DCA Central Office			Malayalam	5	5	Hindi	5	4	Tamil	4	4	7.0 -4.30 M-F*	404-679-4901
Regina Sandoval	Administration	DCA Central Office			Spanish	5	5							8:00-5:00 M-F	404-679-0570
Alex Galdona	Administration	DCA Central Office			Spanish	5	5							8:00- 5:00 M-F	404-327-6873
Setareh Ordoobadi					Farsi	5	5							8:00-5:00 M-F	404-679-3104
Jimish Patel	Housing Finance and Development	DCA Central Office			Gujarati	5	5	Hindi	4	4				8:00-5:00 M-F*	678-891-4900
Anna Hensley	Community Finance Division	DCA Central Office			Spanish	4	3							8:00-5:00 M-F	404-679-4912

Appendix 4: LEP FOUR-FACTOR ANALYSIS

Factor 1: Number or Proportion of LEP Persons in Eligible Service Population

DCA reviewed from the United States Census Bureau's American Community Survey (ACS) 5-year estimates (2010–2014) – Table "B16001: Language Spoken at Home by Ability to Speak English for the Population 5 Years and Older" by county and Census-recognized cities in Georgia. This allowed DCA to see the language proficiency in Georgia for all counties and cities, based on the 38 languages or language groups identified by the U.S. Census Bureau. DCA then applied the HUD safe harbor threshold requirements for written translation (the lesser of 5% when more than 50 persons or 1,000 persons speaking a specified language) to determine the primary languages of the LEP populations. Using the HUD safe harbor threshold, DCA identified those areas that exceeded the safe harbor thresholds of the area population (if greater than 50 individuals) or 1,000 individuals within a geographic area (both county and city in this case). Of the 38 languages or language groups identified by the U.S. Census Bureau, DCA identified 46 counties and 93 cities as containing LEP populations exceeding the HUD safe harbor threshold requirements.

Of the 46 counties identified above, only six counties have more than 1,000 individuals who speak a language other than Spanish and that do not speak English well. These counties were all found in Entitlement Areas in the Atlanta region: Clayton, Cobb, DeKalb, Forsyth, Fulton, and Gwinnett. DCA identified 17 qualifying languages or language groups across these six counties, with African Languages (a Census grouping), Chinese, Korean, Spanish, and Vietnamese being the most prevalent. Of the 93 cities, only nine cities had LEP populations exceeding the safe harbor thresholds for a language besides Spanish. These cities are: Atlanta, Berkeley Lake, Clarkston, Duluth, Forest Park, John's Creek, Lake City, Lumpkin, and Morrow. All of these cities fall within the counties previously identified except Lumpkin, which is in Stewart County. DCA identified nine languages or language groups across these nine cities that met the above thresholds: African Languages (a Census grouping), Chinese, Hindi, Korean, Other Asian Languages (a Census grouping), Other Indic Languages (a Census grouping), Russian, Spanish, and Vietnamese.

In order to identify focus languages among the 17 languages that met the 1,000-person threshold in the highly populated counties in the Atlanta region, DCA followed the process identified in the New Jersey LAP and identified LEP populations exceeding a 1% threshold. DCA observed that African Languages, Chinese, Korean, Spanish, and Vietnamese are the only languages to exceed 1% of the total county population for LEP languages. Upon further outreach, DCA has determined that the most prevalent African Languages in DeKalb County—the only county for which this grouping exceeded the threshold—are Somali, Amharic, Kinyarwanda, and Tigrinya. However, over 64 African languages were identified as being spoken, with none exceeding 1% (6,551 individuals) of the DeKalb population. With 7,233 individual speaking African Languages in DeKalb, one language would need to exceed 90% of all African language speakers to meet this 1% threshold.

The only cities in which a language or language grouping aside from Spanish, Korean, Vietnamese, and Chinese met the threshold requirement are Berkeley Lake, Clarkston, and Lumpkin. Upon further outreach to Clarkston Community Center and Friends of Refugees, DCA

has determined that no single language from the African Language, Other Indic language, or Other Asian language census groupings in Clarkston exceeds the threshold for the four-factor analysis. Through outreach to the Clarkston Community Center and Friends of Refugees, DCA has determined that the following African Languages are spoken in Clarkston: Somali, Arabic, Amharic, Dari and Pashto, with Somali being the most prevalent. Additionally, there is not a clearly prevalent Other Indic language, and the most prevalent Other Asian language is likely Burmese. Based on outreach and analysis of census data, DCA reached the conclusion that none of these prevalent languages exceeded the HUD safe harbor threshold.

Additionally, DCA's community outreach efforts in the city of Lumpkin support a conclusion that the size of the LEP population in Lumpkin was not accurately reflected in the Census data; and, in fact, the number of LEP persons in the city of Lumpkin was well below the acceptable threshold.

While the LEP individuals in Berkeley Lake and Clarkston merit language access services, DCA believes that a more targeted outreach effort is the more reasonable and effective route for providing access. Accordingly, DCA will not include these languages or groupings in the list of focus languages but will provide specific LEP data to any Sub-recipient of funds in Berkeley Lake and Clarkston. DCA also intends to continue cultivating relationships with local partner organization through whom DCA can most effectively and efficiently disseminate outreach regarding DCA programs and translations services.

Table 8: Language Spoken at Home by Ability to Speak English by County

This table shows all counties with at least one language that meets a threshold of at least 1,000 people or 1% of the county population (at least 50 people) for written translations and all languages that exceeded those thresholds in at least one county.

	Total	Speak only English	Spanish	Chinese	Korean	Vietnamese
Atkinson County	7,595	5,973	774	-	-	-
Barrow County	65,706	57,966	2,404	20	29	33
Bartow County	94,113	86,877	2,764	-	65	-
Bibb County	143,891	136,764	1,752	139	143	66
Carroll County	104,350	96,757	2,627	9	222	53
Chatham County	256,327	234,662	5,798	807	227	557
Cherokee County	207,090	182,966	8,093	364	20	242
Clarke County	112,669	97,025	5,586	667	262	147
Clayton County	242,665	193,379	14,534	407	206	5,170
Cobb County	660,920	525,711	33,354	1,843	1,397	1,752
Coffee County	39,988	36,105	1,429	143	14	-
Colquitt County	42,255	35,119	4,008	-	-	-
Columbia County	123,726	111,797	1,744	615	626	253
Coweta County	122,609	111,625	3,621	77	174	142
DeKalb County	655,145	532,072	31,663	3,262	1,697	2,570
Douglas County	125,681	110,729	3,456	187	35	232
Echols County	9,953	2,830	557	-	-	-

Evans County	10,048	8,797	547	11	-	-
Fayette County	103,271	91,142	2,083	310	222	213
Floyd County	89,964	80,995	3,714	27	25	170
Forsyth County	176,351	144,228	6,433	859	1,188	409
Fulton County	903,305	753,464	29,283	4,628	3,697	1,212
Gilmer County	26,868	24,479	1,272	79	-	-
Glynn County	75,770	68,561	2,574	111	13	231
Gordon County	51,869	43,905	4,138	18	16	75
Grady County	23,446	21,127	1,295	-	-	5
Gwinnett County	780,613	521,370	65,812	6,732	12,429	9,435
Habersham County	40,778	35,064	2,296	-	-	8
Hall County	171,743	125,405	20,974	273	64	828
Henry County	195,907	176,985	2,741	319	39	428
Houston County	135,316	123,540	2,949	-	81	491
Jackson County	56,755	52,215	1,569	-	7	13
Liberty County	57,614	51,103	1,159	19	129	64
Lowndes County	104,189	97,842	1,508	155	159	21
Murray County	36,857	32,009	2,066	22	-	-
Muscogee County	183,438	165,973	4,268	92	659	98
Newton County	94,332	87,922	1,742	98	39	101
Paulding County	135,261	126,623	1,717	-	-	40
Polk County	38,284	33,017	2,193	-	-	50
Richmond County	186,549	175,748	1,460	119	257	85
Rockdale County	80,742	71,442	4,008	-	58	175
Telfair County	15,648	13,522	1,465	11	-	-
Tift County	38,151	33,797	1,196	-	10	138
Toombs County	25,101	22,710	1,313	68	-	-
Walton County	79,961	75,088	1,201	8	33	-
Whitfield County	95,474	66,272	14,595	54	10	167

Table 9: Language Spoken at Home by Ability to Speak English by City

This table shows all cities with at least one language that meets the threshold for written translations and all languages that exceeded those thresholds in at least one city.

	Total:	**Speak only English**	**Spanish**	**Russian**	**Hindi**	**Chinese**	**Korean**	**Vietnamese**
Acworth city	19,778	15,125	1,310	-	-	14	42	58
Alpharetta city	56,150	41,024	1,265	430	357	438	447	83
Alto town	1,046	531	284	-	-	-	-	-
Ambrose city	438	323	56	-	-	-	-	-
Athens-Clarke County unified gov't	111,599	96,024	5,558	7	38	664	262	147

Atlanta city	412,665	368,033	8,236	137	117	1,414	873	181
Augusta-Richmond County consolidated gov't	182,246	171,649	1,420	56	-	119	257	85
Austell city	6,481	5,261	382	-	-	-	20	-
Baldwin city	3,050	2,056	509	-	-	-	-	8
Baxley city	4,182	3,616	285	-	-	-	-	-
Berkeley Lake	1,694	1,243	10	104	21	40	17	16
Blue Ridge city	1,347	1,180	77	-	-	-	-	-
Bogart town	1,121	914	81	-	-	-	-	-
Brookhaven city	45,613	29,530	7,730	249	-	159	513	-
Broxton city	1,024	920	54	-	-	-	-	-
Brunswick city	14,463	12,589	1,068	-	-	2	-	-
Buena Vista city	2,220	1,877	302	-	-	-	-	-
Buford city	11,664	7,469	2,000	36	-	-	-	-
Calhoun city	14,530	9,629	2,524	-	50	-	-	-
Cairo city	9,025	7,759	675	-	-	-	-	-
Canton city	21,862	16,548	2,853	9	-	71	-	35
Carrollton city	23,431	19,978	1,384	-	-	9	9	53
Cedartown city	8,893	5,739	1,820	-	10	-	-	-
Chamblee city	14,587	7,564	4,543	-	-	144	23	197
Chatsworth city	4,097	3,009	481	-	-	-	-	-
Clarkston city	6,841	2,788	56	-	-	19	-	244
Claxton city	1,938	1,656	157	-	-	11	-	-
Clayton city	1,797	1,540	189	-	-	-	-	-
Columbus city	183,438	165,973	4,268	-	70	92	659	98
Commerce city	5,821	5,245	318	-	-	-	-	-
Conyers city	14,224	11,854	1,251	-	-	-	-	-
Cornelia city	3,928	2,727	658	-	-	-	-	-
Cumming city	5,273	3,713	715	-	-	-	-	-
Dacula city	4,410	2,803	496	-	-	-	-	-
Dahlonega city	5,675	4,945	448	-	-	8	19	-
Dalton city	30,503	16,312	7,644	-	-	49	10	64
Dillard city	319	219	56	-	-	-	-	-
Doraville city	9,345	3,304	3,093	-	36	252	75	193
Duluth city	25,785	16,796	1,048	63	54	899	1,958	251
Dunwoody city	43,854	33,069	1,556	108	143	289	292	193
East Ellijay city	876	673	75	-	-	-	-	-
East Point city	32,408	27,443	1,577	-	-	140	33	32
Eatonton city	6,148	5,151	534	-	-	-	-	-
Ellijay city	1,473	1,121	257	-	-	-	-	-
Emerson city	1,284	1,033	130	-	-	-	-	-
Enigma town	945	750	121	-	-	-	-	-
Eton city	817	529	100	-	-	-	-	-
Fairburn city	12,362	10,405	622	-	-	-	-	63
Forest Park city	17,346	10,589	2,818	-	8	18	8	929

Funston city	646	543	55	-	-	-	-	-
Gainesville city	31,446	17,987	6,637	-	-	212	10	528
Greensboro city	3,074	2,607	193	-	-	-	-	-
Grovetown city	11,099	8,989	926	-	-	-	10	-
Hapeville city	6,100	4,129	804	-	-	-	-	65
Jacksonville city	162	85	77	-	-	-	-	-
Johns Creek city	75,870	51,806	1,323	274	403	2,034	1,894	278
Kennesaw city	29,101	22,985	1,373	16	51	40	81	131
Lake City	2,442	1,881	157	-	-	8	-	159
Lawrenceville	27,102	17,548	2,416	109	13	8	53	401
Lilburn city	11,281	6,568	1,065	40	106	241	43	186
Lovejoy city	5,876	4,759	326	-	-	-	-	-
Lumpkin city	1,131	1,046	-	-	74	-	-	-
Lyons city	4,056	3,579	281	-	-	-	-	-
Macon-Bibb County	143,689	136,562	1,752	-	57	139	143	66
Marietta city	54,162	39,471	6,260	46	-	127	54	82
Morrow city	6,314	3,943	144	-	-	-	30	659
Morven city	534	450	62	-	-	-	-	-
Moultrie city	13,118	11,545	1,079	-	-	-	-	-
Mountain City	748	647	62	-	-	-	-	-
Mount Airy town	1,145	894	91	-	-	-	-	-
Newnan city	31,367	26,998	1,586	-	-	-	102	62
Norcross city	14,502	6,043	3,693	13	-	163	44	362
Oakwood city	3,721	2,529	445	14	-	-	-	105
Offerman city	401	343	53	-	-	-	-	-
Omega city	1,231	815	83	-	-	-	-	-
Palmetto city	4,436	3,374	650	-	-	-	-	-
Peachtree City	33,199	28,412	1,018	-	-	88	126	37
Peachtree Corners city	36,824	26,288	2,572	83	54	560	182	62
Pearson city	1,697	1,078	406	-	-	-	-	-
Resaca town	955	615	124	-	-	-	-	-
Ringgold city	3,343	2,873	197	12	-	-	34	98
Rome city	32,958	27,738	2,789	-	-	1	-	64
Roswell city	86,437	66,030	7,273	322	19	256	236	329
Sandy Springs	91,988	69,620	5,430	197	88	272	202	178
Savannah city	131,656	121,220	3,007	8	16	518	110	302
Smyrna city	48,262	36,745	2,593	83	154	116	111	-
Statham city	2,348	1,846	261	-	-	-	-	6
Sugar Hill city	18,331	13,259	1,614	25	9	-	244	22
Thunderbolt	2,364	2,078	168	-	-	-	-	38
Trion town	1,921	1,366	432	-	-	-	-	-
Tybee Island city	2,991	2,778	151	-	-	-	-	-
Warner Robins	65,002	58,317	1,808	-	-	-	3	444
Willacoochee	1,501	1,165	169	-	-	-	-	-

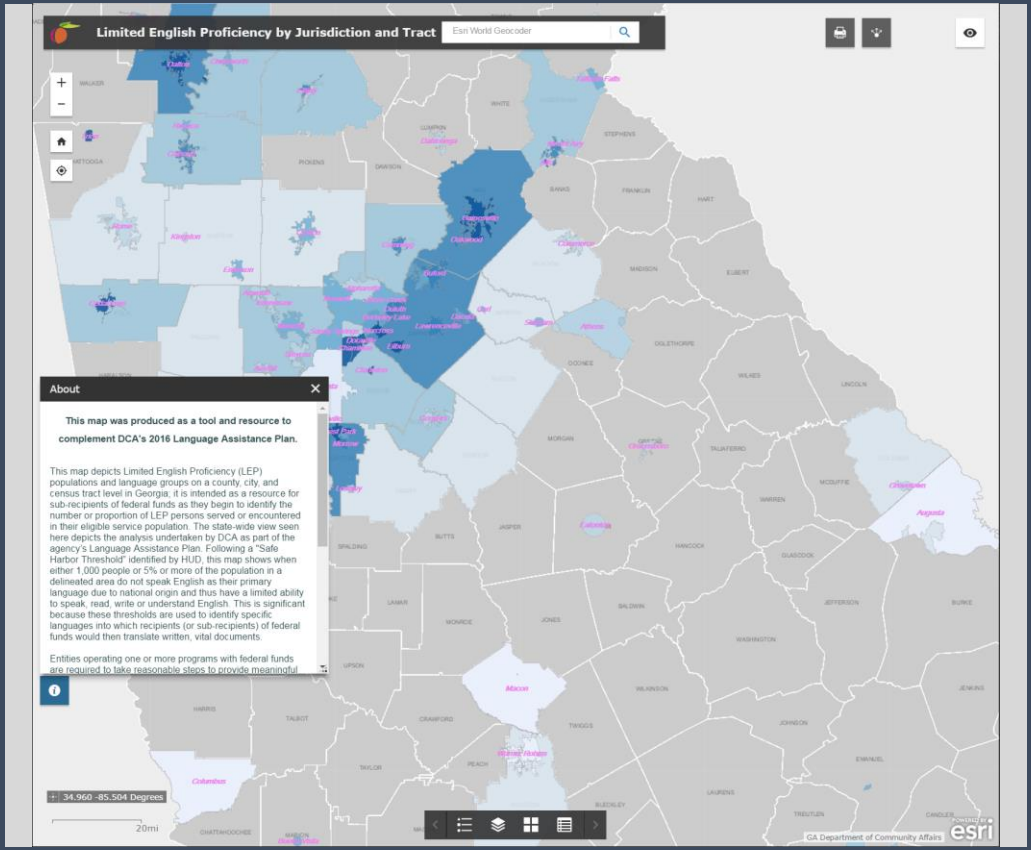
ATTACHMENTS

Attachment 1: LEP CENSUS DATA MAPPING TOOL

http://georgia-dca.maps.arcgis.com/home/index.html

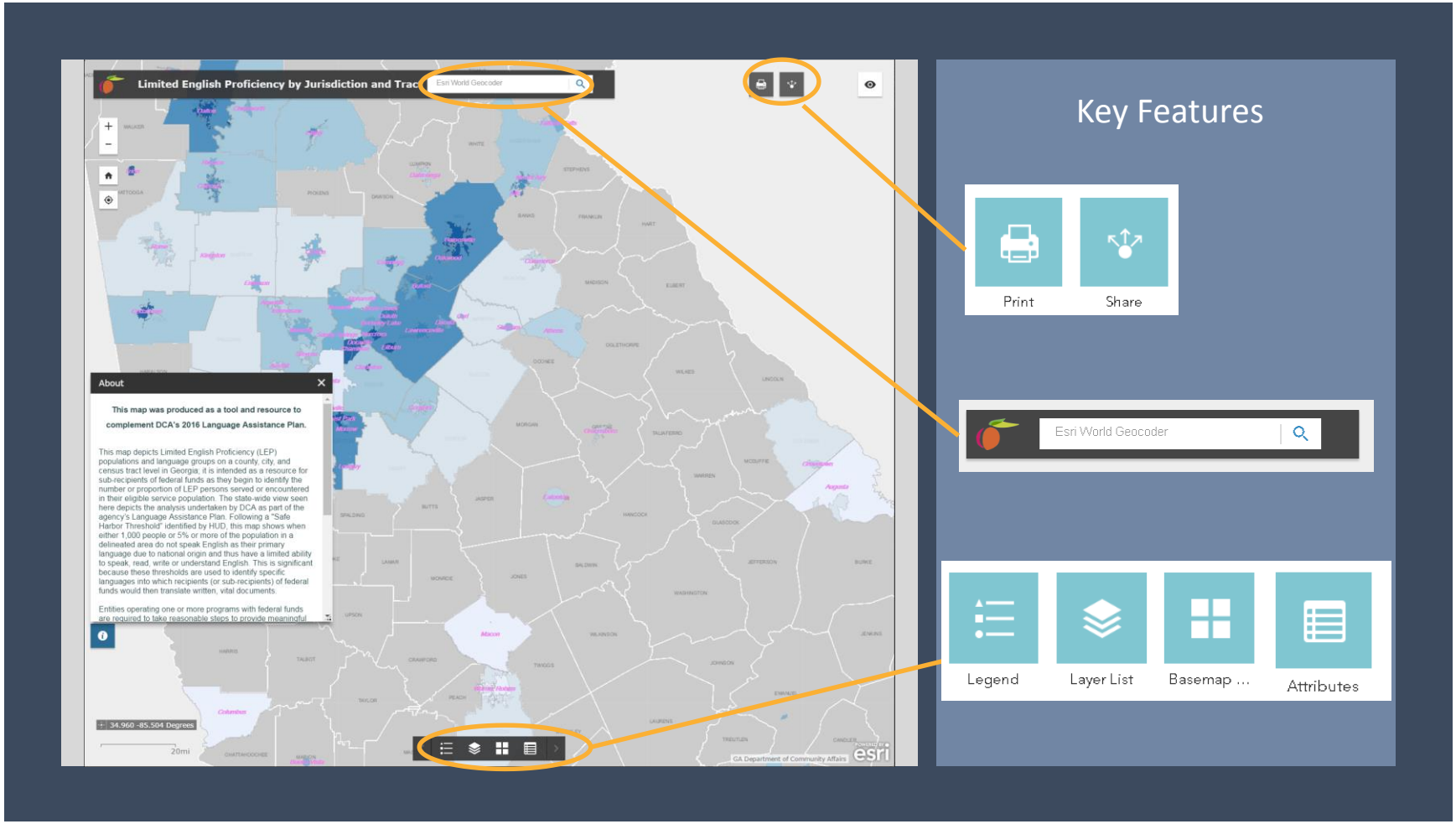
Limited English Proficiency (LEP) by Jurisdiction and Tracts

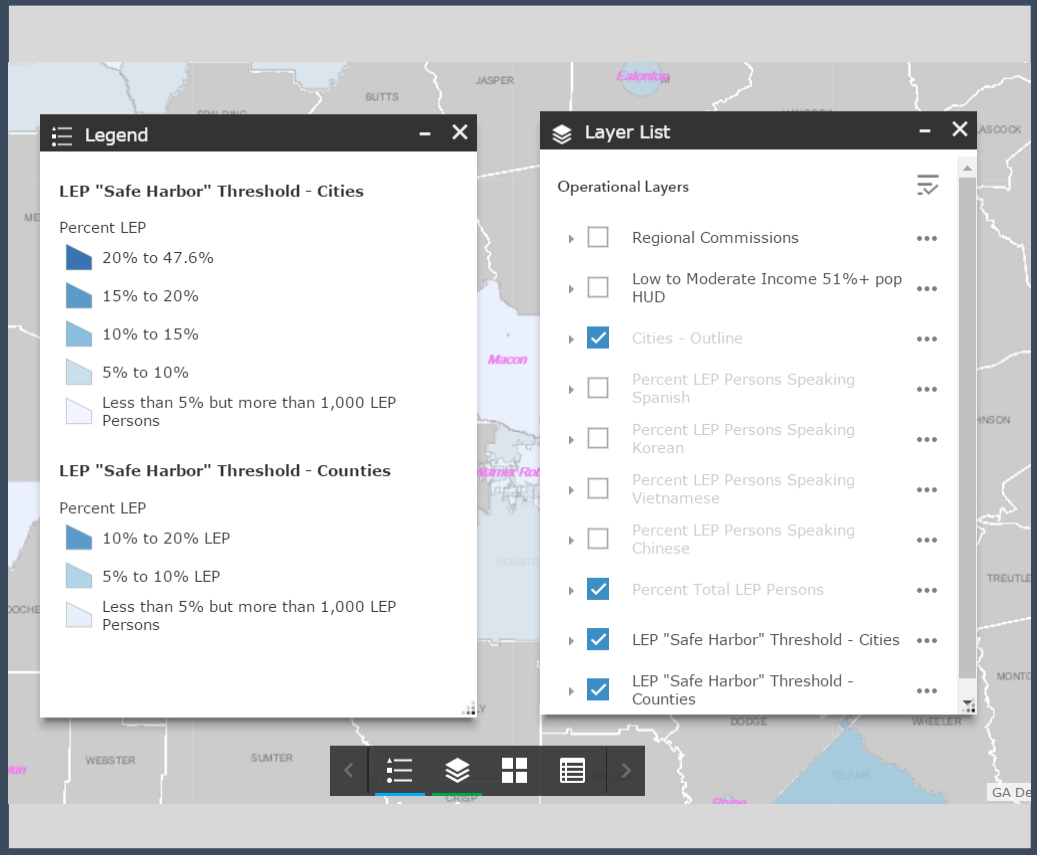
Online Map



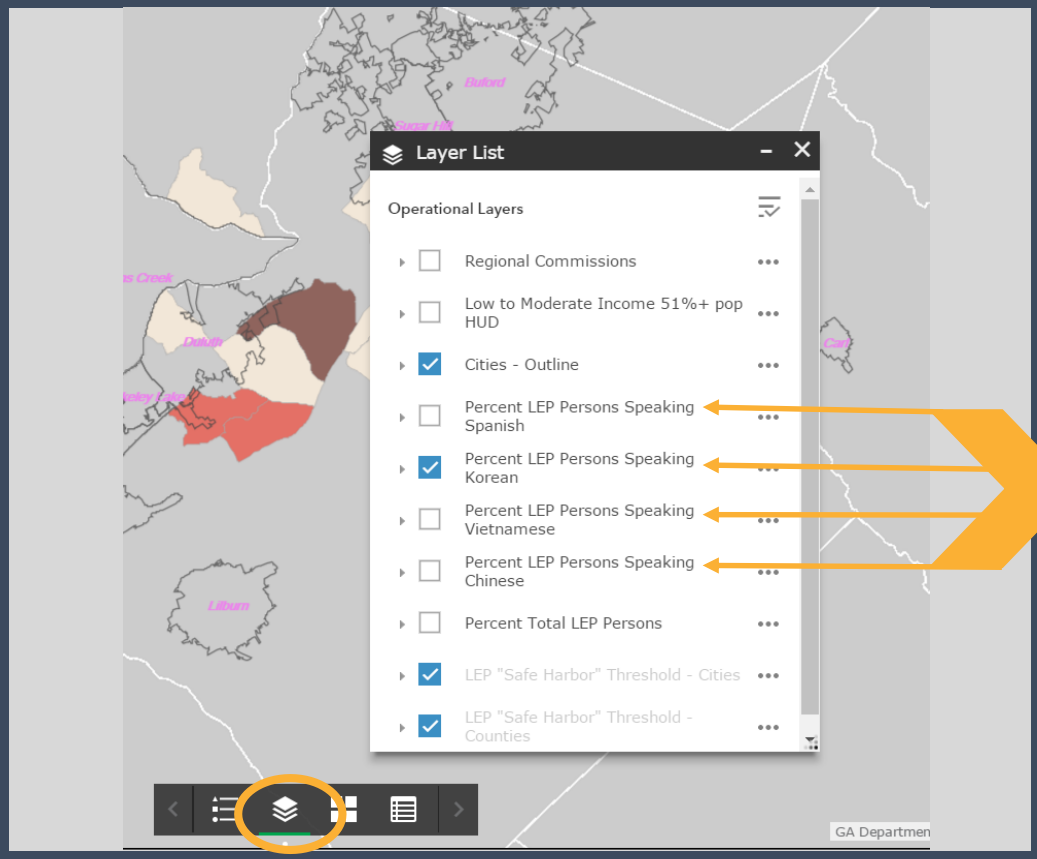
This first look is the overall look at the state of Georgia. From this view, you are able to see the counties where LEP people live, as well as the 12 Regional Commissions. By zooming in, you can get a better understanding of the language needs of your county.

http://arcg.is/2d58qmZ

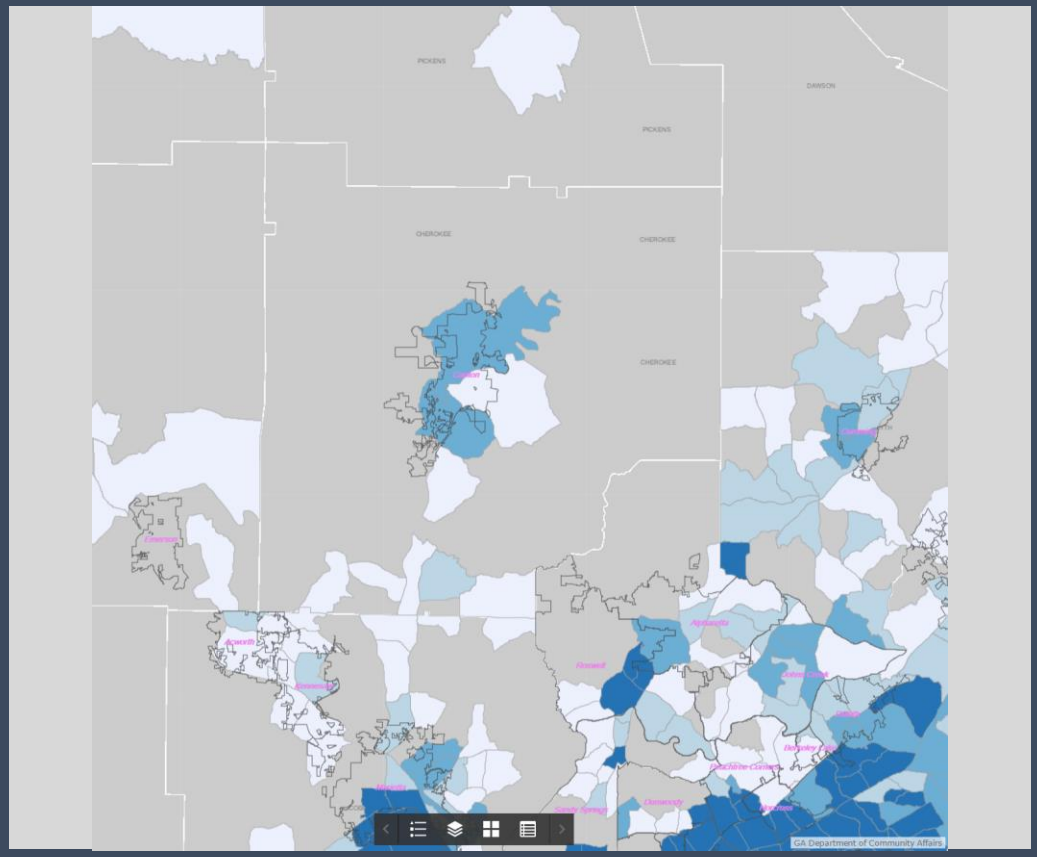

Limited English Proficiency by Jurisdiction and Trac
Esri World Geocoder
About
This map was produced as a tool and resource to complement DCA's 2016 Language Assistance Plan.
This map depicts Limited English Proficiency (LEP) populations and language groups on a county, city, and census tract level in Georgia; it is intended as a resource for sub-recipients of federal funds as they begin to identify the number or proportion of LEP persons served or encountered in their eligible service population. The state-wide view seen here depicts the analysis undertaken by DCA as part of the agency's Language Assistance Plan. Following a "Safe Harbor Threshold" identified by HUD, this map shows when either 1,000 people or 5% or more of the population in a delineated area do not speak English as their primary language due to national origin and thus have a limited ability to speak, read, write or understand English. This is significant because these thresholds are used to identify specific languages into which recipients (or sub-recipients) of federal funds would then translate written, vital documents.
Entities operating one or more programs with federal funds are required to take reasonable steps to provide meaningful
34.960 -85.504 Degrees
20mi
GA Department of Community Affairs
esri
Key Features
Print
Share
Esri World Geocoder
Legend
Layer List
Basemap ...
Attributes



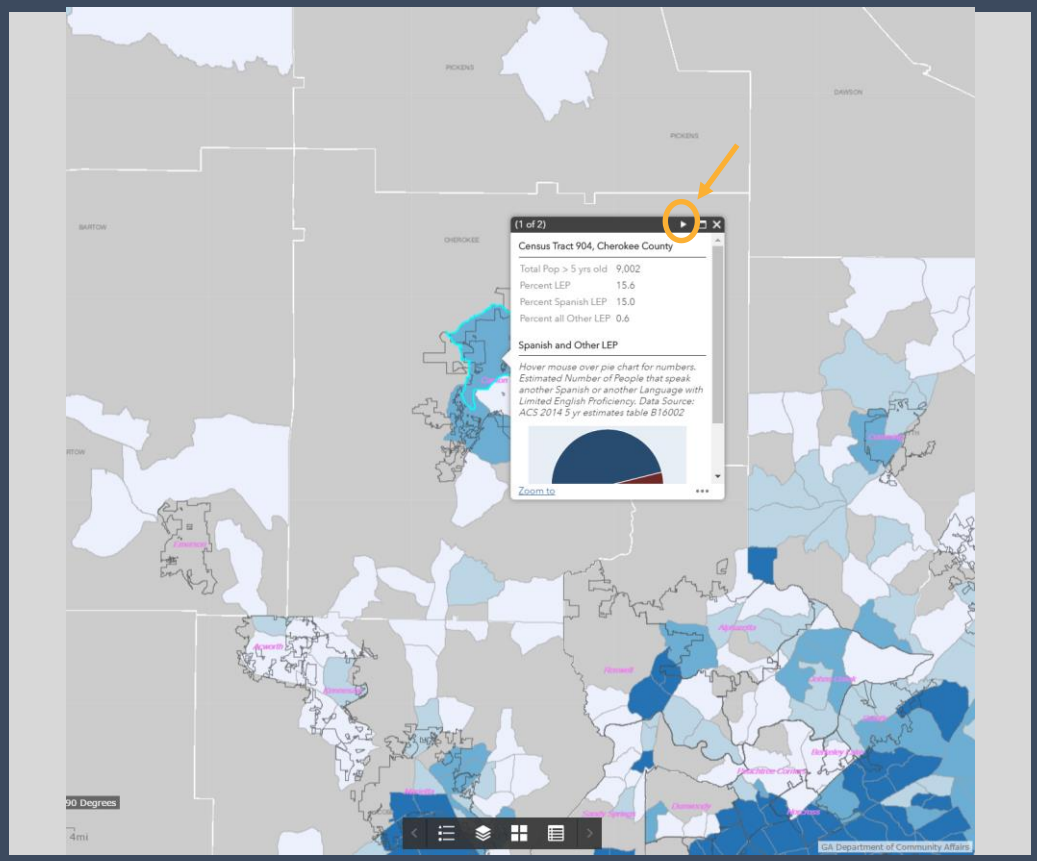
At the bottom of the page, there is the option to view the "Legend" and the "Layer List." The language layers can be changed by selecting the Layer List; here you have the option to change the information on the map. These options, or "layers," include the four most prevalent languages in Georgia, Cities LEP Threshold," "Regional Commissions," "Counties LEP Threshold," and "Low Mod Income 51pct HUD." The map legend shows the percentage of LEP people in a given area. Darker shades of blue denote a higher percent of LEP people, whereas more lightly shaded areas represent a lower percent of LEP people.



This view allows you to select the percentage of LEP people by language within Census Tracts. Only one language layer may be viewed at a time. The percent of LEP people speaking Spanish is viewable across the State of Georgia. However, only in Clayton, Fulton, Cobb, Forsyth, Gwinnett, and DeKalb Counties do Vietnamese, Korean, and Chinese languages meet or exceed the HUD Threshold. Outside of these counties, no other Census Tracts contain more than 5% LEP people as a share of their population.



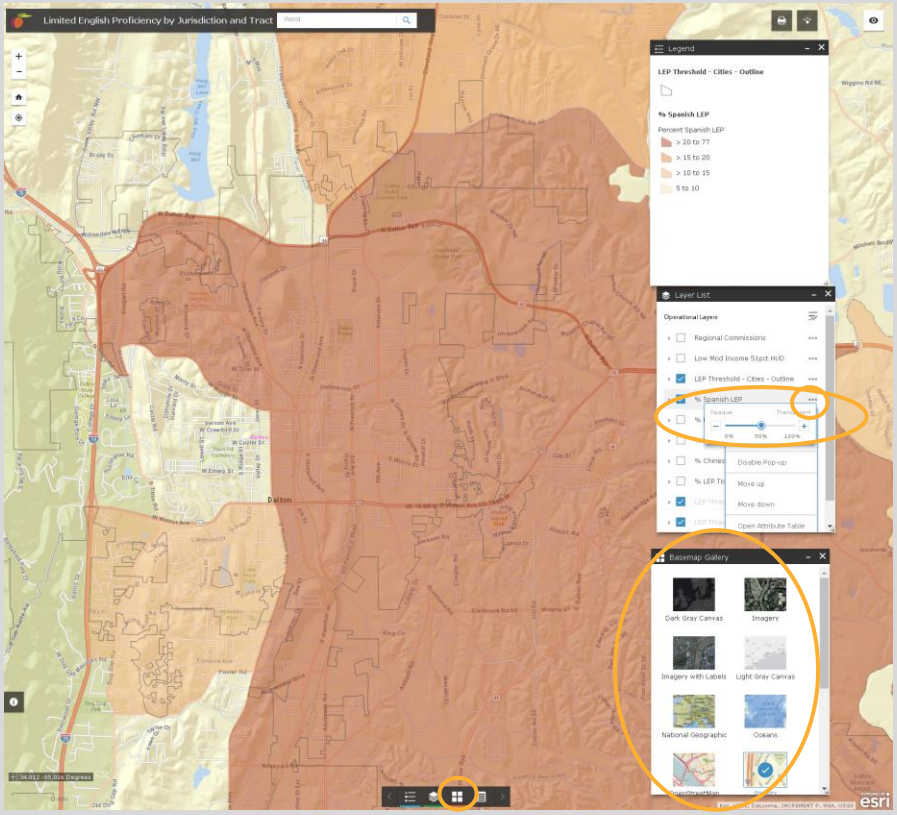
This is a zoomed-in look of a county within Georgia. This view will allow you to see the different concentrations of LEP populations by Census Tract. The “Percent LEP by Census Tract” Layer automatically appears when you zoom in. Cities and Counties appear when you zoom out. Cities in which the LEP population meets or exceeds the “Safe Harbor Threshold” still appear with a dark grey outline when zoomed-in.



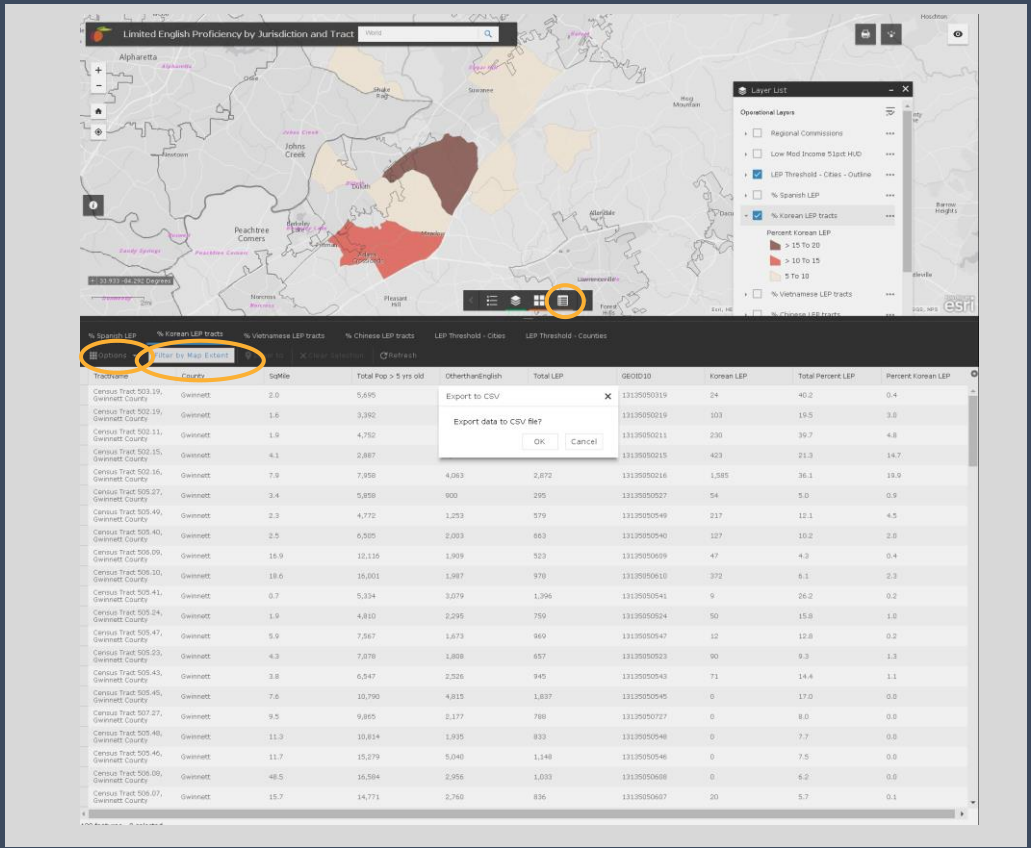
From this view, clicking on any individual Census Tract or City will open a pop-up box with further details of the given area.

When you click, you are clicking on both the City and the Census Tract. Click on the triangular arrow in the upper right corner of the pop-up box to switch your selection from Census Tract to City and vice versa.

These two views show the pop-up box that appears when clicking on a given Census Tract or City. The languages spoken by Census Tract or City appear in the pie chart. For this example, Spanish or Spanish Creole is the predominant language spoken by LEP people in Canton. In the alternate view, by hovering over the pie chart, you are able to see that, of the 21,862 individuals in the area, there are 2,853 LEP persons.



You can change the Basemap and change the transparency of the Layers. Click the (…)

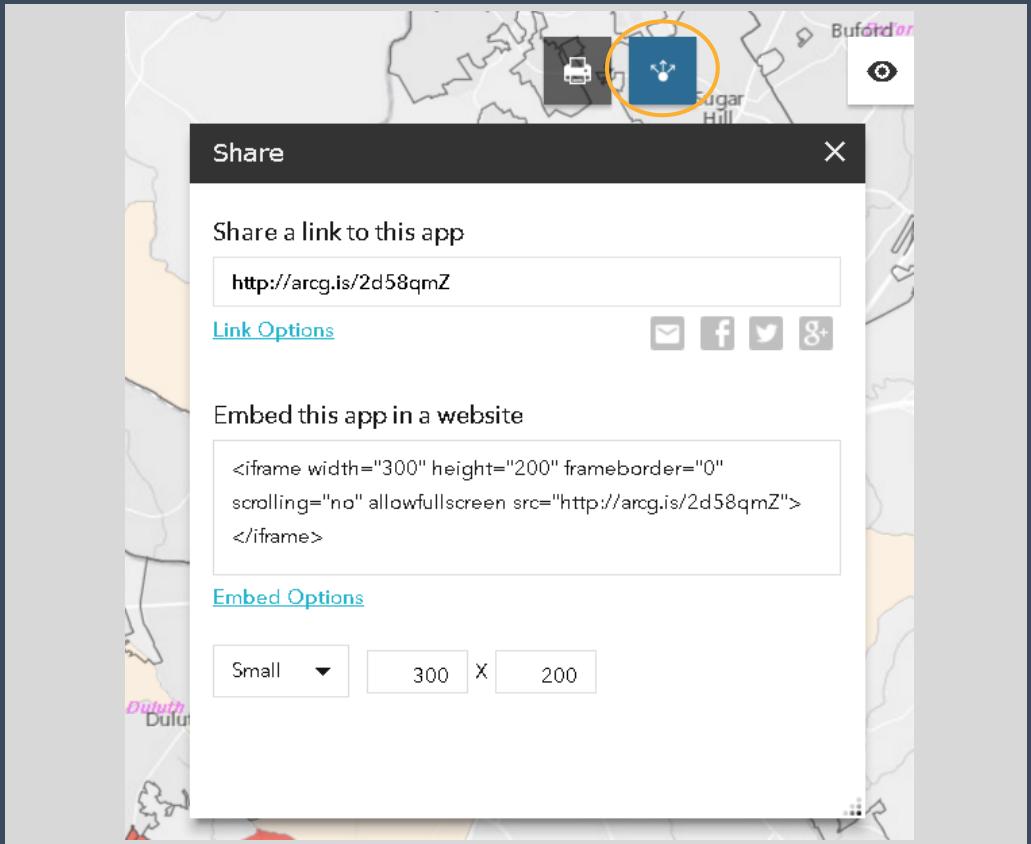


You can access and export all Data Layers here.

You can view the attribute table directly in the map and you can export to a Comma Separated Values (CSV) file.

To do so, click the Attribute Table widget, then click Options and click the option to export all to CSV.

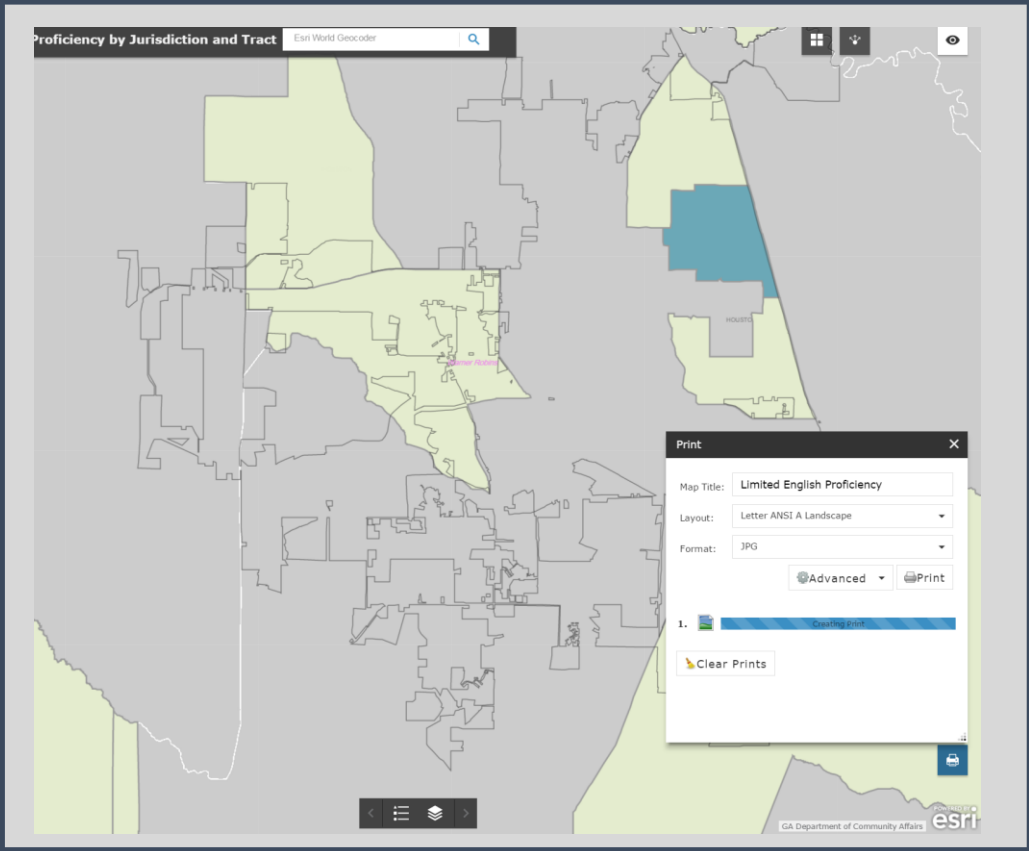
Important! Toggle “Filter by Map Extent” OFF if you want to export everything. If not, it will just export the data in your current view.



Use the Share widget to get a short URL.

Easily share via email, Facebook, Twitter, and Google Plus.

You can also embed the entire map app into a website!



Coming soon…

Print widget. Will export a map with a Legend of your current area in view.

Return to Index

DEPARTMENT OF COMMUNITY AFFAIRS
EFFECTIVE COMMUNICATION POLICY

I. INTRODUCTION

The Georgia Department of Community Affairs (DCA) is committed to providing all persons with equal access to its services, programs, activities, education, and employment regardless of race, color, national origin, religion, age, sex, familial status, or disability. It is the policy of DCA to comply fully with all federal, state, and local nondiscrimination laws and to operate in accordance with the rules and regulations governing Fair Housing and Equal Opportunity in housing and employment. Specifically, DCA shall not on account of race, color, national origin, religion, age, sex, familial status, or disability deny any family or individual the opportunity to apply for or receive assistance under any of DCA's Programs.

Except as otherwise provided in 24 CFR §8.21(c)(1), §8.24(a), §8.25, and §8.31, no qualified individual with disabilities shall, because any DCA facilities are inaccessible to or unusable by persons with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity that receives federal or state financial assistance.

II. EFFECTIVE COMMUNICATION POLICY

DCA in administering all programs is committed to ensuring that applicants and participants with disabilities have an effective means to communicate and that DCA effectively communicates with participants with disabilities regarding DCA policies and procedures. All notifications, including approvals or denials of requests for effective communication referenced in this Policy, will be provided in an alternate format, upon request.

DCA will post a copy of this Effective Communication Policy on its website, in all of its Regional offices as well as its Central Administrative Office located at 60 Executive Park South, NE, Atlanta, GA 30329.

III. AUXILIARY AIDS AND SERVICES

When requested, DCA's employees shall furnish appropriate auxiliary aids and services to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, the programs, services, and activities conducted by DCA.

"Auxiliary aids and services" may include, but are not limited to: (1) qualified sign language interpreters, note-takers, transcription services, written materials, telephone handset amplifiers, telephones compatible with hearing aids, telecommunications devices for deaf persons (TDDs), or other effective methods of making orally delivered materials available to individuals with hearing impairments; and, (2) qualified readers, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments.

DCA will give primary consideration to the choice expressed by the individual. "Primary consideration" means that DCA will honor the choice, unless it can show that another equally effective means of communication is available; or, that use of the means chosen would result in a fundamental alteration in the nature of its service, program, or activity or in an undue financial and administrative burden.

All requests for auxiliary aids and services must be made and received by DCA at least two weeks prior to the date the service is needed. DCA recognizes that emergency situations may occur where a two week notice may not be possible. DCA will take reasonable steps to secure the auxiliary aid or service when such situations exist.

The individual with a disability will submit his/her request for auxiliary aids or services to DCA at the address listed below. All requests shall be dated and time-stamped upon receipt. Alternately, an individual may email DCA or present a request by telephone to any Effective Communication Division Coordinator or their backup (hereinafter "Division Coordinator").

Upon receipt of the request by the applicable Division Coordinator or their designee, the Division Coordinator will consult with the individual with a disability to determine the preferred type of auxiliary aid or service. If the preferred type of auxiliary aid or service is not available or not required, then the Division Coordinator will ascertain whether an alternative means of communication will ensure effective communication. Within five (5) business days of the receipt of the request, the Division Coordinator will forward the request and the determination of the aid or service required to the appropriate Program Manager who will provide the requesting individual with a written notification of the proposed auxiliary aid or service to be provided. The approved request will be implemented no later than five (5) business days after the Program Manager provides the requesting individual with the written notification of approval. The applicant or participant must provide forty-eight (48) hours prior notice to DCA of any need to reschedule their meeting.

Upon disposition of the request, copies of the final decision shall be forwarded to the Agency 504/ADA Coordinator who will maintain copies of all requests for effective communication and DCA's response, including final disposition, for the duration of 3-years from the date of disposition.

DCA's procedures for requesting auxiliary aids and services and all applicable forms shall be posted on DCA's website.

IV. ALTERNATE FORMATS

DCA recognizes that accessing written communications may be difficult for people who are blind or have low vision and individuals with other disabilities. In instances where DCA provides information in written form, DCA will ensure effective communication for people who cannot read the text by providing an alternate format considering the context, the importance of the information, and the length and complexity of the materials.

V. TRAINING AND OUTREACH

To further its commitment to full compliance with applicable Civil Rights laws, DCA will provide federal, state, and local information to applicants and participants in programs (including HUD funded programs) regarding "discrimination" and any recourse available to them should they feel they have been the victim of discrimination. In addition to the required notices, DCA uses brochures and other printed materials to make the public aware of DCA programs. Brochures are made available free of charge to the public through various agencies as well as private organizations offering assistance to low income individuals and families. DCA has developed a “Fair Housing Brochure” which is posted on its website and, displayed in its central office, distributed at public meetings and trainings and distributed to organizations by its marketing staff to accomplish this education. The DCA Fair Housing brochure is available in English and Spanish. DCA attempts to place notices in daily publications; however, in smaller, rural communities, weekly newspapers or local advertising supplements may be used. While minority media generally do not serve DCA’s non-metro areas, notices shall be placed in “non-English or community (race) focused newspapers.

DCA conducts annual Trainings for Property Managers and Multifamily Owners that participate in DCA Multifamily program. The training will include a Fair Housing overview.

DCA partners with the University of Georgia Housing and Demographic Research Center, the University of Georgia Office of the Vice President for Public Service and Outreach, and the Georgia Municipal Association to provide the Georgia Institute for Community Housing (GICH), a three-year program of collaboration and technical assistance to help communities create and launch a locally based plan to meet their housing and neighborhood revitalization needs through partnerships and coordinated action. During the three-year program of technical assistance and cross-community sharing, participating community housing teams comprised of nonprofits, city and/or county government, housing authorities, local lenders, real estate professionals, chambers of commerce, local school boards, and other key players in the housing arena will: attend two retreats a year with other participating communities; identify issues and needs, available resources, and potential obstacles; develop new ideas about meeting local housing needs and enhancing community development; learn about best practices and available resources and funding for housing and community development; produce a community housing plan with objectives and goals; and begin implementation of the action plan. DCA will develop and present a Fair Housing Training module as part of the curriculum for upcoming trainings.

Martin Luther King, Jr. Advisory Council – DCA provides administrative support for the Martin Luther King, Jr. Advisory Council, an independent non-profit organization created by the Georgia General Assembly. One of the Council’s four initiatives is to assist community revitalization using the power of Dr. King’s legacy and principles of social justice to bring people together to improve neighborhoods, particularly around streets or facilities that bear Dr. King’s name. The Sweet Auburn Historic District Opportunity Zone designation by DCA in January, 2013, is a recent example.

DCA will continue to provide the Landlord/Tenant Handbook to Georgia citizens who are renters. This handbook contains educational material regarding Fair housing laws.

DCA utilizes email lists, press releases and general mailings to interested parties, funding recipients, local governments, participating families, landlords, owners, public housing authorities, nonprofit organizations, and their agents to notify the public of funding availability and major changes in its programs.

DCA has designated DCA outreach staff members who will distribute Fair Housing information, provide outreach to citizens, and answer questions regarding DCA programs.

VI. DCA TAG LINE POLICY

ILLUSTRATIONS OF LOGOTYPE, STATEMENT, AND SLOGAN

All Applications, Manuals, Instructions, Brochures, Notices, Meeting invitations, Solicitations, Public Communications, Employment materials and Marketing materials, produced or used by DCA should contain an equal housing opportunity logotype, statement, or slogan as a means of educating the home seeking public that the property is available to all persons regardless of race, color, religion, sex, handicap, familial status, age or national origin. (See Fair Housing Advertising guidelines for additional information.)

The standard Equal Housing Opportunity logotype is as follows:

The following statement is the approved DCA tag line:

The Georgia Department of Community Affairs 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.

For a reasonable accommodation please contact (Effective Communication Division Coordinator) at: (Number) or email fairhousing@dca.ga.gov.

DCA staff should consider the type of medium in determining whether an additional contact for alternate format should be utilized. The additional contact should read as follows:

If you need an alternative format or language, please contact: (Effective Communication Division Coordinator) at: (Number) or email fairhousing@dca.ga.gov.

VII. OUTREACH TO THOSE PERSONS WITH DISABILITIES

In addition to publicizing DCA's programs and services and providing appropriate auxiliary aids and services to individuals with disabilities, DCA is committed to a variety of outreach activities to persons with disabilities. These activities fall into several major categories that are summarized in **Attachment A**. These activities include marketing, programs targeted to those with disabilities, matching persons with disabilities with accessible housing units, criteria for funding selection weighted toward serving those with disabilities, research and technical assistance to facilitate access and services for individuals with disabilities, and DCA's treatment of its own staff through its human resource procedures. The following describes several DCA initiatives in detail that demonstrate DCA's ongoing commitment to equal access for persons with disabilities.

Creation of a Disability Housing Coordinator Position at DCA
DCA partnered with the Governor's Council on Developmental Disabilities (now known as the Georgia Council on Developmental Disabilities) to create a full time Disability Housing position at DCA. That position is responsible for:

- Creating opportunities for expanding knowledge and understanding about issues pertinent to housing for individuals with disabilities through information sharing and distribution, relationship building, training and networking for and with people at all points through the housing spectrum, including DCA leadership and staff, builders, developers, local and state government officials, housing planners, lenders, and organizations representing people with disabilities and their families.

- Developing and coordinating programs and providing technical assistance designed to enhance awareness and understanding of the housing needs of individuals with mental, physical, and/or developmental disabilities and their families and expand the programs available to these targeted populations.

- Populating a database with contact information for persons with disabilities, advocates for persons with disabilities and service organizations.

Creation of the Home Access Program
DCA identified that the architectural design of a home is a significant barrier to many individuals with disabilities being able to remain in their home, even when the home is affordable to them and the other services and supports necessary to live independently are available. As a result, DCA created the Home Access program to provide grant funding for the implementation of accessibility improvements at owner-occupied residences of individuals with a disability. DCA partners with the Brain and Spinal Injury Trust Fund Commission (BSITFC) to implement this program.

Creation of GeorgiaHousingSearch.org
In order to reach individuals least likely to apply for housing to rental units created through various DCA programs, DCA launched GeorgiaHousingSearch.org, providing an important tool to match available rental units to individuals and families needing this resource. Since its launch,

the system has grown to include more than 180,000 units. DCA requires all developers of affordable rental units through its Housing programs to list the portfolio of their properties in Georgia on the system. DCA also promotes its use with organizations serving the homeless or providing support services to individuals with disabilities. Additionally, the service is translatable to over 71 languages at the simple click of a button. The service is able to identify vacant accessible units as well as units with project based rental assistance and landlords that do not require a criminal background check.

Creation of Choice Initiative under the Georgia Dream Homeownership Program
DCA designed a restructured downpayment assistance/principal reduction program to assist individuals with disabilities that, because of income considerations alone, could not afford to purchase a home in their community. Just as with any eligible home buyer, regardless of the existence of a disability, income and credit are the key issues to qualify for a home mortgage. However, individuals with disabilities have additional needs and issues which advocate for the provision of an enhanced amount of financial assistance beyond the traditional $5,000 maximum cap that is available to traditional Georgia Dream borrowers.

As a result of these considerations, DCA now operates the CHOICE initiative, which provides $7,500 to individuals with disabilities and families which include a member with a disability towards the purchase of a home to be used as their primary residence. Since inception, the program has assisted 598 borrowers secure homeownership.

VIII. LANGUAGE ACCESS PLAN (LAP)

DCA is in compliance with HUD's published Guidance in the federal register published January 22, 2007 regarding the Title VI prohibition against national origin discrimination affecting Limited English Proficiency (LEP) persons. Upon completion of the four factor analysis, DCA developed a Language Access Plan (LAP) which is hereby incorporated by reference. DCA's LAP includes but is not limited to the access services described below.

- Utilize HUD forms printed in languages other than English.
- Employ interpreters when necessary.
- Receptionist(s) in the Atlanta office are required to be proficient in Spanish. An employee in each regional office will be trained in conversational Spanish.
- DCA contracts with Language Line Solutions which interprets spoken words in various languages. DCA also contracts with the Georgia Interpreting Service Network (GISN) for sign language interpretive services.
- Purchases and maintains global translation devices.
- DCA also utilizes local community services such as law enforcement agencies, organizations, churches and /or schools that offer translators and interpreters.

DCA will monitor, maintain and update LEP requirements as required by HUD at least annually and/or as changes occur.

IX. REASONABLE ACCOMMODATIONS

DCA is subject to Federal civil rights laws and regulations. This Reasonable Accommodation Policy is based on the following statutes or regulations. See Section 504 of the Rehabilitation Act of 1973 (Section 504); Title II of the Americans with Disabilities Act of 1990 (ADA); the Fair Housing Act of 1968, as amended (Fair Housing Act); the Architectural Barriers Act of 1968, and the respective implementing regulations for each Act.

DCA is committed to ensuring that its policies and procedures do not discriminate against individuals living with disabilities nor deny individuals with disabilities the opportunity to participate in, or benefit from, or otherwise have access to any of DCA's programs, services or activities. Therefore, if an individual with a disability requires an accommodation such as an accessible feature or modification to a DCA policy, DCA will provide such accommodation unless doing so would result in a fundamental alteration in the nature of the program or cause an undue financial and administrative burden. In such a case, DCA will make another accommodation that would not result in a financial or administrative burden.

A reasonable accommodation is a change, modification, alteration, or adaptation in policy, procedure, practice, program, or facility that provides a qualified individual with a disability the opportunity to participate in, or benefit from, a program or activity.

A person with a disability may request a reasonable accommodation at any time during the application process, or at any time during participation in any programs of DCA. Individuals may submit their reasonable accommodation request(s) in writing, orally, or by any other equally effective means of communication. However, DCA staff will document all requests in writing.

A person with a disability includes (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an impairment. As used in this definition, the phrase "physical or mental impairment" includes:

- Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitor-urinary; hemic and lymphatic; skin; and endocrine; or
- Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.
- "Major life activities" means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, and learning.

The definition of disability does not include any individual who is not being treated for or who is not in recovery from substance abuse or who is an alcoholic whose current use of alcohol prevents the individual from participating in programs whose rules specifically prohibit such use (e.g., the housing choice voucher program or activities); or whose participation, by reason of such current substance or alcohol abuse, would constitute a direct threat to property or the safety of others.

DCA may request documentation of the need for a Reasonable Accommodation or Modification. In addition, DCA may request that the individual provide suggested reasonable accommodations. DCA forms for requesting a Reasonable Accommodation or Modification are posted on the DCA website.

DCA may verify a person's disability only to the extent necessary to ensure that individuals who have requested a reasonable accommodation or modification have a disability-based need for the requested accommodation or modification.

X. UNDUE FINANCIAL AND ADMINISTRATIVE BURDEN

If DCA finds that the requested accommodation or modification creates an undue administrative and financial burden, DCA will deny the request and/or present an alternate accommodation that will still meet the need of the person.

1. An undue administrative burden is one that requires a fundamental increase in the essential functions of DCA.

2. A requested accommodation or modification that creates an undue financial burden is one that when considering the available resources of the agency as a whole, would pose a severe financial hardship for DCA.

XI. ASSISTANCE ANIMAL POLICY

DCA recognizes the benefits of assistance/support animals for individuals with disabilities. When requested, DCA will determine, on an individual basis, and in accordance with applicable state and federal Fair Housing laws and regulations, whether an applicant's or participant's need to have such an animal is a reasonable accommodation. Where it is not readily apparent that an animal qualifies as an assistance/support animal under the Fair Housing Act, DCA may require reliable third-party information and documentation that corroborate the disability-related need for the accommodation. DCA's evaluation of third-party information includes whether the participant has a disability for which the animal is needed; and the connection between the participant's disability and the assistance that the animal provides. Reliable third-party information may come from a physician, medical professional, peer support group, non-medical service agency, or a reliable third party knowledgeable about the participant's disability. A participant's medical records or detailed information about the nature of a participant's disability is not necessary for this evaluation.

XII. FEDERAL HOUSING CHOICE VOUCHER PROGRAM ONLY

In cases where an owner refuses to allow an assistance/support animal in the rental property, DCA will allow the participant to terminate the rental agreement and will issue a new housing choice voucher. If the participant elects to move, DCA will work with the participant to obtain moving expenses from social service agencies or other similar sources. DCA will also refer participants to HUD's Office of Fair Housing and Equal Opportunity (FHEO) and provide information on how they may file a Fair Housing complaint. As with all requests for reasonable accommodations or modifications, DCA will consider additional accommodations on a case-by-case basis.

If the property owner has other subsidized units with DCA, DCA may terminate those contracts, if no harm is created to participants living in the rental units. However, the property owner is prohibited from entering into future housing choice voucher contracts with DCA.

XIII. MONITORING AND ENFORCEMENT

DCA's Agency 504/ADA Coordinator is responsible for monitoring DCA's compliance with this Policy. Individuals or their designee or representative who have questions regarding this Policy, its interpretation or implementation should contact either designated Division Coordinators or the DCA's Agency 504/ADA Coordinator.

XIV. RIGHT TO APPEAL/GRIEVANCE PROCESS

Any HUD Program participant or any individual with a disability that is not satisfied with DCA's response to his/her request for an auxiliary aid or service may file a complaint in accordance with DCA's Grievance Procedure following a formal determination by DCA's Section 504/ADA Coordinator. DCA's Grievance Process can be accessed on the DCA website.

XV. EQUAL EMPLOYMENT OPPORTUNITY

It is the policy of DCA to recruit applicants for employment on the basis of individual merit and ability. Applicants are recruited and hired without discrimination on the basis of race, religion, color, national origin, sex, age, disability, or familial status. Personnel procedures and practices with regard to training, promotion, transfer, compensation, demotion, or termination are administered with due consideration of job performance, experience, and qualifications.

DCA is committed to the fair and equal employment of people with disabilities. Reasonable accommodation is the key to this non-discrimination policy. While many individuals with disabilities can work without accommodation, other qualified applicants and employees face barriers to employment without the accommodation process. It is the policy of DCA to reasonably accommodate qualified individuals with disabilities unless the accommodation would impose an undue financial and administrative hardship. In accordance with the Americans with Disabilities Act, accommodations will be provided to qualified individuals with disabilities when such accommodations are directly related to performing the essential functions of a job, competing for a job, or to enjoy equal benefits and privileges of employment. This policy applies to all employees and employees seeking promotional opportunities and job applicants.

For purposes of determining eligibility for a reasonable accommodation, a person with a disability includes (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; (3) individuals with a record of such an impairment. A reasonable accommodation is a modification or adjustment to a job, an employment practice, or the work environment that makes it possible for a qualified individual with a disability to enjoy an equal employment opportunity. Examples of accommodations may include acquiring or modifying equipment or devices; modifying training materials, making facilities readily accessible; modifying work schedules; and reassignment to a vacant position.

Employees or applicants who are dissatisfied with the outcome of their accommodation request may file an appeal pursuant to DCA's internal appeal process.

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PART 109--FAIR HOUSING ADVERTISING

Sec.

APPENDIX I TO PART 109—FAIR HOUSING ADVERTISING

AUTHORITY: Title VIII, Civil Rights Act of 1968, 42 U.S.C. 3600-3620; section 7(d), Department of HUD Act, 42 U.S.C. 3535(d).

SOURCE: 54 FR 3308, Jan. 23, 1989, unless otherwise noted.

§ 109.5 Policy.

It is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States. The provisions of the Fair Housing Act (42 U.S.C. 3600, *et seq.*) make it unlawful to discriminate in the sale, rental, and financing of housing, and in the provision of brokerage and appraisal services, because of race, color, religion, sex, handicap, familial status, or national origin. Section 804(c) of the Fair Housing Act, 42 U.S.C. 3604(c), as amended, makes it unlawful to make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement, with respect to the sale or rental of a dwelling, that indicates any preference, limitation, or discrimination because of race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination. However, the prohibitions of the act regarding familial status do not apply with respect to *housing for older persons*, as defined in section 807(b) of the act.

§ 109.10 Purpose.

The purpose of this part is to assist all advertising media, advertising agencies and all other persons who use advertising to make, print, or publish, or cause to be made, printed, or published, advertisements with respect to the sale, rental, or financing of dwellings which are in compliance with the requirements of the Fair Housing Act. These regulations also describe the matters this Department will review in evaluating compliance with the Fair Housing Act in connection with investigations of complaints alleging discriminatory housing practices involving advertising.

§ 109.15 Definitions.

As used in this part:

(a) *Assistant Secretary* means the Assistant Secretary for Fair Housing and Equal Opportunity.

(b) *General Counsel* means the General Counsel of the Department of Housing and Urban Development.

(c) *Dwelling* means any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(d) *Family* includes a single individual.

(e) *Person* includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, receivers, and fiduciaries.

(f) *To rent* includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(g) *Discriminatory housing practice* means an act that is unlawful under section 804, 805, 806, or 818 of the Fair Housing Act.

(h) *Handicap* means, with respect to a person--

(1) A physical or mental impairment which substantially limits one or more of such person's major life activities,

(2) A record of having such an impairment, or

(3) Being regarded as having such an impairment.

This term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)). For purposes of this part, an individual shall not be considered to have a handicap solely because that individual is a transvestite.

(i) *Familial status* means one or more individuals (who have not attained the age of 18 years) being domiciled with--

(1) A parent or another person having legal custody of such individual or individuals; or

(2) The designee of such parent or other person having such custody, with the written permission of such parent or other person. The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

§ 109.16 Scope.

(a) *General.* This part describes the matters the Department will review in evaluating compliance with the Fair Housing Act in connection with investigations of complaints alleging discriminatory housing practices involving advertising. Use of these criteria will be considered by the General Counsel in making determinations as to whether there is reasonable cause, and by the Assistant Secretary in making determinations that there is no reasonable cause, to believe that a discriminatory housing practice has occurred or is about to occur.

(1) *Advertising media.* This part provides criteria for use by advertising media in determining whether to accept and publish advertising regarding sales or rental transactions. Use of these criteria will be considered by the General Counsel in making determinations as to whether there is reasonable cause, and by the Assistant Secretary in making determinations that there is no reasonable cause, to believe that a discriminatory housing practice has occurred or is about to occur.

(2) *Persons placing advertisements.* A failure by persons placing advertisements to use the criteria contained in this part, when found in connection with the investigation of a complaint alleging the making or use of discriminatory advertisements, will be considered by the General Counsel in making a determination of reasonable cause, and by the Assistant Secretary in making determinations that there is no reasonable cause, to believe that a discriminatory housing practice has occurred or is about to occur.

(b) *Affirmative advertising efforts.* Nothing in this part shall be construed to restrict advertising efforts designed to attract persons to dwellings who would not ordinarily be expected to apply, when such efforts are pursuant to an affirmative marketing program or undertaken to remedy the effects of prior discrimination in connection with the advertising or marketing of dwellings.

[54 FR 308, Jan. 23 1989, as amended at 55 FR 53294, Dec. 28, 1990.]

§ 109.20 Use of words, phrases, symbols, and visual aids.

The following words, phrases, symbols, and forms typify those most often used in residential real estate advertising to convey either overt or tacit discriminatory preferences or limitations. In considering a complaint under the Fair Housing Act, the Department will normally consider the use of these and comparable words, phrases, symbols, and forms to indicate a possible violation of the act and to establish a need for further proceedings on the complaint, if it is apparent from the context of the usage that discrimination within the meaning of the act is likely to result.

(a) *Words descriptive of dwelling, landlord, and tenants.* White private home, Colored home, Jewish home, Hispanic residence, adult building.

(b) *Words indicative of race, color, religion, sex, handicap, familial status, or national origin--*

(1) *Race*--Negro, Black, Caucasian, Oriental, American Indian.

(2) *Color*--White, Black, Colored.

(3) *Religion*--Protestant, Christian, Catholic, Jew.

(4) *National origin*--Mexican American, Puerto Rican, Philippine, Polish, Hungarian, Irish, Italian, Chicano, African, Hispanic, Chinese, Indian, Latino.

(5) *Sex*--the exclusive use of words in advertisements, including those involving the rental of separate units in a single or multi-family dwelling, stating or tending to imply that the housing being advertised is available to persons of only one sex and not the other, except where the sharing of living areas is involved. Nothing in this part restricts advertisements of dwellings used exclusively for dormitory facilities by educational institutions.

(6) *Handicap*--crippled, blind, deaf, mentally ill, retarded, impaired, handicapped, physically fit. Nothing in this part restricts the inclusion of information about the availability of accessible housing in advertising of dwellings.

(7) *Familial status*--adults, children, singles, mature persons. Nothing in this part restricts advertisements of dwellings which are intended and operated for occupancy by older persons and which constitute *housing for older persons* as defined in Part 100 of this title.

(8) *Catch words*--Words and phrases used in a discriminatory context should be avoided, e.g., *restricted, exclusive, private, integrated, traditional, board approval or membership approval.*

(c) *Symbols or logotypes.* Symbols or logotypes which imply or suggest race, color, religion, sex, handicap, familial status, or national origin.

(d) *Colloquialisms.* Words or phrases used regionally or locally which imply or suggest race, color, religion, sex, handicap, familial status, or national origin.

(e) *Directions to real estate for sale or rent (use of maps or written instructions).* Directions can imply a discriminatory preference, limitation, or exclusion. For example, references to real estate location made in terms of racial or national origin significant landmarks, such as an existing black development (signal to blacks) or an existing development known for its exclusion of minorities (signal to whites). Specific directions which make reference to a racial or national origin significant area may indicate a preference. References to a synagogue, congregation or parish may also indicate a religious preference.

(f) *Area (location) description.* Names of facilities which cater to a particular racial, national origin or religious group, such as country club or private school designations, or names of facilities which are used exclusively by one sex may indicate a preference.

§ 109.25 Selective use of advertising media or content.

The selective use of advertising media or content when particular combinations thereof are used exclusively with respect to various housing developments or sites can lead to discriminatory

results and may indicate a violation of the Fair Housing Act. For example, the use of English language media alone or the exclusive use of media catering to the majority population in an area, when, in such area, there are also available non-English language or other minority media, may have discriminatory impact. Similarly, the selective use of human models in advertisements may have discriminatory impact. The following are examples of the selective use of advertisements which may be discriminatory:

(a) *Selective geographic advertisements.* Such selective use may involve the strategic placement of billboards; brochure advertisements distributed within a limited geographic area by hand or in the mail; advertising in particular geographic coverage editions of major metropolitan newspapers or in newspapers of limited circulation which are mainly advertising vehicles for reaching a particular segment of the community; or displays or announcements available only in selected sales offices.

(b) *Selective use of equal opportunity slogan or logo.* When placing advertisements, such selective use may involve placing the equal housing opportunity slogan or logo in advertising reaching some geographic areas, but not others, or with respect to some properties but not others.

(c) *Selective use of human models when conducting an advertising campaign.* Selective advertising may involve an advertising campaign using human models primarily in media that cater to one racial or national origin segment of the population without a complementary advertising campaign that is directed at other groups. Another example may involve use of racially mixed models by a developer to advertise one development and not others. Similar care must be exercised in advertising in publications or other media directed at one particular sex, or at persons without children. Such selective advertising may involve the use of human models of members of only one sex, or of adults only, in displays, photographs or drawings to indicate preferences for one sex or the other, or for adults to the exclusion of children.

§ 109.30 Fair housing policy and practices.

In the investigation of complaints, the Assistant Secretary will consider the implementation of fair housing policies and practices provided in this section as evidence of compliance with the prohibitions against discrimination in advertising under the Fair Housing Act.

(a) *Use of Equal Housing Opportunity logotype, statement, or slogan.* All advertising of residential real estate for sale, rent, or financing should contain an equal housing opportunity logotype, statement, or slogan as a means of educating the homeseeking public that the property is available to all persons regardless of race, color, religion, sex, handicap, familial status, or national origin. The choice of logotype, statement or slogan will depend on the type of media used (visual or auditory) and, in space advertising, on the size of the advertisement. Table I (see Appendix I) indicates suggested use of the logotype, statement, or slogan and size of logotype. Table II (see Appendix I) contains copies of the suggested Equal Housing Opportunity logotype, statement and slogan.

(b) *Use of human models.* Human models in photographs, drawings, or other graphic techniques may not be used to indicate exclusiveness because of race, color, religion, sex,

handicap, familial status, or national origin. If models are used in display advertising campaigns, the models should be clearly definable as reasonably representing majority and minority groups in the metropolitan area, both sexes, and, when appropriate, families with children. Models, if used, should portray persons in an equal social setting and indicate to the general public that the housing is open to all without regard to race, color, religion, sex, handicap, familial status, or national origin, and is not for the exclusive use of one such group.

(c) *Coverage of local laws*. Where the Equal Housing Opportunity statement is used, the advertisement may also include a statement regarding the coverage of any local fair housing or human rights ordinance prohibiting discrimination in the sale, rental or financing of dwellings.

(d) *Notification of fair housing policy*--

(1) *Employees*. All publishers of advertisements, advertising agencies, and firms engaged in the sale, rental or financing of real estate should provide a printed copy of their nondiscrimination policy to each employee and officer.

(2) *Clients*. All publishers or advertisements and advertising agencies should post a copy of their nondiscrimination policy in a conspicuous location wherever persons place advertising and should have copies available for all firms and persons using their advertising services.

(3) *Publishers' notice*. All publishers should publish at the beginning of the real estate advertising section a notice such as that appearing in Table III (see Appendix I). The notice may include a statement regarding the coverage of any local fair housing or human rights ordinance prohibiting discrimination in the sale, rental or financing of dwellings.

APPENDIX I TO PART 109--FAIR HOUSING ADVERTISING

The following three tables may serve as a guide for the use of the Equal Housing Opportunity logotype, statement, slogan, and publisher's notice for advertising:

Table I

A simple formula can guide the real estate advertiser in using the Equal Housing Opportunity logotype, statement, or slogan.

In all space advertising (advertising in regularly printed media such as newspapers or magazines) the following standards should be used:

Size of advertisement	*Size of logotype in inches*
½ page or larger.....	2x2
1/8 page up to ½ page.....	1x1
4 column inches to 1/8 page.....	½ x ½

Less than 4 column inches	[1]

[1]Do not use.

In any other advertisements, if other logotypes are used in the advertisement, then the Equal Housing Opportunity logo should be of a size at least equal to the largest of the other logotypes; if no other logotypes are used, then the type should be bold display face which is clearly visible. Alternatively, when no other logotypes are used, 3 to 5 percent of an advertisement may be devoted to a statement of the equal housing opportunity policy.

In space advertising which is less than 4 column inches (one column 4 inches long or two columns 2 inches long) of a page in size, the Equal Housing Opportunity slogan should be used. Such advertisements may be grouped with other advertisements under a caption which states that the housing is available to all without regard to race, color, religion, sex, handicap, familial status, or national origin.

Table II

Illustrations of Logotype, Statement, and Slogan. Equal Housing Opportunity Logotype:

Equal Housing Opportunity Statement: We are pledged to the letter and spirit of U.S. policy for the achievement of equal housing opportunity throughout the Nation. We encourage and support an affirmative advertising and marketing program in which there are no barriers to obtaining housing because of race, color, religion, sex, handicap, familial status, or national origin.

Equal Housing Opportunity Slogan: "Equal Housing Opportunity."

Table III

Illustration of Media Notice--Publisher's notice: All real estate advertised herein is subject to the Federal Fair Housing Act, which makes it illegal to advertise "any preference, limitation, or discrimination because of race, color, religion, sex, handicap, familial status, or national origin, or intention to make any such preference, limitation, or discrimination."

We will not knowingly accept any advertising for real estate which is in violation of the law. All persons are hereby informed that all dwellings advertised are available on an equal opportunity basis.

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DCA Section 504 Grievance Procedure

CONTACT

fairhousing@dca.ga.gov

The Georgia Fair Housing Act was passed to ensure all Georgians can compete for housing within their economic means on a fair and equitable basis. It prohibits discrimination in housing and housing-related activities because of disability, race, sex, color, national origin, religion, or familial status.

What is prohibited?

Some housing practices are considered illegal if based on a home seeker's race, color, national origin, sex, religion, familial status, or disability:

- Refusing to rent or sell a house.
- Falsely denying that a house is available for inspection, sale, or rent.
- Offering different terms, conditions, or privileges for certain people.
- Intimidating, interfering with, or coercing someone to prevent them from buying or leasing a dwelling.
- Advertising or posting notices, sale or rental, that indicate a preference, limitation, or discrimination.
- Discriminating through financing or broker's services.
- "Steering" of clients by real estate agents to or from certain neighborhoods and of tenants by landlords to or from certain areas of the complex.

Have you been discriminated against under the Fair Housing Act?

If you think your fair housing rights have been violated, you may write, fax, or telephone your complaint to the Georgia Commission on Equal Opportunity (GCEO) or the U.S. Department of Housing and Urban Development (HUD). You have a year to file, but you should file as soon as possible. Include:

- Name & address
- Name & address of the person your complaint is against
- Address or other identification of the housing involved
- Short description of the incident
- Date(s) of the incident

You may also file a complaint online at www.HUD.gov. Once a complaint is filed, fair housing investigators will:

1) Investigate the complaint.
2) Collect relevant facts and data and interview parties and witnesses.
3) Assist both parties in reaching an agreement.

4) Make a determination based on the investigation findings.

If you need assistance, please contact the Georgia Department of Community Affairs Fair Housing Coordinator at fairhousing@dca.ga.gov.

Georgia Commission on Equal Opportunity

Suite #1002 - West Tower
2 Martin Luther King, Jr. Drive, S.E.
Atlanta, GA 30334
Phone: 404-656-1736
Fax: 404-656-4399
Website: http://www.gceo.state.ga.us

U.S. Department of Housing and Urban Development

Fair Housing and Equal Opportunity (FHEO) Center

40 Marietta Street,
Atlanta, GA 30303
Phone: (404) 331-5140
Toll free: (800) 440-8091
TTY (404) 730-2654

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Fair Housing Complaint Form

The Fair Housing Division (FHD) begins its complaint investigation process shortly after receiving a complaint that meets the jurisdiction requirements covered within the Georgia Fair Housing Law. The FHD will either investigate the complaint or refer the complaint to another agency to investigate. Throughout the investigation, the FHD will make efforts to help the parties reach a mutual agreement through a conciliation process. If the complaint cannot be resolved voluntarily by an agreement, the FHD may issue findings from the investigation. If the investigation shows that the law has been violated, the Georgia Commission on Equal Opportunity may refer the case to the Attorney General's Office for legal action to enforce the law.

In order to file a complaint, the following four factors must be met:

- **Standing** (Aggrieved persons, A person who believes that a violation is about to occur, Parents or Guardians, Testers, or Organizations –Fair Housing Organizations, Civil Rights Organizations, Other Advocacy Groups)
- **Respondent Jurisdiction**
- **Subject Matter Jurisdiction**
- **Timeliness** (Any complaint filed under the Fair Housing act must be timely. In order for the GCEO to have jurisdiction to investigate, complaints must be filed within one year-365 calendar days of the alleged discrimination. Counting of the 365 days begins the day after the discriminatory act. The timeliness period begins as of the date of the discriminatory act or the last occurrences or application of a discriminatory policy. Continuing violations refer to either a series of related discriminatory acts, or a discriminatory policy that continues to affect members of a particular category. A complaint that alleges a continuing violation is timely if it is filed within one year of the last occurrence of that discriminatory behavior).

If the complaint is jurisdictional, an Intake Coordinator will contact you regarding filing an Official Fair Housing Complaint with the Agency.

For further information, please contact the Intake Coordinator at (404) 463-4706. The complaint form may be completed and submitted at the following url: https://gceo.georgia.gov/complaints/fair-housing-complaint-form .

for any injury you suffered as a result of the discrimination, including emotional distress;

- provide injunctive or other equitable relief—such as allowing you to rent or buy the dwelling;
- pay the federal government a civil penalty; and
- pay your attorney fees and costs, if you hired your own attorney.

The ALJ cannot order punitive damages, but they could be awarded in a court case.

Federal District Court Cases

If you or the respondent chooses to have the case heard by a Federal District Court, the United States Department of Justice will prosecute the case at no cost to you. You may also hire an attorney to represent you.

The District Court can order injunctive and other equitable relief, and award actual damages, your attorney fees and costs, and punitive damages.

Reconsideration and appeals: ALJ decisions and Federal District Court decisions can be appealed. This means that if you, the government or the respondent does not like the decision, any of you can ask the federal Court of Appeals to have the decision reversed or modified.

Bringing Your Own Lawsuit

Within two years after a discriminatory housing practice has occurred or terminated, you can also bring a civil lawsuit at your own expense in Federal District Court. You retain this right even if you have filed a complaint with HUD, provided you have not signed a conciliation agreement or an administrative hearing has not begun. If you cannot afford to hire an attorney, you may seek assistance from your local legal aid organization or ask the court to appoint an attorney for you. Legal aid organizations exist in many communities to provide low-income people with free (pro bono) legal counsel.

For More Information

Contact HUD. Call the U.S. Department of Housing and Urban Development at 800-669-9777 or visit its website (www.hud.gov) to file a complaint or get answers to your fair housing questions. The HUD website also contains a listing of HUD's regional fair housing offices, fair housing partners, and information and forms for filing a fair housing complaint. Visit www.hud.gov/fairhousing for more information.

LIVE FREE...
from housing discrimination

About This Publication: This publication was created by Consumer Action with funding from the U.S. Department of Housing and Urban Development (HUD). Available in additional languages.

consumer action
Education and advocacy since 1971

EQUAL HOUSING OPPORTUNITY

Filing a Housing Discrimination Complaint

EQUAL HOUSING OPPORTUNITY

More than 40 years

after passage of the federal Fair Housing Act, housing discrimination continues to harm millions of Americans. The Fair Housing Act prohibits housing discrimination because of race, color, national origin, religion, sex, familial status (families with children under 18) or disability.

In some states and municipalities, fair housing laws also protect residents from discrimination because of sexual preference, age, and other bases. The Act covers many kinds of housing transactions, including rentals, home sales, advertising, residential mortgage lending, homeowners' insurance, home improvement financing and zoning. If you believe you were a victim of housing discrimination, you have a right to file a housing discrimination complaint with HUD. Call the U.S. Department of Housing and Urban Development (HUD) at 800-669-9777 (TTY: 800-927-9275), or visit www.hud.gov for information about filing a complaint.

HUD and Housing Discrimination

HUD is the federal agency charged with enforcing the Fair Housing Act.

If you need quick help to stop the loss of potential housing because of discrimination, HUD can address your complaint immediately. For instance, if you have entered into an agreement to buy a house but the seller has backed out because his neighbors put pressure on him not to sell to a person of color, you could lose the home if something were not done immediately. In addressing such circumstances, HUD can authorize the Attorney General to go to court to prevent a rental or sale until the complaint has been investigated.

How to File a Complaint

Housing discrimination complaints may be filed for up to one year after the discriminatory housing practice occurs or ends. However, it is best to file your complaint as soon as possible. HUD accepts housing discrimination complaints at its Washington, DC and regional offices, over the phone, and online via HUD's website. (Information on how to contact the office nearest you can be found at the end of this article.) HUD also will accept a letter outlining your complaint. Include your name, address, the name and address of the person you are complaining about, the address or description of the housing, a short statement of why you think your rights were violated and the date the incident occurred.

In cases where state or local law provides rights, remedies and protections that are "substantially equivalent" to those provided by the federal Fair Housing Act, HUD may refer the complaint to the appropriate state or local enforcement agency. HUD must notify you promptly if it has referred your case, and the agency that receives it must begin investigating within 30 days. Otherwise, HUD may take back (or "reactivate") the complaint for investigation by HUD under federal law. While housing discrimination complaint, investigation, conciliation and litigation procedures may vary somewhat from agency to agency according to state or local law, all HUD-certified fair housing enforcement agencies follow essentially the same resolution process.

Conciliation

While HUD (or the state or local agency) investigates your complaint, it will at the same time try to help you reach a conciliation agreement with the other party (the respondent). If an agreement is reached, it will be legally binding. However, both parties and HUD must agree to it.

Investigations

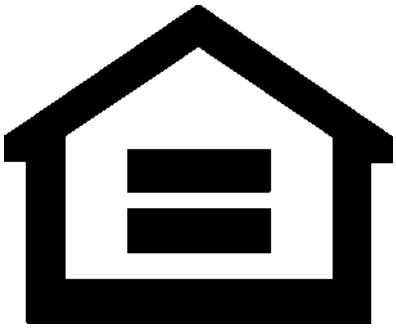
Unless a conciliation agreement is reached, HUD (or the appropriate state or local agency) will continue to investigate your complaint and determine whether there is reasonable cause to believe that discrimination has occurred or is about to occur. If there is, HUD (or the agency) will issue a Charge of Discrimination. You will be notified of HUD's (or the agency's) determination. In cases handled by HUD, there will be an administrative hearing, held before an administrative law judge (ALJ), within 120 days of the Charge of Discrimination. ALJs work for government agencies and enforce powers given the agencies under law.

Both you and the respondent have the right to have a HUD Charge of Discrimination heard in court instead of before an ALJ. Whichever avenue is chosen, there is no cost to you, the complainant, because a government lawyer will prosecute the Charge of Discrimination on your behalf. In addition, you may hire your own lawyer to represent you.

The Administrative Hearing

In the ALJ hearing, each side presents evidence including, when appropriate, testimony from witnesses. The ALJ will issue a decision that is subject to review by HUD's Secretary and by a court. If discrimination is found, the ALJ can order the other party to:

- pay you money for actual damages, including out-of-pocket expenses, humiliation and suffering caused by the discrimination. Actual damages means money to compensate you



EQUAL HOUSING OPPORTUNITY

We Do Business in Accordance With the Federal Fair Housing Law

(The Fair Housing Amendments Act of 1988)

It is Illegal to Discriminate Against Any Person Because of Race, Color, Religion, Sex, Handicap, Familial Status, or National Origin

In the sale or rental of housing or residential lots

In advertising the sale or rental of housing

In the financing of housing

In the provision of real estate brokerage services

In the appraisal of housing

Blockbusting is also illegal

Anyone who feels he or she has been discriminated against may file a complaint of housing discrimination:

1-800-669-9777 (Toll Free)
1-800-927-9275 (TTY)
www.hud.gov/fairhousing

U.S. Department of Housing and Urban Development
Assistant Secretary for Fair Housing and Equal Opportunity
Washington, D.C. 20410

U. S. Department of Housing and Urban Development
Departamento de la Vivienda y el Desarrollo Urbano de los EE.UU.

EQUAL HOUSING OPPORTUNITY
IGUALDAD DE OPORTUNIDADES EN LA VIVIENDA

Nuestras prácticas de negocios cumplen la ley federal de equidad en la vivienda

(Enmienda a la ley de Equidad en la vivienda de 1988)

Es ilegal discriminar contra ninguna persona a causa de su raza, color, religión, sexo, discapacidad, situación familiar u origen nacional

- En la venta o el alquiler de viviendas o lotes residenciales
- En la publicidad relacionada con la venta o el alquiler de viviendas
- En la financiación de la vivienda
- En la provisión de servicios de corredores de bienes raíces
- En la tasación de viviendas
- Las tácticas de intimidación (Blockbusting) también son ilegales

Cualquier persona que crea que ha sido discriminada puede presentar una reclamación de discriminación en la vivienda:
1-800-669-9777 (Línea gratuita)
1-800-927-9275 (TTY)
www.hud.gov/fairhousing

U.S. Department of Housing and Urban Development
Assistant Secretary for Fair Housing and Equal Opportunity
Washington, D.C. 20410

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HUD Rule on Affirmatively Furthering Fair Housing

The U.S. Department of Housing and Urban Development (HUD) has released a final rule to equip communities that receive HUD funding with the data and tools that will help them to meet long-standing fair housing obligations in their use of HUD funds. HUD will provide publicly open data for grantees to use to assess the state of fair housing within their communities and to set locally-determined priorities and goals. The rule responds to recommendations of the Government Accountability Office and stakeholders for HUD to enhance its fair housing planning obligations by providing greater clarity and support to jurisdictions receiving HUD funding, and facilitating local decision-making on fair housing priorities and goals.

For more than forty years, HUD funding recipients have been obligated by law to reduce barriers to fair housing. Established in the Fair Housing Act of 1968, the law directs HUD and its program participants to affirmatively further the Act's goals of promoting fair housing and equal opportunity. The final rule on affirmatively furthering fair housing (AFFH) aims to provide all HUD grantees with clear guidelines and the data that will help them to achieve those goals, because no child's ZIP code should determine her opportunity to achieve.

HUD's rule clarifies and simplifies existing fair housing obligations for HUD grantees to analyze their fair housing landscape and set locally-determined fair housing priorities and goals through an Assessment of Fair Housing (AFH). To aid communities in this work, HUD will provide open data to grantees and the public on patterns of integration and segregation, racially and ethnically concentrated areas of poverty, disproportionate housing needs, and disparities in access to opportunity. This improved approach provides a better mechanism for HUD grantees to build fair housing goals into their existing community development and housing planning processes. In addition to providing data and maps, HUD will also provide technical assistance to aid grantees as they adopt this approach.

Key features of this final rule include:

- Clarifying existing fair housing obligations. Existing patterns of meeting AFFH obligations have been undermined by limited access to data about fair housing conditions and access to opportunity. A Government Accountability Office report from 2010 also cited a lack of clarity, standards, and transparency for communities under the current process. HUD's rule clarifies and standardizes this process.

- Publicly open data on fair housing and access to opportunity. HUD will provide publicly open data and mapping tools to aid community members and local leaders in setting local fair housing priorities and goals.

- A balanced approach to fair housing. The final rule helps to facilitate communities relying on local knowledge and local decision-making to determine best strategies for meeting their fair housing obligations at the local level – including making place-based investments to revitalize distressed areas, or expanding access to quality affordable housing throughout a community.

- Expanding access to opportunity. The strength of America's economy, the stability and security of its neighborhoods, and the ability for all to prosper depends on all Americans having equal access to opportunity – no matter what they look like or where they come from. This rule facilitates local decision-making by HUD grantees to expand equal access to opportunity for all Americans.

- Valuing local data and knowledge. HUD is providing grantees with publicly open data to assist with their assessment of fair housing, but grantees will also use local data and knowledge to inform local decision-making, including information obtained through the community participation process.

- Customized tools for local leaders. Recognizing that one size does not fit all grantees, given their differing responsibilities and geographic areas served, HUD will be providing fair housing assessment tools specific to local jurisdictions, public housing authorities (PHAs), and states and Insular Areas.

- Collaboration is encouraged. Many fair housing priorities transcend a grantee's boundaries. Actions to advance these priorities often involve coordination by multiple jurisdictions. The final rule encourages grantees to collaborate on fair housing assessments to advance regional fair housing priorities and goals.

- Community voice. The rule facilitates community participation in the local process to analyze fair housing conditions and set local priorities and goals.

- A phased-in approach. The final rule provides for additional time for communities to adopt this improved process for setting local fair housing priorities than originally proposed.

- Additional time for small grantees and recent regional collaborations. Local jurisdictions receiving a CDBG grant of $500,000 or less and qualified PHAs will have more time to submit their first AFH. Grantees that recently submitted a Regional Analysis of Impediments in connection with HUD's Sustainable Communities competition have additional time to submit their first AFH than originally proposed.

AFFH FACT SHEET:

THE DUTY TO AFFIRMATIVELY FURTHER FAIR HOUSING

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 Insular Areas, 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 programs 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.

AFFH FACT SHEET:
THE FAIR HOUSING PLANNING PROCESS UNDER THE AFFH RULE

Pursuant to its authority under the Fair Housing Act, HUD has long directed program participants to undertake an assessment of fair housing issues—previously under the Analysis of Impediments (AI) approach, and following the effective date of the AFFH rule, under the new Assessment of Fair Housing (AFH) approach.[1] See 80 Fed. Reg. 42283 (July 16, 2015).

The AFFH rule is a fair housing planning rule—the rule clarifies existing fair housing obligations for HUD program participants to analyze their fair housing landscape and set locally-determined fair housing priorities and goals through AFH. The regulations establish specific requirements for the development and submission of an AFH by program participants and the incorporation and implementation of the strategies and goals set in the AFH into subsequent planning documents, including consolidated plans and PHA Plans, in a manner that connects housing and community development policy and investment planning with meaningful actions that affirmatively further fair housing.

FAIR HOUSING ISSUES, CONTRIBUTING FACTORS, AND GOALS

The approach established by the AFFH rule is designed to improve the fair housing planning process by providing data and greater clarity of the steps that program participants must undertake to assess fair housing issues and contributing factors, establish fair housing priorities and goals to address them, and take meaningful actions to ultimately affirmatively further fair housing. The AFFH rule defines the terms fair housing issue, contributing factor, and meaningful actions as follows:

FAIR HOUSING ISSUE: "means a condition in a program participants geographic area of analysis that restricts fair housing choice or access to opportunity, and includes such conditions as ongoing local or regional segregation or lack of integration, racially or ethnically concentrated areas of poverty, significant disparities in access to opportunity, disproportionate housing needs, and evidence of discrimination or violations of civil rights law or regulations related to housing." See 24 C.F.R. § 5.152

CONTRIBUTING FACTOR: "means a factor that creates, contributes to, perpetuates, or increases the severity of one or more fair housing issues. Goals in an AFH are designed to overcome one or more contributing factors and related fair housing issues as provided in § 5.154." See 24 C.F.R. § 5.152.

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." See 24 C.F.R. § 5.152.

FAIR HOUSING PLANNING UNDER THE AFFH RULE

The intent of fair housing planning is to help program participants determine whether policies, practices, programs, and activities restrict fair housing choice and access to opportunity, and, if so, assess what factors are contributing to these barriers, and then develop a plan for addressing these restrictions. See 80 Fed. Reg. 42283 (July 16, 2015).

[1] Please note that "program participants" refers to the entities specified in § 5.154(b) of the AFFH rule (i.e., jurisdictions and insular areas that are required to submit consolidated plans and public housing agencies (PHAs) receiving assistance under sections 8 or 9 of the United States Housing Act of 1937).

The fair housing planning process that program participants must undertake includes:

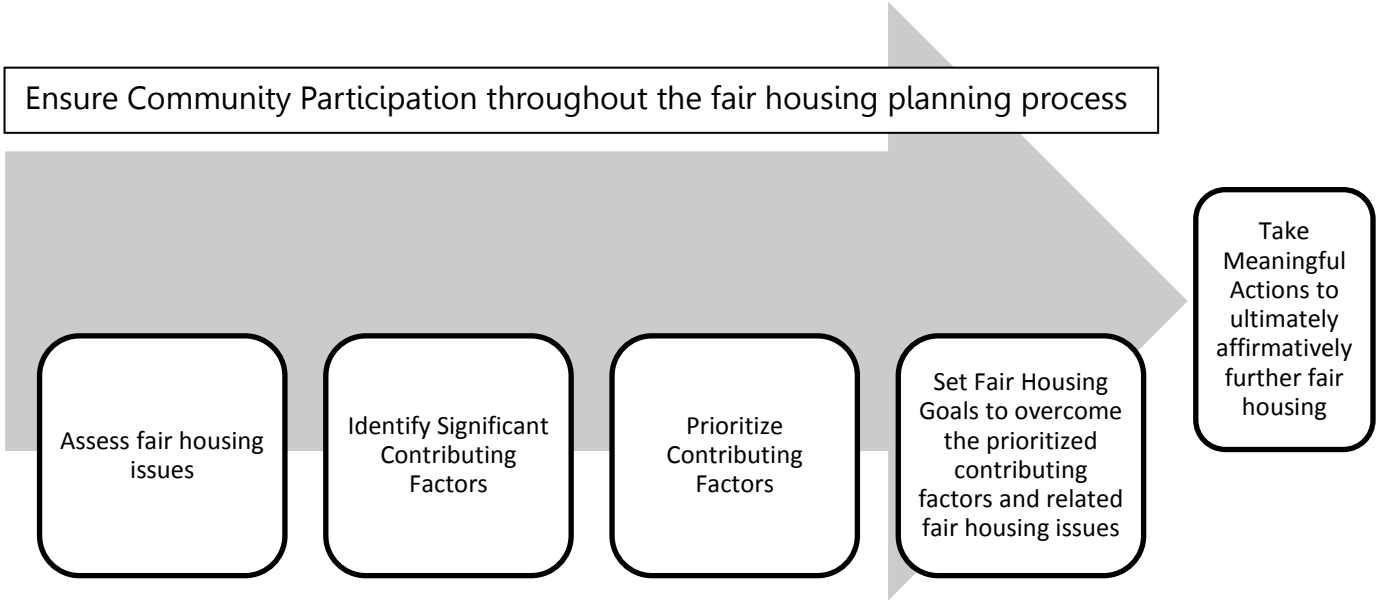
1. **Ensure Community Participation**. To ensure the AFH is informed by meaningful community participation, program participants must give the public reasonable opportunities for involvement throughout the AFH planning process, including in the development of the AFH and in the incorporation of the AFH into subsequent planning documents. See 24 C.F.R. § 5.158 and the Community Participation Fact Sheets.

2. **Assess Fair Housing Issues**. Identify and discuss the fair housing issues affecting those protected under the Fair Housing Act, based on an assessment of HUD-provided data, local data, and local knowledge. See 24 C.F.R. § 5.154. These fair housing issues include, among others:
   - Ongoing local or regional segregation or lack of integration based on race, color, religion, sex, familial status, national origin, and disability within the jurisdiction and region;
   - Racially or ethnically concentrated areas of poverty (R/ECAPs) within the jurisdiction and region;
   - Significant disparities in access to opportunity for any protected class within the jurisdiction and region; and
   - Disproportionate housing needs for any protected class within the jurisdiction and region.

3. **Identify Contributing Factors**. Identify significant contributing factors for the fair housing issues of segregation, racially or ethnically concentrated areas of poverty, disparities in access to opportunity, disproportionate housing needs, and fair housing issues related to publicly supported housing, disability and access, and fair housing enforcement, outreach capacity, and resources. See 24 C.F.R. § 5.154(d)(3).

4. **Prioritize Contributing Factors**. Prioritize such factors and justify the prioritization. In prioritizing such factors, program participants shall give highest priority to those factors that limit or deny fair housing choice or access to opportunity, or negatively impact fair housing or civil rights compliance. See 24 C.F.R. § 5.154(d)(4).

5. **Set Fair Housing Goals**. Set goals for overcoming the effects of contributing factors. For each goal, a program participant must identify one or more contributing factors that the goal is designed to address, describe how the overall goal relates to overcoming the identified contributing factor(s) and related fair housing issue(s), and identify the metrics and milestones for determining what fair housing results will be achieved. See 24 C.F.R. § 5.154(d)(4). To implement goals and priorities set in an AFH, strategies and action shall be included in program participants Consolidated Plans, Annual Action Plans, and PHA Plans (as applicable). See 24 C.F.R. §§ 5.152 and 5.154.



FAIR HOUSING GOALS LEAD TO STRATEGIES, ACTIONS, AND FAIR HOUSING OUTCOMES

The AFFH rule affords program participants considerable choice and flexibility in formulating goals and priorities to achieve fair housing outcomes. While the fair housing outcomes will vary based on local context and decision making, the fair housing planning process outlined above, in the AFFH rule, and within the AFH must be followed. Fair housing goals must be contained in the AFH; must include metrics, milestones, and timeframe for achievement; and must be explicitly incorporated into subsequent planning documents. Strategies and actions to implement the goals shall be included in the program participant's subsequent planning documents. This means that strategies and actions consistent with the goals contained in the AFH must be stated in the Consolidated Plan, PHA plan, and Annual Action Plans. Incorporating fair housing goals into these existing planning processes, which, in turn, incorporate fair housing strategies, actions, and priorities into housing and community development decision making promotes achieving fair housing outcomes. See 80 Fed. Reg. 42273 (July 16, 2015).

Take Meaningful Action. Using the goals set in the AFH, the program participant must take meaningful actions to affirmatively further fair housing. Taking meaningful actions means taking significant actions that are designed and can reasonably be 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. See 24 C.F.R. § 5.152. Ultimately, program participants must take meaningful actions to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities that are free from discrimination.

The outcomes that HUD seeks from this rule are those intended by the Fair Housing Act—overcoming historic patterns of segregation, promoting fair housing choice, and fostering inclusive communities that are free from discrimination. See 80 Fed. Reg. 42348 (July 16, 2015). HUD is not mandating specific outcomes for the planning process. See 80 Fed. Reg. 42288 (July 16, 2015). Instead, recognizing the importance of local decision making, the new AFH process establishes basic parameters and helps guide public sector housing and community development planning and investment decisions to fulfill the obligation to affirmatively further fair housing. See 80 Fed. Reg. 42288 (July 16, 2015).

Title 24: Housing and Urban Development

PART 1—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Contents

AUTHORITY: 42 U.S.C. 2000d-1 and 3535(d).

SOURCE: 38 FR 17949, July 5, 1973, unless otherwise noted.

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§1.1 Purpose.

The purpose of this part 1 is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereafter referred to as the *Act*) to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Housing and Urban Development.

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§1.2 Definitions.

As used in this part 1—

(a) The term *Department* means the Department of Housing and Urban Development.

(b) The term *Secretary* means the Secretary of Housing and Urban Development.

(c) The term *responsible Department official* means the Secretary or, to the extent of any delegation of authority by the Secretary to act under this part 1, any other Department official to whom the Secretary may hereafter delegate such authority.

(d) The term *United States* means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United States, and the term *State* means any one of the foregoing.

(e) The term *Federal financial assistance* includes: (1) Grants, loans, and advances of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance. The term *Federal financial assistance* does not include a contract of insurance or guaranty.

(f) The term *recipient* means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program or activity, or who otherwise participates in carrying out such program or activity (such as a redeveloper in the Urban Renewal Program), including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program or activity.

(g) The term *applicant* means one who submits an application, contract, request, or plan requiring Department approval as a condition to eligibility for Federal financial assistance, and the term *application* means such an application, contract, request, or plan.

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§1.3 Application of part 1.

This part 1 applies to any program or activity for which Federal financial assistance is authorized under a law administered by the Department. It applies to money paid, property transferred, or other Federal financial assistance extended to any such program or activity on or after January 3, 1965. This part 1 does not apply to: (a) Any Federal financial assistance by way of insurance or guaranty contracts, (b) money paid, property transferred, or other assistance extended to any such program or activity before January 3, 1965, (c) any assistance to any person who is the ultimate beneficiary under any such program or activity, or (d) any employment practice, under any such program or activity, of any employer, employment agency, or labor organization, except to the extent described in §1.4(c).

[38 FR 17949, July 5, 1973, as amended at 83 FR 26360, June 7, 2018]

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§1.4 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity to which this part 1 applies.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program or activity to which this part 1 applies may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin:

(i) Deny a person any housing, accommodations, facilities, services, financial aid, or other benefits provided under the program or activity;

(ii) Provide any housing, accommodations, facilities, services, financial aid, or other benefits to a person which are different, or are provided in a different manner, from those provided to others under the program or activity;

(iii) Subject a person to segregation or separate treatment in any matter related to his receipt of housing, accommodations, facilities, services, financial aid, or other benefits under the program or activity;

(iv) Restrict a person in any way in access to such housing, accommodations, facilities, services, financial aid, or other benefits, or in the enjoyment of any advantage or privilege enjoyed by others in connection with such housing, accommodations, facilities, services, financial aid, or other benefits under the program or activity;

(v) Treat a person differently from others in determining whether he satisfies any occupancy, admission, enrollment, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any housing, accommodations, facilities, services, financial aid, or other benefits provided under the program or activity;

(vi) Deny a person opportunity to participate in the program or activity through the provision of services or otherwise, or afford him an opportunity to do so which is different from that afforded others under the program or activity (including the opportunity to participate in the program or activity as an employee but only to the extent set forth in paragraph (c) of this section).

(vii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(2)(i) A recipient, in determining the types of housing, accommodations, facilities, services, financial aid, or other benefits which will be provided under any such program or activity, or the class of persons to whom, or the situations in which, such housing, accommodations, facilities, services, financial aid, or other benefits will be provided under any such program or activity, or the class of persons to be afforded an opportunity to participate in any such program or activity, may not, directly or

through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity as respect to persons of a particular race, color, or national origin.

(ii) A recipient, in operating low-rent housing with Federal financial assistance under the United States Housing Act of 1937, as amended (42 U.S.C. 1401 *et seq.*), shall assign eligible applicants to dwelling units in accordance with a plan, duly adopted by the recipient and approved by the responsible Department official, providing for assignment on a community-wide basis in sequence based upon the date and time the application is received, the size or type of unit suitable, and factors affecting preference or priority established by the recipient's regulations, which are not inconsistent with the objectives of title VI of the Civil Rights Act of 1964 and this part 1. The plan may allow an applicant to refuse a tendered vacancy for good cause without losing his standing on the list but shall limit the number of refusals without cause as prescribed by the responsible Department official.

(iii) The responsible Department official is authorized to prescribe and promulgate plans, exceptions, procedures, and requirements for the assignment and reassignment of eligible applicants and tenants consistent with the purpose of paragraph (b)(2)(ii) of this section, this part 1, and title VI of the Civil Rights Act of 1964, in order to effectuate and insure compliance with the requirements imposed thereunder.

(3) In determining the site or location of housing, accommodations, or facilities, an applicant or recipient may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this part 1 applies, on the ground of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part 1.

(4) As used in this part 1 the housing, accommodations, facilities, services, financial aid, or other benefits provided under a program or activity receiving Federal financial assistance shall be deemed to include any housing, accommodations, facilities, services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in paragraphs (b) and (c) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(6)(i) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program should take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, or national origin.

Where previous discriminatory practice or usage tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this part 1 applies, the applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage, and to accomplish the purpose of the Act.

(c) *Employment practices.* (1) Where a primary objective of the Federal financial assistance to a program or activity to which this part 1 applies is to provide employment, a recipient may not, directly or through contractual or other arrangements, subject a person to discrimination on the ground of race, color, or national origin in its employment practices under such program or activity (including recruitment or recruitment advertising, employment, layoff, termination, upgrading, demotion, transfer, rates of pay or other forms of compensation and use of facilities). The requirements applicable to construction employment under such program or activity shall be those specified in or pursuant to part III of Executive Order 11246 or any executive order which supersedes or amends it.

(2) Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the ground of race, color, or national origin in the employment practices of the recipient or other persons subject to this part 1 tends, on the ground of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program to which this part 1 applies, the provisions of this paragraph (c) shall apply to the employment practices of the recipient or other persons subject to this part 1 to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries.

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§1.5 Assurances required.

(a) *General.* (1) Every contract for Federal financial assistance to carry out a program or activity to which this part 1 applies, executed on or after January 3, 1965, and every application for such Federal financial assistance submitted on or after January 3, 1965, shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to

contract or application, contain or be accompanied by an assurance that the program or activity will be conducted and the housing, accommodations, facilities, services, financial aid, or other benefits to be provided will be operated and administered in compliance with all requirements imposed by or pursuant to this part 1. In the case of a contract or application where the Federal financial assistance is to provide or is in the form of personal property or real property or interest therein or structures thereon, the assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the contract or application. The responsible Department official shall specify the form of the foregoing assurance for such program or activity, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program or activity. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) In the case of real property, structures or improvements thereon, or interests therein, acquired through a program of Federal financial assistance the instrument effecting any disposition by the recipient of such real property, structures or improvements thereon, or interests therein, shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. In the case where Federal financial assistance is provided in the form of a transfer of real property or interests therein from the Federal Government, the instrument effecting or recording the transfer shall contain such a covenant.

(3) In program receiving Federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, to the extent that rights to space on, over, or under any such property are included as part of the program receiving such assistance, the nondiscrimination requirements of this part 1 shall extend to any facility located wholly or in part in such space.

(b) *Preexisting contracts—funds not disbursed.* In any case where a contract for Federal financial assistance, to carry out a program or activity to which this part 1 applies, has been executed prior to January 3, 1965, and the funds have not been fully disbursed by the Department, the responsible Department official shall, where necessary to effectuate the purposes of this part 1, require an assurance similar to that provided in paragraph (a) of this section as a condition to the disbursement of further funds.

(c) *Preexisting contracts—periodic payments.* In any case where a contract for Federal financial assistance, to carry out a program or activity to which this part 1 applies, has been executed prior to January 3, 1965, and provides for periodic payments for the continuation of the program or activity, the recipient shall, in connection with the first application for such periodic payments on or after January 3, 1965: (1) Submit a statement that the program or activity is being conducted in compliance with all requirements imposed by or pursuant to this part 1 and (2) provide such methods of administration for the program or activity as are found by the responsible Department official to give reasonable assurance that the recipient will comply with all requirements imposed by or pursuant to this part 1.

(d) *Assurances from institutions.* (1) In the case of any application for Federal financial assistance to an institution of higher education, the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of persons as students, patients, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such persons, shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the responsible Department official, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such program. If in any such case the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

(e) *Elementary and secondary schools.* The requirements of this section with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system (1) is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order, or (2) submits a plan for the desegregation of such school or school system which the responsible official of the Department of Health and Human Services determines is adequate to accomplish the purposes of the Act and this part 1 within the earliest practicable time, and provides reasonable assurance that it will carry out such plan.

[38 FR 17949, July 5, 1973, as amended at 50 FR 9269, Mar. 7, 1985]

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§1.6 Compliance information.

(a) *Cooperation and assistance.* The responsible Department official and each Department official who by law or delegation has the principal responsibility within the Department for the administration of any law extending financial assistance subject to this part 1 shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with this part 1 and shall provide assistance and guidance to recipients to help them comply voluntarily with this part 1.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible Department official or his designee timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official or his designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part 1. In general, recipients should have available for the department racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally assisted programs.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible Department official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part 1. Where any information required of a recipient is in the exclusive possession of any other agency, institution, or person and this agency, institution, or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part 1 and its applicability to the program or activity under which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the responsible Department official finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this part 1.

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§1.7 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible Department official or his designee shall from time to time review the practices of recipients to determine whether they are complying with this part 1.

(b) *Complaints.* Any person who believes himself or any specific class of persons to be subjected to discrimination prohibited by this part 1 may by himself or by a representative file with the responsible Department official or his designee a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the responsible Department official or his designee.

(c) *Investigations.* The responsible Department official or his designee shall make a prompt investigation whenever a compliance review, report, complaint, or any other information indicates a possible failure to comply with this part 1. The investigation should include, where appropriate, a review of the pertinent practices and policies of the recipient, the circumstances under which the possible noncompliance with this part 1 occurred, and other factors relevant to a determination as to whether the recipient has failed to comply with this part .

(d) *Resolution of matters.* (1) If an investigation pursuant to paragraph (c) of this section indicates a failure to comply with this part 1, the responsible Department official or his designee will so inform the recipient and the matter will be resolved by informal means whenever possible. If it has been determined that the matter cannot be resolved by informal means, action will be taken as provided for in §1.8.

(2) If an investigation does not warrant action pursuant to paragraph (d)(1) of this section the responsible Department official or his designee will so inform the recipient and the complainant, if any, in writing.

(e) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any person for the purpose of interfering with any right or privilege secured by title VI of the Act or this part 1, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of 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.

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§1.8 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part 1, and if the noncompliance threatened noncompliance cannot be corrected by informal means, compliance with this part 1 may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance, or by any other means authorized by

law. Such other means may include, but are not limited to: (1) A reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with §1.5.* If an applicant fails or refuses to furnish an assurance required under §1.5 or otherwise fails or refuses to comply with the requirement imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph, except that the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to a contract therefor approved prior to January 3, 1965.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until (1) the responsible Department official has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed by or pursuant to this part 1, (3) the action has been approved by the Secretary, and (4) the expiration of 30 days after the Secretary has filed with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the responsible Department official has determined that compliance cannot be secured by voluntary means, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least 10 days from the mailing of such notice to the applicant or recipient. During this period of at least 10 days additional efforts shall be made to persuade the applicant or recipient to comply with this part 1 and to take such corrective action as may be appropriate.

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§1.9 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by §1.8(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either:

(1) Fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the responsible Department official that the matter be scheduled for hearing, or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated time and place. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph (a) or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and §1.8(c) and consent to the making of a decision on the basis of such information as is available.

(b) *Hearing procedures.* Hearings shall be conducted in accordance with 24 CFR part 180.

[38 FR 17949, July 5, 1973, as amended at 61 FR 52217, Oct. 4, 1996]

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§1.10 Effect on other regulations; forms and instructions.

(a) *Effect on other regulations.* All regulations, orders, or like directions heretofore issued by any officer of the Department which impose requirements designed to prohibit any discrimination against persons on the ground of race, color, or national origin under any program or activity to which this part applies, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant or recipient for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by this part, except that nothing in this part shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to January 3, 1965. Nothing in this part, however, shall be deemed to supersede any of the followi (including future amendments thereof):

(1) Executive Orders 11246 and 11375 and regulations issued thereunder, or

(2) Executive Order 11063 and regulations issued thereunder, or any other order, regulations or instructions, insofar as such order, regulations, or instructions, prohibit discrimination on the ground of race, color, or national origin in any program or activity or situation to which this part is inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* The responsible Department official shall assure that forms and detailed instructions and procedures for effectuating this part are issued and promptly made available to interested persons.

(c) *Supervision and coordination.* The Secretary may from time to time assign to officials of the Department, or to officials of other departments or agencies of the Government with the consent of such department or agency, responsibilities in connection with the effectuation of the purposes of title VI of the Act and this part (other than responsibility for final decision as provided in §1.10), including the achievement of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of title VI and this part to similar programs or activities and in similar situations. Any action taken, determination made, or requirement imposed by an official of another department or agency acting pursuant to an assignment of responsibility under this paragraph shall have the same effect as though such action had been taken by the responsible official of this Department.

[38 FR 17949, July 5, 1973. Redesignated at 61 FR 52217, Oct. 4, 1996]

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Title 24: Housing and Urban Development

PART 6—NONDISCRIMINATION IN PROGRAMS AND ACTIVITIES RECEIVING ASSISTANCE UNDER TITLE I OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

Contents

AUTHORITY: 42 U.S.C. 3535(d) 42 U.S.C. 5309.

SOURCE: 64 FR 3797, Jan. 25, 1999, unless otherwise noted.

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Subpart A—General Provisions

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§6.1 Purpose.

The purpose of this part is to implement the provisions of section 109 of title I of the Housing and Community Development Act of 1974 (Title I) (42 U.S.C. 5309). Section 109 provides that no person in the United States shall, on the ground of race, color, national origin, religion, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with Federal financial assistance. Section 109 does not directly prohibit discrimination on the bases of age or disability, and the regulations in this part 6 do not apply to age or disability discrimination in Title I programs. Instead, section 109 directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) (Age Discrimination Act) and the prohibitions against discrimination on the basis of disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (Section 504) apply to programs or activities funded in whole or in part with Federal financial assistance. Thus, the regulations of 24 CFR part 8, which implement Section 504 for HUD programs, and the regulations of 24 CFR part 146, which implement the Age Discrimination Act for HUD programs, apply to disability and age discrimination in Title I programs.

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§6.2 Applicability.

(a) This part applies to any program or activity funded in whole or in part with funds under title I of the Housing and Community Development Act of 1974, including Community Development Block Grants—Entitlement, State and HUD-Administered Small Cities, and Section 108 Loan Guarantees; Urban Development Action Grants; Economic Development Initiative Grants; and Special Purpose Grants.

(b) The provisions of this part and sections 104(b)(2) and 109 of Title I that relate to discrimination on the basis of race shall not apply to the provision of Federal financial assistance by grantees under this title to the Hawaiian Homelands (42 U.S.C. 5309).

(c) The provisions of this part and sections 104(b)(2) and 109 of Title I that relate to discrimination on the basis of race and national origin shall not apply to the provision of Federal financial assistance to grant recipients under the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4101). See also, 24 CFR 1003.601(a).

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§6.3 Definitions.

The terms *Department, HUD,* and *Secretary* are defined in 24 CFR part 5. Other terms used in this part 6 are defined as follows:

Act means the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301-5320).

Assistant Secretary means the Assistant Secretary for Fair Housing and Equal Opportunity.

Award Official means the HUD official who has been delegated the Secretary's authority to implement a Title I funded program and to make grants under that program.

Complete complaint means a written statement that contains the complainant's name and address, identifies the Recipient against which the complaint is made, and describes the Recipient's alleged discriminatory action in sufficient detail to inform HUD of the nature and date of the alleged violation of section 109. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Federal financial assistance means: (1) Any assistance made available under title I of the Housing and Community Development Act of 1974, as amended, and includes income generated from such assistance, and any grant, loan, contract, or any other arrangement, in the form of:

(i) Funds;

(ii) Services of Federal personnel; or

(iii) Real or personal property or any interest in or use of such property, including:

(A) Transfers or leases of the property for less than fair market value or for reduced consideration; and

(B) Proceeds from a subsequent transfer or lease of the property if the Federal share of its fair market value is not returned to the Federal Government.

(2) Any assistance in the form of proceeds from loans guaranteed under section 108 of the Act, but does not include assistance made available through direct Federal procurement contracts or any other contract of insurance or guaranty.

Program or activity (funded in whole or in part) means all of the operations of—

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or local government; or

(ii) The entity of a State or local government that distributes Federal financial assistance, and each department or agency (and each State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other post-secondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965), system of vocational education or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to the corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity that is described in paragraphs (1), (2), or (3) of this definition, any part of which is extended Federal financial assistance.

Recipient means any State, political subdivision of any State, or instrumentality of any State or political subdivision; any public or private agency, institution, organization, or other entity; or any individual, in any State, to whom Federal financial assistance is extended, directly or through another Recipient, for any program or activity, or who otherwise participates in carrying out such program or activity, including any successor, assign, or transferee thereof. Recipient does not include any ultimate beneficiary under any program or activity.

Responsible Official means the Assistant Secretary for Fair Housing and Equal Opportunity or his or her designee.

Section 109 means section 109 of the Housing and Community Development Act of 1974, as amended.

Title I means title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301-5321).

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§6.4 Discrimination prohibited.

(a) Section 109 requires that no person in the United States shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with Federal financial assistance, on the grounds of race, color, national origin, religion, or sex.

(1) A Recipient under any program or activity to which this part applies may not, directly or through contractual, licensing, or other arrangements, take any of the following actions on the grounds of race, color, national origin, religion, or sex:

(i) Deny any individual any facilities, services, financial aid, or other benefits provided under the program or activity;

(ii) Provide any facilities, services, financial aid, or other benefits that are different, or are provided in a different form, from that provided to others under the program or activity;

(iii) Subject an individual to segregated or separate treatment in any facility, or in any matter of process related to the receipt of any service or benefit under the program or activity;

(iv) Restrict an individual's access to, or enjoyment of, any advantage or privilege enjoyed by others in connection with facilities, services, financial aid or other benefits under the program or activity;

(v) Treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, eligibility, membership, or other requirements or conditions that the individual must meet in order to be provided any facilities, services, or other benefit provided under the program or activity;

(vi) Deny an individual an opportunity to participate in a program or activity as an employee;

(vii) Aid or otherwise perpetuate discrimination against an individual by providing Federal financial assistance to an agency, organization, or person that discriminates in providing any housing, aid, benefit, or service;

(viii) Otherwise limit an individual in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by other individuals receiving the housing, aid, benefit, or service;

(ix) Use criteria or methods of administration that have the effect of subjecting persons to discrimination or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to persons of a particular race, color, national origin, religion, or sex; or

(x) Deny a person the opportunity to participate as a member of planning or advisory boards.

(2) In determining the site or location of housing, accommodations, or facilities, a Recipient may not make selections that have the effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination on the ground of race, color, national origin, religion, or sex. The Recipient may not make selections that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of section 109 and of this part 6.

(3)(i) In administering a program or activity in which the Recipient has discriminated on the grounds of race, color, national origin, religion or sex, the Recipient must take any necessary steps to overcome the effects of prior discrimination.

(ii) In the absence of discrimination, a Recipient, in administering a program or activity, may take any steps necessary to overcome the effects of conditions that resulted in limiting participation by persons of a particular race, color, national origin, religion, or sex.

(iii) After a finding of noncompliance, or after a Recipient has reasonable cause to believe that discrimination has occurred, a Recipient shall not be prohibited by this section from taking any action eligible under subpart C of 24 CFR part 570 to ameliorate an imbalance in benefits, services or facilities provided to any geographic area or specific group of persons within its jurisdiction, where the purpose of such action is to remedy discriminatory practices or usage.

(iv)(A) Notwithstanding anything to the contrary in this part, nothing contained in this section shall be construed to prohibit any Recipient from maintaining or constructing separate living facilities or restroom facilities for the different sexes in order to protect personal privacy or modesty concerns. Furthermore, selectivity on the basis of sex is not prohibited when institutional or custodial services can, in the interest of personal privacy or modesty, only be performed by a member of the same sex as those receiving the services.

(B) Section 109 of the Act does not directly prohibit discrimination on the basis of age or disability, but directs that the prohibitions against discrimination on the basis of age under the Age Discrimination Act and the prohibitions against discrimination on the basis of disability under Section 504 apply to Title I programs and activities. Accordingly, for programs or activities receiving Federal financial assistance, the regulations in this part 6 apply to discrimination on the bases of race, color, national origin, religion, or sex; the regulations at 24 CFR part 8 apply to discrimination on the basis of disability; and the regulations at 24 CFR part 146 apply to discrimination on the basis of age.

(b) [Reserved]

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§6.5 Discrimination prohibited—employment.

(a) *General.* A Recipient may not, under any program or activity funded in whole or in part with Federal financial assistance, directly or through contractual agents or other arrangements including contracts and consultants, subject a person to discrimination in the terms and conditions of employment. Terms and conditions of employment include advertising, interviewing, selection, promotion, demotion, transfer, recruitment and advertising, layoff or termination, pay or other compensation, including benefits, and selection for training.

(b) *Determination of compliance status.* The Assistant Secretary will follow the procedures set forth in this part and 29 CFR part 1691 and look to the substantive guidelines and policy of the Equal Employment Opportunity Commission when reviewing employment practices under Section 109.

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§6.6 Records to be maintained.

(a) *General.* Recipients shall maintain records and data as required by 24 CFR 91.105, 91.115, 570.490, and 570.506.

(b) *Employment.* Recipients shall maintain records and data as required by the Equal Employment Opportunity Commission at 29 CFR part 1600.

(c) Recipients shall make available such records and any supporting documentation upon request of the Responsible Official.

(Approved by the Office of Management and Budget under control numbers 2506-0117 and 2506-0077)

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Subpart B—Enforcement

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§6.10 Compliance information.

(a) *Cooperation and assistance.* The Responsible Official and the Award Official will provide assistance and guidance to Recipients to help them comply voluntarily with this part.

(b) *Access to data and other sources of information.* Each Recipient shall permit access by authorized representatives of HUD to its facilities, books, records, accounts, minutes and audio tapes of meetings, personnel, computer disks and tapes, and other sources of information as may be pertinent to a determination of whether the Recipient is complying with this part. Where

information required of a Recipient is in the exclusive possession of any other agency, institution, or person, and that agency, institution, or person fails or refuses to furnish this information, the Recipient shall so certify in any requested report and shall set forth what efforts it has made to obtain the information. Failure or refusal to furnish pertinent information (whether maintained by the Recipient or some other agency, institution, or person) without a credible reason for the failure or refusal will be considered to be noncompliance under this part.

(c) *Compliance data.* Each Recipient shall keep records and submit to the Responsible Official, timely, complete, and accurate data at such times and in such form as the Responsible Official may determine to be necessary to ascertain whether the Recipient has complied or is complying with this part.

(d) *Notification to employees, beneficiaries, and participants.* Each Recipient shall make available to employees, participants, beneficiaries, and other interested persons information regarding the provisions of this part and its applicability to the program or activity under which the Recipient receives Federal financial assistance and make such information available to them in such manner as the Responsible Official finds necessary to apprise such persons of the protections against discrimination assured them by Section 109 and this part.

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§6.11 Conduct of investigations.

(a) *Filing a complaint*—(1) *Who may file.* Any person who believes that he or she has been subjected to discrimination prohibited by this part may file, or may have an authorized representative file on his or her behalf, a complaint with the Responsible Official. Any person who believes that any specific class of persons has been subjected to discrimination prohibited by this part and who is a member of that class or who is the authorized representative of a member of that class may file a complaint with the Responsible Official.

(2) *Confidentiality.* Generally, the Responsible Official shall hold in confidence the identity of any person submitting a complaint, unless the person submits written authorization otherwise. However, an exception to maintaining confidentiality of the identity of the person may be required to carry out the purposes of this part, including the conduct of any investigation, hearing, or proceeding under this part.

(3) *When to file.* Complaints shall be filed within 180 days of the alleged act of discrimination, unless the Responsible Official waives this time limit for good cause. For purposes of determining when a complaint is filed under this part, a complaint mailed to the Responsible Official via the U.S. Postal Service will be deemed filed on the date it is postmarked. A complaint delivered to the Responsible Official in any other manner will be deemed filed on the date it is received by the Responsible Official.

(4) *Where to file complaints.* Complaints must be in writing, signed, addressed to the Responsible Official, and filed with (mailed to or otherwise delivered to) the Office of Fair Housing and Equal Opportunity at any HUD Office.

(5) *Content of complaints.* Each complaint should contain the complainant's name, address, and phone number; a description or name, if available, of the Recipient alleged to have violated this part; an address where the violation occurred; and a description of the Recipient's alleged discriminatory action in sufficient detail to inform the Responsible Official of the nature and date of the alleged violation of this part.

(6) *Amendments to complaints.* Amendments to complaints, such as clarification and amplification of allegations in a complaint or the addition of other Recipients, may be made by the complainant or the complainant's authorized representative at any time while the complaint is being considered, and any amendment shall be deemed to be made as of the original filing date.

(7) *Notification.* To the extent practicable, the Responsible Official will notify the complainant and the Recipient of the Responsible Official's receipt of a complaint within 10 calendar days of receipt of a complete complaint. If the Responsible Official receives a complaint that is not complete, the Responsible Official will notify the complainant and specify the additional information that is needed to make the complaint complete. If the complainant fails to complete the complaint, the Responsible Official will close the complaint without prejudice and notify the complainant. When a complete complaint has been received, the Responsible Official, or his or her designee, will assess the complaint for acceptance, rejection, or referral to an appropriate Federal agency within 20 calendar days.

(8) *Resolution of complaints.* After the acceptance of a complete complaint, the Responsible Official will investigate the complaint, attempt informal resolution, and, if resolution is not achieved, the Responsible Official will notify the Recipient and complainant, to the extent practicable within 180 days of the receipt of the complete complaint, of the results of the investigation in a letter of findings sent by certified mail, return receipt requested, containing the following:

(i) Findings of fact and a finding of compliance or noncompliance;

(ii) A description of an appropriate remedy for each violation believed to exist; and

(iii) A notice of the right of the Recipient and the complainant to request a review of the letter of findings by the Responsible Official. A copy of the final investigative report will be made available upon request.

(b) *Compliance reviews*—(1) *Periodic compliance reviews.* The Responsible Official may periodically review the practices of Recipients to determine whether they are complying with this part and may conduct on-site reviews. The Responsible Official will initiate an on-site review by sending to the Recipient a letter advising the Recipient of the practices to be reviewed; the programs affected by the review; and the opportunity, at any time before a final determination, to submit information that explains, validates, or otherwise addresses the practices under review. In addition, the Award Official will include, in normal program compliance reviews and monitoring procedures, appropriate actions to review and monitor compliance with general or specific program requirements designed to implement the requirements of this part.

(2) *Time period of the review.* (i) For the Entitlement program, compliance reviews will cover the three years before the date of the review.

(ii) For the Urban Development Action Grant (UDAG) program, the compliance review is applicable only to UDAG loan repayments or other payments or revenues classified as program income. UDAG repayments or other payments or revenues classified as miscellaneous revenue are not subject to compliance review under this part. (*See* 24 CFR 570.500(a).) The compliance review will cover the time period that program income is being repaid.

(iii) For the State and HUD-Administered Small Cities programs, the compliance review will cover the four years before the date of the review.

(iv) For all other programs, the time period covered by the review will be four years before the date of the review.

(v) On a case-by-case basis, at the discretion of the Responsible Official, the above time frames for review can be expanded where facts or allegations warrant further investigation.

(3) *Early compliance resolution.* On the last day of the on-site visit, after the compliance review, the Recipient will be given an opportunity to supplement the record. Additionally, a prefinding conference may be held and a summary of the proposed findings may be presented to the Recipient. In those instances where the issue(s) cannot be resolved at a prefinding conference or with the supplemental information, a meeting will be scheduled to attempt a voluntary settlement.

(4) *Notification of findings.* (i) The Assistant Secretary will notify the Recipient of Federal financial assistance of the results of the compliance review in a letter of findings sent by certified mail, return receipt requested.

(ii) *Letter of findings.* The letter of findings will include the findings of fact and the conclusions of law; a description of a remedy for each violation found; and a notice that a copy of HUD's final report concerning its compliance review will be made available, upon request, to the Recipient.

(c) *Right to a review of the letter of findings.* (1) Within 30 days of receipt of the letter of findings, any party may request that a review be made of the letter of findings, by mailing or delivering to the Responsible Official, Room 5100, Office of Fair Housing and Equal Opportunity, HUD, Washington, DC 20410, a written statement of the reasons why the letter of findings should be modified.

(2) The Responsible Official will send by certified mail, return receipt requested, a copy of the request for review to all parties. Parties other than the party requesting review and HUD shall have 20 days from receipt to respond to the request for review.

(3) The Responsible Official will either sustain or modify the letter of findings or require that further investigation be conducted, within 60 days of the request for review. The Responsible Official's decision shall constitute the formal determination of compliance or noncompliance.

(4) If no party requests that the letter of findings be reviewed, the Responsible Official, within 14 calendar days of the expiration of the time period in paragraph (a)(9)(i) of this section, will send a formal written determination of compliance or noncompliance to all parties.

(d) *Voluntary compliance time limits.* The Recipient will have 10 calendar days from receipt of the letter of findings of noncompliance, or such other reasonable time as specified in the letter, within which to agree, in writing, to come into voluntary compliance or to contact the Responsible Official for settlement discussions. If the Recipient fails to meet this deadline, HUD will proceed in accordance with §§6.12 and 6.13.

(e) *Informal resolution/voluntary compliance*—(1) *General.* It is the policy of HUD to encourage the informal resolution of matters. A complaint or a compliance review may be resolved by informal means at any time. If a letter of findings is issued,

and the letter makes a finding of noncompliance, the Responsible Official will attempt to resolve the matter through a voluntary compliance agreement.

(2) *Objectives of informal resolution/voluntary compliance.* In attempting informal resolution, the Responsible Official will attempt to achieve a just resolution of the matter and to obtain assurances, where appropriate, that the Recipient will satisfactorily remedy any violations of the rights of any complainant, and will take such action as will assure the elimination of any violation of this part or the prevention of the occurrence of such violation in the future. If a finding of noncompliance has been made, the terms of such an informal resolution shall be reduced to a written voluntary compliance agreement, signed by the Recipient and the Responsible Official, and be made part of the file. Such voluntary compliance agreements shall seek to protect the interests of the complainant (if any), other persons similarly situated, and the public.

(3) *Right to file a private civil action.* At any time in the process, the complainant has the right to file a private civil action. If the complainant does so, the Responsible Official has the discretion to administratively close the investigation or continue the investigation, if he or she decides that it is in the best interests of the Department to do so. If the Responsible Official makes a finding of noncompliance and an agreement to voluntarily comply is not obtained from the Recipient, the procedures at §§6.12 and 6.13 for effecting compliance shall be followed.

(f) *Intimidatory or retaliatory acts prohibited.* No Recipient or other person shall intimidate, threaten, coerce, or discriminate against any person for the purpose of interfering with any right or privilege secured by this part, or because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, compliance review, proceeding, or hearing under this part.

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§6.12 Procedure for effecting compliance.

(a) Whenever the Assistant Secretary determines that a Recipient of Federal financial assistance has failed to comply with Section 109(a) or this part and voluntary compliance efforts have failed, the Secretary will notify the Governor of the State or the Chief Executive Officer of the unit of general local government of the findings of noncompliance and will request that the Governor or the Chief Executive Officer secure compliance. If within a reasonable period of time, not to exceed 60 days, the Governor or the Chief Executive Officer fails or refuses to secure compliance, the Secretary will:

(1) Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(2) Exercise the powers and functions provided by Title VI;

(3) Terminate or reduce payments under Title I, or limit the availability of payments under Title I to programs or activities not affected by the failure to comply; or

(4) Take such other actions as may be provided by law, including, but not limited to, the initiation of proceedings under 2 CFR part 2424 or any applicable proceeding under State or local law.

(b) *Termination, reduction, or limitation of the availability of Title I payments.* No order terminating, reducing, or limiting the availability of Title I payments under this part shall become effective until:

(1) The Secretary has notified the Governor of the State or the Chief Executive Officer of the unit of general local government of the Recipient's failure to comply in accordance with paragraph (a) of this section and of the termination, reduction or limitation of the availability of Title I payments to be taken;

(2) The Secretary has determined that compliance cannot be secured by voluntary means;

(3) The Recipient has been extended an opportunity for a hearing in accordance with §6.13(a); and

(4) A final agency notice or decision has been rendered in accordance with paragraph (c) of this section or 24 CFR part 180.

(c) If a Recipient does not respond to the notice of opportunity for a hearing or does not elect to proceed with a hearing within 20 days of the issuance of the Secretary's actions listed in paragraphs (b)(1), (2) and (3) of this section, then the Secretary's approval of the termination, reduction or limitation of the availability of Title I payments is considered a final agency notice and the Recipient may seek judicial review in accordance with section 111(c) of the Act.

[64 FR 3797, Jan. 25, 1999, as amended at 72 FR 73491, Dec. 27, 2007]

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§6.13 Hearings and appeals.

(a) When a Recipient requests an opportunity for a hearing, in accordance with §6.12(b)(3), the General Counsel will follow the notification procedures set forth in 24 CFR 180.415. The hearing, and any petition for review, will be conducted in accordance with the procedures set forth in 24 CFR part 180.

(b) After a hearing is held and a final agency decision is rendered under 24 CFR part 180, the Recipient may seek judicial review in accordance with section 111(c) of the Act.

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Title 24: Housing and Urban Development

PART 8—NONDISCRIMINATION BASED ON HANDICAP IN FEDERALLY ASSISTED PROGRAMS AND ACTIVITIES OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Contents

AUTHORITY: 29 U.S.C. 794; 42 U.S.C. 3535(d) and 5309.

SOURCE: 53 FR 20233, June 2, 1988, unless otherwise noted.

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Subpart A—General Provisions

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§8.1 Purpose.

(a) The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C 794), to the end that no otherwise qualified individual with handicaps in the United States shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Housing and Urban Development. This part also implements section 109 of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5309). This part does not effectuate section 504 as it applies to any program or activity conducted by the Department. Compliance with this part does not assure compliance with requirements for accessibility by physically-handicapped persons imposed under the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157; 24 CFR part 40).

(b) The policies and standards for compliance established by this part are established in contemplation of, and with a view to enforcement through, the Department's administration of programs or activities receiving Federal financial assistance and the administrative procedures described in subpart D (including, without limitation, judicial enforcement under §8.57(a)).

[53 FR 20233, June 2, 1988, as amended at 83 FR 26361, June 7, 2018]

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§8.2 Applicability.

This part applies to all applicants for, and recipients of, HUD assistance in the operation of programs or activities receiving such assistance.

[53 FR 20233, June 2, 1988, as amended at 83 FR 26361, June 7, 2018]

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§8.3 Definitions.

As used in this part:

Accessible, when used with respect to the design, construction, or alteration of a facility or a portion of a facility other than an individual dwelling unit, means that the facility or portion of the facility when designed, constructed or altered, can be approached, entered, and used by individuals with physical handicaps. The phrase *accessible to and usable by* is synonomous with accessible.

Accessible, when used with respect to the design, construction, or alteration of an individual dwelling unit, means that the unit is located on an accessible route and when designed, constructed, altered or adapted can be approached, entered, and used by individuals with physical handicaps. A unit that is on an accessible route and is adaptable and otherwise in compliance with the standards set forth in §8.32 is *accessible* within the meaning of this paragraph. When a unit in an existing facility which is being made accessible as a result of alterations is intended for use by a specific qualified individual with handicaps (e.g., a current occupant of such unit or of another unit under the control of the same recipient, or an applicant on a waiting list), the unit will be deemed accessible if it meets the requirements of applicable standards that address the particular disability or impairment of such person.

Accessible route means a continuous unobstructed path connecting accessible elements and spaces in a building or facility that complies with the space and reach requirements of applicable standards prescribed by §8.32. An accessible route that serves only accessible units occupied by persons with hearing or vision impairments need not comply with those requirements intended to effect accessibility for persons with mobility impairments.

Adaptability means the ability of certain elements of a dwelling unit, such as kitchen counters, sinks, and grab bars, to be added to, raised, lowered, or otherwise altered, to accommodate the needs of persons with or without handicaps, or to accommodate the needs of persons with different types or degrees of disability. For example, in a unit adaptable for a hearing-impaired person, the wiring for visible emergency alarms may be installed but the alarms need not be installed until such time as the unit is made ready for occupancy by a hearing-impaired person.

Alteration means any change in a facility or its permanent fixtures or equipment. It includes, but is not limited to, remodeling, renovation, rehabilitation, reconstruction, changes or rearrangements in structural parts and extraordinary repairs. It does not include normal maintenance or repairs, reroofing, interior decoration, or changes to mechanical systems.

Applicant for assistance means one who submits an application, request, plan, or statement required to be approved by a Department official or by a primary recipient as a condition of eligibility for Federal financial assistance. An application means such a request, plan or statement.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities receiving Federal financial assistance. For example, auxiliary aids for persons with impaired vision may include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids for persons with impaired hearing may include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Department or *HUD* means the Department of Housing and Urban Development.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other real or personal property or interest in the property.

Federal financial assistance means any assistance provided or otherwise made available by the Department through any grant, loan, contract or any other arrangement, in the form of:

(a) Funds;

(b) Services of Federal personnel; or

(c) Real or personal property or any interest in or use of such property, including:

(1) Transfers or leases of the property for less than fair market value or for reduced consideration; and

(2) Proceeds from a subsequent transfer or lease of the property if the Federal share of its fair market value is not returned to the Federal Government.

Federal financial assistance includes community development funds in the form of proceeds from loans guaranteed under section 108 of the Housing and Community Development Act of 1974, as amended, but does not include assistance made available through direct Federal procurement contracts or payments made under these contracts or any other contract of insurance or guaranty.

Handicap means any condition or characteristic that renders a person an individual with handicaps.

Historic preservation programs or activities means programs or activities receiving Federal financial assistance that have preservation of historic properties as a primary purpose.

Historic properties means those properties that are listed or are eligible for listing in the National Register of Historic Places, or such properties designated as historic under a statute of the appropriate State or local government body.

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment. For purposes of employment, this term does not include: Any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the individual from performing the duties of the job in question, or whose employment, by reason of current alcohol or drug abuse, would constitute a direct threat to property or the safety of others; or any individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job. For purposes of other programs and activities, the term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the individual from participating in the program or activity in question, or whose participation, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others. As used in this definition, the phrase:

(a) *Physical or mental impairment* includes:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

(b) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(c) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(d) *Is regarded as having an impairment* means:

(1) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by a recipient as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or

(3) Has none of the impairments defined in paragraph (a) of this section but is treated by a recipient as having such an impairment.

Multifamily housing project means a project containing five or more dwelling units.

Primary recipient means a person, group, organization, State or local unit of government that is authorized or required to extend Federal financial assistance to another recipient for the purpose of carrying out a program or activity.

Program or activity means all of the operations of:

(a)(1) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(2) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(b)(1) A college, university, or other post-secondary institution, or a public system of higher education; or

(2) A local educational agency (as defined in section 198(a)(10) of the Elementary and Secondary Education Act of 1965), system of vocational education, or other school system;

(c)(1) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(i) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(2) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(d) Any other entity which is established by two or more of the entities described in paragraphs (a), (b), or (c) of this section;

any part of which is extended Federal financial assistance.

Project means the whole of one or more residential structures and appurtenant structures, equipment, roads, walks, and parking lots which are covered by a single contract for Federal financial assistance or application for assistance, or are treated as a whole for processing purposes, whether or not located on a common site.

Qualified individual with handicaps means:

(a) With respect to employment, an individual with handicaps who, with reasonable accommodation, can perform the essential functions of the job in question; and

(b) With respect to any non-employment program or activity which requires a person to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the recipient can demonstrate would result in a fundamental alteration in its nature; or

(c) With respect to any other non-employment program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity. *Essential eligibility requirements*

include stated eligibility requirements such as income as well as other explicit or implicit requirements inherent in the nature of the program or activity, such as requirements that an occupant of multifamily housing be capable of meeting the recipient's selection criteria and be capable of complying with all obligations of occupancy with or without supportive services provided by persons other than the recipient. For example, a chronically mentally ill person whose particular condition poses a significant risk of substantial interference with the safety or enjoyment of others or with his or her own health or safety in the absence of necessary supportive services may be *qualified* for occupancy in a project where such supportive services are provided by the recipient as part of the assisted program. The person may not be *qualified* for a project lacking such services.

Recipient means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended for any program or activity directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance. An entity or person receiving housing assistance payments from a recipient on behalf of eligible families under a housing assistance payments program or a voucher program is not a recipient or subrecipient merely by virtue of receipt of such payments.

Replacement cost of the completed facility means the current cost of construction and equipment for a newly constructed housing facility of the size and type being altered. Construction and equipment costs do not include the cost of land, demolition, site improvements, non-dwelling facilities and administrative costs for project development activities.

Secretary means the Secretary of Housing and Urban Development.

Section 504 means section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, as it applies to programs or activities receiving Federal financial assistance.

Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

[53 FR 20233, June 2, 1988; 54 FR 8188, Feb. 27, 1989]

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§8.4 Discrimination prohibited.

(a) No qualified individual with handicaps shall, solely on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance from the Department.

(b)(1) A recipient, in providing any housing, aid, benefit, or service in a program or activity that receives Federal financial assistance from the Department may not, directly or through contractual, licensing, or other arrangements, solely on the basis of handicap:

(i) Deny a qualified individual with handicaps the opportunity to participate in, or benefit from, the housing, aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in, or benefit from, the housing, aid, benefit, or service that is not equal to that afforded to others;

(iii) Provide a qualified individual with handicaps with any housing, aid, benefit, or service that is not as effective in affording the individual an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate housing, aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps from that provided to others unless such action is necessary to provide qualified individuals with handicaps with housing, aid, benefits, or services that are as effective as those provided to others.

(v) Aid or perpetuate discrimination against a qualified individual with handicaps by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any housing, aid, benefit, or service to beneficiaries in the recipient's federally assisted program or activity;

(vi) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards;

(vii) Deny a dwelling to an otherwise qualified buyer or renter because of a handicap of that buyer or renter or a person residing in or intending and eligible to reside in that dwelling after it is sold, rented or made available; or

(viii) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by other qualified individuals receiving the housing, aid, benefit, or service.

(2) For purposes of this part, housing, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for individuals with handicaps and non-handicapped persons, but must afford individuals with handicaps equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement.

(3) A recipient may not deny a qualified individual with handicaps the opportunity to participate in any federally assisted program or activity that is not separate or different despite the existence of permissibly separate or different programs or activities.

(4) In any program or activity receiving Federal financial assistance from the Department, a recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would:

(i) Subject qualified individuals with handicaps to discrimination solely on the basis of handicap;

(ii) Defeat or substantially impair the accomplishment of the objectives of the recipient's federally assisted program or activity for qualified individuals with a particular handicap involved in the program or activity, unless the recipient can demonstrate that the criteria or methods of administration are manifestly related to the accomplishment of an objective of a program or activity; or

(iii) Perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a federally assisted facility, an applicant for assistance or a recipient may not make selections the purpose or effect of which would:

(i) Exclude qualified individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under, any program or activity that receives Federal financial assistance from the Department, or

(ii) Defeat or substantially impair the accomplishment of the objectives of the program or activity with respect to qualified individuals with handicaps.

(6) As used in this section, the housing, aid, benefit, or service provided under a program or activity receiving Federal financial assistance includes any housing, aid, benefit, or service provided in or through a facility that has been constructed, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c)(1) Non-handicapped persons may be excluded from the benefits of a program if the program is limited by Federal statute or executive order to individuals with handicaps. A specific class of individuals with handicaps may be excluded from a program if the program is limited by Federal statute or Executive order to a different class of individuals.

(2) Certain Department programs operate under statutory definitions of *handicapped person* that are more restrictive than the definition of *individual with handicaps* contained in §8.3. Those definitions are not superseded or otherwise affected by this regulation.

(d) Recipients shall administer programs and activities receiving Federal financial assistance in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

(e) The obligation to comply with this part is not obviated or alleviated by any State or local law or other requirement that, based on handicap, imposes inconsistent or contradictory prohibitions or limits upon the eligibility of qualified individuals with handicaps to receive services or to practice any occupation or profession.

(f) The enumeration of specific forms of prohibited discrimination in paragraphs (b) through (e) of this section does not limit the general prohibition in paragraph (a) of this section.

[53 FR 20233, June 2, 1988; 53 FR 28115, July 26, 1988, as amended at 83 FR 23961, June 7, 2018]

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§8.5 [Reserved]

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§8.6 Communications.

(a) The recipient shall take appropriate steps to ensure effective communication with applicants, beneficiaries, and members of the public.

(1) The recipient shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity receiving Federal financial assistance.

(i) In determining what auxiliary aids are necessary, the recipient shall give primary consideration to the requests of the individual with handicaps.

(ii) The recipient is not required to provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where a recipient communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective communication systems shall be used.

(b) The recipient shall adopt and implement procedures to ensure that interested persons (including persons with impaired vision or hearing) can obtain information concerning the existence and location of accessible services, activities, and facilities.

(c) This section does not require a recipient to take any action that the recipient can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. If an action would result in such an alteration or burdens, the recipient shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity receiving HUD assistance.

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Subpart B—Employment

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§8.10 General prohibitions against employment discrimination.

(a) No qualified individual with handicaps shall, solely on the basis of handicap, be subjected to discrimination in employment under any program or activity that receives Federal financial assistance from the Department.

(b) A recipient may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(c) The prohibition against discrimination in employment applies to the following activities:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, injury or illness, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence for training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(d) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified applicants with handicaps or employees with handicaps to discrimination prohibited by this subpart. The relationships referred to in this paragraph (d) include relationships with employment and referral agencies, labor unions, organizations providing or administering fringe benefits to employees of the recipient, and organizations providing training and apprenticeship programs.

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§8.11 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant with handicaps or employee with handicaps, unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include:

(1) Making facilities used by employees accessible to and usable by individuals with handicaps and

(2) Job restructuring, job relocation, part-time or modified work schedules, acquisitions or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining, under paragraph (a) of this section, whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

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§8.12 Employment criteria.

(a) A recipient may not use any employment test or other selection criterion that screens out or tends to screen out individuals with handicaps or any class of individuals with handicaps unless:

(1) The recipient demonstrates that the test score or other selection criterion, as used by the recipient, is job-related for the position in question; and

(2) The appropriate HUD official demonstrates that alternative job-related tests or criteria that tend to screen out fewer individuals with handicaps are unavailable.

(b) A recipient shall select and administer tests concerning employment to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

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§8.13 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not make a preemployment inquiry or conduct a preemployment medical examination of an applicant to determine whether the applicant is an individual with handicaps or the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is undertaking affirmative action efforts, voluntary or otherwise, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped, if the following conditions are met:

(1) The recipient states clearly on any written questionnaire used for this purpose, or makes clear orally if no written questionnaire is used, that the information requested is intended for use solely in connection with its remedial action obligations, or its voluntary or affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential (as provided in paragraph (d) of this section), that refusal to provide the information will not subject the applicant or employee to any adverse treatment, and that the information will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted before the employee's entrance on duty if all entering employees in that category of job classification

must take such an examination regardless of handicap, and the results of such examination are used only in accordance with the requirements of this part.

(d) Information obtained under this section concerning the medical condition or history of the applicant is to be collected and maintained on separate forms that are accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed of restrictions on the work or duties of individuals with handicaps and informed of necessary accommodations;

(2) First aid and safety personnel may be informed if the condition might require emergency treatment; and

(3) Government officials investigating compliance with section 504 shall be provided relevant information upon request.

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Subpart C—Program Accessibility

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§8.20 General requirement concerning program accessibility.

Except as otherwise provided in §§8.21(c)(1), 8.24(a), 8.25, and 8.31, no qualified individual with handicaps shall, because a recipient's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance.

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§8.21 Non-housing facilities.

(a) *New construction.* New non-housing facilities shall be designed and constructed to be readily accessible to and usable by individuals with handicaps.

(b) *Alterations to facilities.* Alterations to existing non-housing facilities shall, to the maximum extent feasible, be made to be readily accessible to and usable by individuals with handicaps. For purposes of this paragraph, the phrase *to the maximum extent feasible* shall not be interpreted as requiring that a recipient make a non-housing facility, or element thereof, accessible if doing so would impose undue financial and administrative burdens on the operation of the recipient's program or activity.

(c) *Existing non-housing facilities*—(1) *General.* A recipient shall operate each non-housing program or activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(i) Necessarily require a recipient to make each of its existing non-housing facilities accessible to and usable by individuals with handicaps;

(ii) In the case of historic preservation programs or activities, require the recipient to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(iii) Require a recipient to take any action that it can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. If an action would result in such an alteration or such burdens, the recipient shall take any action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(2) *Methods*—(i) *General.* A recipient may comply with the requirements of this section in its programs and activities receiving Federal financial assistance through such means as location of programs or services to accessible facilities or accessible portions of facilities, assignment of aides to beneficiaries, home visits, the addition or redesign of equipment (e.g., appliances or furnishings) changes in management policies or procedures, acquisition or construction of additional facilities, or alterations to existing facilities on a selective basis, or any other methods that result in making its program or activity accessible to individuals with handicaps. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. In choosing among available methods for meeting the requirements of this section, the recipient shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(ii) *Historic preservation programs or activities.* In meeting the requirements of §8.21(c) in historic preservation programs or activities, a recipient shall give priority to methods that provide physical access to individuals with handicaps. In cases where a physical alteration to an historic property is not required because of §8.21(c)(1)(ii) or (iii), alternative methods of achieving

program accessibility include using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible; assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or adopting other innovative methods.

(3) *Time period for compliance.* The recipient shall comply with the obligations established under this section within sixty days of July 11, 1988, except that where structural changes in facilities are undertaken, such changes shall be made within three years of July 11, 1988, but in any event as expeditiously as possible.

(4) *Transition plan.* If structural changes to non-housing facilities will be undertaken to achieve program accessibility, a recipient shall develop, within six months of July 11, 1988, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including individuals with handicaps or organizations representing individuals with handicaps. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(i) Identify physical obstacles in the recipient's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(ii) Describe in details the methods that will be used to make the facilities accessible;

(iii) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period;

(iv) Indicate the official responsible for implementation of the plan; and

(v) Identify the persons or groups with whose assistance the plan was prepared.

(Approved by the Office of Management and Budget under control number 2529-0034)

[53 FR 20233, June 2, 1988; 53 FR 28115, July 26, 1988, as amended at 54 FR 37645, Sept. 12, 1989]

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§8.22 New construction—housing facilities.

(a) New multifamily housing projects (including public housing and Indian housing projects as required by §8.25) shall be designed and constructed to be readily accessible to and usable by individuals with handicaps.

(b) Subject to paragraph (c) of this section, a minimum of five percent of the total dwelling units or at least one unit in a multifamily housing project, whichever is greater, shall be made accessible for persons with mobility impairments. A unit that is on an accessible route and is adaptable and otherwise in compliance with the standards set forth in §8.32 is accessible for purposes of this section. An additional two percent of the units (but not less than one unit) in such a project shall be accessible for persons with hearing or vision impairments.

(c) HUD may prescribe a higher percentage or number than that prescribed in paragraph (b) of this section for any area upon request therefor by any affected recipient or by any State or local government or agency thereof based upon demonstration to the reasonable satisfaction of HUD of a need for a higher percentage or number, based on census data or other available current data (including a currently effective Housing Assistance Plan or Comprehensive Homeless Assistance Plan), or in response to evidence of a need for a higher percentage or number received in any other manner. In reviewing such request or otherwise assessing the existence of such needs, HUD shall take into account the expected needs of eligible persons with and without handicaps.

[53 FR 20233, June 2, 1988, as amended at 56 FR 920, Jan. 9, 1991]

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§8.23 Alterations of existing housing facilities.

(a) *Substantial alteration.* If alterations are undertaken to a project (including a public housing project as required by §8.25(a)(2)) that has 15 or more units and the cost of the alterations is 75 percent or more of the replacement cost of the completed facility, then the provisions of §8.22 shall apply.

(b) *Other alterations.* (1) Subject to paragraph (b)(2) of this section, alterations to dwelling units in a multifamily housing project (including public housing) shall, to the maximum extent feasible, be made to be readily accessible to and usable by individuals with handicaps. If alterations of single elements or spaces of a dwelling unit, when considered together, amount to an alteration of a dwelling unit, the entire dwelling unit shall be made accessible. Once five percent of the dwelling units in a project are readily accessible to and usable by individuals with mobility impairments, then no additional elements of dwelling

units, or entire dwelling units, are required to be accessible under this paragraph. Alterations to common areas or parts of facilities that affect accessibility of existing housing facilities shall, to the maximum extent feasible, be made to be accessible to and usable by individuals with handicaps. For purposes of this paragraph, the phrase *to the maximum extent feasible* shall not be interpreted as requiring that a recipient (including a PHA) make a dwelling unit, common area, facility or element thereof accessible if doing so would impose undue financial and administrative burdens on the operation of the multifamily housing project.

(2) HUD may prescribe a higher percentage or number than that prescribed in paragraph (b)(1) of this section for any area upon request therefor by any affected recipient or by any State or local government or agency thereof based upon demonstration to the reasonable satisfaction of HUD of a need for a higher percentage or number, based on census data or other available current data (including a currently effective Housing Assistance Plan or Comprehensive Homeless Assistance Plan), or in response to evidence of a need for a higher percentage or number received in any other manner. In reviewing such request or otherwise assessing the existence of such needs, HUD shall take into account the expected needs of eligible persons with and without handicaps.

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§8.24 Existing housing programs.

(a) *General.* A recipient shall operate each existing housing program or activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require a recipient to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2) Require a recipient to take any action that it can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. If an action would result in such an alteration or such burdens, the recipient shall take any action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods.* A recipient may comply with the requirements of this section through such means as reassignment of services to accessible buildings, assignment of aides to beneficiaries, provision of housing or related services at alternate accessible sites, alteration of existing facilities and construction of new facilities, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. A recipient is not required to make structural changes in existing housing facilities where other methods are effective in achieving compliance with this section or to provide supportive services that are not part of the program. In choosing among available methods for meeting the requirements of this section, the recipient shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance.* The recipient shall comply with the obligations established under this section within sixty days of July 11, 1988 except that—

(1) In a public housing program where structural changes in facilities are undertaken, such changes shall be made within the timeframes established in §8.25(c).

(2) In other housing programs, where structural changes in facilities are undertaken, such changes shall be made within three years of July 11, 1988, but in any event as expeditiously as possible.

(d) *Transition plan and time period for structural changes.* Except as provided in §8.25(c), in the event that structural changes to facilities will be undertaken to achieve program accessibility, a recipient shall develop, within six months of July 11, 1988, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including individuals with handicaps or organizations representing individuals with handicaps. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period;

(4) Indicate the official responsible for implementation of the plan; and

(5) Identify the persons or groups with whose assistance the plan was prepared.

(Approved by the Office of Management and Budget under control number 2529-0034)

[53 FR 20233, June 2, 1988; 53 FR 28115, July 26, 1988, as amended at 54 FR 37645, Sept. 12, 1989]

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§8.25 Public housing and multi-family Indian housing.

(a) *Development and alteration of public housing and multi-family Indian housing.* (1) The requirements of §8.22 shall apply to all newly constructed public housing and multi-family Indian housing.

(2) The requirements of §8.23 shall apply to public housing and multi-family Indian housing developed through rehabilitation and to the alteration of public housing and multi-family Indian housing.

(3) In developing public housing and multi-family Indian housing through the purchase of existing properties PHAs and IHAs shall give priority to facilities which are readily accessible to and usable by individuals with handicaps.

(b) *Existing public housing and multi-family Indian housing—general.* The requirements of §8.24(a) shall apply to public housing and multi-family Indian housing programs.

(c) *Existing public housing and multi-family Indian housing—needs assessment and transition plan.* As soon as possible, each PHA (for the purpose of this paragraph, this includes an Indian Housing Authority) shall assess, on a PHA-wide basis, the needs of current tenants and applicants on its waiting list for accessible units and the extent to which such needs have not been met or cannot reasonably be met within four years through development, alterations otherwise contemplated, or other programs administered by the PHA (e.g., Section 8 Moderate Rehabilitation or Section 8 Existing Housing or Housing Vouchers). If the PHA currently has no accessible units or if the PHA or HUD determines that information regarding the availability of accessible units has not been communicated sufficiently so that, as a result, the number of eligible qualified individuals with handicaps on the waiting list is not fairly representative of the number of such persons in the area, the PHA's assessment shall include the needs of eligible qualified individuals with handicaps in the area. If the PHA determines, on the basis of such assessment, that there is no need for additional accessible dwelling units or that the need is being or will be met within four years through other means, such as new construction, Section 8 or alterations otherwise contemplated, no further action is required by the PHA under this paragraph. If the PHA determines, on the basis of its needs assessment, that alterations to make additional units accessible must be made so that the needs of eligible qualified individuals with handicaps may be accommodated proportionally to the needs of non-handicapped individuals in the same categories, then the PHA shall develop a transition plan to achieve program accessibility. The PHA shall complete the needs assessment and transition plan, if one is necessary, as expeditiously as possible, but in any event no later than two years after July 11, 1988. The PHA shall complete structural changes necessary to achieve program accessibility as soon as possible but in any event no later than four years after July 11, 1988. The Assistant Secretary for Fair Housing and Equal Opportunity and the Assistant Secretary for Public and Indian Housing may extend the four year period for a period not to exceed two years, on a case-by-case determination that compliance within that period would impose undue financial and administrative burdens on the operation of the recipient's public housing and multi-family Indian housing program. The Secretary or the Undersecretary may further extend this time period in extraordinary circumstances, for a period not to exceed one year. The plan shall be developed with the assistance of interested persons including individuals with handicaps or organizations representing individuals with handicaps. A copy of the needs assessment and transition plan shall be made available for public inspection. The transition plan shall, at a minimum—

(1) Identify physical obstacles in the PHA's facilities (e.g., dwelling units and common areas) that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the PHA's facilities accessible. A PHA may, if necessary, provide in its plan that it will seek HUD approval, under 24 CFR part 968, of a comprehensive modernization program to meet the needs of eligible individuals with handicaps;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period;

(4) Indicate the official responsible for implementation of the plan; and

(5) Identify the persons or groups with whose assistance the plan was prepared.

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[53 FR 20233, June 2, 1988, as amended at 54 FR 37645, Sept. 12, 1989; 56 FR 920, Jan. 9, 1991]

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§8.26 Distribution of accessible dwelling units.

Accessible dwelling units required by §8.22, 8.23, 8.24 or 8.25 shall, to the maximum extent feasible and subject to reasonable health and safety requirements, be distributed throughout projects and sites and shall be available in a sufficient range of sizes and amenities so that a qualified individual with handicaps' choice of living arrangements is, as a whole, comparable to that of other persons eligible for housing assistance under the same program. This provision shall not be construed to require provision of an elevator in any multifamily housing project solely for the purpose of permitting location of accessible units above or below the accessible grade level.

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§8.27 Occupancy of accessible dwelling units.

(a) Owners and managers of multifamily housing projects having accessible units shall adopt suitable means to assure that information regarding the availability of accessible units reaches eligible individuals with handicaps, and shall take reasonable nondiscriminatory steps to maximize the utilization of such units by eligible individuals whose disability requires the accessibility features of the particular unit. To this end, when an accessible unit becomes vacant, the owner or manager before offering such units to a non-handicapped applicant shall offer such unit:

(1) First, to a current occupant of another unit of the same project, or comparable projects under common control, having handicaps requiring the accessibility features of the vacant unit and occupying a unit not having such features, or, if no such occupant exists, then

(2) Second, to an eligible qualified applicant on the waiting list having a handicap requiring the accessibility features of the vacant unit.

(b) When offering an accessible unit to an applicant not having handicaps requiring the accessibility features of the unit, the owner or manager may require the applicant to agree (and may incorporate this agreement in the lease) to move to a non-accessible unit when available.

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§8.28 Housing certificate and housing voucher programs.

(a) In carrying out the requirements of this subpart, a recipient administering a Section 8 Existing Housing Certificate program or a housing voucher program shall:

(1) In providing notice of the availability and nature of housing assistance for low-income families under program requirements, adopt suitable means to assure that the notice reaches eligible individuals with handicaps;

(2) In its activities to encourage participation by owners, include encouragement of participation by owners having accessible units;

(3) When issuing a Housing Certificate or Housing Voucher to a family which includes an individual with handicaps include a current listing of available accessible units known to the PHA and, if necessary, otherwise assist the family in locating an available accessible dwelling unit;

(4) Take into account the special problem of ability to locate an accessible unit when considering requests by eligible individuals with handicaps for extensions of Housing Certificates or Housing Vouchers; and

(5) If necessary as a reasonable accommodation for a person with disabilities, approve a family request for an exception rent under §982.504(b)(2) for a regular tenancy under the Section 8 certificate program so that the program is readily accessible to and usable by persons with disabilities.

(b) In order to ensure that participating owners do not discriminate in the recipient's federally assisted program, a recipient shall enter into a HUD-approved contract with participating owners, which contract shall include necessary assurances of nondiscrimination.

[53 FR 20233, June 2, 1988, as amended at 63 FR 23853, Apr. 30, 1998]

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§8.29 Homeownership programs (sections 235(i) and 235(j), Turnkey III and Indian housing mutual self-help programs).

Any housing units newly constructed or rehabilitated for purchase or single family (including semi-attached and attached) units to be constructed or rehabilitated in a program or activity receiving Federal financial assistance shall be made accessible upon request of the prospective buyer if the nature of the handicap of an expected occupant so requires. In such case, the buyer shall consult with the seller or builder/sponsor regarding the specific design features to be provided. If accessibility features selected at the option of the homebuyer are ones covered by the standards prescribed by §8.32, those features shall comply with the standards prescribed in §8.32. The buyer shall be permitted to depart from particular specifications of these standards in order to accommodate his or her specific handicap. The cost of making a facility accessible under this paragraph may be included in the mortgage amount within the allowable mortgage limits, where applicable. To the extent such costs exceed allowable mortgage limits, they may be passed on to the prospective homebuyer, subject to maximum sales price limitations (see 24 CFR 235.320.)

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§8.30 Rental rehabilitation program.

Each grantee or state recipient in the rental rehabilitation program shall, subject to the priority in 24 CFR 511.10(l) and in accordance with other requirements in 24 CFR part 511, give priority to the selection of projects that will result in dwelling units being made readily accessible to and usable by individuals with handicaps.

[53 FR 20233, June 2, 1988; 53 FR 28115, July 26, 1988]

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§8.31 Historic properties.

If historic properties become subject to alterations to which this part applies the requirements of §4.1.7 of the standards of §8.32 of this part shall apply, except in the case of the Urban Development Action Grant (UDAG) program. In the UDAG program the requirements of 36 CFR part 801 shall apply. Accessibility to historic properties subject to alterations need not be provided if such accessibility would substantially impair the significant historic features of the property or result in undue financial and administrative burdens.

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§8.32 Accessibility standards.

(a) Effective as of July 11, 1988, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (UFAS) shall be deemed to comply with the requirements of §§8.21, 8.22, 8.23, and 8.25 with respect to those buildings. Departures from particular technical and scoping requirements of the UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided. The alteration of housing facilities shall also be in conformance with additional scoping requirements contained in this part. Persons interested in obtaining a copy of the UFAS are directed to §40.7 of this title.

(b) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of individuals with physical handicaps.

(c) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

(d) For purposes of this section, section 4.1.4(11) of UFAS may not be used to waive or lower the minimum of five percent accessible units required by §8.22(b) or to apply the minimum only to projects of 15 or more dwelling units.

(e) Except as otherwise provided in this paragraph, the provisions of §§8.21 (a) and (b), 8.22 (a) and (b), 8.23, 8.25(a) (1) and (2), and 8.29 shall apply to facilities that are designed, constructed or altered after July 11, 1988. If the design of a facility was commenced before July 11, 1988, the provisions shall be followed to the maximum extent practicable, as determined by the Department. For purposes of this paragraph, the date a facility is constructed or altered shall be deemed to be the date bids for the construction or alteration of the facility are solicited. For purposes of the Urban Development Action Grant (UDAG) program, the provisions shall apply to the construction or alteration of facilities that are funded under applications submitted after July 11, 1988. If the UDAG application was submitted before July 11, 1988, the provisions shall apply, to the maximum extent practicable, as determined by the Department.

[53 FR 20233, June 2, 1988, as amended at 61 FR 5203, Feb. 9, 1996]

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§8.33 Housing adjustments.

A recipient shall modify its housing policies and practices to ensure that these policies and practices do not discriminate, on the basis of handicap, against a qualified individual with handicaps. The recipient may not impose upon individuals with handicaps other policies, such as the prohibition of assistive devices, auxiliary alarms, or guides in housing facilities, that have the effect of limiting the participation of tenants with handicaps in the recipient's federally assisted housing program or activity in violation of this part. Housing policies that the recipient can demonstrate are essential to the housing program or activity will not be regarded as discriminatory within the meaning of this section if modifications to them would result in a fundamental alteration in the nature of the program or activity or undue financial and administrative burdens.

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Subpart D—Enforcement

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§8.50 Assurances required.

(a) *Assurances.* An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance to HUD, or in the case of a subrecipient to a primary recipient, on a form specified by the responsible civil rights official, that the program or activity will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Covenants.* (1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (b)(2) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the covenant shall also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on the property for the purposes for which the property was transferred, the Secretary may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he or she deems appropriate, agree to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

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§8.51 Self-evaluation.

(a) Each recipient shall, within one year of July 11, 1988, and after consultation with interested persons, including individuals with handicaps or organizations representing individuals with handicaps:

(1) Evaluate its current policies and practices to determine whether, in whole or in part, they do not or may not meet the requirements of this part;

(2) Modify any policies and practices that do not meet the requirements of this part; and

(3) Take appropriate corrective steps to remedy the discrimination revealed by the self-evaluation.

(b) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (a)(1) of this section, maintain on file, make available for public inspection, and provide to the

responsible civil rights official, upon request: (1) A list of the interested persons consulted; (2) a description of areas examined and any problems identified; and (3) a description of any modifications made and of any remedial steps taken.

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[53 FR 20233, June 2, 1988, as amended at 54 FR 37645, Sept. 12, 1989]

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§8.52 Remedial and affirmative action.

(a) *Remedial action.* (1) If the responsible civil rights official finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall take such remedial action as the responsible civil rights official deems necessary to overcome the effects of the discrimination.

(2) The responsible civil rights official may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action—

(i) With respect to individuals with handicaps who are no longer participants in the program but who were participants in the program when such discrimination occurred or

(ii) With respect to individuals with handicaps who would have been participants in the program had the discrimination not occurred.

(b) *Voluntary action.* A recipient may take nondiscriminatory steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified individuals with handicaps.

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§8.53 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) *Adoption of grievance procedures.* A recipient that employees fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to housing covered by this part.

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§8.54 Notice.

(a) A recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its federally assisted programs and activities. The notification shall also include an identification of the responsible employee designated pursuant to §8.53. A recipient shall make the initial notification required by this paragraph within 90 days of July 11, 1988. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publications, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

(c) The recipient shall ensure that members of the population eligible to be served or likely to be affected directly by a federally assisted program who have visual or hearing impairments are provided with the information necessary to understand and participate in the program. Methods for ensuring participation include, but are not limited to, qualified sign language and oral interpreters, readers, or the use of taped and Braille materials.

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§8.55 Compliance information.

(a) *Cooperation and assistance.* The responsible civil rights official and the award official shall, to the fullest extent practicable, seek the cooperation of recipients in obtaining compliance with this part and shall provide assistance and guidance to recipients to help them comply voluntarily with this part.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the responsible civil rights official or his or her designee timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the responsible civil rights official or his or her designee may determine to be necessary to enable him or her to ascertain whether the recipient has complied or is complying with this part. In general, recipients should have available for the Department data showing the extent to which individuals with handicaps are beneficiaries of federally assisted programs.

(c) *Access to sources of information.* Each recipient shall permit access by the responsible civil rights official during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities, as may be pertinent to ascertain compliance with this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution, or person and this agency, institution, or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the program or activity under which the recipient receives Federal financial assistance, and make such information available to them in such manner as the responsible civil rights official finds necessary to apprise such persons of the protections against discrimination assured them by this part.

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[53 FR 20233, June 2, 1988, as amended at 54 FR 37645, Sept. 12, 1989]

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§8.56 Conduct of investigations.

(a) *Periodic compliance reviews.* The responsible civil rights official or designee may periodically review the practices of recipients to determine whether they are complying with this part and where he or she has a reasonable basis to do so may conduct on-site reviews. Such basis may include any evidence that a problem exists or that programmatic matters exist that justify on-site investigation in selected circumstances. The responsible civil rights official shall initiate an on-site review by sending to the recipient a letter advising the recipient of the practices to be reviewed; the programs affected by the review; and the opportunity, at any time prior to receipt of a final determination, to make a documentary or other submission that explains, validates, or otherwise addresses the practices under review. In addition, each award official shall include in normal program compliance reviews and monitoring procedures appropriate actions to review and monitor compliance with general or specific program requirements designed to effectuate the requirements of this part.

(b) *Investigations.* The responsible civil rights official shall make a prompt investigation whenever a compliance review, report, complaint or any other information indicates a possible failure to comply with this part.

(c) *Filing a complaint*—(1) *Who may file.* Any person who believes that he or she has been subjected to discrimination prohibited by this part may by himself or herself or by his or her authorized representative file a complaint with the responsible civil rights official. Any person who believes that any specific class of persons has been subjected to discrimination prohibited by this part and who is a member of that class or who is the authorized representative of a member of that class may file a complaint with the responsible civil rights official.

(2) *Confidentiality.* The responsible civil rights official shall hold in confidence the identity of any person submitting a complaint, unless the person submits written authorization otherwise, and except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or proceeding under this part.

(3) *When to file.* Complaints shall be filed within 180 days of the alleged act of discrimination, unless the responsible civil rights official waives this time limit for good cause shown. For purposes of determining when a complaint is filed under this paragraph, a complaint mailed to the Department shall be deemed filed on the date it is postmarked. Any other complaint shall be deemed filed on the date it is received by the Department.

(4) *Where to file complaints.* Complaints may be filed by mail with the Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Washington, DC 20410, or any Regional or Field Office of the Department.

(5) *Contents of complaints.* Each complaint should contain the complainant's name and address, the name and address of the recipient alleged to have violated this part, and a description of the recipient's alleged discriminatory action in sufficient

detail to inform the Department of the nature and date of the alleged violation of this part.

(6) *Amendments of complaints.* Complaints may be reasonably and fairly amended at any time. Amendments to complaints such as clarification and amplification of allegations in a complaint or the addition of other recipients may be made at any time during the pendency of the complaint and any amendment shall be deemed to be made as of the original filing date.

(d) *Notification.* The responsible civil rights official will notify the complainant and the recipient of the agency's receipt of the complaint within ten (10) calendar days.

(e) *Complaint processing procedures.* After acknowledging receipt of a complaint, the responsible civil rights official will immediately initiate complaint processing procedures.

(1) Preliminary investigation.

(i) Within twenty (20) calendar days of acknowledgement of the complaint, the responsible civil rights official will review the complaint for acceptance, rejection, or referral to the appropriate Federal agency.

(ii) If the complaint is accepted, the responsible civil rights official will notify the complainant and the award official. The responsible civil righs official will also notify the applicant or recipient complained against of the allegations and give the applicant or recipient an opportunity to make a written submission responding to, rebutting, or denying the allegations raised in the complaint.

(iii) The party complained against may send the responsible civil rights official a response to the notice of complaint within thirty (30) calendar days of receiving it. With leave of the responsible civil rights official, an answer may be amended at any time. The responsible civil rights official will permit answers to be amended for good cause shown.

(2) Informal resolution. In accordance with paragraph (j) of this section, the responsible civil rights official shall attempt to resolve complaints informally whenever possible.

(f) *Dismissal of complaint.* If the investigation reveals no violation of this part, the responsible civil rights official will dismiss the complaint and notify the complainant and recipient.

(g) *Letter of findings.* If an informal resolution of the complaint is not reached the responsible civil rights official or his or her designee shall, within 180 days of receipt of the complaint, notify the recipient and the complainant (if any) of the results of the investigation in a letter sent by certified mail, return receipt requested, containing the following:

(1) Preliminary findings of fact and a preliminary finding of compliance or noncompliance;

(2) A description of an appropriate remedy for each violation believed to exist;

(3) A notice that a copy of the Final Investigative Report of the Department will be made available, upon request, to the recipient and the complainant (if any); and

(4) A notice of the right of the recipient and the complainant (if any) to request a review of the letter of findings by the reviewing civil rights official.

(h) *Right to review of the letter of findings.* (1) A complainant or recipient may request that a complete review be made of the letter of findings within 30 days of receipt, by mailing or delivering to the reviewing civil rights official, Office of Fair Housing and Equal Opportunity, Washington, DC 20410, a written statement of the reasons why the letter of findings should be modified in light of supplementary information.

(2) The reviewing civil rights official shall send by certified mail, return receipt requested, a copy of the request for review to the other party, if any. Such other party shall have 20 days to respond to the request for review.

(3) The reviewing civil rights official shall either sustain or modify the letter of findings within 60 days of the request for review. The reviewing civil rights official's decision shall constitute the formal determination.

(4) If neither party requests that the letter of findings be reviewed, the responsible civil rights official shall, within fourteen (14) calendar days of the expiration of the time period in paragraph (h)(1) of this section, send a formal written determination of compliance or noncompliance to the recipient and copies to the award official.

(i) *Voluntary compliance time limits.* The recipient will have ten (10) calendar days from receipt of the formal determination of noncompliance within which to come into voluntary compliance. If the recipient fails to meet this deadline, HUD shall proceed under §8.57.

(j) *Informal resolution/voluntary compliance*—(1) *General.* It is the policy of the Department to encourage the informal resolution of matters. The responsible civil rights official may attempt to resolve a matter through informal means at any stage of processing. A matter may be resolved by informal means at any time. If a letter of findings making a preliminary finding of noncompliance is issued, the responsible civil rights official shall attempt to resolve the matter by informal means.

(2) *Objectives of informal resolution/voluntary compliance.* In attempting informal resolution, the responsible civil rights official shall attempt to achieve a just resolution of the matter and to obtain assurances where appropriate, that the recipient will satisfactorily remedy any violations of the rights of any complainant and will take such action as will assure the elimination of any violation of this part or the prevention of the occurrence of such violation in the future. The terms of such an informal resolution shall be reduced to a written voluntary compliance agreement, signed by the recipient and the responsible civil rights official, and be made part of the file for the matter. Such voluntary compliance agreements shall seek to protect the interests of the complainant (if any), other persons similarly situated, and the public interest.

(k) *Intimidatory or retaliatory acts prohibited.* No recipient or other person shall intimidate, threaten, coerce, or discriminate against any person for the purpose of interfering with any right or privilege secured by this part, or because he or she has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of this part, including the conduct of investigation, hearing or judicial proceeding arising thereunder.

[53 FR 20233, June 2, 1988; 53 FR 28115, July 26, 1988; 53 FR 34634, Sept. 7, 1988]

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§8.57 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with this part and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance, or by other means authorized by law. Such other means may include, but are not limited to:

(1) A referral to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States, or any assurance or other contractual undertaking;

(2) The initiation of debarment proceedings pursuant to 2 CFR part 2424; and

(3) Any applicable proceeding under State or local law.

(b) *Noncompliance with §8.50.* If an applicant or a recipient of assistance under a contract which is extended or amended on or after July 11, 1988, fails or refuses to furnish an assurance required under §8.50 or otherwise fails or refuses to comply with the requirements imposed by that section, Federal financial assistance may be refused under paragraph (c) of this section. The Department is not required to provide assistance during the pendency of the administrative proceeding under such paragraph (c), except where the assistance is due and payable under a contract approved before July 11, 1988.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating, or refusing to grant or continue Federal financial assistance shall become effective until:

(1) The responsible civil rights official has advised the applicant or recipient of its failure to comply and has determined that compliance cannot be secured by voluntary means;

(2) There has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with a requirement imposed under this part;

(3) The action has been approved by the Secretary; and

(4) The expiration of 30 days after the Secretary has filed with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate, or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Notice to State or local government.* Whenever the Secretary determines that a State or unit of general local government which is a recipient of Federal financial assistance under title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301-5318) has failed to comply with a requirement of this part with respect to a program or activity funded in whole or in part with such assistance, the Secretary shall notify the Governor of the State or the chief

executive officer of the unit of general local government of the noncompliance and shall request the Governor or the chief executive officer to secure compliance. The notice shall be given at least sixty days before:

(1) An order suspending, terminating, or refusing to grant or continue Federal financial assistance becomes effective under paragraph (c) of this section; or

(2) Any action to effect compliance by any other means authorized by law is taken under paragraph (a) of this section.

(e) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until:

(1) The responsible civil rights official has determined that compliance cannot be secured by voluntary means;

(2) The recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance; and

(3) At least 10 days have elapsed since the mailing of such notice to the applicant or recipient. During this period, additional efforts shall be made to persuade the applicant or recipient to comply with this part and to take such corrective action as may be appropriate.

However, this paragraph shall not be construed to prevent an award official from utilizing appropriate procedures and sanctions established under the program to assure or secure compliance with a specific requirement of the program designed to effectuate the objectives of this part.

[53 FR 20233, June 2, 1988; 53 FR 28115, July 26, 1988, as amended at 72 FR 73491, Dec. 27, 2007]

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§8.58 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required by §8.57(c), reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action. The notice shall:

(1) Fix a date not less than 20 days after the date of the notice for the applicant or recipient to request the administrative law judge to schedule a hearing, or

(2) Advise the applicant or recipient that the matter has been scheduled for hearing at a stated time and place. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this paragraph or to appear at a hearing for which a date has been set is a waiver of the right to a hearing under §8.57(c) and consent to the making of a decision on the basis of available information.

(b) *Hearing procedures.* Hearings shall be conducted in accordance with 24 CFR part 180.

[53 FR 20233, June 2, 1988, as amended at 61 FR 52218, Oct. 4, 1996]

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

Special Attention of:

All Secretary's Representatives
All State/Area Coordinators
All CPD Office Directors
All FHEO Field Offices
All CDBG Grantees

Notice: CPD-05-10

Issued: November 3, 2005
Expires: November 3, 2006

SUBJECT: Accessibility for Persons with Disabilities to Non-Housing Programs funded by Community Development Block Grant Funds -- Section 504 of the Rehabilitation Act of 1973, the Americans With Disabilities Act, and the Architectural Barriers Act

I. Purpose

The purpose of this Notice is to remind recipients of Federal funds under the Community Development Block Grant (CDBG) Program of their obligation to comply with Section 504 of the Rehabilitation Act of 1973, HUD's implementing regulations (24 CFR Part 8), the Americans with Disabilities Act, (ADA) and its implementing regulations, (28 CFR Parts 35, 36), and the Architectural Barriers Act (ABA) and its implementing regulations (24 CFR Parts 40, 41) in connection with recipients' non-housing programs. This Notice describes key compliance elements for non-housing programs and facilities assisted under the CDBG programs. However, recipients should review the specific provisions of the ADA, Section 504, the ABA, and their implementing regulations in order to assure that their programs are administered in full compliance.

Applicability

This Notice applies to all non-housing programs and facilities assisted with Community Development Block Grant Funds (e.g. public facilities and public improvements, commercial buildings, office buildings, and other non-residential buildings) and facilities in which CDBG activities are undertaken (e.g., public services). A separate Notice is being issued concerning Federal accessibility requirements for housing programs assisted by recipients of CDBG and HOME program funds.

II. Section 504 of the Rehabilitation Act of 1973

Section 504 of the Rehabilitation Act of 1973, as amended, provides "No otherwise qualified individual with a disability in the United States ... shall, solely by reason of his or her disability,

be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance...". HUD's regulations implementing the Section 504 requirements can be found at 24 CFR Part 8.

Distribution: W-3-1

Part 8 requires that recipients ensure that their programs are accessible to and usable by persons with disabilities. Part 8 also prohibits recipients from employment discrimination based upon disability.

The Section 504 regulations define "recipient" as any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution organization, or other entity or any person to which Federal financial assistance is extended for any program or activity directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance (24 CFR 8.3). For the purposes of Part 8, recipients include States and localities that are grantees and subgrantees under the CDBG program, their subrecipients, community-based development organizations, businesses, and any other entity that receives CDBG assistance, but not low and moderate income beneficiaries of the program. CDBG grantees are responsible for establishing policies and practices that they will use to monitor compliance of all covered programs, activities, or work performed by their subrecipients, contractors, subcontractors, management agents, etc.

Non-housing Programs

New Construction – 24 CFR Part 8 requires that new non-housing facilities constructed by recipients of Federal financial assistance shall be designed and constructed to be readily accessible to and usable by persons with disabilities (24 CFR 8.21(a)).

Alterations to facilities -- Part 8 requires to the maximum extent feasible that recipients make alterations to existing non-housing facilities to ensure that such facilities are readily accessible to and usable by individuals with disabilities. An element of an existing non-housing facility need not be made accessible if doing so would impose undue financial and administrative burdens on the operation of the recipients program or activity (24 CFR 8.21 (b)).

Existing non-housing facilities - A recipient is obligated to operate each non-housing program or activity so that, when viewed in its entirety, the program or activity is readily accessible to and usable by persons with disabilities (24 CFR 8.21 (c)).

Recipients are not necessarily required to make each of their existing non-housing facilities accessible to and usable by persons with disabilities if when viewed in its entirety, the program or activity is readily accessible to and usable by persons with disabilities 24 CFR 8.21(c)(1)). Recipients are also not required to take any action that they can demonstrate would result in a fundamental alteration in the nature of its program or activity or cause an undue administrative and financial burden. However, recipients are still required to take other actions that would not result in such alterations, but would nevertheless ensure that persons with disabilities receive the benefits and services of the program (24 CFR 8.21(c)(iii)).

Historic Preservation - Recipients are not required to take any actions that would result in a substantial impairment of significant historic features of an historic property. However, in such cases where a physical alteration is not required, the recipient is still obligated to use alternative means to achieve program accessibility, including using audio-visual materials and devices to depict those portions of a historic property that cannot be made accessible, assigning persons to

guide persons with disabilities into or through portions of historic properties that cannot be made accessible, or otherwise adopting other innovative methods so that individuals with disabilities can still benefit from the program (24 CFR 8.21(c)(2)(ii)).

Accessibility Standards

Design, construction, or alteration of facilities in conformance with the Uniform Federal Accessibility Standards (UFAS) is deemed to comply with the accessibility requirements for nonhousing facilities. Recipients may depart from particular technical and scoping requirements of UFAS where substantially equivalent or greater accessibility and usability is provided (24 CFR 8.32). For copies of UFAS, contact the HUD Distribution Center at 1-800-767-7468; hearing-impaired, or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1-800-877-8339.

Where a property is subject to more than one law or accessibility standard, it is necessary to comply with all applicable requirements. In some cases, it may be possible to do this by complying with the stricter requirement; however, it is also important to ensure that meeting the stricter requirement also meets both the scoping and technical requirements of overlapping laws or standards.

Employment

Section 504 also prohibits discrimination based upon disability in employment (see 24 CFR Part 8, Subpart B).

III. The Americans With Disabilities Act of 1990

The Americans With Disabilities Act of 1990 (ADA) guarantees equal opportunities for persons with disabilities in employment, public accommodations, transportation, State and local government services, and telecommunications. Unlike Section 504 which applies only to programs and activities receiving Federal financial assistance, the ADA applies even if no Federal financial assistance is given.

The U.S. Department of Justice enforces Titles I, II, and III of the ADA. HUD shares enforcement responsibility with the Department of Justice for TitleII, and is designated the lead Federal agency for all programs, service and regulatory activities relating to state and local public housing and housing assistance and referral. The Equal Employment Opportunity Commission investigates administrative complaints involving Title I. For further information regarding The U.S. Department of Justice enforcement of Title II of the ADA, please visit http://www.ADA.gov.

Title I prohibits discrimination in employment based upon disability. The regulations implementing Title I are found at 29 CFR Part 1630. The Equal Employment Opportunity Commission (EEOC) offers technical assistance on the ADA provisions applying to employment. These can be obtained at the EEOC web site www.eeoc.gov, or by calling 800-669-3362 (voice) and 800-800-3302 (TTY).

Title II prohibits discrimination based on disability by State and local governments. Title II essentially extended the Section 504 requirements to services, programs, and activities provided by States, local governments and other entities that do not receive Federal financial assistance from HUD or another Federal agency. CDBG grantees are covered by both Title II and Section 504. The Department of Justice Title II regulations are found at 28 CFR Part 35.

Title II also requires that facilities that are newly constructed or altered, by, on behalf of, or for use of a public entity, be designed and constructed in a manner that makes the facility readily accessible to and usable by persons with disabilities. (28 CFR 35.151 (a) & (b)) Facilities constructed or altered in conformance with either UFAS or the ADA Accessibility Guidelines for Buildings and Facilities (ADAAG) (Appendix A to 28 CFR Part 36) shall be deemed to comply with the Title II Accessibility requirements, except that the elevator exemption contained at section 4.1.3(5) and section 4.1.6(1)(j) of ADAAG shall not apply. (28CFR 35.151(c))

Title II specifically requires that all newly constructed or altered streets, roads, and highways and pedestrian walkways must contain curb ramps or other sloped areas at any intersection having curbs or other barriers to entry from a street level or pedestrian walkway and that all newly constructed or altered street level pedestrian walkways must have curb ramps at intersections. Newly constructed or altered street level pedestrian walkways must contain curb ramps or other sloped areas at intersections to streets, roads, or highways. (28CFR 35.151(e))

The Title II regulations required that by January 26, 1993, public entities (State or local governments) conduct a self-evaluation to review their current policies and practices to identify and correct any requirements that were not consistent with the regulation. Public entities that employed more than 50 persons were required to maintain their self-evaluations on file and make it available for three years. If a public entity had already completed a self-evaluation under Section 504 of the Rehabilitation Act, then the ADA only required it to do a self-evaluation of those policies and practices that were not included in the previous self-evaluation. (28 CFR 35.105)

The Department of Justice offers technical assistance on Title II through its web page at **www.usdoj.gov/crt/ada/taprog.htm,** and through its ADA Information Line, at **202 514-0301 (voice and 202-514-0383 (TTY).** The Department of Justice's technical assistance materials include among others, the Title II Technical Assistance Manual with Yearly Supplements, the ADA guide for Small Towns, and an ADA Guide entitled The ADA and City Governments: Common Problems.

Title III prohibits discrimination based upon disability in places of public accommodation (businesses and non-profit agencies that serve the public) and "commercial" facilities (other businesses). It applies regardless of whether the public accommodation or commercial facility is operated by a private or public entity, or by a for profit or not for profit business. The Department of Justice Title III regulations are found at 28 CFR Part 36. The Department of Justice also offers technical assistance concerning Title III through the web page cited above and the ADA Hotline cited above.

Justice also offers technical assistance concerning Title III through the web page cited above and the ADA Hotline cited above.

IV. The Architectural Barriers Act of 1968

The Architectural Barriers Act of 1968 (ABA) (42 U.S.C. 4151-4157) requires that certain buildings financed with Federal funds must be designed, constructed, or altered in accordance with standards that ensure accessibility for persons with physical disabilities. The ABA covers any building or facility financed in whole or in part with Federal funds, except privately-owned residential structures. Covered buildings and facilities designed, constructed, or altered with CDBG funds are subject to the ABA and must comply with the Uniform Federal Accessibility Standards (UFAS) (24 CFR 570.614). In practice, buildings built to meet the requirements of Section 504 and the ADA will conform to the requirements of the ABA.

Self Evaluations

The Section 504 regulations required recipients of Federal financial assistance to conduct a self-evaluation of their policies and practices to determine if they were consistent with the law's requirements. This self evaluation was to have been completed no later than July 11, 1989. Title II of the ADA imposed this requirement on all covered public entities. The ADA regulations required that ADA self evaluations be completed by January 26, 1993, although those public entities that had already performed a Section 504 self evaluation were only required to perform a self-evaluation on those policies and practices that had not been included in the Section 504 review.

The regulatory deadlines are long past. Nonetheless, recipients who have not completed a self-evaluation are encouraged to conduct a self-evaluation to be in compliance with this requirement under these regulatory provisions.

Involving persons with disabilities in the self-evaluation process is very beneficial. This will assure the most meaningful result for both the recipient and for persons with disabilities who participate in the recipient's programs and activities. It is important to involve persons and/or organizations representing persons with disabilities, and agencies or other experts who work regularly with accessibility standards.

Important steps in conducting a self-evaluation and implementing its results include the following:

- Evaluate current policies and practices and analyze them to determine if they adversely affect the full participation of individuals with disabilities in its programs, activities and services. Be mindful of the fact that a policy or practice may appear neutral on its face, but may have a discriminatory effect on individuals with disabilities.

- Modify any policies and practices that are not or may not be in compliance with the regulations at Section 504 or Title II and Title III of the ADA.

- Take appropriate corrective steps to remedy those policies and practices which either are discriminatory or have a discriminatory effect. Develop policies and procedures by which persons with disabilities may request a modification of a physical barrier or a rule or

practice that has the effect of limiting or excluding a person with a disability from the benefits of the program.

- Document the self-evaluation process and activities. The Department recommends that all recipients keep the self-evaluation on file for at least three years, including records of the individuals and organizations consulted, areas examined and problems identified, and document modifications and remedial steps, as an aid to meeting the requirement at 24 CFR Part 8.55.

The Department also recommends that recipients periodically update the self-evaluation, particularly, for example, if there have been changes in the programs and services of the agency. In addition, public entities covered by Title II of the ADA should review any policies and practices that were not included in their Section 504 self-evaluation and should modify discriminatory policies and practices accordingly.

V. HUD Resources Available Concerning Section 504

Further information concerning compliance with Section 504 may be obtained through the HUD web page **(http://www.hud.gov/offices/fheo/disabilities/sect504.cfm).** Additional assistance and information may be obtained by contacting the local HUD Office of Community Planning and Development and the Office of Fair Housing and Equal Opportunity. Below is a list of the phone numbers for these offices.

	CPD	FHEO
Boston, MA	617 994-8357	617 994-8300
Hartford, CT	806 240-4800 x3059	860 240-4800
New York, NY	212 542-7401	212 264-1290
Buffalo, NY	716 551-5755 x5800	716 551-5755
Newark, NJ	973 622-7900 x3300	973 622-7900
Philadelphia, PA	215 656-0624 x3201	215 656-0663
Pittsburgh, PA	412 644-2999	412 644-6970
Baltimore, MD	410 962-2520 x3071	410 962-2520
Richmond, VA	804 771-2100 x3766	804 771-2100
Washington, DC	202 275-9200 x3l63	202 275-9200
Atlanta, GA	404 331-5001 x2449	404 331-5140
Birmingham, AL	205 731-2630 x1027	205 731-2630
South Florida	305 536-5678 x2257	305 536-5678 x2218
Jacksonville, FL	904 232-1777 x2077	904 232-1241
San Juan, PR	787 766-5201	787 766-5400
Louisville, KY	502 582-6163 x200	502 582-6163 x230
Jackson, MS	601 965-4700 x3140	601 965-4700 x2435
Knoxville, TN	865 545-4391 x125	865 545-4400
Greensboro, NC	336 547-4000	336 547-4050
Columbia, SC	803 765-5564	803 765-5938
Chicago, IL	312 353-1696 x2713	312 353-7776
Minneapolis, MN	612 370-3019 x2107	612 370-3185
Detroit, MI	313 226-7900 x8059	313 226-7900
Milwaukee, WI	414 297-3214 x8100	414 297-3214
Columbus, OH	614 469-5737 x8240	614 469-5737 x8170
Indianapolis, IN	317 226-6303 x6790	317 226-6303
Little Rock, AK	501 324-6375 x3300	501 324-6296
Oklahoma City, OK	405 609-8569	405 609-8435
Kansas City, KS	913 551-5485	913 551-6958
Omaha, NE	402 492-3147	402 492-3109
St. Louis, MO	314 539-6524	314 539-6583
New Orleans, LA	504 589-7214 x1047	504 589-7219
Fort Worth, TX	817 978-5934	817 978-5900
San Antonio, TX	210 475-6821	210 475-6885
Albuquerque, NM	505 346-7361	505 346-6463
Denver, CO	303 672-5414 xl326	303 672-5437
San Francisco, CA	415 489-6597	415 489-6602
Los Angeles, CA	213 894-8000 x3300	213 894-8000 x2600
Honolulu, HI	808 522-8180 x264	808 522-8175
Phoenix, AZ	602 379-7175	602 379-6699 x5261
Seattle, WA	206 220-5268	206 220-5170
Portland, OR	503 326-7018	503 326-2561
Manchester, NH	603 666-7510 x3017	617 994-8300
Anchorage, AK	907 677-9890	907 677-9837
Houston, TX	817 978-5934	713 718-3199

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-0500

September 15, 2016

Office of General Counsel Guidance on Fair Housing Act Protections for Persons with Limited English Proficiency

I. Introduction

The Fair Housing Act (or Act) prohibits discrimination in the sale, rental or financing of dwellings, and in other housing-related transactions, because of race, color, religion, sex, disability, familial status or national origin.[1] This guidance discusses how the Fair Housing Act applies to a housing provider's consideration of a person's limited ability to read, write, speak or understand English. Specifically, this guidance addresses how the disparate treatment and discriminatory effects methods of proof apply in Fair Housing Act cases in which a housing provider bases an adverse housing action – such as a refusal to rent or renew a lease – on an individual's limited ability to read, write, speak or understand English.[2] Because of the close nexus between limited English proficiency ("LEP")[3] and national origin, the distinctions between intent and effects claims involving LEP and national origin are often subtle and can be difficult to discern.

II. Background

LEP refers to a person's limited ability to read, write, speak, or understand English. Individuals who are LEP are not a protected class under the Act. The Act nonetheless prohibits housing providers from using LEP selectively based on a protected class or as a pretext for discrimination because of a protected class. The Act also prohibits housing providers from using LEP in a way that causes an unjustified discriminatory effect.

Over twenty-five million persons in the United States, approximately nine percent of the United States population, are LEP. Among LEP persons in the United States, approximately 16,350,000 speak Spanish (65%), 1,660,000 speak Chinese (7%), 850,000 speak Vietnamese (3%), 620,000 speak Korean (2%), 530,000 speak Tagalog (2%), 410,000 speak Russian (2%), and fewer speak dozens of other languages.[4]

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[1] 42 U.S.C. §§ 3601-19.

[2] Programs and activities that receive federal financial assistance, including from HUD, have greater obligations to provide meaningful access to their LEP applicants and beneficiaries under Title VI of the Civil Rights Act of 1964. *See* 42 U.S.C. § 2000d *et seq.*; 24 C.F.R. § 1.4; Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," 65 Fed. Reg. 50121 (Aug. 16, 2000); *see also* Dep't of Hous. & Urban Dev., Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 72 Fed. Reg. 2732 (Jan. 22, 2007) [hereinafter HUD LEP Guidance]. This guidance does not address the obligations under Title VI that apply to programs and activities that receive federal financial assistance.

[3] Depending on the context, "LEP" is used to stand for "limited English proficiency" or "limited English proficient."

[4] U.S. Census Bureau; American Community Survey, 2010-2014 American Community Survey 5-Year Estimates, Table B16001; http://factfinder.census.gov/bkmk/table/1.0/en/ACS/14_5YR/B16001.

Nearly all LEP persons are LEP because either they or their family members are from non-English speaking countries. The link between national origin and LEP is fairly intuitive[5] but is also supported by statistics. In the United States, 34% of Asians[6] and 32% of Hispanics[7] are LEP as compared with 6% of whites[8] and 2% of non-Hispanic whites.[9] Focusing on place of birth, in the United States 61% of persons born in Latin America[10] and 46% of persons born in Asia[11] are LEP as compared with 2% of persons born in the United States.[12] Thus, housing decisions that are based on LEP generally relate to race or national origin.[13] Sometimes, "the line between discrimination on account of race and discrimination on account of national origin may be so thin as to be indiscernible."[14]

"National origin" means the geographic area in which a person was born or from which his or her ancestors came.[15] The geographic area need not be a country for it to be considered someone's "national origin," but rather can be a region within a country, or a region that spans multiple countries.[16] In general, national origin discrimination can occur even if the defendant

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[5] *See Faith Action for Cmty. Equity v. Hawaii*, No. 13-00450 SOM/RLP, 2014 U.S. Dist. LEXIS 58817 at *32 (D. Haw. Apr. 28, 2014) (finding it "relatively intuitive" that an "English-only policy disproportionately adversely affects people of national origins other than the United States."); *EEOC v. Premier Operator Servs.*, 113 F. Supp. 2d 1066, 1073 (N.D. Tex. 2000) ("English-only rules . . . disproportionately burden national origin minorities because they preclude many members of these groups from speaking the language in which they are best able to communicate, while rarely, if ever, having that effect on non-minority employees."); *EEOC v. Synchro-Start Prods.*, 29 F. Supp. 2d 911, 912 (N.D. Ill. 1999) ("[A]ny English-only rule unarguably impacts people of some national origins (those from non-English speaking countries) much more heavily than others."); *Saucedo v. Bros. Well Serv., Inc.*, 464 F. Supp. 919, 922 (S.D. Tex. 1979) ("A rule that Spanish cannot be spoken on the job obviously has a disparate impact upon Mexican-American employees. Most Anglo-Americans obviously have no desire and no ability to speak foreign languages on or off the job.").

[6] U.S. Census Bureau; American Community Survey, 2010-2014 American Community Survey 5-Year Estimates, Table B16005D; http://factfinder.census.gov/bkmk/table/1.0/en/ACS/14_5YR/B16005D.

[7] U.S. Census Bureau; American Community Survey, 2010-2014 American Community Survey 5-Year Estimates, Table B16005I; http://factfinder.census.gov/bkmk/table/1.0/en/ACS/14_5YR/B16005I.

[8] U.S. Census Bureau; American Community Survey, 2010-2014 American Community Survey 5-Year Estimates, Table B16005A; http://factfinder.census.gov/bkmk/table/1.0/en/ACS/14_5YR/B16005A.

[9] U.S. Census Bureau; American Community Survey, 2010-2014 American Community Survey 5-Year Estimates, Table B16005H; http://factfinder.census.gov/bkmk/table/1.0/en/ACS/14_5YR/B16005H. As used here, "Hispanic" means of "Hispanic, Latino, or Spanish origin."

[10] U.S. Census Bureau; American Community Survey, 2010-2014 American Community Survey 5-Year Estimates, Table S0506; http://factfinder.census.gov/bkmk/table/1.0/en/ACS/14_5YR/S0506.

[11] U.S. Census Bureau; American Community Survey, 2010-2014 American Community Survey 5-Year Estimates, Table S0505; http://factfinder.census.gov/bkmk/table/1.0/en/ACS/14_5YR/S0505.

[12] U.S. Census Bureau; American Community Survey, 2010-2014 American Community Survey 5-Year Estimates, Table B06007; http://factfinder.census.gov/bkmk/table/1.0/en/ACS/14_5YR/B06007.

[13] Race and national origin discrimination are highlighted in this memorandum because LEP cases typically involve discrimination on these bases, but particular facts could implicate other protected classes. For example, certain religious groups share a common language. Alternatively, a particular person's inability to read, write or speak in English could coincide with a disability, in which case other statutory protections, such as the obligation to provide reasonable accommodations, would apply.

[14] *Deravin v. Kerik*, 335 F.3d 195, 202 (2d Cir. 2003); *see also Salas v. Wis. Dep't of Corr.*, 493 F.3d 913, 923 (7th Cir. 2007) ("[T]here is uncertainty about what constitutes race versus national origin discrimination.).

[15] *Espinoza v. Farah Mfg. Co., Inc.*, 414 U.S. 86, 88 (1973) (employment discrimination case); *Hous. Rights Ctr. v. Donald Sterling Corp.*, 274 F. Supp. 2d 1129, 1138 (C.D. Cal. 2003) (applying the definition of national origin in *Espinoza* to the Fair Housing Act).

[16] *See* Guidelines on Discrimination Because of National Origin, 45 Fed. Reg. 85632, 85633 (Dec. 29, 1980) (EEOC explanation that under Title VII national origin need not be a "sovereign nation").

does not know, or is mistaken about, precisely from where the plaintiff originates.[17] Although language discrimination is not necessarily national origin discrimination, national origin discrimination includes discrimination because an individual has the physical, cultural, or linguistic characteristics of persons from a foreign geographic area.[18] Thus, "[c]ourts have found a nexus between language requirements and national origin discrimination."[19]

National statistics also demonstrate a connection between citizenship and LEP: for the U.S. population eighteen years and over, 63% of noncitizens are LEP, compared with 39% of naturalized citizens and 1% of native-born citizens.[20] As with language discrimination, discrimination against non-citizens or against those with a particular immigration status is not national origin discrimination, per se, because one's citizenship and immigration status are related but distinct from one's birthplace or ancestry. A requirement involving citizenship or immigration status will violate the Act when "it has the purpose or [unjustified] effect of discriminating on the basis of national origin."[21]

III. Intentional Discrimination

A housing provider violates the Fair Housing Act if the provider uses a person's LEP to discriminate intentionally because of race, national origin, or another protected characteristic. Selectively enforcing a language-related restriction based on a person's protected class violates the Act, as does using LEP as a pretext for intentional discrimination. In such cases, the use of the language-related criteria is analyzed under the Act the same as is the use of any other potentially discriminatory criteria. In an LEP case, as in any Fair Housing Act case, intentional discrimination can be established through direct or circumstantial evidence. "The key question . . . is whether the plaintiffs have presented sufficient evidence to permit a reasonable jury to conclude [they] suffered an adverse housing action" because of their protected class.[22]

Often, "lack of English proficiency is used as a proxy for national-origin discrimination."[23] Therefore, courts have held that language-related restrictions are "worthy of close scrutiny,"[24] are subject to "a very searching look,"[25] and "should be examined in the most careful possible

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[17] *See Berke v. Ohio Dep't of Pub. Welfare*, No. C-2-75-815, 1978 U.S. Dist. LEXIS 17380, at *22 (S.D. Ohio June 6, 1978) *aff'd*, 628 F.2d 980 (6th Cir. 1980) (Employee satisfied the prima facie elements for national origin discrimination under Title VII even though her employer did not know that she was of Polish origin but could have inferred that her "national origin was other than of the United States.").

[18] *See, e.g.*, 29 C.F.R. § 1601.1 ("The [EEOC] defines national origin discrimination broadly as including, but not limited to, the denial of equal employment opportunity because of an individual's, or his or her ancestor's, place of origin; or because an individual has the physical, cultural or linguistic characteristics of a national origin group.").

[19] *Colindres v. Quietflex Mfg.*, Nos. H-01-4319, -4323, 2004 U.S. Dist. LEXIS 27981, at *36 (S.D. Tex. Mar. 23, 2004).

[20] U.S. Census Bureau; American Community Survey, 2010-2014 American Community Survey 5-Year Estimates, Table B16008; http://factfinder.census.gov/bkmk/table/1.0/en/ACS/14_5YR/B16008.

[21] *Espinoza v. Hillwood Square Mut. Asso.*, 522 F. Supp. 559, 568 (E.D. Va. 1981) (quoting *Espinoza v. Farah Mfg. Co.*, 414 U.S. at 92) (Fair Housing Act claim alleging discrimination against non-citizens survives motion to dismiss because "a citizenship requirement might be but one part of a wider scheme of unlawful national-origin discrimination.").

[22] *Lindsay v. Yates*, 578 F.3d 407, 416 (6th Cir. 2009).

[23] *Aghazadeh v. Me. Med. Ctr.*, No. 98-421-P-C, 1999 U.S. Dist. LEXIS 23538, at *12 (D. Me. July 8, 1999).

[24] *Rivera v. Nibco, Inc.*, 701 F. Supp. 2d 1135, 1141 (E.D. Cal. 2010).

[25] *Fragante v. Honolulu*, 888 F.2d 591, 596 (9th Cir. 1989).

manner."[26] Justifications for language-related restrictions in a Fair Housing Act case must therefore be closely scrutinized to determine whether the restriction is in fact a proxy or pretext for race or national origin discrimination. LEP persons may speak English well enough to conduct essential housing-related matters or have a household member who can provide assistance as needed, so a blanket refusal to deal with LEP persons in the housing context is likely not motivated by genuine communication concerns.[27] Suspect practices include advertisements containing blanket statements such as "all tenants must speak English," or turning away all applicants who are not fluent in English. If the housing provider or resident can access free or low-cost language assistance services, any cost-based justifications for refusing to deal with LEP persons would also be immediately suspect.[28] In addition, the languages residents speak amongst themselves or to their guests do not affect the housing provider or neighbors in any legitimate way. Thus, bans on tenants speaking non-English languages on the property or statements disparaging tenants for speaking non-English languages have no cognizable justification under the Act.[29]

Aside from restrictions against all persons whose primary language is not English, the Act also may be violated by policies or practices that discriminate against persons based on their particular primary language, whether facially or through selective enforcement.[30] For example, if a housing provider has a policy of not selling, renting or lending to persons who speak a certain language, but will conduct those same transactions with persons who speak other languages, intentional discrimination is the likely reason.[31] Courts have recognized that "an individual's primary language skill generally flows from his or her national origin," and "persons of different nationalities are often distinguished by a foreign language."[32] Because a person's primary language generally derives from his or her national origin, singling out persons for disparate treatment because they speak a certain language is typically national origin discrimination. Furthermore, the Act's prohibitions include making statements with respect to the sale or rental of a dwelling indicating "any preference, limitation, or discrimination" based on national origin, evaluated according to the perceptions of a reasonable person.[33] A reasonable person could understand a restriction against persons who speak a specific language as indicating a "preference, limitation, or discrimination" against individuals whose national origins are areas where that

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[26] *Smothers v. Benitez*, 806 F. Supp. 299, 306 (D.P.R. 1992).
[27] *See Odima v. Westin Tucson Hotel Co.*, 991 F.2d 595, 601 (9th Cir. 1993) (explaining that the court will not permit "an easy refuge" for the defendant "to state falsely that it was not the person's national origin" but rather his "communication skills" that motivated the adverse action).
[28] *See Faith Action for Cmty. Equity*, 2014 U.S. Dist. LEXIS 58817 at *35 (In a Title VI case, based on an allegation that a third party "has been willing to offer competent translations at no cost to Defendants, and that this offer has been repeatedly rejected… any cost-based justification for the English-only policy is undermined.").
[29] *See, e.g., Cabrera v. Alvarez*, 977 F. Supp. 2d 969, 977 (N.D. Cal. 2013) (Fair Housing Act claim survived a motion to dismiss based in part on the housing provider's statement that tenant "should learn English now that she is in America.").
[30] *See Wilkie v. Geisinger Sys. Servs.*, No. 3:12-CV-580, 2014 U.S. Dist. LEXIS 132162, at *27 (M.D. Pa. Sep. 18, 2014) ("[I]f Plaintiff can prove that she alone was prohibited from speaking another language, then such a restriction would be indicative of discrimination."); *Aghazadeh*, 1999 U.S. Dist. LEXIS 23538, at *8 ("Discrimination against an individual because she speaks Farsi, for example, could be considered discrimination on the basis of her national origin" because "it is reasonable to infer that Farsi is the primary language of Iran.").
[31] *See Lopez v. Advantage Plumbing & Mech. Corp.*, No. 15-CV-4507 (AJN), 2016 U.S. Dist. LEXIS 43608, at *12 (S.D.N.Y. Mar. 30, 2016) ("[C]ourts have recognized that prohibiting certain non-English languages in the workplace while permitting others may constitute actionable employment discrimination.").
[32] *Olagues v. Russoniello*, 797 F.2d 1511, 1520-21 (9th Cir. 1986), *vacated as moot*, 484 F.2d 131 (9th Cir. 1987).
[33] 42 U.S.C. § 3604(c); *Ragin v. N.Y. Times Co.*, 923 F.2d 995, 1002 (2d Cir. 1991) (describing the standard for 42 U.S.C. § 3604(c) as the perception of an "ordinary" or "reasonable" person).

language is primarily used. Therefore, a notice, statement, or advertisement with respect to the sale or rental of a dwelling containing such a restriction will likely violate the Act.

Under Title VII of the Civil Rights Act of 1964 ("Title VII"),[34] some courts have recognized as legitimate the needs of employers to require that employees speak English for effective supervision, a cohesive workforce and to put customers at ease.[35] A housing provider's relationship with a resident, however, is quite different from that of a supervisor with an employee in that generally a supervisor must instruct and monitor the employee to improve performance. Likewise, the relationship among neighbors does not resemble that of coworkers in that generally neighbors can coexist effectively with minimal communication. Title VII also has the bona fide occupational qualification defense,[36] which does not exist under the Fair Housing Act. Thus, many of the interests asserted by employers that some courts have recognized as non-pretextual under Title VII will be inapplicable with regards to housing, lending or other real-estate related transactions covered by the Act.

A person's accent and his or her national origin are "inextricably intertwined."[37] It is thus inconceivable that a housing decision that treats someone differently because he or she speaks English fluently but with an accent is anything but intentional discrimination because of national origin in violation of the Act.[38] The same is true for housing-related policies or practices that treat persons with certain accents differently than persons with other accents.[39]

Targeting individuals for unfair or illegal housing-related services who are LEP or speak a particular language may also constitute intentional discrimination in violation of the Act. This is akin to "reverse redlining," where a service provider, such as a lender or insurer, targets a group of persons who share a race or national origin, or targets an area where most of the residents share a race or national origin, for the extension of credit or insurance on unfair or illegal terms.[40] Targeting in this manner violates the Act, regardless of whether the defendant acts based on animus towards the individuals' race or national origin group. In the same way, targeting such a group or area for other housing-related services, such as home loan modifications or audits, on unfair or illegal terms also violates the Act.[41] In some of these targeting cases, the discrimination has consisted of unfair and illegal language-related practices,

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[34] 42 U.S.C. § 2000e *et seq.*

[35] *See, e.g., Roman v. Cornell Univ.*, 53 F. Supp. 2d 223, 237 (N.D.N.Y. 1999) (collecting cases).

[36] *See* 42 U.S.C. § 2000e-2(e)(1).

[37] *Gold v. FedEx Freight E., Inc.*, 487 F.3d 1001, 1008 (6th Cir. 2007); *Raad v. Fairbanks N. Star Borough*, 323 F.3d 1185, 1195 (9th Cir. 2003).

[38] *Compare Gold*, 487 F.3d 1001 at 1009 ("Our characterization of [defendant's] comments concerning [plaintiff's] accent as direct evidence of national-origin discrimination is consistent with the Supreme Court's statements on the subject."); *with Shah v. Oklahoma*, 485 F. App'x 971, 974 (10th Cir. 2012) ("[C]omments regarding a plaintiff's accent may constitute circumstantial evidence of discrimination.").

[39] *See Odima*, 53 F.3d at 1491 n.2 (in finding employment discrimination, noting that the plaintiff, who spoke with a Nigerian accent, was told to go to speech therapy to advance his career while a coworker, who spoke with an Austrian accent, was not).

[40] *See Hargraves v. Capital City Mortg. Corp.*, 140 F. Supp. 2d 7, 20 (D.D.C. 2000).

[41] *See HUD v. The Home Loan Auditors, L.L.C.* (Jan. 7, 2016), http://portal.hud.gov/hudportal/documents/huddoc?id=16-1-CHARGE-CALI.PDF

such as false advertising in non-English mediums and failing to explain untranslated documents or translating them inaccurately.[42]

If a housing provider is required to provide housing-related language assistance services to LEP persons under federal, state or local law, or by contract, and the housing provider fails to comply with that requirement, this too may constitute intentional discrimination.[43] By failing to comply with a requirement to provide language assistance, the housing provider may be denying individuals, based on their national origin, an equal opportunity to enjoy the housing benefits to which that requirement entitles them.[44]

IV. Discriminatory Effects Liability and Use of Limited English Proficiency to Make Housing Decisions

A housing provider violates the Fair Housing Act when the provider's policy or practice has an unjustified discriminatory effect, even when the provider had no intent to discriminate.[45] Under this standard, a facially-neutral policy or practice that has a discriminatory effect because of race, national origin, or another protected characteristic violates the Act if it is not supported by a legally sufficient justification. Thus, where a policy or practice that restricts access to housing on the basis of LEP has a discriminatory effect based on national origin, race, or other protected characteristic, such policy or practice violates the Act if it is not necessary to serve a substantial, legitimate, nondiscriminatory interest of the housing provider, or if such interest could be served by another practice that has a less discriminatory effect.[46] Discriminatory effects liability is assessed under a three-step burden-shifting standard requiring a fact-specific analysis.[47]

The following sections discuss the three steps used to analyze claims that a housing provider's use of LEP results in an unjustified discriminatory effect in violation of the Act.

A. Assessing the Discriminatory Effect

In the first step of the analysis, the plaintiff (or HUD in an administrative proceeding) must prove that the defendant's policy or practice concerning LEP persons has a discriminatory effect, that is, that the policy results in a disparate impact on a group of persons because of the group's national origin, race, or other protected characteristic.[48] The burden of proving this first

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[42] *Id.*; *Garcia v. Zak*, 37 MDLR 55 (Mass. Comm'n Against Discrimination, Apr. 28, 2015).

[43] *See Cabrera*, 977 F. Supp. 2d at 977 (denying a motion to dismiss as to plaintiffs' intentional Fair Housing Act claim where the plaintiffs, LEP tenants, alleged, *inter alia*, that their landlord failed to provide translation services as required by their lease).

[44] *See Almendares v. Palmer*, 284 F. Supp. 2d 799, 808 (N.D. Ohio 2003) (finding that one could "logically infer" discriminatory intent where the defendant "chose to continue a policy of failing to ensure bilingual services" as required by Title VI "knowing that Spanish-speaking applicants and recipients . . . were being harmed as the consequence").

[45] 24 C.F.R. § 100.500; *accord Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.*, ___ U.S. ___, 135 S. Ct. 2507, 2514-15 (2015).

[46] 24 C.F.R. § 100.500; *see also Inclusive Cmtys. Project*, 135 S. Ct. at 2514-15 (summarizing the standards in HUD's discriminatory effects regulations at 24 C.F.R. § 100.500).

[47] *See* 24 C.F.R. § 100.500.

[48] *Id.* A discriminatory effect can also be proven with evidence that the policy creates, increases, reinforces, or perpetuates segregated housing patterns. *See* 24 C.F.R. § 100.500(a). This guidance addresses only the method for analyzing a disparate impact claim, which in HUD's experience is more commonly asserted in this context.

step of the analysis is satisfied by presenting evidence proving that the challenged practice causes or predictably will cause a disparate impact.

Census data may be used to prove that an LEP-related policy has a disparate impact based on race, national origin or another protected characteristic.[49] The U.S. Census Bureau publishes data relating LEP to other criteria that may be relevant to a given case, such as national origin, race, geography, language spoken, citizenship, and age, and it also provides Public Use Microdata Sample files that can be used to produce figures relating LEP to other potentially relevant criteria, such as income, household size and renter/owner status. Other evidence can also demonstrate the existence of a disparate impact, such as the characteristics of the actual applicants or residents affected by a housing provider's policy, where, for example, a landlord is alleged to have evicted all tenants who are LEP. No single comparative method is generally required or always preferred. Regardless of the method of analysis, determining whether a policy or practice results in a disparate impact is ultimately a fact-specific and case-specific inquiry.

A policy disfavoring LEP persons can have a disparate impact on persons of multiple national origins; in other words, the members of the injured group need not all be of the same national origin. As one court explained:

> The fact that the impact of the English-only policy does not fall only on one national origin or a few national origins does not prevent the impact of the policy from being disparate. Indeed, if an impact cannot be 'disparate' when it affects multiple national origins, then any policy would be immune from challenge so long as it casts its discriminatory net widely enough. If a policy differently affects individuals from nations where English is the primary language and nations where it is not, then the policy has a disparate impact.[50]

B. Evaluating Whether the Challenged Policy or Practice is Necessary to Achieve a Substantial, Legitimate, Nondiscriminatory Interest

In the second step of the discriminatory effects analysis, the burden shifts to the housing provider to prove that the challenged policy or practice is justified – that is, that it is necessary to achieve a substantial, legitimate, nondiscriminatory interest of the provider.[51] The interest proffered by the housing provider may not be hypothetical or speculative, meaning the housing provider must be able to supply evidence proving that the housing provider has a substantial, legitimate, nondiscriminatory interest supporting the challenged policy.[52] Assertions based on generalizations or stereotypes about LEP persons will not satisfy the housing provider's burden.

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[49] *Cf. Veles v. Lindow*, No 99-15795, 2000 U.S. App. LEXIS 27672, at *3 (9th Cir. Nov. 1, 2000) (affirming verdict in favor of defendants where plaintiffs had "provided virtually no evidence to prove disparate impact and inexplicably failed to object to the district court's exclusion of statistical evidence in support of their claim").

[50] *Faith Action for Cmty. Equity*, 2014 U.S. Dist. LEXIS 58817 at *33 (Title VI challenge to Hawaii's decision to cease offering its driver's license test in eight non-English languages).

[51] 24 C.F.R. § 100.500(c)(2).

[52] *See* 24 C.F.R. § 100.500(b)(2); *see also* 78 Fed. Reg. 11460, 11471 (Feb. 15, 2013).

Whether a policy or practice is necessary to achieve a housing provider's substantial, legitimate, nondiscriminatory interest will vary by case. Many of the LEP cases in the employment context where the business justification defense has succeeded lack analogs in the housing context. Housing and employment practices differ for many reasons, including the amount and nature of the communication that they generally require.[53] Therefore, many of the business justifications that have succeeded under Title VII will not apply or will not be considered substantial, legitimate, nondiscriminatory interests under the Act.

English proficiency is likely not necessary in the seller-buyer context because it does not involve an ongoing relationship. Nor is it likely necessary in the landlord-tenant context where communications are not particularly complex or frequent or where, for example, a landlord employs a management company with multilingual staff or otherwise can access language assistance. Similarly, refusing to allow an LEP borrower to have mortgage documents translated, or refusing to provide the borrower with translated documents that the lender or mortgage broker has readily available, is likely not necessary to achieve a substantial, legitimate, nondiscriminatory interest. Likewise, restricting a borrower's use of an interpreter, or requiring that an English speaker cosign a mortgage, likely will not prove justifiable.

Some states require that if negotiations for a mortgage are conducted in a non-English language, certain mortgage documents must also be provided in that language.[54] Avoiding compliance with a state consumer protection law would not be considered a substantial, legitimate, nondiscriminatory interest that would justify refusing to serve LEP borrowers.

C. Evaluating Whether There Is a Less Discriminatory Alternative

The third step of the discriminatory effects analysis is applicable only if a housing provider successfully proves that its language-related policy or practice is necessary to achieve its substantial, legitimate, nondiscriminatory interest. In the third step, the burden shifts back to the plaintiff (or HUD in an administrative proceeding) to prove that such interest could be served by another practice that has a less discriminatory effect.[55] The identification of a less discriminatory alternative will depend on the particulars of the policy or practice under challenge, as well as specifics about the housing at issue and affected population.

Allowing a tenant (or home-buyer, mortgage-borrower, etc.) a reasonable amount of time to take a document, such as a lease, to be translated, could be a less discriminatory alternative. Other less discriminatory alternatives in an LEP case might include obtaining written or oral translation services or drawing upon the language skills of staff members. Similarly, if the family has a member who speaks English or brings another person along to interpret, agreeing to communicate through these individuals could be an alternative to refusing to deal with anyone who does not speak English.[56]

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[53] *See supra* Part III discussing the reasons housing differs from employment with regards to intent claims, which apply to effects claims as well.

[54] *See, e.g.*, Cal. Civ. Code § 1632; Or. Rev. Stat. § 86A.198.

[55] 24 C.F.R. § 100.500(c)(3).

[56] For assisted housing providers, however, requiring tenants to rely on family members rather than providing language assistance may not be permissible under Title VI. *See* HUD LEP Guidance, *supra* note 2, at 2743.

V. Conclusion

The Fair Housing Act prohibits both intentional housing discrimination and housing practices that have an unjustified discriminatory effect because of race, national origin or other protected characteristics. Selective application of a language-related policy, or use of LEP as a pretext for unequal treatment of individuals based on race, national origin, or other protected characteristics, violates the Act. Moreover, because of the close link between LEP and certain racial and national origin groups, restrictions on access to housing based on LEP are likely disproportionately to burden certain protected classes and, if not legally justified, may violate the Act under a discriminatory effects theory.

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Title 24: Housing and Urban Development

PART 58—ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES

Contents

AUTHORITY: 12 U.S.C. 1707 note, 1715z-13a(k); 25 U.S.C. 4115 and 4226; 42 U.S.C. 1437x, 3535(d), 3547, 4321-4335, 4852, 5304(g), 12838, and 12905(h); title II of Pub. L. 105-276; E.O. 11514 as amended by E.O. 11991, 3 CFR, 1977 Comp., p. 123.

SOURCE: 61 FR 19122, Apr. 30, 1996, unless otherwise noted.

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Subpart A—Purpose, Legal Authority, Federal Laws and Authorities

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§58.1 Purpose and applicability.

(a) *Purpose.* This part provides instructions and guidance to recipients of HUD assistance and other responsible entities for conducting an environmental review for a particular project or activity and for obtaining approval of a Request for Release of Funds.

(b) *Applicability.* This part applies to activities and projects where specific statutory authority exists for recipients or other responsible entities to assume environmental responsibilities. Programs and activities subject to this part include:

(1) Community Development Block Grant programs authorized by Title I of the Housing and Community Development Act of 1974, in accordance with section 104(g) (42 U.S.C. 5304(g));

(2) [Reserved]

(3)(i) Grants to states and units of general local government under the Emergency Shelter Grant Program, Supportive Housing Program (and its predecessors, the Supportive Housing Demonstration Program (both Transitional Housing and Permanent Housing for Homeless Persons with Disabilities) and Supplemental Assistance for Facilities to Assist the Homeless), Shelter Plus Care Program, Safe Havens for Homeless Individuals Demonstration Program, and Rural Homeless Housing Assistance, authorized by Title IV of the McKinney-Vento Homeless Assistance Act, in accordance with section 443 (42 U.S.C. 11402);

(ii) Grants beginning with Fiscal Year 2001 to private non-profit organizations and housing agencies under the Supportive Housing Program and Shelter Plus Care Program authorized by Title IV of the McKinney-Vento Homeless Assistance Act, in accordance with section 443 (42 U.S.C. 11402);

(4) The HOME Investment Partnerships Program authorized by Title II of the Cranston-Gonzalez National Affordable Housing Act (NAHA), in accordance with section 288 (42 U.S.C. 12838);

(5) Grants to States and units of general local government for abatement of lead-based paint and lead dust hazards pursuant to Title II of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1992, and grants for lead-based paint hazard reduction under section 1011 of the Housing and Community Development Act of 1992, in accordance with section 1011(o) (42 U.S.C. 4852(o));

(6)(i) Public Housing Programs under Title I of the United States Housing Act of 1937, including HOPE VI grants authorized under section 24 of the Act for Fiscal Year 2000 and later, in accordance with section 26 (42 U.S.C. 1437x);

(ii) Grants for the revitalization of severely distressed public housing (HOPE VI) for Fiscal Year 1999 and prior years, in accordance with Title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105-276, approved October 21, 1998); and

(iii) Assistance administered by a public housing agency under section 8 of the United States Housing Act of 1937, except for assistance provided under part 886 of this title, in accordance with section 26 (42 U.S.C. 1437x);

(7) Special Projects appropriated under an appropriation act for HUD, such as special projects under the heading “Annual Contributions for Assisted Housing” in Title II of various Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Acts, in accordance with section 305(c) of the Multifamily Housing Property Disposition Reform Act of 1994 (42 U.S.C. 3547);

(8) The FHA Multifamily Housing Finance Agency Pilot Program under section 542(c) of the Housing and Community Development Act of 1992, in accordance with section 542(c)(9)(12 U.S.C. 1707 note);

(9) The Self-Help Homeownership Opportunity Program under section 11 of the Housing Opportunity Program Extension Act of 1996 (Pub. L. 104-120, 110 Stat. 834), in accordance with section 11(m));

(10) Assistance provided under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), in accordance with:

(i) Section 105 for Indian Housing Block Grants and Federal Guarantees or Financing for Tribal Housing Authorities (25 U.S.C. 4115 and 4226); and

(ii) Section 806 for Native Hawaiian Housing Block Grants (25 U.S.C. 4226);

(11) Indian Housing Loan Guarantees authorized by section 184 of the Housing and Community Development Act of 1992, in accordance with section 184(k) (12 U.S.C. 1715z-13a(k)); and

(12) Grants for Housing Opportunities for Persons with AIDS (HOPWA) under the AIDS Housing Opportunity Act, as follows: competitive grants beginning with Fiscal Year 2001 and all formula grants, in accordance with section 856(h) (42 U.S.C. 12905(h)); all grants for Fiscal Year 1999 and prior years, in accordance with section 207(c) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105-276, approved October 21, 1998).

(c) When HUD assistance is used to help fund a revolving loan fund that is administered by a recipient or another party, the activities initially receiving assistance from the fund are subject to the requirements in this part. Future activities receiving assistance from the revolving loan fund, after the fund has received loan repayments, are subject to the environmental review requirements if the rules of the HUD program that initially provided assistance to the fund continue to treat the activities as subject to the Federal requirements. If the HUD program treats the activities as not being subject to any Federal requirements, then the activities cease to become Federally-funded activities and the provisions of this part do not apply.

(d) To the extent permitted by applicable laws and the applicable regulations of the Council on Environmental Quality, the Assistant Secretary for Community Planning and Development may, for good cause and with appropriate conditions, approve waivers and exceptions or establish criteria for exceptions from the requirements of this part.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56127, Sept. 29, 2003]

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§58.2 Terms, abbreviations and definitions.

(a) For the purposes of this part, the following definitions supplement the uniform terminology provided in 40 CFR part 1508:

(1) *Activity* means an action that a grantee or recipient puts forth as part of an assisted project, regardless of whether its cost is to be borne by the HUD assistance or is an eligible expense under the HUD assistance program.

(2) *Certifying Officer* means the official who is authorized to execute the Request for Release of Funds and Certification and has the legal capacity to carry out the responsibilities of §58.13.

(3) *Extraordinary Circumstances* means a situation in which an environmental assessment (EA) or environmental impact statement (EIS) is not normally required, but due to unusual conditions, an EA or EIS is appropriate. Indicators of unusual conditions are:

(i) Actions that are unique or without precedent;

(ii) Actions that are substantially similar to those that normally require an EIS;

(iii) Actions that are likely to alter existing HUD policy or HUD mandates; or

(iv) Actions that, due to unusual physical conditions on the site or in the vicinity, have the potential for a significant impact on the environment or in which the environment could have a significant impact on users of the facility.

(4) *Project* means an activity, or a group of integrally related activities, designed by the recipient to accomplish, in whole or in part, a specific objective.

(5) *Recipient* means any of the following entities, when they are eligible recipients or grantees under a program listed in §58.1(b):

(i) A State that does not distribute HUD assistance under the program to a unit of general local government;

(ii) Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, and Palau;

(iii) A unit of general local government;

(iv) An Indian tribe;

(v) With respect to Public Housing Programs under §58.1(b)(6)(i), fiscal year 1999 and prior HOPE VI grants under §58.1(b)(6)(ii) or Section 8 assistance under §58.1(b)(6)(iii), a public housing agency;

(vi) Any direct grantee of HUD for a special project under §58.1(b)(7);

(vii) With respect to the FHA Multifamily Housing Finance Agency Program under 58.1(b)(8), a qualified housing finance agency;

(viii) With respect to the Self-Help Homeownership Opportunity Program under §58.1(b)(9), any direct grantee of HUD.

(ix)(A) With respect to NAHASDA assistance under §58.1(b)(10), the Indian tribe or the Department of Hawaiian Home Lands; and

(B) With respect to the Section 184 Indian Housing Loan Guarantee program under §58.1(b)(11), the Indian tribe.

(x) With respect to the Shelter Plus Care and Supportive Housing Programs under §58.1(b)(3)(ii), nonprofit organizations and other entities.

(6) *Release of funds.* In the case of the FHA Multifamily Housing Finance Agency Program under §58.1(b)(8), Release of Funds, as used in this part, refers to HUD issuance of a firm approval letter, and Request for Release of Funds refers to a recipient's request for a firm approval letter. In the case of the Section 184 Indian Housing Loan Guarantee program under §58.1(b)(11), Release of Funds refers to HUD's issuance of a commitment to guarantee a loan, or if there is no commitment, HUD's issuance of a certificate of guarantee.

(7) *Responsible Entity.* Responsible Entity means:

(i) With respect to environmental responsibilities under programs listed in §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;

(8) *Unit Density* refers to a change in the number of dwelling units. Where a threshold is identified as a percentage change in density that triggers review requirements, no distinction is made between an increase or a decrease in density.

(9) *Tiering* means the evaluation of an action or an activity at various points in the development process as a proposal or event becomes ripe for an Environment Assessment or Review.

(10) *Vacant Building* means a habitable structure that has been vacant for more than one year.

(b) The following abbreviations are used throughout this part:

(1) CDBG—Community Development Block Grant;

(2) CEQ—Council on Environmental Quality;

(3) EA—Environmental Assessment;

(4) EIS—Environmental Impact Statement;

(5) EPA—Environmental Protection Agency;

(6) ERR—Environmental Review Record;

(7) FONSI—Finding of No Significant Impact;

(8) HUD—Department of Housing and Urban Development;

(9) NAHA—Cranston-Gonzalez National Affordable Housing Act of 1990;

(10) NEPA—National Environmental Policy Act of 1969, as amended;

(11) NOI/EIS—Notice of Intent to Prepare an EIS;

(12) NOI/RROF—Notice of Intent to Request Release of Funds;

(13) ROD—Record of Decision;

(14) ROF—Release of Funds; and

(15) RROF—Request for Release of Funds.

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§58.4 Assumption authority.

(a) *Assumption authority for responsible entities: General.* Responsible entities shall assume the responsibility for environmental review, decision-making, and action that would otherwise apply to HUD under NEPA and other provisions of law that further the purposes of NEPA, as specified in §58.5. Responsible entities that receive assistance directly from HUD assume these responsibilities by execution of a grant agreement with HUD and/or a legally binding document such as the certification contained on HUD Form 7015.15, certifying to the assumption of environmental responsibilities. When a State distributes funds to a responsible entity, the State must provide for appropriate procedures by which these responsible entities will evidence their assumption of environmental responsibilities.

(b) *Particular responsibilities of the States.* (1) States are recipients for purposes of directly undertaking a State project and must assume the environmental review responsibilities for the State's activities and those of any non-governmental entity that may participate in the project. In this case, the State must submit the certification and RROF to HUD for approval.

(2) States must exercise HUD's responsibilities in accordance with §58.18, with respect to approval of a unit of local government's environmental certification and RROF for a HUD assisted project funded through the state. Approval by the state of a unit of local government's certification and RROF satisfies the Secretary's responsibilities under NEPA and the related laws cited in §58.5.

(c) *Particular responsibilities of Indian tribes.* An Indian tribe may, but is not required to, assume responsibilities for environmental review, decision-making and action for programs authorized by the Native American Housing Assistance and

Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (other than title VIII) or section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z-13a). The tribe must make a separate decision regarding assumption of responsibilities for each of these Acts and communicate that decision in writing to HUD. If the tribe assumes these responsibilities, the requirements of this part shall apply. If a tribe formally declines assumption of these responsibilities, they are retained by HUD and the provisions of part 50 of this title apply.

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§58.5 Related Federal laws and authorities.

In accordance with the provisions of law cited in §58.1(b), the responsible entity must assume responsibilities for environmental review, decision-making and action that would apply to HUD under the following specified laws and authorities. The responsible entity must certify that it has complied with the requirements that would apply to HUD under these laws and authorities and must consider the criteria, standards, policies and regulations of these laws and authorities.

(a) *Historic properties.* (1) The National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*), particularly sections 106 and 110 (16 U.S.C. 470 and 470h-2).

(2) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921), 3 CFR 1971-1975 Comp., p. 559, particularly section 2(c).

(3) Federal historic preservation regulations as follows:

(i) 36 CFR part 800 with respect to HUD programs other than Urban Development Action Grants (UDAG); and

(ii) 36 CFR part 801 with respect to UDAG.

(4) The Reservoir Salvage Act of 1960 as amended by the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 *et seq.*), particularly section 3 (16 U.S.C. 469a-1).

(b) *Floodplain management and wetland protection.* (1) Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951), 3 CFR, 1977 Comp., p. 117, as interpreted in HUD regulations at 24 CFR part 55, particularly section 2(a) of the order (For an explanation of the relationship between the decision-making process in 24 CFR part 55 and this part, see §55.10 of this subtitle A.)

(2) Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961), 3 CFR, 1977 Comp., p. 121, as interpreted in HUD regulations at 24 CFR part 55, particularly sections 2 and 5 of the order.

(c) *Coastal Zone Management.* The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*), as amended, particularly section 307(c) and (d) (16 U.S.C. 1456(c) and (d)).

(d) *Sole source aquifers.* (1) The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) *et seq.,* and 21 U.S.C. 349) as amended; particularly section 1424(e)(42 U.S.C. 300h-3(e)).

(2) Sole Source Aquifers (Environmental Protection Agency—40 CFR part 149).

(e) *Endangered species.* The Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) as amended, particularly section 7 (16 U.S.C. 1536).

(f) *Wild and scenic rivers.* The Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 *et seq.*) as amended, particularly section 7(b) and (c) (16 U.S.C. 1278(b) and (c)).

(g) *Air quality.* (1) The Clean Air Act (42 U.S.C. 7401 *et. seq.*) as amended; particularly section 176(c) and (d) (42 U.S.C. 7506(c) and (d)).

(2) Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency —40 CFR parts 6, 51, and 93).

(h) *Farmlands protection.* (1) Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 *et seq.*) particularly sections 1540(b) and 1541 (7 U.S.C. 4201(b) and 4202).

(2) Farmland Protection Policy (Department of Agriculture—7 CFR part 658).

(i) *HUD environmental standards.* (1) Applicable criteria and standards specified in part 51 of this title, other than the runway clear zone notification requirement in §51.303(a)(3).

(2)(i) Also, it is HUD policy that all properties that are being proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property.

(ii) The environmental review of multifamily housing with five or more dwelling units (including leasing), or non-residential property, must include the evaluation of previous uses of the site or other evidence of contamination on or near the site, to ensure that the occupants of proposed sites are not adversely affected by any of the hazards listed in paragraph (i)(2)(i) of this section.

(iii) Particular attention should be given to any proposed site on or in the general proximity of such areas as dumps, landfills, industrial sites, or other locations that contain, or may have contained, hazardous wastes.

(iv) The responsible entity shall use current techniques by qualified professionals to undertake investigations determined necessary.

(j) *Environmental justice.* Executive Order 12898—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994 (59 FR 7629), 3 CFR, 1994 Comp. p. 859.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56128, Sept. 29, 2003; 78 FR 68734, Nov. 15, 2013]

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§58.6 Other requirements.

In addition to the duties under the laws and authorities specified in §58.5 for assumption by the responsible entity under the laws cited in §58.1(b), the responsible entity must comply with the following requirements. Applicability of the following requirements does not trigger the certification and release of funds procedure under this part or preclude exemption of an activity under §58.34(a)(12) and/or the applicability of §58.35(b). However, the responsible entity remains responsible for addressing the following requirements in its ERR and meeting these requirements, where applicable, regardless of whether the activity is exempt under §58.34 or categorically excluded under §58.35(a) or (b).

(a)(1) Under the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4128), Federal financial assistance for acquisition and construction purposes (including rehabilitation) may not be used in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(i) The community in which the area is situated is participating in the National Flood Insurance Program (see 44 CFR parts 59 through 79), or less than one year has passed since the FEMA notification regarding such hazards; and

(ii) Where the community is participating in the National Flood Insurance Program, flood insurance protection is to be obtained as a condition of the approval of financial assistance to the property owner.

(2) Where the community is participating in the National Flood Insurance Program and the recipient provides financial assistance for acquisition or construction purposes (including rehabilitation) for property located in an area identified by FEMA as having special flood hazards, the responsible entity is responsible for assuring that flood insurance under the National Flood Insurance Program is obtained and maintained.

(3) Paragraph (a) of this section does not apply to Federal formula grants made to a State.

(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.

(b) Under section 582 of the National Flood Insurance Reform Act of 1994, 42 U.S.C. 5154a, HUD disaster assistance that is made available in a special flood hazard area may not be used to make a payment (including any loan assistance payment) to a person for repair, replacement or restoration for flood damage to any personal, residential or commercial property if:

(1) The person had previously received Federal flood disaster assistance conditioned on obtaining and maintaining flood insurance; and

(2) The person failed to obtain and maintain flood insurance.

(c) Pursuant to the Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3501), HUD assistance may not be used for most activities proposed in the Coastal Barrier Resources System.

(d) In all cases involving HUD assistance, subsidy, or insurance for the purchase or sale of an existing property in a Runway Clear Zone or Clear Zone, as defined in 24 CFR part 51, the responsible entity shall advise the buyer that the property is in a runway clear zone or clear zone, what the implications of such a location are, and that there is a possibility that the property may, at a later date, be acquired by the airport operator. The buyer must sign a statement acknowledging receipt of this information.

[61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15271, Mar. 30, 1998; 78 FR 68734, Nov. 15, 2013]

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Subpart B—General Policy: Responsibilities of Responsible Entities

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§58.10 Basic environmental responsibility.

In accordance with the provisions of law cited in §58.1(b), except as otherwise provided in §58.4(c), the responsible entity must assume the environmental responsibilities for projects under programs cited in §58.1(b). In doing so, the responsible entity must comply with the provisions of NEPA and the CEQ regulations contained in 40 CFR parts 1500 through 1508, including the requirements set forth in this part.

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§58.11 Legal capacity and performance.

(a) A responsible entity which believes that it does not have the legal capacity to carry out the environmental responsibilities required by this part must contact the appropriate local HUD Office or the State for further instructions. Determinations of legal capacity will be made on a case-by-case basis.

(b) If a public housing, special project, HOPWA, Supportive Housing, Shelter Plus Care, or Self-Help Homeownership Opportunity recipient that is not a responsible entity objects to the non-recipient responsible entity conducting the environmental review on the basis of performance, timing, or compatibility of objectives, HUD will review the facts to determine who will perform the environmental review.

(c) At any time, HUD may reject the use of a responsible entity to conduct the environmental review in a particular case on the basis of performance, timing or compatibility of objectives, or in accordance with §58.77(d)(1).

(d) If a responsible entity, other than a recipient, objects to performing an environmental review, or if HUD determines that the responsible entity should not perform the environmental review, HUD may designate another responsible entity to conduct the review in accordance with this part or may itself conduct the environmental review in accordance with the provisions of 24 CFR part 50.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56129, Sept. 29, 2003]

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§58.12 Technical and administrative capacity.

The responsible entity must develop the technical and administrative capability necessary to comply with 40 CFR parts 1500 through 1508 and the requirements of this part.

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§58.13 Responsibilities of the certifying officer.

Under the terms of the certification required by §58.71, a responsible entity's certifying officer is the “responsible Federal official” as that term is used in section 102 of NEPA and in statutory provisions cited in §58.1(b). The Certifying Officer is therefore responsible for all the requirements of section 102 of NEPA and the related provisions in 40 CFR parts 1500 through 1508, and 24 CFR part 58, including the related Federal authorities listed in §58.5. The Certifying Officer must also:

(a) Represent the responsible entity and be subject to the jurisdiction of the Federal courts. The Certifying Officer will not be represented by the Department of Justice in court; and

(b) Ensure that the responsible entity reviews and comments on all EISs prepared for Federal projects that may have an impact on the recipient's program.

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§58.14 Interaction with State, Federal and non-Federal entities.

A responsible entity shall consult with appropriate environmental agencies, State, Federal and non-Federal entities and the public in the preparation of an EIS, EA or other environmental reviews undertaken under the related laws and authorities cited in §58.5 and §58.6. The responsible entity must also cooperate with other agencies to reduce duplication between NEPA and comparable environmental review requirements of the State (see 40 CFR 1506.2 (b) and (c)). The responsible entity must prepare its EAs and EISs so that they comply with the environmental review requirements of both Federal and State laws unless otherwise specified or provided by law. State, Federal and local agencies may participate or act in a joint lead or cooperating agency capacity in the preparation of joint EISs or joint environmental assessments (see 40 CFR 1501.5(b) and 1501.6). A single EIS or EA may be prepared and adopted by multiple users to the extent that the review addresses the relevant environmental issues and there is a written agreement between the cooperating agencies which sets forth the coordinated and overall responsibilities.

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§58.15 Tiering.

Responsible entities may tier their environmental reviews and assessments to eliminate repetitive discussions of the same issues at subsequent levels of review. Tiering is appropriate when there is a requirement to evaluate a policy or proposal in the early stages of development or when site-specific analysis or mitigation is not currently feasible and a more narrow or focused analysis is better done at a later date. The site specific review need only reference or summarize the issues addressed in the broader review. The broader review should identify and evaluate those issues ripe for decision and exclude those issues not relevant to the policy, program or project under consideration. The broader review should also establish the policy, standard or process to be followed in the site specific review. The Finding of No Significant Impact (FONSI) with respect to the broader assessment shall include a summary of the assessment and identify the significant issues to be considered in site specific reviews. Subsequent site-specific reviews will not require notices or a Request for Release of Funds unless the Certifying Officer determines that there are unanticipated impacts or impacts not adequately addressed in the prior review. A tiering approach can be used for meeting environmental review requirements in areas designated for special focus in local Consolidated Plans. Local and State Governments are encouraged to use the Consolidated Plan process to facilitate environmental reviews.

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§58.17 [Reserved]

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§58.18 Responsibilities of States assuming HUD environmental responsibilities.

States that elect to administer a HUD program shall ensure that the program complies with the provisions of this part. The state must:

(a) Designate the state agency or agencies that will be responsible for carrying out the requirements and administrative responsibilities set forth in subpart H of this part and which will:

(1) Develop a monitoring and enforcement program for post-review actions on environmental reviews and monitor compliance with any environmental conditions included in the award.

(2) Receive public notices, RROFs, and certifications from recipients pursuant to §§58.70 and 58.71; accept objections from the public and from other agencies (§58.73); and perform other related responsibilities regarding releases of funds.

(b) Fulfill the state role in subpart H relative to the time period set for the receipt and disposition of comments, objections and appeals (if any) on particular projects.

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Subpart C—General Policy: Environmental Review Procedures

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§58.21 Time periods.

All time periods in this part shall be counted in calendar days. The first day of a time period begins at 12:01 a.m. local time on the day following the publication or the mailing and posting date of the notice which initiates the time period.

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§58.22 Limitations on activities pending clearance.

(a) Neither a recipient nor any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance under a program listed in §58.1(b) on an activity or project until HUD or the state has approved the recipient's RROF and the related certification from the responsible entity. In addition, until the RROF and the related certification have been approved, neither a recipient nor any participant in the development process may commit non-HUD funds on or undertake an activity or project under a program listed in §58.1(b) if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives.

(b) If a project or activity is exempt under §58.34, or is categorically excluded (except in extraordinary circumstances) under §58.35(b), no RROF is required and the recipient may undertake the activity immediately after the responsible entity has documented its determination as required in §58.34(b) and §58.35(d), but the recipient must comply with applicable requirements under §58.6.

(c) If a recipient is considering an application from a prospective subrecipient or beneficiary and is aware that the prospective subrecipient or beneficiary is about to take an action within the jurisdiction of the recipient that is prohibited by paragraph (a) of this section, then the recipient will take appropriate action to ensure that the objectives and procedures of NEPA are achieved.

(d) An option agreement on a proposed site or property is allowable prior to the completion of the environmental review if the option agreement is subject to a determination by the recipient on the desirability of the property for the project as a result of the completion of the environmental review in accordance with this part and the cost of the option is a nominal portion of the purchase price. There is no constraint on the purchase of an option by third parties that have not been selected for HUD funding, have no responsibility for the environmental review and have no say in the approval or disapproval of the project.

(e) *Self-Help Homeownership Opportunity Program (SHOP).* In accordance with section 11(d)(2)(A) of the Housing Opportunity Program Extension Act of 1996 (42 U.S.C. 12805 note), an organization, consortium, or affiliate receiving assistance under the SHOP program may advance nongrant funds to acquire land prior to completion of an environmental review and approval of a Request for Release of Funds (RROF) and certification, notwithstanding paragraph (a) of this section. Any advances to acquire land prior to approval of the RROF and certification are made at the risk of the organization, consortium, or affiliate and reimbursement for such advances may depend on the result of the environmental review. This authorization is limited to the SHOP program only and all other forms of HUD assistance are subject to the limitations in paragraph (a) of this section.

(f) *Relocation.* Funds may be committed for relocation assistance before the approval of the RROF and related certification for the project provided that the relocation assistance is required by 24 CFR part 42.

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§58.23 Financial assistance for environmental review.

The costs of environmental reviews, including costs incurred in complying with any of the related laws and authorities cited in §58.5 and §58.6, are eligible costs to the extent allowable under the HUD assistance program regulations.

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Subpart D—Environmental Review Process: Documentation, Range of Activities, Project Aggregation and Classification

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§58.30 Environmental review process.

(a) The environmental review process consists of all the actions that a responsible entity must take to determine compliance with this part. The environmental review process includes all the compliance actions needed for other activities and projects that are not assisted by HUD but are aggregated by the responsible entity in accordance with §58.32.

(b) The environmental review process should begin as soon as a recipient determines the projected use of HUD assistance.

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§58.32 Project aggregation.

(a) A responsible entity must group together and evaluate as a single project all individual activities which are related either on a geographical or functional basis, or are logical parts of a composite of contemplated actions.

(b) In deciding the most appropriate basis for aggregation when evaluating activities under more than one program, the responsible entity may choose: *functional aggregation* when a specific type of activity (e.g., water improvements) is to take place in several separate locales or jurisdictions; *geographic aggregation* when a mix of dissimilar but related activities is to be concentrated in a fairly specific project area (e.g., a combination of water, sewer and street improvements and economic development activities); or *a combination of aggregation approaches,* which, for various project locations, considers the impacts arising from each functional activity and its interrelationship with other activities.

(c) The purpose of project aggregation is to group together related activities so that the responsible entity can:

(1) Address adequately and analyze, in a single environmental review, the separate and combined impacts of activities that are similar, connected and closely related, or that are dependent upon other activities and actions. (See 40 CFR 1508.25(a)).

(2) Consider reasonable alternative courses of action.

(3) Schedule the activities to resolve conflicts or mitigate the individual, combined and/or cumulative effects.

(4) Prescribe mitigation measures and safeguards including project alternatives and modifications to individual activities.

(d) *Multi-year project aggregation*—(1) *Release of funds.* When a recipient's planning and program development provide for activities to be implemented over two or more years, the responsible entity's environmental review should consider the relationship among all component activities of the multi-year project regardless of the source of funds and address and evaluate their cumulative environmental effects. The estimated range of the aggregated activities and the estimated cost of the total project must be listed and described by the responsible entity in the environmental review and included in the RROF. The release of funds will cover the entire project period.

(2) When one or more of the conditions described in §58.47 exists, the recipient or other responsible entity must re-evaluate the environmental review.

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§58.33 Emergencies.

(a) In the cases of emergency, disaster or imminent threat to health and safety which warrant the taking of an action with significant environmental impact, the provisions of 40 CFR 1506.11 shall apply.

(b) If funds are needed on an emergency basis and adherence to separate comment periods would prevent the giving of assistance during a Presidentially declared disaster, or during a local emergency that has been declared by the chief elected official of the responsible entity who has proclaimed that there is an immediate need for public action to protect the public safety, the combined Notice of FONSI and Notice of Intent to Request Release of Funds (NOI/RROF) may be disseminated and/or published simultaneously with the submission of the RROF. The combined Notice of FONSI and NOI/RROF shall state that the funds are needed on an emergency basis due to a declared disaster and that the comment periods have been combined. The Notice shall also invite commenters to submit their comments to both HUD and the responsible entity issuing the notice to ensure that these comments will receive full consideration.

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§58.34 Exempt activities.

(a) Except for the applicable requirements of §58.6, the responsible entity does not have to comply with the requirements of this part or undertake any environmental review, consultation or other action under NEPA and the other provisions of law or authorities cited in §58.5 for the activities exempt by this section or projects consisting solely of the following exempt activities:

(1) Environmental and other studies, resource identification and the development of plans and strategies;

(2) Information and financial services;

(3) Administrative and management activities;

(4) Public services that will not have a physical impact or result in any physical changes, including but not limited to services concerned with employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation and welfare or recreational needs;

(5) Inspections and testing of properties for hazards or defects;

(6) Purchase of insurance;

(7) Purchase of tools;

(8) Engineering or design costs;

(9) Technical assistance and training;

(10) Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration;

(11) Payment of principal and interest on loans made or obligations guaranteed by HUD;

(12) Any of the categorical exclusions listed in §58.35(a) provided that there are no circumstances which require compliance with any other Federal laws and authorities cited in §58.5.

(b) A recipient does not have to submit an RROF and certification, and no further approval from HUD or the State will be needed by the recipient for the drawdown of funds to carry out exempt activities and projects. However, the responsible entity must document in writing its determination that each activity or project is exempt and meets the conditions specified for such exemption under this section.

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§58.35 Categorical exclusions.

Categorical exclusion refers to a category of activities for which no environmental impact statement or environmental assessment and finding of no significant impact under NEPA is required, except in extraordinary circumstances (see §58.2(a)(3)) in which a normally excluded activity may have a significant impact. Compliance with the other applicable Federal environmental laws and authorities listed in §58.5 is required for any categorical exclusion listed in paragraph (a) of this section.

(a) *Categorical exclusions subject to §58.5.* The following activities are categorically excluded under NEPA, but may be subject to review under authorities listed in §58.5:

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

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

(3) Rehabilitation of buildings and improvements when the following conditions are met:

(i) In the case of a building for residential use (with one to four units), the density is not increased beyond four units, and the land use is not changed;

(ii) In the case of multifamily residential buildings:

(A) Unit density is not changed more than 20 percent;

(B) The project does not involve changes in land use from residential to non-residential; and

(C) The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.

(iii) In the case of non-residential structures, including commercial, industrial, and public buildings:

(A) The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and

(B) The activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another.

(4)(i) An individual action on up to four dwelling units where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between; or

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

(iii) Paragraphs (a)(4)(i) and (ii) of this section do not apply to rehabilitation of a building for residential use (with one to four units) (see paragraph (a)(3)(i) of this section).

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

(6) Combinations of the above activities.

(b) *Categorical exclusions not subject to §58.5.* The Department has determined that the following categorically excluded activities would not alter any conditions that would require a review or compliance determination under the Federal laws and authorities cited in §58.5. When the following kinds of activities are undertaken, the responsible entity does not have to publish a NOI/RROF or execute a certification and the recipient does not have to submit a RROF to HUD (or the State) except in the circumstances described in paragraph (c) of this section. Following the award of the assistance, no further approval from HUD or the State will be needed with respect to environmental requirements, except where paragraph (c) of this section applies. The recipient remains responsible for carrying out any applicable requirements under §58.6.

(1) Tenant-based rental assistance;

(2) Supportive services including, but not limited to, health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, State, and Federal government benefits and services;

(3) Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs;

(4) Economic development activities, including but not limited to, equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or expansion of existing operations;

(5) Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction, including closing costs and down payment assistance, interest buydowns, and similar activities that result in the transfer of title.

(6) Affordable housing pre-development costs including legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact.

(7) Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under this part, if the approval is made by the same responsible entity that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under §58.47.

(c) *Circumstances requiring NEPA review.* If a responsible entity determines that an activity or project identified in paragraph (a) or (b) of this section, because of extraordinary circumstances and conditions at or affecting the location of the activity or project, may have a significant environmental effect, it shall comply with all the requirements of this part.

(d) The Environmental Review Record (ERR) must contain a well organized written record of the process and determinations made under this section.

[61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15272, Mar. 30, 1998; 68 FR 56129, Sept. 29, 2003; 78 FR 68734, Nov. 15, 2013]

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§58.36 Environmental assessments.

If a project is not exempt or categorically excluded under §§58.34 and 58.35, the responsible entity must prepare an EA in accordance with subpart E of this part. If it is evident without preparing an EA that an EIS is required under §58.37, the responsible entity should proceed directly to an EIS.

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§58.37 Environmental impact statement determinations.

(a) An EIS is required when the project is determined to have a potentially significant impact on the human environment.

(b) An EIS is required under any of the following circumstances, except as provided in paragraph (c) of this section:

(1) The project would provide a site or sites for, or result in the construction of, hospitals or nursing homes containing a total of 2,500 or more beds.

(2) The project would remove, demolish, convert or substantially rehabilitate 2,500 or more existing housing units (but not including rehabilitation projects categorically excluded under §58.35), or would result in the construction or installation of 2,500 or more housing units, or would provide sites for 2,500 or more housing units.

(3) The project would provide enough additional water and sewer capacity to support 2,500 or more additional housing units. The project does not have to be specifically intended for residential use nor does it have to be totally new construction. If the project is designed to provide upgraded service to existing development as well as to serve new development, only that portion of the increased capacity which is intended to serve new development should be counted.

(c) If, on the basis of an EA, a responsible entity determines that the thresholds in paragraph (b) of this section are the sole reason for the EIS, the responsible entity may prepare a FONSI pursuant to 40 CFR 1501.4. In such cases, the FONSI must be made available for public review for at least 30 days before the responsible entity makes the final determination whether to prepare an EIS.

(d) Notwithstanding paragraphs (a) through (c) of this section, an EIS is not required where §58.53 is applicable.

(e) *Recommended EIS Format.* The responsible entity must use the EIS format recommended by the CEQ regulations (40 CFR 1502.10) unless a determination is made on a particular project that there is a compelling reason to do otherwise. In such a case, the EIS format must meet the minimum requirements prescribed in 40 CFR 1502.10.

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§58.38 Environmental review record.

The responsible entity must maintain a written record of the environmental review undertaken under this part for each project. This document will be designated the “Environmental Review Record” (ERR) and shall be available for public review. The Departmental Environmental Clearance Officer (DECO) shall establish a prescribed format that the responsible entity shall use to prepare the ERR. The DECO may prescribe alternative formats as necessary to meet specific program needs.

(a) *ERR Documents.* The ERR shall contain all the environmental review documents, public notices and written determinations or environmental findings required by this part as evidence of review, decisionmaking and actions pertaining to a particular project of a recipient. The document shall:

(1) Describe the project and the activities that the recipient has determined to be part of the project;

(2) Evaluate the effects of the project or the activities on the human environment;

(3) Document compliance with applicable statutes and authorities, in particular those cited in §58.5 and 58.6; and

(4) Record the written determinations and other review findings required by this part (e.g., exempt and categorically excluded projects determinations, findings of no significant impact).

(b) *Other documents and information.* The ERR shall also contain verifiable source documents and relevant base data used or cited in EAs, EISs or other project review documents. These documents may be incorporated by reference into the ERR provided that each source document is identified and available for inspection by interested parties. Proprietary material and special studies prepared for the recipient that are not otherwise generally available for public review shall not be incorporated by reference but shall be included in the ERR.

[61 FR 19122, Apr. 30, 1996, as amended at 79 FR 49229, Aug. 20, 2014]

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Subpart E—Environmental Review Process: Environmental Assessments (EA's)

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§58.40 Preparing the environmental assessment.

The DECO shall establish a prescribed format that the responsible entity shall use to prepare the EA. The DECO may prescribe alternative formats as necessary to meet specific program needs. In preparing an EA for a particular proposed project or other action, the responsible entity must:

(a) Determine existing conditions and describe the character, features and resources of the project area and its surroundings; identify the trends that are likely to continue in the absence of the project.

(b) Identify all potential environmental impacts, whether beneficial or adverse, and the conditions that would change as a result of the project.

(c) Identify, analyze and evaluate all impacts to determine the significance of their effects on the human environment and whether the project will require further compliance under related laws and authorities cited in §58.5 and §58.6.

(d) Examine and recommend feasible ways in which the project or external factors relating to the project could be modified in order to eliminate or minimize adverse environmental impacts.

(e) Discuss the need for the proposal, appropriate alternatives where the proposal involves unresolved conflicts concerning alternative uses of available resources, the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

(f) Complete all environmental review requirements necessary for the project's compliance with applicable authorities cited in §§58.5 and 58.6.

(g) Based on steps set forth in paragraph (a) through (f) of this section, make one of the following findings:

(1) A Finding of No Significant Impact (FONSI), in which the responsible entity determines that the project is not an action that will result in a significant impact on the quality of the human environment. The responsible entity may then proceed to §58.43.

(2) A finding of significant impact, in which the project is deemed to be an action which may significantly affect the quality of the human environment. The responsible entity must then proceed with its environmental review under subpart F or G of this part.

[61 FR 19122, Apr. 30, 1996, as amended at 79 FR 49229, Aug. 20, 2014]

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§58.43 Dissemination and/or publication of the findings of no significant impact.

(a) If the responsible entity makes a finding of no significant impact, it must prepare a FONSI notice, using the current HUD-recommended format or an equivalent format. As a minimum, the responsible entity must send the FONSI notice to individuals and groups known to be interested in the activities, to the local news media, to the appropriate tribal, local, State and Federal agencies; to the Regional Offices of the Environmental Protection Agency having jurisdiction and to the HUD Field Office (or the State where applicable). The responsible entity may also publish the FONSI notice in a newspaper of general circulation in the affected community. If the notice is not published, it must also be prominently displayed in public buildings, such as the local Post Office and within the project area or in accordance with procedures established as part of the citizen participation process.

(b) The responsible entity may disseminate or publish a FONSI notice at the same time it disseminates or publishes the NOI/RROF required by §58.70. If the notices are released as a combined notice, the combined notice shall:

(1) Clearly indicate that it is intended to meet two separate procedural requirements; and

(2) Advise the public to specify in their comments which “notice” their comments address.

(c) The responsible entity must consider the comments and make modifications, if appropriate, in response to the comments, before it completes its environmental certification and before the recipient submits its RROF. If funds will be used in Presidentially declared disaster areas, modifications resulting from public comment, if appropriate, must be made before proceeding with the expenditure of funds.

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§58.45 Public comment periods.

Required notices must afford the public the following minimum comment periods, counted in accordance with §58.21:

(a) Notice of Finding of No Significant Impact (FONSI)	15 days when published or, if no publication, 18 days when mailing and posting
(b) Notice of Intent to Request Release of Funds (NOI-RROF)	7 days when published or, if no publication, 10 days when mailing and posting
(c) Concurrent or combined notices	15 days when published or, if no publication, 18 days when mailing and posting

[68 FR 56130, Sept. 29, 2003]

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§58.46 Time delays for exceptional circumstances.

The responsible entity must make the FONSI available for public comments for 30 days before the recipient files the RROF when:

(a) There is a considerable interest or controversy concerning the project;

(b) The proposed project is similar to other projects that normally require the preparation of an EIS; or

(c) The project is unique and without precedent.

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§58.47 Re-evaluation of environmental assessments and other environmental findings.

(a) A responsible entity must re-evaluate its environmental findings to determine if the original findings are still valid, when:

(1) The recipient proposes substantial changes in the nature, magnitude or extent of the project, including adding new activities not anticipated in the original scope of the project;

(2) There are new circumstances and environmental conditions which may affect the project or have a bearing on its impact, such as concealed or unexpected conditions discovered during the implementation of the project or activity which is proposed to be continued; or

(3) The recipient proposes the selection of an alternative not in the original finding.

(b)(1) If the original findings are still valid but the data or conditions upon which they were based have changed, the responsible entity must affirm the original findings and update its ERR by including this re-evaluation and its determination based on its findings. Under these circumstances, if a FONSI notice has already been published, no further publication of a FONSI notice is required.

(2) If the responsible entity determines that the original findings are no longer valid, it must prepare an EA or an EIS if its evaluation indicates potentially significant impacts.

(3) Where the recipient is not the responsible entity, the recipient must inform the responsible entity promptly of any proposed substantial changes under paragraph (a)(1) of this section, new circumstances or environmental conditions under paragraph (a)(2) of this section, or any proposals to select a different alternative under paragraph (a)(3) of this section, and must then permit the responsible entity to re-evaluate the findings before proceeding.

[61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15272, Mar. 30, 1998]

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Subpart F—Environmental Review Process: Environmental Impact Statement Determinations

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§58.52 Adoption of other agencies' EISs.

The responsible entity may adopt a draft or final EIS prepared by another agency provided that the EIS was prepared in accordance with 40 CFR parts 1500 through 1508. If the responsible entity adopts an EIS prepared by another agency, the procedure in 40 CFR 1506.3 shall be followed. An adopted EIS may have to be revised and modified to adapt it to the particular environmental conditions and circumstances of the project if these are different from the project reviewed in the EIS. In such

cases the responsible entity must prepare, circulate, and file a supplemental draft EIS in the manner prescribed in §58.60(d) and otherwise comply with the clearance and time requirements of the EIS process, except that scoping requirements under 40 CFR 1501.7 shall not apply. The agency that prepared the original EIS should be informed that the responsible entity intends to amend and adopt the EIS. The responsible entity may adopt an EIS when it acts as a cooperating agency in its preparation under 40 CFR 1506.3. The responsible entity is not required to re-circulate or file the EIS, but must complete the clearance process for the RROF. The decision to adopt an EIS shall be made a part of the project ERR.

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§58.53 Use of prior environmental impact statements.

Where any final EIS has been listed in the FEDERAL REGISTER for a project pursuant to this part, or where an areawide or similar broad scale final EIS has been issued and the EIS anticipated a subsequent project requiring an environmental clearance, then no new EIS is required for the subsequent project if all the following conditions are met:

(a) The ERR contains a decision based on a finding pursuant to §58.40 that the proposed project is not a new major Federal action significantly affecting the quality of the human environment. The decision shall include:

(1) References to the prior EIS and its evaluation of the environmental factors affecting the proposed subsequent action subject to NEPA;

(2) An evaluation of any environmental factors which may not have been previously assessed, or which may have significantly changed;

(3) An analysis showing that the proposed project is consistent with the location, use, and density assumptions for the site and with the timing and capacity of the circulation, utility, and other supporting infrastructure assumptions in the prior EIS;

(4) Documentation showing that where the previous EIS called for mitigating measures or other corrective action, these are completed to the extent reasonable given the current state of development.

(b) The prior final EIS has been filed within five (5) years, and updated as follows:

(1) The EIS has been updated to reflect any significant revisions made to the assumptions under which the original EIS was prepared;

(2) The EIS has been updated to reflect new environmental issues and data or legislation and implementing regulations which may have significant environmental impact on the project area covered by the prior EIS.

(c) There is no litigation pending in connection with the prior EIS, and no final judicial finding of inadequacy of the prior EIS has been made.

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Subpart G—Environmental Review Process: Procedures for Draft, Final and Supplemental Environmental Impact Statements

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§58.55 Notice of intent to prepare an EIS.

As soon as practicable after the responsible entity decides to prepare an EIS, it must publish a NOI/EIS, using the HUD recommended format and disseminate it in the same manner as required by 40 CFR parts 1500 through 1508.

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§58.56 Scoping process.

The determination on whether or not to hold a scoping meeting will depend on the same circumstances and factors as for the holding of public hearings under §58.59. The responsible entity must wait at least 15 days after disseminating or publishing the NOI/EIS before holding a scoping meeting.

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§58.57 Lead agency designation.

If there are several agencies ready to assume the lead role, the responsible entity must make its decision based on the criteria in 40 CFR 1501.5(c). If the responsible entity and a Federal agency are unable to reach agreement, then the responsible entity must notify HUD (or the State, where applicable). HUD (or the State) will assist in obtaining a determination based on the procedure set forth in 40 CFR 1501.5(e).

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§58.59 Public hearings and meetings.

(a) *Factors to consider.* In determining whether or not to hold public hearings in accordance with 40 CFR 1506.6, the responsible entity must consider the following factors:

(1) The magnitude of the project in terms of economic costs, the geographic area involved, and the uniqueness or size of commitment of resources involved.

(2) The degree of interest in or controversy concerning the project.

(3) The complexity of the issues and the likelihood that information will be presented at the hearing which will be of assistance to the responsible entity.

(4) The extent to which public involvement has been achieved through other means.

(b) *Procedure.* All public hearings must be preceded by a notice of public hearing, which must be published in the local news media 15 days before the hearing date. The Notice must:

(1) State the date, time, place, and purpose of the hearing or meeting.

(2) Describe the project, its estimated costs, and the project area.

(3) State that persons desiring to be heard on environmental issues will be afforded the opportunity to be heard.

(4) State the responsible entity's name and address and the name and address of its Certifying Officer.

(5) State what documents are available, where they can be obtained, and any charges that may apply.

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§58.60 Preparation and filing of environmental impact statements.

(a) The responsible entity must prepare the draft environmental impact statement (DEIS) and the final environmental impact statements (FEIS) using the current HUD recommended format or its equivalent.

(b) The responsible entity must file and distribute the (DEIS) and the (FEIS) in the following manner:

(1) Five copies to EPA Headquarters;

(2) Five copies to EPA Regional Office;

(3) Copies made available in the responsible entity's and the recipient's office;

(4) Copies or summaries made available to persons who request them; and

(5) FEIS only—one copy to State, HUD Field Office, and HUD Headquarters library.

(c) The responsible entity may request waivers from the time requirements specified for the draft and final EIS as prescribed in 40 CFR 1506.6.

(d) When substantial changes are proposed in a project or when significant new circumstances or information becomes available during an environmental review, the recipient may prepare a supplemental EIS as prescribed in 40 CFR 1502.9.

(e) The responsible entity must prepare a Record of Decision (ROD) as prescribed in 40 CFR 1505.2.

[61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15272, Mar. 30, 1998]

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Subpart H—Release of Funds for Particular Projects

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§58.70 Notice of intent to request release of funds.

The NOI/RROF must be disseminated and/or published in the manner prescribed by §58.43 and §58.45 before the certification is signed by the responsible entity.

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§58.71 Request for release of funds and certification.

(a) The RROF and certification shall be sent to the appropriate HUD Field Office (or the State, if applicable), except as provided in paragraph (b) of this section. This request shall be executed by the Certifying Officer. The request shall describe the specific project and activities covered by the request and contain the certification required under the applicable statute cited in §58.1(b). The RROF and certification must be in a form specified by HUD.

(b) When the responsible entity is conducting an environmental review on behalf of a recipient, as provided for in §58.10, the recipient must provide the responsible entity with all available project and environmental information and refrain from undertaking any physical activities or choice limiting actions until HUD (or the State, if applicable) has approved its request for release of funds. The certification form executed by the responsible entity's certifying officer shall be sent to the recipient that is to receive the assistance along with a description of any special environmental conditions that must be adhered to in carrying out the project. The recipient is to submit the RROF and the certification of the responsible entity to HUD (or the State, if applicable) requesting the release of funds. The recipient must agree to abide by the special conditions, procedures and requirements of the environmental review, and to advise the responsible entity of any proposed change in the scope of the project or any change in environmental conditions.

(c) If the responsible entity determines that some of the activities are exempt under applicable provisions of this part, the responsible entity shall advise the recipient that it may commit funds for these activities as soon as programmatic authorization is received. This finding shall be documented in the ERR maintained by the responsible entity and in the recipient's project files.

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§58.72 HUD or State actions on RROFs and certifications.

The actions which HUD (or a State) may take with respect to a recipient's environmental certification and RROF are as follows:

(a) In the absence of any receipt of objection to the contrary, except as provided in paragraph (b) of this section, HUD (or the State) will assume the validity of the certification and RROF and will approve these documents after expiration of the 15-day period prescribed by statute.

(b) HUD (or the state) may disapprove a certification and RROF if it has knowledge that the responsible entity or other participants in the development process have not complied with the items in §58.75, or that the RROF and certification are inaccurate.

(c) In cases in which HUD has approved a certification and RROF but subsequently learns (e.g., through monitoring) that the recipient violated §58.22 or the recipient or responsible entity otherwise failed to comply with a clearly applicable environmental authority, HUD shall impose appropriate remedies and sanctions in accord with the law and regulations for the program under which the violation was found.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56130, Sept. 29, 2003]

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§58.73 Objections to release of funds.

HUD (or the State) will not approve the ROF for any project before 15 calendar days have elapsed from the time of receipt of the RROF and the certification or from the time specified in the notice published pursuant to §58.70, whichever is later. Any person or agency may object to a recipient's RROF and the related certification. However, the objections must meet the conditions and procedures set forth in subpart H of this part. HUD (or the State) can refuse the RROF and certification on any grounds set forth in §58.75. All decisions by HUD (or the State) regarding the RROF and the certification shall be final.

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§58.74 Time for objecting.

All objections must be received by HUD (or the State) within 15 days from the time HUD (or the State) receives the recipient's RROF and the related certification, or within the time period specified in the notice, whichever is later.

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§58.75 Permissible bases for objections.

HUD (or the State), will consider objections claiming a responsible entity's noncompliance with this part based only on any of the following grounds:

(a) The certification was not in fact executed by the responsible entity's Certifying Officer.

(b) The responsible entity has failed to make one of the two findings pursuant to §58.40 or to make the written determination required by §§58.35, 58.47 or 58.53 for the project, as applicable.

(c) The responsible entity has omitted one or more of the steps set forth at subpart E of this part for the preparation, publication and completion of an EA.

(d) The responsible entity has omitted one or more of the steps set forth at subparts F and G of this part for the conduct, preparation, publication and completion of an EIS.

(e) The recipient or other participants in the development process have committed funds, incurred costs or undertaken activities not authorized by this part before release of funds and approval of the environmental certification by HUD (or the state).

(f) Another Federal agency acting pursuant to 40 CFR part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56130, Sept. 29, 2003]

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§58.76 Procedure for objections.

A person or agency objecting to a responsible entity's RROF and certification shall submit objections in writing to HUD (or the State). The objections shall:

(a) Include the name, address and telephone number of the person or agency submitting the objection, and be signed by the person or authorized official of an agency.

(b) Be dated when signed.

(c) Describe the basis for objection and the facts or legal authority supporting the objection.

(d) State when a copy of the objection was mailed or delivered to the responsible entity's Certifying Officer.

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§58.77 Effect of approval of certification.

(a) *Responsibilities of HUD and States.* HUD's (or, where applicable, the State's) approval of the certification shall be deemed to satisfy the responsibilities of the Secretary under NEPA and related provisions of law cited at §58.5 insofar as those responsibilities relate to the release of funds as authorized by the applicable provisions of law cited in §58.1(b).

(b) *Public and agency redress.* Persons and agencies seeking redress in relation to environmental reviews covered by an approved certification shall deal with the responsible entity and not with HUD. It is HUD's policy to refer all inquiries and complaints to the responsible entity and its Certifying Officer. Similarly, the State (where applicable) may direct persons and agencies seeking redress in relation to environmental reviews covered by an approved certification to deal with the responsible entity, and not the State, and may refer inquiries and complaints to the responsible entity and its Certifying Officer. Remedies for noncompliance are set forth in program regulations.

(c) *Implementation of environmental review decisions.* Projects of a recipient will require post-review monitoring and other inspection and enforcement actions by the recipient and the State or HUD (using procedures provided for in program regulations) to assure that decisions adopted through the environmental review process are carried out during project development and implementation.

(d) *Responsibility for monitoring and training.* (1) At least once every three years, HUD intends to conduct in-depth monitoring and exercise quality control (through training and consultation) over the environmental activities performed by responsible entities under this part. Limited monitoring of these environmental activities will be conducted during each program monitoring site visit. If through limited or in-depth monitoring of these environmental activities or by other means, HUD becomes aware of any environmental deficiencies, HUD may take one or more of the following actions:

(i) In the case of problems found during limited monitoring, HUD may schedule in-depth monitoring at an earlier date or may schedule in-depth monitoring more frequently;

(ii) HUD may require attendance by staff of the responsible entity at HUD-sponsored or approved training, which will be provided periodically at various locations around the country;

(iii) HUD may refuse to accept the certifications of environmental compliance on subsequent grants;

(iv) HUD may suspend or terminate the responsible entity's assumption of the environmental review responsibility;

(v) HUD may initiate sanctions, corrective actions, or other remedies specified in program regulations or agreements or contracts with the recipient.

(2) HUD's responsibilities and action under paragraph (d)(1) of this section shall not be construed to limit or reduce any responsibility assumed by a responsible entity with respect to any particular release of funds under this part. Whether or not HUD takes action under paragraph (d)(1) of this section, the Certifying Officer remains the responsible Federal official under §58.13 with respect to projects and activities for which the Certifying Officer has submitted a certification under this part.

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SUMMARY OF LEVELS OF ENVIRONMENTAL REVIEW & DOCUMENTATION REQUIRED IN ERR

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LEVEL OF ENVIRONMENTAL REVIEW				
58.34 Exempt	58.35(b) Categorically Excluded **NOT** subject to 58.5	58.35(a) Categorically Excluded **AND** subject to 58.5 "A" **checked** for all on Statutory Worksheet	58.35(a) Categorically Excluded **AND** subject to 58.5 statutory authorities: **"B" checked for one or more** on Statutory Worksheet	58.36 NEPA Environmental Assessment
TYPE OF ACTIVITIES				
Environmental and other studies Resource Identification Development of plans and strategies Information and financial services Administrative and Management Activities Public services, i.e., employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation, welfare, recreational needs Inspections and testing Purchase insurance and tools Engineering or design costs Technical assistance and training Temporary or permanent improvements that do not alter environmental conditions and are limited to activities to protect, repair or arrest the effects of disasters, imminent threats, or physical deterioration Payments of principal and interest on loans or obligations guaranteed by HUD Combinations of the above activities	Tenant-based rental assistance Supportive services such as health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent, mortgage, or utilities, assistance in gaining access to government benefits. Operating costs including maintenance, furnishings, security, equipment, operation, supplies, utilities, staff training and recruitment Economic development activities including equipment purchase, inventory financing, interest subsidy, operating costs, and other expenses not associated with construction or expansion Activities to assist homeownership of existing or new dwelling units not assisted w/Federal funds, including closing costs and down payment assistance to homebuyers, interest buy downs or other actions resulting in transfer of title. Affordable housing pre-development costs: legal consulting, developer and other site-option costs, project financing, administrative costs for loan commitments, zoning approvals, and other activities which don't have a physical impact. Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under Part 58, if: approval is by same the RE, and re-evaluation is not required, per 58.47 Combinations of the above activities	Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are already in place and will be retained in the same use without change in size or capacity of more than 20% • Replacement of water or sewer lines • Reconstruction of curbs & sidewalks • repaving of streets Special projects directed toward the removal of material and architectural barriers that restrict the mobility of and accessibility to the elderly and handicapped. Single Family Housing Rehab • Unit density is not increased beyond 4 units, • Project doesn't involve change in land use from residential to non-residential • The footprint of the building in not increased in a floodplain or a wetland. Multifamily Housing Rehab • Unit density change is not more than 20% • Project doesn't involve change in land use from residential to non-residential • Cost of rehabilitation is less than 75% of the estimated cost of replacement after rehab Non-Residential Structures • Facilities and improvements were in place and will not be changed in size or capacity by more than 20% • Activity does not involve change in land use from non-residential to residential, commercial to industrial, or one industrial use to another Individual action (e.g., disposition, new construction, demolition, acquisition) on a 1 to 4 family dwelling; or individual action on five or more units scattered on sites more than 2000 feet apart and no more than 4 units per site. Acquisition (including leasing) or disposition of, or equity loans on an existing structure or acquisition (including leasing) of vacant land provided that the structure or land acquired or disposed of will be retained for the same use. Combinations of the above activities	Activities not exempt or categorically excluded. Generally, new construction of 5 or more homes, and conversion from one type of land use to another.
DOCUMENTATION REQUIRED IN ERR				
Written determination of exemption. Also, determine compliance with 58.6: ♦ National Flood Insurance Program ♦ Coastal Barrier Resource Act ♦ Runway Clear Zones **Use Determination of Exemption Form – Exempt** **Can be signed by Tribal Official**	Written determination of Cat Ex Not Subject To Also, determine compliance with 58.6: ♦ National Flood Insurance Program (NFIP) ♦ Coastal Barrier Resource Act (CBRA) ♦ Runway Clear Zones **Use Determination of Exemption Form-Cat Ex Not Subject To** **Can be signed by Tribal Official**	Complete Statutory Worksheet*, (sec. 58.5) and indicate converts exempt. Also, determine compliance with 58.6 ♦ NFIP ♦ CBRA ♦ Runway Clear Zones **Use Statutory Wksht & Determination of Exemption Form –Cat Ex Subj To-Signed by C.O.**	Complete Statutory Checklist* (sec. 58.5) NOI/RROF notification RROF & Certification (form 7015.15) Authority to Use Grant Funds (form 7015.16) Also, determine compliance with 58.6 ♦ National Flood Insurance Program ♦ Coastal Barrier Resource Act ♦ Runway Clear Zones **Use Statutory Worksheet and Determination of Exemption Form – Cat Ex Subject To** **All Forms signed by Certifying Officer**	Environmental Assessment* (including Statutory Checklist) FONSI and NOI/RROF notification Form 7015.15 Form 7015.16 Also, determine compliance with 58.6 **Use EA Form-signed by C.O.**

*HUD recommended format

Adapted from chart prepared by Anchorage Office of Native American Programs, HUD

8- Step Decision-Making Process for Executive Order 11988

STEP 1: Determine if the proposed action is in the base floodplain

** AVOID FLOODPLAIN DEVELOPMENT IF POSSIBLE**

Yes

No

STEP 2: Early public review

STEP 3: Identify and evaluate alternatives to locating in the base floodplain

No action alternative

Non-floodplain alternative

Floodplain proposal

Yes

Does the action have
(a) impacts in the base floodplain
[See also 24 CFR 55.12(c)(6)]
or
(b) indirectly support floodplain development?

** Substitute 500 year floodplain for base floodplain for **critical actions** **

No

STEP 4: Identify impacts of proposed action

STEP 5: Minimize harm and restore and preserve natural and beneficial values

STEP 6: Reevaluate alternatives

Limit action - Return to Step 3

No action

In the base floodplain

STEP 7: Findings and public explanation

STEP 8: Implement proposed action in compliance with minimization plans and flood insurance requirements

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 Cites 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 funs 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;

C. Rehabilitation work to historic properties which is being or has been reviewed by the SHPO for the Federal or State Rehabilitation Incentive 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 HISTORC 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

for new construction set forth in the *Standards* and input received 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 *Standard*s (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 ARCHITECHTURAL 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

notify the Preservation Professional and take the objection into account. When requested by the objector, the State Recipient and the Preservation Professional shall consult with the SHPO and/or Council to resolve the objection. The State Recipient is not required to cease work while objections are being reviewed.

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 public objects, or if the project will 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 uncharged.

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 untaken 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:

a. Have demonstrated experience in completing the application forms 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 <u>not</u> part of street facing-elevations, and alterations to window openings which are <u>not</u> 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 biding 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).

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

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.

Cross References:

SUBJECT: Process for Tribal Consultation in Projects That Are Reviewed Under 24 CFR Part 58

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 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. 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 (54 U.S.C. § 300101) et seq 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

ACHP Advisory Council on Historic Preservation (federal)
APE Area of Potential Effect
CPD Community Planning and Development Office
ERR Environmental Review Record
FEO Field Environmental Officer
HUD U.S. Department of Housing and Urban Development
MOA Memorandum of Agreement
NAGPRA Native American Graves Protection and Repatriation Act
PA Programmatic Agreement
RE Responsible Entity
REO Regional Environmental Officer
RROF Request for Release of Funds and Certification
SHPO State Historic Preservation Officer
TDAT Tribal Directory Assessment Tool
THPO 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**

Project	**Reviewed By**	**Date**

APPENDIX A
Georgia Public Works Construction Law
(O.C.G.A. § 36-91-1 through § 36-91-95)

36-91-1

This chapter shall be known and may be cited as the “Georgia Local Government Public Works Construction Law.”

36-91-2

As used in this chapter, the term:

(1) “Alternate bids” means the amount stated in the bid or proposal to be added to or deducted from the amount of the base bid or base proposal if the corresponding change in project scope or alternate materials or methods of construction is accepted.

(2) “Base bid” or “base proposal” means the amount of money stated in the bid or proposal as the sum for which the bidder or proposer offers to perform the work.

(3) “Bid bond” means a bond with good and sufficient surety or sureties for the faithful acceptance of the contract payable to, in favor of, and for the protection of the governmental entity for which the contract is to be awarded.

(4) “Change order” means an alteration, addition, or deduction from the original scope of work as defined by the contract documents to address changes or unforeseen conditions necessary for project completion.

(5) “Competitive sealed bidding” means a method of soliciting public works construction contracts whereby the award is based upon the lowest responsive, responsible bid in conformance with the provisions of subsection (b) of Code Section 36-91-21.

(6) “Competitive sealed proposals” means a method of soliciting public works contracts whereby the award is based upon criteria identified in a request for proposals in conformance with the provisions of subsection (c) of Code Section 36-91-21.

(7) “Emergency” means any situation resulting in imminent danger to the public health or safety or the loss of an essential governmental service.

(8) “Governing authority” means the official or group of officials responsible for governance of a governmental entity.

(9) “Governmental entity” means a county, municipal corporation, consolidated government, authority, board of education, or other public board, body, or commission

but shall not include any authority, board, department, or commission of the state, or a public transportation agency as defined by Chapter 9 of Title 32.

(10) “Payment bond” means a bond with good and sufficient surety or sureties payable to the governmental entity for which the work is to be done and intended for the use and protection of all subcontractors and all persons supplying labor, materials, machinery, and equipment in the prosecution of the work provided for in the public works construction contract.

(11) “Performance bond” means a bond with good and sufficient surety or sureties for the faithful performance of the contract and to indemnify the governmental entity for any damages occasioned by a failure to perform the same within the prescribed time. Such bond shall be payable to, in favor of, and for the protection of the governmental entity for which the work is to be done.

(12) “Public works construction” means the building, altering, repairing, improving, or demolishing of any public structure or building or other public improvements of any kind to any public real property other than those projects covered by Chapter 4 of Title 32. Such term does not include the routine operation, repair, or maintenance of existing structures, buildings, or real property.

(13) “Responsible bidder” or “responsible offeror” means a person or entity that has the capability in all respects to perform fully and reliably the contract requirements.

(14) “Responsive bidder” or “responsive offeror” means a person or entity that has submitted a bid or proposal that conforms in all material respects to the requirements set forth in the invitation for bids or request for proposals.

(15) “Scope of project” means the work required by the original contract documents and any subsequent change orders required or appropriate to accomplish the intent of the project as described in the bid documents.

(16) “Scope of work” means the work that is required by the contract documents.

(17) “Sole source” means those procurements made pursuant to a written determination by a governing authority that there is only one source for the required supply, service, or construction item.

36-91-20

(a) All public works construction contracts subject to this chapter entered into by a governmental entity with private persons or entities shall be in writing and on file and available for public inspection at a place designated by such governmental entity. Municipalities and consolidated governments shall execute and enter into contracts in the manner provided in applicable local legislation or by ordinance.

(b)(1) Prior to entering into a public works construction contract other than those exempted by Code Section 36-91-22, a governmental entity shall publicly advertise the contract opportunity. Such notice shall be posted conspicuously in the governing authority's office and shall be advertised in the legal organ of the county or by electronic means on an Internet website of the governmental entity or an Internet website identified by the governmental entity which may include the Georgia Procurement Registry as provided by Code Section 50-5-69.

(2) Contract opportunities that are advertised in the legal organ shall be advertised a minimum of two times, with the first advertisement occurring at least four weeks prior to the opening of the sealed bids or proposals. The second advertisement shall follow no earlier than two weeks from the first advertisement.

(3) Contract opportunities that are advertised solely on the Internet shall be posted continuously for at least four weeks prior to the opening of sealed bids or proposals. Inadvertent or unintentional loss of Internet service during the advertisement period shall not require the contract award or bid or proposal opening to be delayed.

(4) Contract opportunities that will be awarded by competitive sealed bids shall have plans and specifications available on the first day of the advertisement and shall be open to inspection by the public. The plans and specifications shall indicate if the project will be awarded by base bid or base bid plus selected alternates and:

(A) A statement listing whether all anticipated federal, state, or local permits required for the project have been obtained or an indication of the status of the application for each such permit including when it is expected to be obtained; and

(B) A statement listing whether all anticipated rights of way and easements required for the project have been obtained or an indication of the status as to when each such rights of way or easements are expected to be obtained.

(5) Contract opportunities that will be awarded by competitive sealed proposals shall be publicly advertised with a request for proposals which request shall include conceptual program information in the request for proposals describing the requested services in a level of detail appropriate to the project delivery method selected for the project.

(6) The advertisement shall include such details and specifications as will enable the public to know the extent and character of the work to be done.

(7) All required notices of advertisement shall also advise of any mandatory prequalification requirements or pre-bid conferences as well as any federal requirements pursuant to subsection (d) of Code Section 36-91-22. Any advertisement which provides notice of a mandatory pre-bid conference or prequalification shall provide reasonable advance notice of said conference or for the submittal of such prequalification information.

(c) Governmental entities are authorized to utilize any construction delivery method, provided that all public works construction contracts subject to the requirements of this chapter that:

(1) Place the bidder or offeror at risk for construction; and

(2) Require labor or building materials in the execution of the contract shall be awarded on the basis of competitive sealed bidding or competitive sealed proposals. Governmental entities shall have the authority to reject all bids or proposals or any bid or proposal that is nonresponsive or not responsible and to waive technicalities and informalities.

(d) No governmental entity shall issue or cause to be issued any addenda modifying plans and specifications within a period of 72 hours prior to the advertised time for the opening bids or proposals, excluding Saturdays, Sundays, and legal holidays. However, if the necessity arises to issue an addendum modifying plans and specifications within the 72 hour period prior to the advertised time for the opening of bids or proposals, excluding Saturdays, Sundays, and legal holidays, then the opening of bids or proposals shall be extended at least 72 hours, excluding Saturdays, Sundays, and legal holidays, from the date of the original bid or proposal opening without need to readvertise as required by subsection (b) of this Code section.

(e) Bid and contract documents may contain provisions authorizing the issuance of change orders, without the necessity of additional requests for bids or proposals, within the scope of the project when appropriate or necessary in the performance of the contract. Change orders may not be used to evade the purposes of this article.

(f) Any governmental entity may, in its discretion, adopt a process for mandatory prequalification of prospective bidders or offerors; provided, however, that:

(1) Criteria for prequalification must be reasonably related to the project or the quality of work;

(2) Criteria for prequalification must be available to any prospective bidder or offeror requesting such information for each project that requires prequalification;

(3) Any prequalification process must include a method of notifying prospective bidders or offerors of the criteria for or limitations to prequalification; and

(4) Any prequalification process must include a procedure for a disqualified bidder to respond to his or her disqualification to a representative of the governmental entity; provided, however, that such procedure shall not be construed to require the governmental entity to provide a formal appeals procedure. A prequalified bidder or offeror can not be later disqualified without cause.

36-91-21

(a) It shall be unlawful to let out any public works construction contracts subject to the requirements of this chapter without complying with the competitive award requirements contained in this Code section. Any contractor who performs any work of the kind in any other manner and who knows that the public works construction contract was let out without complying with the notice and competitive award requirements of this chapter shall not be entitled to receive any payment for such work.

(b) Any competitive sealed bidding process shall comply with the following requirements:

(1) The governmental entity shall publicly advertise an invitation for bids;

(2) Bidders shall submit sealed bids based on the criteria set forth in such invitation;

(3) The governmental entity shall open the bids publicly and evaluate such bids without discussions with the bidders; and

(4) The contract shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids; provided, however, that if the bid from the lowest responsible and responsive bidder exceeds the funds budgeted for the public works construction contract, the governmental entity may negotiate with such apparent low bidder to obtain a contract price within the budgeted amount. Such negotiations may include changes in the scope of work and other bid requirements.

(c)(1) In making any competitive sealed proposal, a governmental entity shall:

(A) Publicly advertise a request for proposals, which request shall include conceptual program information in the request for proposals describing the requested services in a level of detail appropriate to the project delivery method selected for the project, as well as the relative importance of the evaluation factors;

(B) Open all proposals received at the time and place designated in the request for proposals so as to avoid disclosure of contents to competing offerors during the process of negotiations; and

(C) Make an award to the responsible and responsive offeror whose proposal is determined in writing to be the most advantageous to the governmental entity, taking into consideration the evaluation factors set forth in the request for proposals. The evaluation factors shall be the basis on which the award decision is made. The contract file shall indicate the basis on which the award is made.

(2) As set forth in the request for proposals, offerors submitting proposals may be afforded an opportunity for discussion, negotiation, and revision of proposals.

Discussions, negotiations, and revisions may be permitted after submission of proposals and prior to award for the purpose of obtaining best and final offers. In accordance with the request for proposals, all responsible offerors found by the governmental entity to have submitted proposals reasonably susceptible of being selected for award shall be given an opportunity to participate in such discussions, negotiations, and revisions. During the process of discussion, negotiation, and revision, the governmental entity shall not disclose the contents of proposals to competing offerors.

(d) Whenever a public works construction contract for any governmental entity subject to the requirements of this chapter is to be let out by competitive sealed bid or proposal, no person, by himself or herself or otherwise, shall prevent or attempt to prevent competition in such bidding or proposals by any means whatever. No person who desires to procure such work for himself or herself or for another shall prevent or endeavor to prevent anyone from making a bid or proposal therefor by any means whatever, nor shall such person so desiring the work cause or induce another to withdraw a bid or proposal for the work.

(e) Before commencing the work, any person who procures such public work by bidding or proposal shall make an oath in writing that he or she has not directly or indirectly violated subsection (d) of this Code section. The oath shall be filed by the officer whose duty it is to make the payment. If the contractor is a partnership, all of the partners and any officer, agent, or other person who may have represented or acted for them in bidding for or procuring the contract shall also make the oath. If the contractor is a corporation, all officers, agents, or other persons who may have acted for or represented the corporation in bidding for or procuring the contract shall make the oath. If such oath is false, the contract shall be void, and all sums paid by the governmental entity on the contract may be recovered by appropriate action.

(f) If any member of a governmental entity lets out any public works construction contract subject to the requirements of this article and receives, takes, or contracts to receive or take, either directly or indirectly, any part of the pay or profit arising out of any such contract, he or she shall be guilty of a misdemeanor.

(g) No public works construction contract with a governing authority shall be valid for any purpose unless the contractor shall comply with all bonding requirements of this chapter. No such contract shall be valid if any governmental entity lets out any public works construction contract subject to the requirements of this chapter without complying with the requirements of this chapter.

36-91-22

(a) The requirements of this chapter shall not apply to public works construction projects, when the same can be performed at a cost of less than $ 100,000.00. Public works construction projects shall not be subdivided in an effort to evade the provisions of this chapter.

(b) Any governmental entity having a correctional institution shall have the power and authority to purchase material for and use inmate labor in performing public works construction projects; and in such cases, this chapter shall not apply. Any governmental entity may contract with a governmental entity having a correctional institution for the use of inmate labor from such institution and use the inmates in the performance of any public works construction project; and in such cases, this chapter shall not apply.

(c) In the event that the labor used or to be used in a public works construction project is furnished at no expense by the state or federal government or any agency thereof, the governing authority shall have the power and authority to purchase material for such public works construction project and use the labor furnished free to the governmental entity; and in such case, this chapter shall not apply.

(d) Where a public works construction contract involves the expenditure of federal assistance or funds, the receipt of which is conditioned upon compliance with federal laws or regulations regarding the procedures for awarding public works construction contracts, a governmental entity shall comply with such federal requirements and shall not be required to comply with the provisions of this chapter that differ from the federal requirements. The governmental entity shall provide notice that federal procedures exist for the award of such contracts in the advertisement required by subsection (b) of Code Section 36-91-20. The availability and location of such federal requirements shall be provided to any person requesting such information.

(e) The requirements of this chapter shall not apply to public works construction projects necessitated by an emergency; provided, however, that the nature of the emergency shall be described in the minutes of the governing authority. Any contract let by a county pursuant to this subsection shall be ratified, as soon as practicable, on the minutes of the governing authority, and the nature of the emergency shall be described therein.

(f) Except as otherwise provided in Chapter 4 of Title 32, the requirements of this chapter shall not apply to public works construction projects subject to the requirements of Chapter 4 of Title 32.

(g) The requirements of this chapter shall not apply to public works construction projects or any portion of a public works construction project self-performed by a governmental entity. If the governmental entity contracts with a private person or entity for a portion of such project, the provisions of this chapter shall apply to any such contract estimated to exceed $ 100,000.00.

(h) The requirements of this chapter shall not apply to sole source public works construction contracts.

(i) The requirements of this chapter shall not apply to hospital authorities; provided, however, that a public works construction contract entered into by a hospital authority

shall be subject to the requirements of this chapter if, in connection with such contract, the hospital authority either:

(1) Incurs indebtedness and secures such indebtedness by pledging amounts to be received by such authority from one or more counties or municipalities through an intergovernmental contract entered into in accordance with Code Section 31-7-85; or

(2) Receives funds from the state or one or more counties or municipalities for the purpose of financing a public works construction project, which moneys are not for reimbursement of health services provided.

36-91-40

(a)(1) Any bid bond, performance bond, payment bond, or security deposit required for a public works construction contract shall be approved and filed with the treasurer or the person performing the duties usually performed by a treasurer of the obligee named therein. At the option of the governmental entity, if the surety named in the bond is other than a surety company authorized by law to do business in this state pursuant to a current certificate of authority to transact surety business by the Commissioner of Insurance, such bond shall not be approved and filed unless such surety is on the United States Department of Treasury's list of approved bond sureties.

(2) Any bid bond, performance bond, or payment bond required by this Code section shall be approved as to form and as to the solvency of the surety by an officer of the governmental entity negotiating the contract on behalf of the governmental entity. In the case of a bid bond, such approval shall be obtained prior to acceptance of the bid or proposal. In the case of payment bonds and performance bonds, such approval shall be obtained prior to the execution of the contract.

(b) Whenever, in the judgment of the obligee:

(1) Any surety on a bid, performance, or payment bond has become insolvent;

(2) Any corporate surety is no longer certified or approved by the Commissioner of Insurance to do business in the state; or

(3) For any cause there are no longer proper or sufficient sureties on any or all of the bonds,

the obligee may require the contractor to strengthen any or all of the bonds or to furnish a new or additional bond or bonds within ten days. Thereupon, if so ordered by the obligee, all work on the contract shall cease unless such new or additional bond or bonds are furnished. If such bond or bonds are not furnished within such time, the obligee may terminate the contract and complete the same as the agent of and at the expense of the contractor and his or her sureties.

36-91-50

(a) Bid bonds shall be required for all public works construction contracts subject to the requirements of this article with estimated bids or proposals over $ 100,000.00; provided, however, that a governmental entity may require a bid bond for projects with estimated bids or proposals of $ 100,000.00 or less.

(b) In the case of competitive sealed bids, except as provided in Code Sections 36-91-52 and 36-91-53, a bid may not be revoked or withdrawn until 60 days after the time set by the governmental entity for opening of bids. Upon expiration of this time period, the bid will cease to be valid, unless the bidder provides written notice to the governmental entity prior to the scheduled expiration date that the bid will be extended for a time period specified by the governmental entity.

(c) In the case of competitive sealed proposals, the governmental entity shall advise offerors in the request for proposals of the number of days that offerors will be required to honor their proposals; provided, however, that if an offeror is not selected within 60 days of opening the proposals, any offeror that is determined by the governmental entity to be unlikely of being selected for contract award shall be released from his or her proposal.

(d) If a governmental entity requires a bid bond for any public works construction contract, no bid or proposal for a contract with the governmental entity shall be valid for any purpose unless the contractor shall give a bid bond with good and sufficient surety or sureties approved by the governing authority. The bid bond shall be in the amount of not less than 5 percent of the total amount payable by the terms of the contract. No bid or proposal shall be considered if a proper bid bond or other security authorized in Code Section 36-91-51 has not been submitted. The provisions of this subsection shall not apply to any bid or proposal for a contract that is required by law to be accompanied by a proposal guaranty and shall not apply to any bid or proposal for a contract with any public agency or body which receives funding from the United States Department of Transportation and which is primarily engaged in the business of public transportation.

36-91-51

(a) In lieu of the bid bond provided for in Code Section 36-91-50, the governmental entity may accept a cashier's check, certified check, or cash in the amount of not less than 5 percent of the total amount payable by the terms of the contract payable to and for the protection of the governmental entity for which the contract is to be awarded.

(b) When the amount of any bid bond required under this article does not exceed $750,000.00, the governmental entity may, in its sole discretion, accept an irrevocable letter of credit issued by a bank or savings and loan association, as defined in Code Section 7-1-4, in the amount of and in lieu of the bond otherwise required under Code Section 36-91-50.

36-91-52

(a) As used in this Code section, the term “bid” includes proposal and the term “bidder” includes offeror.

(b) Any governmental entity receiving bids subject to this article shall permit a bidder to withdraw a bid from consideration after the bid opening without forfeiture of the bid security if the bidder has made an appreciable error in the calculation of his or her bid and if:

(1) Such error in the calculation of his or her bid can be documented by clear and convincing written evidence;

(2) Such error can be clearly shown by objective evidence drawn from inspection of the original work papers, documents, or materials used in the preparation of the bid sought to be withdrawn;

(3) The bidder serves written notice upon the governmental entity which invited proposals for the work prior to the award of the contract and not later than 48 hours after the opening of bids, excluding Saturdays, Sundays, and legal holidays;

(4) The bid was submitted in good faith and the mistake was due to a calculation or clerical error, an inadvertent omission, or a typographical error as opposed to an error in judgment; and

(5) The withdrawal of the bid will not result in undue prejudice to the governmental entity or other bidders by placing them in a materially worse position than they would have occupied if the bid had never been submitted.

(c) In the event that an apparent successful bidder has withdrawn his or her bid as provided in subsection (b) of this Code section, action on the remaining bids should be considered as though the withdrawn bid had not been received. In the event the project is relet for bids, under no circumstances shall a bidder who has filed a request to withdraw a bid be permitted to resubmit a bid for the work.

(d) No bidder who is permitted to withdraw a bid pursuant to subsection (b) of this Code section shall for compensation supply any material or labor to, or perform any subcontract or other work agreement for, the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

36-91-53

(a) As used in this Code section, the term:

(1) “Affiliated corporation” means, with respect to any corporation, any other corporation related thereto:

(A) As a parent corporation;

(B) As a subsidiary corporation;

(C) As a sister corporation;

(D) By common ownership or control; or

(E) By control of one corporation by the other.

(2) The term “bid” includes proposals.

(b) In any case where two or more affiliated corporations bid for a contract under this Code section and any one or more of such affiliated corporations subsequently rescind or revoke their bid or bids in favor of another such affiliated corporation whose bid is for a higher amount and the contract is awarded at such higher amount to such other affiliated corporation, then the bid bond, proposal guaranty, or other security otherwise required under this article of each affiliated corporation rescinding or revoking its bid shall be forfeited.

36-91-54

The obligee in any bid bond required to be given in accordance with this article shall be entitled to maintain an action thereon at any time upon any breach of such bond; provided, however, that no action may be instituted on the bonds or security deposits after one year from the completion of the contract and the acceptance of the public work by the governmental entity.

36-91-70

Performance bonds shall be required for all public works construction contracts subject to the requirements of this chapter with an estimated contract amount greater than $ 100,000.00; provided, however, that a governmental entity may require a performance bond for public works construction contracts that are estimated at $ 100,000.00 or less. No public works construction contract requiring a performance bond shall be valid for any purpose unless the contractor shall give such performance bond. The performance bond shall be in the amount of at least the total amount payable by the terms of the contract and shall be increased as the contract amount is increased.

36-91-71

When the amount of the performance bond required under this article does not exceed $750,000.00, the governmental entity may, in its sole discretion, accept an irrevocable letter of credit by a bank or savings and loan association, as defined in Code Section 7-1-4, in the amount of and in lieu of the bond otherwise required under this article.

36-91-72

The obligee in any performance bond required to be given in accordance with this article shall be entitled to maintain an action thereon at any time upon any breach of such bond; provided, however, no action can be instituted on the bonds or security deposits after one year from the completion of the contract and the acceptance of the public work by the governmental entity.

36-91-90

Payment bonds shall be required for all public works construction contracts subject to the requirements of this chapter with an estimated contract amount greater than $ 100,000.00; provided, however, that a governmental entity may require a payment bond for public works construction contracts that are estimated at $ 100,000.00 or less. No public works construction contract requiring a payment bond shall be valid for any purpose, unless the contractor shall give such payment bond; provided, however, that, in lieu of such payment bond, the governmental entity, in its discretion, may accept a cashier's check, certified check, or cash for the use and protection of all subcontractors and all persons supplying labor, materials, machinery, and equipment in the prosecution of work provided in the contract. The payment bond or other security accepted in lieu of a payment bond shall be in the amount of at least the total amount payable by the terms of the initial contract and shall be increased if requested by the governmental entity as the contract amount is increased.

36-91-91

If a payment bond or security deposit is not taken in the manner and form required in this article, the corporation or body for which work is done under the contract shall be liable to all subcontractors and to all persons furnishing labor, skill, tools, machinery, or materials to the contractor or subcontractor thereunder for any loss resulting to them from such failure. No agreement, modification, or change in the contract, change in the work covered by the contract, or extension of time for the completion of the contract shall release the sureties of such payment bond.

36-91-92

(a) The contractor furnishing the payment bond or security deposit shall post on the public works construction site and file with the clerk of the superior court in the county in which the site is located a notice of commencement no later than 15 days after the

contractor physically commences work on the project and supply a copy of the notice of commencement to any subcontractor, materialman, or person who makes a written request of the contractor. Failure to supply a copy of the notice of commencement within ten calendar days of receipt of the written request from the subcontractor, materialman, or person shall render the provisions of paragraph (1) of subsection (a) of Code Section 36-91-93 inapplicable to the subcontractor, materialman, or person making the request. The notice of commencement shall include:

(1) The name, address, and telephone number of the contractor;

(2) The name and location of the public work being constructed or a general description of the improvement;

(3) The name and address of the governmental entity that is contracting for the public works construction;

(4) The name and address of the surety for the performance and payment bonds, if any; and

(5) The name and address of the holder of the security deposit provided, if any.

(b) The failure to file a notice of commencement shall render the notice to contractor requirements of paragraph (1) of subsection (a) of Code Section 36-91-93 inapplicable.

(c) The clerk of the superior court shall file the notice of commencement within the records of that office and maintain an index separate from other real estate records or an index with the preliminary notices specified in subsection (a) of Code Section 44-14-361.3. Each such notice of commencement shall be indexed under the name of the governmental entity and the name of the contractor as contained in the notice of commencement.

36-91-93

(a) Every person entitled to the protection of the payment bond or security deposit required to be given who has not been paid in full for labor or material furnished in the prosecution of the work referred to in such bond or security deposit before the expiration of a period of 90 days after the day on which the last of the labor was done or performed by such person or the material or equipment or machinery was furnished or supplied by such person for which such claim is made, or when he or she has completed his or her subcontract for which claim is made, shall have the right to bring an action on such payment bond or security deposit for the amount, or the balance thereof, unpaid at the time of the commencement of such action and to prosecute such action to final execution and judgment for the sum or sums due such person; provided, however, that:

(1) Any person having a direct contractual relationship with a subcontractor but no contractual relationship, express or implied, with the contractor furnishing such payment bond or security deposit on a public works construction project where the contractor has not complied with the notice of commencement requirements shall have the right of action upon the payment bond or security deposit upon giving written notice to the contractor within 90 days from the day on which such person did or performed the last of the labor or furnished the last of the material or machinery or equipment for which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was performed or done. The notice to the contractor may be served by registered or certified mail, postage prepaid, or statutory overnight delivery, duly addressed to the contractor, at any place at which the contractor maintains an office or conducts his or her business or at his or her residence, by depositing such notice in any post office or branch post office or any letter box under the control of the United States Postal Service; alternatively, notice may be served in any manner in which the sheriffs of this state are authorized by law to serve summons or process; and

(2) Any person having a direct contractual relationship with a subcontractor but no contractual relationship, express or implied, with the contractor furnishing such payment bond or security deposit on a public works construction project where the contractor has complied with the notice of commencement requirements in accordance with subsection (a) of Code Section 36-91-92 shall have the right of action on the payment bond or security deposit, provided that such person shall, within 30 days from the filing of the notice of commencement or 30 days following the first delivery of labor, material, machinery, or equipment, whichever is later, give to the contractor a written notice setting forth:

(A) The name, address, and telephone number of the person providing labor, material, machinery, or equipment;

(B) The name and address of each person at whose instance the labor, material, machinery, or equipment is being furnished;

(C) The name and the location of the public works construction site; and

(D) A description of the labor, material, machinery, or equipment being provided and, if known, the contract price or anticipated value of the labor, material, machinery, or equipment to be provided or the amount claimed to be due, if any.

(b) Nothing contained in this Code section shall limit the right of action of a person entitled to the protection of the payment bond or security deposit required to be given pursuant to this article to the 90 day period following the day on which such person did or performed the last of the labor or furnished the last of the material or machinery or equipment for which such claim is made.

(c) Every action instituted under this Code section shall be brought in the name of the claimant without making the governmental entity for which the work was done or was to be done a party to such action.

36-91-94

The official who has the custody of the bond or security deposit required by this article is authorized and directed to furnish to any person making application therefor a copy of the bond or security deposit agreement and the contract for which it was given, certified by the official who has custody of the bond or security deposit. With his or her application, such person shall also submit an affidavit that he or she has supplied labor or materials for such work and that payment therefor has not been made or that he or she is being sued on any such bond or security deposit. Such copy shall be primary evidence of the bond or security deposit and contract and shall be admitted in evidence without further proof. Applicants shall pay for such certified copies and such certified statements such fees as the official fixes to cover the cost of preparation thereof, provided that in no case shall the fee fixed exceed the fees which the clerks of the superior courts are permitted to charge for similar copies.

36-91-95

No action can be instituted on the payment bonds or security deposits after one year from the completion of the contract and the acceptance of the public works construction by the proper public authorities. Every action instituted under this article shall be brought in the name of the claimant, without the governmental entity for which the work was done or was to be done being made a party thereto.

House Bill 322 (AS PASSED HOUSE AND SENATE)

By: Representatives McCall of the 33rd, Powell of the 32nd, Fleming of the 121st, Gravley of the 67th, and Trammell of the 132nd

A BILL TO BE ENTITLED

AN ACT

To amend Title 36 of the Official Code of Georgia Annotated, relating to local government, so as to change provisions relating to the advertisement of certain bid or proposal opportunities; to change notice provisions relating to public works construction contracts; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 36 of the Official Code of Georgia Annotated, relating to local government, is amended by revising Code Section 36-80-27, relating to advertisement of bid or proposal opportunities, as follows:

"36-80-27.

If a bid or proposal opportunity is extended by a county, municipal corporation, or local board of education for goods, ~~and~~ services, or both, valued at ~~$10,000.00~~ $100,000.00 or more ~~or if a bid or proposal opportunity is extended for public works construction contracts subject to Chapter 91 of this title~~, such bid or proposal opportunity shall be advertised by such respective local governmental entity in the Georgia Procurement Registry, as established in subsection (b) of Code Section 50-5-69, at no cost to the local governmental entity. ~~Such bid opportunity may also be advertised in the official legal organ of the county, municipal corporation, or local board of education in the same manner as required by Code Section 36-91-20 or other media normally utilized by the local governmental entity when advertising bid opportunities, including the Internet website of the local governmental entity.~~ Such bid or proposal opportunity shall be advertised on such registry for the same period of time, as set by ordinance or policy, if any, as the county, municipality, or local board of education advertises bid or proposal opportunities in the official legal organ or other media normally utilized by the local governing entity. Each

advertisement shall include such details and specifications as will enable the public to know the extent and character of the bid or proposal opportunity."

SECTION 2.

Said title is further amended in Code Section 36-91-20, relating to written contract required, advertising, competitive sealed bidding, timing of addendums, and prequalification for public works construction contracts, by revising paragraph (1) of subsection (b) as follows:

"(b)(1) Prior to entering into a public works construction contract other than those exempted by Code Section 36-91-22, a governmental entity shall publicly advertise the contract opportunity. Such notice shall be posted conspicuously in the governing authority's office and shall be advertised on the Georgia Procurement Registry as provided for in Code Section 50-5-69 at no cost to the governmental entity. Such advertisement on such registry shall be for the same period of time specified under paragraph (3) of this subsection. Such notice may be advertised in the legal organ of the county or by electronic means on ~~an Internet~~ the website of the governmental entity or any other appropriate ~~Internet~~ websites identified by the governmental entity ~~which shall include the Georgia Procurement Registry as provided by Code Section 50-5-69, provided that such posting is at no cost to the governmental entity~~."

SECTION 3.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 4.

All laws and parts of laws in conflict with this Act are repealed.

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Sample CDBG Contract Conditions

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NOTE:
The Local Government's attorney should review and approve all contract provisions

Section 3 Clause of the Urban Development Act of 1968

1.) The work to be performed under this contract is on a project assisted under a program providing direct Federal financial assistance from the Department of Housing and Urban Development and 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 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project to be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

2.) The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.

3.) The contractor will send to each labor organization or representative of workers with which he has a collective bargain-agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

4.) The contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the letter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

5.) Compliance with the provisions of Section 3, the regulations set forth in the 24 CFR Part 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of the contract, shall be a condition of the Federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors, and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors, and assigns to those sanctions specified by the grant or loan agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

PROVISION for REMEDIES

Note: It is required that any contract, regardless of value, contain a provision for remedies in case of violation or breach of terms, including sanctions. The following is a sample clause which meets the requirement. There is no specific required language and the recipient's attorney should approve whatever language is used.

1.) **Termination:** Unearned payments under this contract may be suspended or terminated upon refusal to accept any additional conditions that may be imposed by City/County; or if the grant to the City/County under the Community Development Block Grant Program is suspended or terminated. Moreover, if through any cause, the contractor shall fail to fulfill its obligations under this contract in a timely and proper manner, or if the contractor shall violate any of the covenants, agreements, conditions or obligations of the contract documents; the City/County may terminate this contract by giving written notice to the contractor and surety of such termination and specifying the effective date of such termination. In such event, the City/County may take over the work and prosecute the same to completion, by contract or otherwise, and the contractor and his sureties shall be liable to the City/County for any additional cost incurred by the Owner in its completion of the work and they shall also be liable to the Owner for liquidated damages for any delay in the completion of the work as provided below. Furthermore, the Contractor will be paid an amount which bears the same ratio to the total compensation as the work and services actually performed bear to the total work and services required. Provided, however, that if less than sixty percent of the services required by this Contract have been performed upon the effective date of such termination, the Contractor shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expenses (not otherwise reimbursed under this Contract) incurred by the Contractor during the Contract period which are directly attributable to the uncompleted portion of the services required by this Contract.

2.) **Liquidated Damages for Delays.** If the work is not completed within the time stipulated, therefore, including any extensions of time for excusable delays as herein provided, the Contractor shall pay to the Owner as fixed and agreed liquidated damages (it being impossible to determine the damages occasioned by the delay) for each working day of delay, until the work is completed, the amount as set forth in *(insert location of liquidated damages statement, normally found in the Contract General Conditions)* and the Contractor and his sureties shall be liable to the Owner for the amount thereof.

3.) **Excusable Delays.** The right of the Contractor to proceed shall not be terminated nor shall the Contractor be charged with liquidated damages for any delays in the completion of the work due:

(a) To any acts of the Government, including controls or restrictions upon or requisitioning of materials, equipment, tools, or labor by reason of war, National Defense, or any other national emergency;
(b) To any acts of the Owner;

(c) To causes not reasonable foreseeable by the parties to this Contract at the time of the execution of the Contract which are beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, acts of another Contractor in the performance of some other contract with the Owner, fires, floods, epidemics, quarantine, strikes, freight embargoes, and weather of unusual severity such as hurricanes, tornadoes, and cyclones; and

(d) To any delay of any subcontractor occasioned by any of the causes specified in subparagraphs (a) (b) and (c) or this subparagraph "d".

Provided, however, that the Contractor promptly notified the Owner within ten (10) days of the cause of the delay. Upon receipt of such notification, the Owner shall ascertain the facts and the cause and extent of delay. If upon the basis of the terms of this contract the delay is properly excusable, the Owner shall extend the time for completing the work for a period of time commensurate with the period of excusable delay.

Sample "Termination for Convenience Clause"

Note: it is required that a "termination" clause be included in any contract over $10,000 in value. This is a sample clause. The recipient's attorney should approve whatever language is used in the contract. There is no required language.

1.) **Termination for Convenience of the (city or county):**

The (city or county) may terminate this contract at any time for any reason by giving at least thirty (30) days notice in writing to the contractor. If the contract is terminated by the (city or county) as provided herein, the contractor will be paid a fair payment as negotiated with the (city or county) for the work completed as of the date of termination.

Equal Employment Opportunity (EEO) Clause

During the performance of this contract, the Contractor agrees as follows:

1.) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and the employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2.) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

3.) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4.) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

5.) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

6.) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by the rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7.) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or

purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a Contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

CA-26

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY
CONSTRUCTION CONTRACT SPECIFICATIONS
(EXECUTIVE ORDER 11246)

1. As used in these specifications:

   a. "Covered Area" means the geographical area described in the solicitation from which this contract resulted.

   b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority.

   c. "Employer Identification Number" means the Federal Social Security Number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

   A Minority Group Member is:

   ...American Indian or Alaskan Native
   consisting of all persons having origins in any of the original people of North American and who maintain cultural identification through tribal affiliations or community recognition.

   ...Black
   consisting of all persons having origins in any of the Black racial groups of Africa.

   ...Asian or Pacific Islander
   consisting of all persons having origins in any of the original people of the Far East, Southeast Asia, the Indian Sub-Continent or the Pacific Islands. This area includes China, India, Japan, Korea, the Philippines and Samoa.

   ...Hispanic
   consisting of all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin.

   ...Cape Verde an
   consisting of all persons having origins in the Cape Verde Islands.

   ...Portuguese
   consisting of all persons of Portuguese, Brazilian or other Portuguese culture or origin.

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000.00 the provisions of these specifications and the notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in the Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or subcontract participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. the overall good faith performance by other Contractors or subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or subcontractor's failure to make good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in Paragraphs 7a through p of these specifications. The goals set for the Contractor in the solicitation from which this contract resulted are expressed as percentages in the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement nor the failure by a union with whom the Contractor has a collective bargaining agreement to refer either minority or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity . The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and shall implement affirmative action steps at least as extensive as the following:

   a. Ensure and maintain a working environment free of harassment, intimidation and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment with specific attention to minority or female individuals working at such sites or in such facilities.

   b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notifications to the Regional Director when the union or unions, with which the Contractor has a collective bargaining agreement, have not referred to the Contractor a minority person or woman sent by the Contractor or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under Paragraph 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, Supervisors etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, and providing written notification to, and discussing the Contractor's EEO policy with, other Contractors and subcontractors with whom the Contractor anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notifications to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the EEO policy and Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (Paragraph 7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under Paragraph 7a through p of these Specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, reflected in the Contractor's minority and female workforce participation , makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's non-compliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is under-utilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex or national origin.

11. The Contractor shall not enter into any subcontract with any person for firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, terminations and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in Paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment-related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application or requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTIN TO EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, area as follows:

Timetable:	Goals for minority participation	Goals for female participation
Until Further Notice	(insert goal)	x.xx%

These goals are applicable to each non-exempt contractor's total on-site construction workforce, regardless of whether or not part of that workforce is performing work on a Federal, Federally assisted or non-Federally related project, contract or sub-contract.

The contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to the performed.

4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is (insert description of the economic area in which the contract will be performed, giving the city, SMSA or non SMSA designation, and a list of the counties included in the economic area).

CERTIFICATE OF NON-SEGREGATED FACILITIES

We, _____(Company)
Certify that we do not and will not maintain or provide for our employees any segregated facilities at any of our establishments, and that we do not and will not permit our employees to perform their services at any location, under our control, where segregated facilities are maintained. We understand and agree that breach of this certification is a violation of Equal Opportunity clause required by Executive Order 11246, amended.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom or otherwise.

We further agree that (except where we have obtained identical certifications from proposed Subcontractors for specific time periods) we will obtain identical certifications from proposed Subcontractors prior to the award of subcontracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause; that we will retain such certification in our files; and that we will forward the following notice to such proposed Subcontractors (except where the proposed Subcontractors have submitted identical certifications for specific time periods).

NOTICE TO PROSPECTIVE SUBBUILDERS OF REQUIREMENT FOR CERTIFICATION OF NON-SEGREGATED FACILITIES. A certification of Non-segregated facilities as required by the 9 May 1967 order on Elimination of Segregated Facilities, by the Secretary of Labor (32 Fed. Reg. 7439, 19 May 1967), must be submitted from the provisions either for each subcontract or for all subcontracts during a period (i.e. quarterly, semi-annually, or annually).

NOTE: Whoever knowingly and willfully makes any false, fictitious or fraudulent representation may be liable to criminal prosecution under 18 U.S.C. 1001.

_____
(Name of Company)

By: _____

Date: _____ **Title:** _____

FEDERAL LABOR STANDARDS PROVISION
Georgia Community Development Block Grant

Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

A.1.(i) **Minimum Wages.** All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR Part 5.5(a)(1)(ii)) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(a) The contracting officer shall require that any class of laborers or mechanics, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, US. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary.

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. **Withholding**. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to

pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 for under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) **Payrolls and basic records.** Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project.) Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable program (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii)(a) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Part 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), US. Government Printing Office, Washington, DC, 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR Part 5.5(a)(3)(i) and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph A.3(ii)(b) of this section.

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph A.3(i) of this section available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR Part 5.12.

4.(i) **Apprentices and Trainees.** Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the US. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as

stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ration permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeymen's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification.

If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the US. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journey hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performs. In addition, any trainee performing work on the job site in excess of the ration permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer

be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) **Equal employment opportunity**. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. **Compliance with Copeland Act requirements**. The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.

6. **Subcontracts**. The contractor or subcontractor will insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as HUD or its designee may be appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Part 5.5.

7. **Contract termination:** debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounded for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. **Compliance with Davis-Bacon and Related Act Requirements**. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. **Disputes concerning labor standards**. Disputes arising out of a labor standards provision of this contract shall to be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6 and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the US. Department of Labor, or the employees or their representatives.

10. (i) **Certification of Eligibility**. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the US. Criminal Code, 18 U.S.C. 1001. Additionally, US. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of

...influencing in any way the action of such Administration...makes, utters or publishes any statement, knowing the same to be false...shall be fined not more than $5,000 or imprisoned not more than two years, or both."

11. **Complaints, Proceedings, or Testimony by Employees**. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. **Contract Work Hours and Safety Standards Act.** As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) **Overtime requirements:** No contractor or subcontractor contracting for any part of the contract work may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation:** liability for unpaid wages, liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

(3) **Withholding for unpaid wages and liquidated damages:** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any money payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

(4) **Subcontracts:** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier

subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. **Health and Safety**

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 (formerly part 1518) and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (Public Law 91-54, 83 Stat. 96).

(3) The Contractor shall include the provisions of this Article in every subcontract so that such provisions will be binding on each subcontractor. The Contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

ACCEPTABLE ALTERNATE WORK SHEET FOR CONTRACTOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION (LOWER-TIER PARTICIPANT) FOR HUD PROGRAMS

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower-Tier Covered Transactions pursuant to 24 Code of Federal Regulations, Part 24.510(b).

1. By signing and submitting this proposal, the prospective lower-tier participant certifies that neither it, its principals nor affiliates, is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Further, the Participant provides the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that an erroneous certification was rendered, in addition to other remedies available to the Federal Government, the Department or agency with which this transaction originated may pursue available remedies.

3. Further, the Participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the Participant learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. By submitting this proposal, it is agreed that should the proposed covered transaction be entered into, the Participant will not knowingly enter into any lower-tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction unless authorized by the agency with which this transaction originated.

5. It is further agreed that by submitting this proposal, the Participant will include this Certification, without modification, in all lower-tier covered transactions and in all solicitations for lower-tier covered transactions.

Contractor Name_____Date_____

Title_____Address_____

City_____State_____Zip_____

NON-CERTIFICATION:

As the perspective lower-tier participant, I am unable to certify to statements in this Certification as explained in the attachment to this proposal.

Contractor Name_____Date_____

Title_____Address_____

City_____State_____Zip_____

The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

PERFORMANCE, PAYMENT and BID BONDS

Contract Performance and Payment Bonds issued in the full amount of the contract are required by federal procurement rules if the contract is for $100,000 or more.

A Bid Bond or other security is required by federal rules whenever the contract is for $100,000 or more.

Generally these bonds must be issued by a surety company satisfactory to the local government, qualified to do business in Georgia, and in a format meeting the federal and state legal requirements. The bonding company must also appear on the "List of Acceptable Sureties" published annually by the US Department of the Treasury.

DCA recommends that CDBG Recipients be sure to assign responsibility for reviewing construction bonds. This job may be given to the local attorney, the grant administrator, or the project architect/engineer. Specific duties include verification that the agent is licensed y the state and authorized by the bonding company and verification through the Insurance Commissioner that the company is financially sound and licensed in Georgia. The actual bond should also be reviewed and verified as being valid.

COMPLIANCE WITH CLEAN AIR AND WATER ACTS

The contract is subject to the requirements of the Clean Air Act, as amended, 42 USC 1857 et. seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended from time to time.

In compliance with said regulations:

1.) The Contractor shall require of subcontractors that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 4C CFR 15.20.

2.) The Contractor will comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 USC 1857c-8) and section 308 of the Federal Water Pollution Control Act as amended, (330 USC 1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in said section 114 and section 308, and all regulations and guidelines issued thereunder.

3.) The Contractor will provide prompt notice of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized or to be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4.) The Contract will include or cause to be included the criteria and requirements to paragraph (1) through (4) of this section in every nonexempt subcontract and take such action as the Government will direct as a means of enforcing such provisions.

Contractor Affidavit under O.C.G.A. § 13-10-91(b)(l)

The undersigned contractor ("Contractor") executes this Affidavit to comply with O.C.G.A § 13-10-91 related to any contract to which Contractor is a party that is subject to O.C.G.A. § 13-10-91 and hereby verifies its compliance with O.C.G.A. § 13-10-91, attesting as follows:

a) The Contractor has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program;

b) The Contractor will continue to use the federal work authorization program throughout the contract period, including any renewal or extension thereof;

c) The Contractor will notify the public employer in the event the Contractor ceases to utilize the federal work authorization program during the contract period, including renewals or extensions thereof;

d) The Contractor understands that ceasing to utilize the federal work authorization program constitutes a material breach of Contract;

e) The Contractor will contract for the performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the Contractor with the information required by O.C.G.A. § 13-10-91(a), (b), and (c);

f) The Contractor acknowledges and agrees that this Affidavit shall be incorporated into any contract(s) subject to the provisions of O.C.G.A. § 13-10- 91 for the project listed below to which Contractor is a party after the date hereof without further action or consent by Contractor; and

g) Contractor acknowledges its responsibility to submit copies of any affidavits, drivers' licenses, and identification cards required pursuant to O.C.G.A. § 13-10-91 to the public employer within five business days of receipt.

_____ _____

Federal Work Authorization User Identification Number Date of Authorization

_____ _____

Name of Contractor Name of Project

_____

Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, _____, 20_____ in _____ (city), _____ (state).

_____

Signature of Authorized Officer or Agent

_____

Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME
ON THIS THE _____ DAY OF _____, 20_____.

_____

NOTARY PUBLIC
My Commission Expires: _____

Subcontractor Affidavit under O.C.G.A. § 13-10-91(b)(3)

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with (name of contractor) on behalf of (name of public employer) has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned subcontractor will continue to use the federal work authorization program throughout the contract period and the undersigned subcontractor will contract for the physical performance of services in satisfaction of such contract only with sub-subcontractors who present an affidavit to the subcontractor with the information required by O.C.G.A. § 13-10-91(b). Additionally, the undersigned subcontractor will forward notice of the receipt of an affidavit from a sub-subcontractor to the contractor within five business days of receipt. If the undersigned subcontractor receives notice that a sub-subcontractor has received an affidavit from any other contracted sub-subcontractor, the undersigned subcontractor must forward, within five business days of receipt, a copy of the notice to the contractor. Subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

_____
Federal Work Authorization User Identification Number

_____
Date of Authorization

_____
Name of Subcontractor

_____
Name of Project

_____
Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, ___, 201__ in _____(city), _____(state).

_____
Signature of Authorized Officer or Agent

_____
Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME
ON THIS THE _____ DAY OF _____,201__.

_____
NOTARY PUBLIC

My Commission Expires:

_____

Sub-subcontractor Affidavit under O.C.G.A. § 13-10-91(b)(4)

By executing this affidavit, the undersigned sub-subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract for (name of subcontractor or sub-subcontractor with whom such sub-subcontractor has privity of contract) and (name of contractor) on behalf of (name of public employer) has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned sub-subcontractor will continue to use the federal work authorization program throughout the contract period and the undersigned sub-subcontractor will contract for the physical performance of services in satisfaction of such contract only with sub-subcontractors who present an affidavit to the sub-subcontractor with the information required by O.C.G.A. § 13-10-91(b). The undersigned sub-subcontractor shall submit, at the time of such contract, this affidavit to (name of subcontractor or sub-subcontractor with whom such sub-subcontractor has privity of contract). Additionally, the undersigned sub-subcontractor will forward notice of the receipt of any affidavit from a sub-subcontractor to (name of subcontractor or sub-subcontractor with whom such sub-subcontractor has privity of contract). Sub-subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

_____
Federal Work Authorization User Identification Number

_____
Date of Authorization

_____
Name of Sub-subcontractor

_____
Name of Project

_____
Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, ___, 201__ in _____(city), _____(state).

_____
Signature of Authorized Officer or Agent

_____
Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME
ON THIS THE _____ DAY OF _____,201__.

_____
NOTARY PUBLIC
My Commission Expires:

_____

Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

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

Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

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DCA Guidance

Procurement for Application Development and Administrative Services

CDBG payments for Grant Administration services are subject to the "competitive negotiation" requirements of 24 CFR 570.489(g). These provisions apply, typically, to contracts with private consultants, and are not necessary when contracting with Regional Commissions (RCs). Note, however, that RCs that wish to subcontract directly with private consultants must use the procedures in this section and follow the requirements of 24 CFR 570.489(g), before entering into subcontracts with private consultants. Alternately, the local government may contract with both an RC and private consultant provided the requirements herein are followed for the procurement of the private consultant.

To comply, the applicant government (not the individual or firm proposing to provide services) must:

Step 1. Establish or appoint a local Selection Review Committee
The city or county must establish a Selection Review Committee to determine the evaluation criteria and to rate proposals for services. This committee may consist of the entire local governing body (council/board of commissioners), a subset of this council/ board, as appointed by the Mayor/Chairman, or a combination of elected officials and city/county staff. Cities/counties should have a minimum of three members on the committee.

Committee members may not have any potential conflicts of interest with any of the individuals, firms, or agencies under review (e.g., family relationships, close friendships, business dealings) and no person who might potentially receive benefits from CDBG-assisted activities may participate in the selection, award, or administration of a contract supported by CDBG funding if he or she has a real or apparent conflict of interest. For further guidance regarding potential conflicts of interest, please see the most recent version of the CDBG Recipients' Manual at the following web page: https://www.dca.ga.gov/node/3582.

Step 2. Determine the Selection Criteria to Evaluate Respondents
Determine what evaluation criteria will be used to rate the proposals submitted to the city/county. Prepare a Ratings Criterion Score sheet to evaluate and score each proposal received. See sample in Appendix D.

Step 3. Develop the Request for Proposals (RFP) Package
Develop a Request for Proposal (RFP) package that includes "evaluation factors" selected by the Review Committee and their level of importance. The RFP package should include the submission deadline and instructions for submission, a local point of contact for any questions regarding the RFP, and a format for a Statement of Qualifications. See sample in Appendix C.

*** The RFP Package should also include DCA's Section 3 Solicitation Package, which can be found at the following url;** https://www.dca.ga.gov/node/3858.

Step 4. Advertise the RFP
Federal Section 3 requires communities to advertise the RFP in three locations. The three locations include the local government web site and/or by publishing it in the applicant's "legal organ," along

with posting the opportunity at any of the following, for a total of 3 locations: A) city hall/county courthouse; B) most widely distributed newspaper; C) Local GA Department of Labor office and/or Local Workforce Board office; D) local DFCS office; E) local Public Health department; F) local Housing Authority management office. If the contract will be for more than $100,000 it must be advertised on the Georgia Procurement Registry (https://ssl.doas.state.ga.us/PRSapp). Allow 30 days for responses. The publication must state this is a Section 3 contract opportunity. See the sample in Appendix A.

Send an email or letter with a copy of the RFP, Statement of Qualifications, and the Section 3 Solicitation Package to a minimum of 7 "known providers". If sending letters by mail, DCA requires that letters be sent certified return receipt to provide the required documentation. Sole source approval is required from DCA when only one response is received. Emails must be sent with a Request Delivery Receipt and Request Read Receipt to provide equivalent documentation when using this method. See the sample in Appendix B.

When soliciting firms to develop applications/administer projects, RFP's should be sent to at least 7 "known providers." As a service to applicants, recipients and others, DCA maintains a list of consultants who have expressed an interest in making proposals on CDBG projects. This is not an "approved" list. DCA does not approve or disapprove consultants. This is the applicant's or recipient's responsibility. The list can be found on the DCA web site.

Step 5. Review and rate proposals
After the submittal deadline, the committee should review and rate each of the proposals received. Committee members should use the evaluation criteria established in step 2 above. Each committee member should score the proposals; all scores can then be averaged to determine the highest scoring proposal. The firm with the highest average points should be selected. See the sample in Appendix D.

If a Section 3 business submits a bid and requests a preference, the city/county must give priority to the greatest extent possible to the business. In this instance, the city/county should contact Kathleen Vaughn at (404) 679-0594 or kathleen.vaughn@dca.ga.gov for further guidance to ensure compliance with the federal Section 3 requirements.

Step 6. Approve the selected contractor and award contract
The City Council/Board of Commissioners has final authority to award the contract to the selected contractor. The review committee should present a recommendation to the city/county attorney and to the governing board for final approval. A contract for services should be prepared between the city/county and the selected consultant.

Letter(s) or emails thanking unsuccessful respondents for making a proposal should then be sent. Based on evaluation criteria contained in the RFP, this letter should briefly state the reasons why the respondent was not hired.

Step 7: Record keeping
The city/county must maintain and make available all documentation utilized during the RFP process, including but not limited to:

- Copy of the full RFP

- Proof of publication of the RFP (by full tear sheet from newspaper or screen shot of web site; photo of posting on bulletin board)
- List of firms/individuals that were sent RFPs
- Copies of proposals received
- Scoring sheet that shows the rankings for each of the submitted proposals
- Meeting minutes indicating the council/board approved the selection of the selected firm for service
- Executed contract for services with applicable federal language
- Documentation of any correspondence with a Section 3 business

Because CDBG funds cannot be used to pay for any application development costs, applicants are cautioned only to obligate CDBG funds for grant administration services and not for grant writing services. Contracts should initially only obligate the applicant to pay for costs of application development using local or other non-CDBG sources. Communities are encouraged to include a contingent contract for administrative services that will become effective if the CDBG application is funded. ***Note: Even if local sources of funds are planned for grant administration services and no CDBG funds are budgeted for this activity, this procurement process described herein and in the most recent version of the CDBG Recipients' Manual must be followed for both grant writing and grant administration services based on the requirements of federal regulations.***

All professional procurement requires Section 3 compliance.

If an acceptable procurement process was followed for an application that is being resubmitted because it was denied in the previous program year, it is not necessary for the local government to re-advertise for professional services if they choose to retain the same firm for the same application. (Please note, however, that should the procurement process not have included the applicable Section 3 compliance requirements, then a new advertisement and RFP solicitation is required). Any older procurements will not be valid, and a new advertisement and solicitation of RFP's is required.

For procurement processes that result in requests for sole source approval from DCA, the procurement process must be fully documented to DCA's satisfaction before DCA will grant approval, including but not limited to the following: 1) a description of the procurement process; 2) documentation of advertisement of the Request for Proposals; 3) a list of the active, qualified consultants or engineers/architects that were emailed/mailed the Request for Proposals; and 4) certified return receipt documentation that the Request for Proposals was mailed to the required number of active, qualified consultants or engineers/architects, or adequate email documentation that the Request for Proposals was delivered as required. For further guidance regarding procurement for professional services, please see the most recent version of the CDBG Recipients' Manual at the following web page: https://www.dca.ga.gov/node/3582.

Appendix A:
Sample Notice for RFP

****

CITY/COUNTY
REQUEST FOR PROPOSALS
ADMINISTRATIVE & RELATED GRANT SERVICES

Date: **DATE**

Statements of qualifications and proposals are being requested from consultants with a strong record in successfully assisting local governments with grant writing for and implementation of Community Development Block Grant (CDBG) programs. Responding firms should be qualified to provide grant administration and related services including, but not limited to: Preparation of the grant application; Preparation of the Environmental Review Record; Preparation of draw/disbursement requests; Assistance with financial administration of grant funds and record keeping; Assistance with holding public hearings; Assistance with any required acquisition following the Uniform Relocation Assistance and Real Property Acquisition Act (URA); Assisting the engineer/architect with preparation of bid documents, advertising and conducting the bid opening; Assisting the city/county with Davis-Bacon and related labor requirements including weekly payroll review and employee interviews; Assisting the city/county with meeting Affirmatively Furthering Fair Housing (AFFH) requirements; and Preparation of close-out documents.

CITY/COUNTY plans are to contract with a reputable consulting firm for grant writing, and, if funded, for administration services, for a FY20__ CDBG project. The purpose of the project is to provide DESCRIBE PROPOSED IMPROVEMENTS.

Information which should be submitted for our evaluation is as follows:

1) **History of firm and resources**
2) **CDBG experience, including other DCA grant programs**
3) **Capacity to complete scope of work**
4) **Current workload**
5) **Scope and level of service proposed**
6) **Experience with similar projects and list of references**
7) **Fees associated with grant writing, and grant administration, if the project is funded**
8) **Statement of Qualifications Form**
9) **Applicable Section 3 Certification forms, if claiming Section 3 Status**

All contracts are subject to Federal and State contract provisions prescribed by the Georgia Department of Community Affairs. This project is covered under the requirements of Section 3 of the HUD Act of 1968, as amended and Section 3 Business Concerns are encouraged to apply.

CITY/COUNTY *also abides by the following laws as they pertain to HUD Assisted Projects: Title VI of the Civil Rights Act of 1964; Section 109 of the Housing and Community Development Act of 1974, Title 1; Title VII of the Civil Rights Act of 1968 (Fair Housing Act); Section 104(b)(2) of the Housing and Community Development Act of 1974; Section 504 of the Rehabilitation Act of 1973 as amended; Title II of the Americans with Disabilities Act of 1990 (ADA); and the Architectural Barriers Act of 1968.*

Interested parties should request copies of the Statement of Qualifications Form and Section 3 Solicitation Package prior to preparing and submitting their proposal. Proposals should be received no later than **5:00 PM on [30 DAYS AFTER PUBLICATION]**. Proposals received after the above date and time may not be considered. We reserve the right to accept or reject any and all proposals and to waive informalities in the proposal process. Questions, Statement of Qualifications and Section 3 Certification form requests (i.e., request for Section 3 preference), and proposal packages should be submitted to the name and address listed below:

CLIENT CONTACT
CLIENT
ADDRESS
Phone:
Email:

****

Appendix B:
Sample Email Request for Proposals

****

Copy and paste the "email" below, including the Fair Housing and ADA logos, to send to your selected Grant Administration firms and remember to select the Request for Delivery Receipt and Request a Read Receipt. Please also remember to attach the Statement of Qualifications Form and DCA Section 3 Solicitation Package to your email.

***Subject: PLEASE RESPOND: CITY/COUNTY RFP Grant Administration Services – FY20__ CDBG/EIP/RDF

FROM: CITY/COUNTY, Georgia

RE: CITY/COUNTY Solicitation Package for Grant Administration Services – FY20__ CDBG/EIP/RDF

PLEASE REPLY TO THIS EMAIL to let us know if you received this request and/or if you will be submitting a proposal.

Thank you,

CITY/COUNTY CONTACT
CITY/COUNTY NAME

CITY/COUNTY

REQUEST FOR PROPOSALS
ADMINISTRATIVE & RELATED GRANT SERVICES

Statements of qualifications and proposals are being requested from consultants with a strong record in successfully assisting local governments with grant writing for and implementation of Community Development Block Grant (CDBG) programs. Responding firms should be qualified to provide grant administration and related services including, but not limited to: Preparation of the grant application; Preparation of the Environmental Review Record; Preparation of draw/disbursement requests; Assistance with financial administration of grant funds and record keeping; Assistance with holding public hearings; Assistance with any required acquisition following the Uniform Relocation Assistance and Real Property Acquisition Act (URA); Assisting the engineer/architect with preparation of bid documents, advertising and conducting the bid opening; Assisting the city/county with Davis-Bacon and related labor requirements including weekly payroll review and employee

interviews; Assisting the city/county with meeting Affirmatively Furthering Fair Housing (AFFH) requirements; and Preparation of close-out documents.

CITY/COUNTY plans are to contract with a reputable consulting firm for grant writing, and, if funded, for administration services, for a FY20__ CDBG project. The purpose of the project is to provide TYPE OF IMPROVEMENTS.

Information which should be submitted for our evaluation is as follows:

1) **History of firm and resources**
2) **CDBG/EIP experience, including other DCA grant programs**
3) **Capacity to complete scope of work**
4) **Current workload**
5) **Scope and level of service proposed**
6) **Experience with similar projects and list of references**
7) **Fees associated with grant writing, and grant administration, if the project is funded.**
8) **Statement of Qualifications Form, see attached.**
9) **Applicable Section 3 Certification forms, if claiming Section 3 Status**

All contracts are subject to Federal and State contract provisions prescribed by the Georgia Department of Community Affairs. This project is covered under the requirements of Section 3 of the HUD Act of 1968, as amended and Section 3 Business Concerns are encouraged to apply.

The City/County also abides by the following laws as they pertain to HUD Assisted Projects: Title VI of the Civil Rights Act of 1964; Section 109 of the Housing and Community Development Act of 1974, Title 1; Title VII of the Civil Rights Act of 1968 (Fair Housing Act); Section 104(b)(2) of the Housing and Community Development Act of 1974; Section 504 of the Rehabilitation Act of 1973 as amended; Title II of the Americans with Disabilities Act of 1990 (ADA); and the Architectural Barriers Act of 1968.

Proposals should be received no later than **5:00 PM on 30 DAYS AFTER PUBLICATION**. Proposals received after the above date and time will not be considered. The City/County reserves the right to accept or reject any and all proposals and to waive informalities in the proposal process. Questions and Completed Proposals should be submitted to the name and address listed below:

CITY/COUNTY CONTACT
CITY/COUNTY ADDRESS
Phone:
Email:

****

Appendix C:
Sample Statement of Qualifications

****

GRANT ADMINISTRATION STATEMENT OF QUALIFICATIONS

NAME OF FIRM: _____

ADDRESS: _____

_____

1. Years in Business in Present Form: _____

2. Firms History and Resource Capability to Perform Required Services:

_____

_____

_____

3. Titles, names, and addresses of all officers.

_____

_____

_____

_____

4. List up to five (5) projects which demonstrate skills to be used on CDBG projects.

   1. _____
   2. _____
   3. _____
   4. _____
   5. _____

5. If you were awarded the administration on these type of projects, what would your fee for grant writing/grant administration services be *(fees can be expressed in percentages, but all agreements will be lump sum amounts)*?

_____

6. Describe the organizational capacity to complete all necessary grant administration activities, including experience of all employees who will be or may be assigned to this project.

_____

_____

_____

_____

_____

7. List references with contact information.

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

8. Are you a Section 3 Business Concern? Yes _____ No _____

If you are claiming to be a Section 3 Business Concern, then the Attached Section 3 Business Concern Certification, Previous Certification and Action Plan must be filled out, signed, notarized, and submitted with your proposal. If you answered no, then you will not have to fill out and submit with your proposal. If you are the successful proposer, you will be asked to provide the completed Section 3 Forms for the CITY/COUNTY's records.

Is the signed and notarized Section 3 Business Concern Certification, Previous Certification and Action Plan attached to your proposal? Yes _____ No _____

9. Certifying that:

Mr./Mrs./Ms. _____ being duly sworn deposes and states that he/she is the _____ (title) of _____ (name of firm) and that answers to the foregoing questions and all statements herein contained are true and correct.

Appendix D.
GRANT ADMINISTRATION SAMPLE RATINGS CRITERION

****

RFP Rating Score Sheet

Consultant's knowledge of CDBG guidelines and regulations. Years of experience

0 → No Experience.
1 → One to five years of combined experience with CDBG and other federal programs.
2 → Six or more years of combined experience with CDBG and other federal programs.

Capacity to complete scope of work.

0 → Concerns administrator does not have organizational capacity to complete scope of work
1 → Administrator has average organizational capacity to complete scope of work
2 → Administrator has exceptional organizational capacity to complete scope of work

Consultant's past performance. Check references.

0 → Reference information is incomplete.
1 → Three or less References are listed, with average recommendations
2 → More than three references are listed, with strong recommendations

Consultant's experience in administration of this type of project.

0 → Administrator has not completed a project of this type.
1 → Administrator has completed one to five projects of this type.
2 → Administrator has successfully completed six or more projects of this type.

Consultant's current workload.

0 → Administrator has more work than they can handle.
1 → Administrator has some difficulty managing their current work load.
2 → Administrator has demonstrated they can handle their projected work load.

Consultant's fee $_____.

0 → Fees are high, services do not appear to be a good value for the dollar.
1 → Fee is normal, services do not appear to be a good value for the dollar.
2 → Fee is normal, services appear to be a good value for the dollar.

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DCA Guidance

Procurement for Engineering and/or Architectural Grant Services

CDBG payments for Engineering and/or Architectural Grant services are subject to the "competitive negotiation" requirements of 24 CFR 570.489(g). These provisions apply whether these services are paid for with CDBG funds or local funds.

To comply, the applicant government or contracted firm (not the individual or firm proposing to provide services) must:

Step 1. Establish or appoint a local Selection Review Committee
The city or county must establish a Selection Review Committee to determine the evaluation criteria and to rate proposals for services. This committee may consist of the entire local governing body (council/board of commissioners), a subset of this council/board, as appointed by the Mayor/Chairman, or a combination of elected officials and city/county staff. Cities/counties should have a minimum of three members on the committee.

Committee members may not have any potential conflicts of interest with any of the individuals, firms, or agencies under review (e.g., family relationships, close friendships, business dealings) and no person who might potentially receive benefits from CDBG-assisted activities may participate in the selection, award, or administration of a contract supported by CDBG funding if he or she has a real or apparent conflict of interest. For further guidance regarding potential conflicts of interest, please see the most recent version of the CDBG Recipients' Manual at the following web page: https://www.dca.ga.gov/node/3582.

Step 2. Determine the Selection Criteria to Evaluate Respondents
Determine what evaluation criteria will be used to rate the proposals submitted to the city/county. Prepare a Ratings Criterion Score Sheet to evaluate and score each proposal received. See sample in Appendix D.

Step 3. Develop the Request for Proposals (RFP) Package
Develop a Request for Proposal (RFP) package that includes "evaluation factors" selected by the Review Committee and their level of importance. The RFP package should include the submission deadline and instructions for submission, a local point of contact for any questions regarding the RFP, and a format for a Statement of Qualifications. See sample in Appendix C.

*** The RFP Package should also include DCA's Section 3 Solicitation Package, which can be found at the following url;** https://www.dca.ga.gov/node/3858.

Step 4. Advertise the RFP
Federal Section 3 requires communities to advertise the RFP in three locations. The three locations include the local government web site and/or by publishing it in the applicant's "legal organ," along with posting the opportunity at any of the following, for a total of 3 locations: A) city hall/county courthouse; B) most widely distributed newspaper; C) Local GA Department of Labor office and/or Local Workforce Board office; D) local DFCS office; E) local Public Health department;

F) local Housing Authority management office. If the contract will be for more than $100,000 it must be advertised on the Georgia Procurement Registry (https://ssl.doas.state.ga.us/PRSapp). Allow 30 days for responses. The publication must state this is a Section 3 contract opportunity. See the sample in Appendix A.

Send an email or letter with a copy of the RFP, a Statement of Qualifications, and the Section 3 Solicitation Package to a minimum of 10 "known providers". If sending letters by mail, DCA requires that letters be sent certified return receipt to provide the required documentation. Sole source approval is required from DCA when only one response is received. Emails must be sent with a Request Delivery Receipt and Request Read Receipt to provide equivalent documentation when using this method. See the sample in Appendix B.

When soliciting firms to provide engineering or architectural services, RFP's should be sent to at least 10 "known providers." As a service to applicants, recipients and others, DCA maintains a list of consultants who have expressed an interest in making proposals on CDBG projects. This is not an "approved" list. DCA does not approve or disapprove consultants. This is the applicant's or recipient's responsibility. The list can be found on the DCA web site.

Step 5. Review and rate proposals

After the submittal deadline, the committee should review and rate each of the proposals received. Committee members should use the evaluation criteria established in step 2 above. Each committee member should score the proposals; all scores can then be averaged to determine the highest scoring proposal. The firm with the highest average points should be selected. See the sample in Appendix D.

If a Section 3 business submits a bid and requests a preference, the city/county must give priority to the greatest extent possible to the business. In this instance, the city/county should contact Kathleen Vaughn at (404) 679-0594 or kathleen.vaughn@dca.ga.gov for further guidance to ensure compliance with the federal Section 3 requirements.

Step 6. Approve the selected firm and award contract

The City Council/Board of Commissioners has final authority to award the contract to the selected firm. The review committee should present a recommendation to the city/county attorney and to the governing board for final approval. A contract for services should be prepared between the city/county and the selected consultant.

Letter(s) or emails thanking unsuccessful respondents for making a proposal should then be sent. Based on evaluation criteria contained in the RFP, this letter should briefly state the reasons why the respondent was not hired.

Step 7: Record keeping

The city/county must maintain and make available all documentation utilized during the RFP process, including but not limited to:

- Copy of the full RFP
- Proof of publication of the RFP (by full tear sheet from newspaper or screen shot of web site; photo of posting on bulletin board)

- List of firms/individuals that were sent RFPs along with proof of delivery
- Copies of proposals received
- Scoring sheet that shows the rankings for each of the submitted proposals
- Meeting minutes indicating the council/board approved the selection of the selected firm for service
- Executed contract for services with applicable federal language
- Documentation of any correspondence with a Section 3 business

Because CDBG funds cannot be used to pay for any application development costs, applicants are cautioned only to obligate CDBG funds for engineering or architectural services and not for preliminary reports (PER/PAR). Contracts should initially only obligate the applicant to pay for costs of application development using local or other non-CDBG sources. Communities are encouraged to include a contingent contract for engineering or architectural services that will become effective if the CDBG application is funded. ***Note: Even if local sources of funds are planned for engineering or architectural services and no CDBG funds are budgeted for this activity, this procurement process described herein and in the most recent version of the CDBG Recipients' Manual must be followed for procurement of these services based on the requirements of federal regulations.***

All professional procurement requires Section 3 compliance.

If an acceptable procurement process was followed for an application that is being resubmitted because it was denied in the previous program year, it is not necessary for the local government to re-advertise for professional services if they choose to retain the same firm for the same application. (Please note, however, that should the procurement process not have included the applicable Section 3 compliance requirements, then a new advertisement and RFP solicitation is required). Any older procurements will not be valid, and a new advertisement and solicitation of RFP's is required.

For procurement processes that result in requests for sole source approval from DCA, the procurement process must be fully documented to DCA's satisfaction before DCA will grant approval, including but not limited to the following: 1) a description of the procurement process; 2) documentation of advertisement of the Request for Proposals; 3) a list of the active, qualified consultants or engineers/architects that were emailed/mailed the Request for Proposals; and 4) certified return receipt documentation that the Request for Proposals was mailed to the required number of active, qualified consultants or engineers/architects, or adequate email documentation that the Request for Proposals was delivered as required. For further guidance regarding procurement for professional services, please see the most recent version of the CDBG Recipients' Manual at the following web page: https://www.dca.ga.gov/node/3582.

Appendix A: Sample Notice for RFP

****

CITY/COUNTY
REQUEST FOR PROPOSALS
ENGINEERING AND/OR ARCHITECTURAL GRANT SERVICES

Date: **DATE**

Statements of qualifications and proposals are being requested from engineering/architectural firms with a strong record in successfully assisting local governments with the implementation of Community Development Block Grant (CDBG) programs. Responding firms should be technically qualified and licensed in the State of Georgia to provide these services.

Plans are to contract for engineering/architectural preliminary design services required for a potential FY20__ CDBG project and, if funded, for engineering/architectural services for the implementation of the project. The purpose of the project is to provide TYPE OF IMPROVEMENTS.

Information which should be submitted for our evaluation is as follows:

1) **History of firm and resources**
2) **CDBG/EIP/RDF experience, including other DCA grant programs**
3) **Key personnel/qualifications**
4) **Current workload**
5) **Scope and level of service proposed**
6) **Experience with similar projects and list of references**
7) **Fees and/or Percentages (if any) associated with the Preliminary Engineering Report (PER) for the application, and Design and Construction Management Services, if the project is funded. The draft PER would be needed no later than _____).**
8) **Errors and Omissions Insurance**
9) **Statement of Qualifications Form**
10) **Section 3 Certification Form** ***(Only Submit with your Proposal if you are claiming Section 3 Status.)***

All contracts are subject to Federal and State contract provisions prescribed by the Georgia Department of Community Affairs. This project is covered under the requirements of Section 3 of the HUD Act of 1968, as amended and Section 3 Business Concerns are encouraged to apply.

CITY/COUNTY *also abides by the following laws as they pertain to HUD Assisted Projects: Title VI of the Civil Rights Act of 1964; Section 109 of the Housing and Community Development Act of 1974, Title 1; Title VII of the Civil Rights Act of 1968 (Fair Housing Act); Section 104(b)(2) of the Housing and Community Development Act of 1974; Section 504 of the Rehabilitation Act of 1973 as amended; Title II of the Americans with Disabilities Act of 1990 (ADA); and the Architectural Barriers Act of 1968.*

Interested parties should request copies of the Statement of Qualifications Form and Section 3 Solicitation Package prior to preparing and submitting their proposal. Proposals should be received no later than **5:00 PM on [30 DAYS AFTER PUBLICATION]**. Proposals received after the above date and time may not be considered. We reserve the right to accept or reject any and all proposals and to waive informalities in the proposal process. Questions, Statement of Qualifications and Section 3 Certification form requests (i.e., request for Section 3 preference), and proposal packages should be submitted to the name and address listed below:

CLIENT CONTACT
CLIENT
ADDRESS
Phone:
Email:

****

Appendix B:
Sample Email Request for Proposals

****

Copy and paste the "email" below, including the Fair Housing and ADA logos, to send to your selected Engineering/Architectural firms and remember to select the Request for Delivery Receipt and Request a Read Receipt. Please also remember to attach the Statement of Qualifications Form and DCA Section 3 Solicitation Package to your email.

***Subject: PLEASE RESPOND: CITY/COUNTY RFP ENGINEERING AND/OR ARCHITECTURAL GRANT SERVICES – FY20__ CDBG/EIP/RDF

FROM: CITY/COUNTY, Georgia

RE: CITY/COUNTY Solicitation Package for Engineering and/or Architectural Grant Services – FY20__ CDBG/EIP/RDF

PLEASE REPLY TO THIS EMAIL to let us know if you received this request and/or if you will be submitting a proposal.

Thank you,

CITY/COUNTY CONTACT
CITY/COUNTY NAME

CITY/COUNTY
REQUEST FOR PROPOSALS
ENGINEERING AND/OR ARCHITECTURAL GRANT SERVICES

Date: **DATE**

Statements of qualifications and proposals are being requested from engineering/architectural firms with a strong record in successfully assisting local governments with the implementation of Community Development Block Grant (CDBG) programs. Responding firms should be technically qualified and licensed in the State of Georgia to provide these services.

Plans are to contract for engineering/architectural services required for a FY20__ CDBG/EIP/RDF project, if funded. The purpose of the project is to provide TYPE OF IMPROVEMENTS.

Information which should be submitted for our evaluation is as follows:

1) **History of firm and resources**
2) **CDBG/EIP/RDF experience, including other DCA grant programs**
3) **Key personnel/qualifications**
4) **Current workload**
5) **Scope and level of service proposed**
6) **Experience with similar projects and list of references**
7) **Fees and/or Percentages (if any) associated with the Preliminary Engineering Report (PER) for the application, and Design and Construction Management Services, if the project is funded. The draft PER would be needed no later than _____).**
8) **Errors and Omissions Insurance**

9) **Statement of Qualifications Form**

10) **Section 3 Certification Form** ***(Only Submit with your Proposal if you are claiming Section 3 Status.)***

All contracts are subject to Federal and State contract provisions prescribed by the Georgia Department of Community Affairs. This project is covered under the requirements of Section 3 of the HUD Act of 1968, as amended and Section 3 Business Concerns are encouraged to apply.

CITY/COUNTY also abides by the following laws as they pertain to HUD Assisted Projects: Title VI of the Civil Rights Act of 1964; Section 109 of the HCD Act of 1974, Title 1; Title VII of the Civil Rights Act of 1968 (Fair Housing Act); Section 104(b)(2) of the Housing and Community Development Act of 1974; Section 504 of the Rehabilitation Act of 1973 as amended; Title II of the Americans with Disabilities Act of 1990 (ADA); and the Architectural Barriers Act of 1968.

Interested parties should request copies of the Statement of Qualifications Form and Section 3 Certification Form prior to preparing and submitting their proposal. Proposals should be received no later than **5:00 PM on [30 DAYS AFTER PUBLICATION]**. Proposals received after the above date and time may not be considered. We reserve the right to accept or reject any and all proposals and to waive informalities in the proposal process. Questions, Statement of Qualifications and Section 3 Certification form requests and proposal packages should be submitted to the name and address listed below:

CITY/COUNTY CONTACT
CITY/COUNTY
ADDRESS
Phone: / Email:

Appendix C:
Engineering/Architectural
Sample Statement of Qualifications

****

NAME OF FIRM: _____

ADDRESS: _____

_____

1. Years in Business in Present Form: _____

2. Firms History and Resource Capability to Perform Required Services:

   _____

   _____

3. Titles, Names, and Addresses of all Officers:

   _____

   _____

   _____

4. List categories in which firm is legally qualified to do business. Include Licenses and Registrations where applicable.

   _____

   _____

5. Does your firm carry Errors and Omissions Insurance?_____

6. If you were awarded the design, bid phase, and inspection for this project, what would your fee be?

   _____

7. Does your firm charge for the preliminary engineering report (PER)?
   If yes, what would the charge be? $_____
   Can your firm meet the draft PER deadline? YES____ NO_____

8. List up to five (5) projects which demonstrate skills to be used on CDBG projects. Note project name, location, owner, year, contract amount, and nature of firm's responsibility.

1. _____

2. _____

3. _____

4. _____

5. _____

9. List key personnel (with qualifications) likely to be involved on these projects and explain their specific role in CDBG work.

_____

_____

_____

10. List three (3) references for the Firm.

1. _____

2. _____

3. _____

11. Are you a Section 3 Business Concern? Yes _____ No _____

If yes, the Attached Section 3 Business Concern Certification, Previous Certification and Action Plan must be filled out, signed, notarized, and submitted with your proposal.

Is the signed and notarized Section 3 Business Concern Certification, Previous Certification and Action Plan attached to your proposal? Yes ____

If no, you will only need to submit the Section 3 forms if you are the successful proposer.

12. Certifying that:

Mr./Mrs./Ms. _____ (signature) being duly sworn deposes and states that he/she is the _____ (title)
of _____ (name of firm) and that answers to the foregoing questions and all statements herein contained are true and correct.

Appendix D.
ENGINEERING/ARCHITECTURAL SAMPLE RATINGS CRITERION

****

CONTACT: _____

NAME OF FIRM: _____

FIRM ADDRESS: _____

Evaluate the Architectural and/or Engineering Firm based on the points assigned to each of the following selection criterion

		CIRCLE POINTS			
	CRITERION	**POOR**	**GOOD**	**EXCELLENT**	**POINTS ASSIGNED**
1.	Ability to provide the disciplines necessary for this project.	0	1	2	_____
2.	Firm's experience with this type of construction.	0	1	2	_____
3.	Key personnel experience with this type of construction	0	1	2	_____
4.	Quality of reference information.	0	1	2	_____
5.	Has Firm had experience with Community Development Block Grant (CDBG) projects?	0	1	2	_____
6.	Is price competitive?	0	1	2	_____
				TOTAL POINTS	_____

Firm can meet PER/PAR deadline? ____ Yes ____ No

Firm carries Errors and Omissions insurance? ____ Yes ____ No

COMMENTS ON WHY FIRM SHOULD BE SELECTED: _____

_____

_____

_____

NAME: _____

DATE OF REVIEW: _____

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GUIDEFORM RESIDENTIAL ANTIDISPLACEMENT AND RELOCATION ASSISTANCE PLAN

(To be submitted to DCA before the demolition or conversion of any occupied or vacant occuplable low and moderate Income dwelling unit.)

The [recipient] will replace all occupied and "vacant occuplable" low/moderate Income housing demolished or converted to a use other than as lower income housing in connection with a project assisted with finds provided under the Community Development Block Grant program.

All replacement housing will be provided within three years after the commencement of the demolition or conversion. Before entering into a committing the [recipient] to provide funds for a project that will directly result in demolition or conversion, the [recipient] will make public by [describe how, such as publication in a newspaper of general circulation] and submit to Georgia Department of Community Affairs. The following information in writing:

1. A description of the proposed project;

2. The address, number of bedrooms, and location on a map of low/moderate income housing that will be demolished or converted to a use other than as lower income housing as a result of an assisted project;

3. A time schedule for the commencement and completion of the demolition or conversion;

4. To the extent known, the address, number of bedrooms and location on a map of the replacement housing that has been or will be provided;

5. Verification from funding source of the address and number of bedrooms, with a time schedule, for the provisions of the replacement housing;

6. Verification from a qualified source that the replacement housing units' rent and utilities are below "fair market rent";

7. The basis for concluding that the replacement housing will remain low and moderate income housing for at least 10 years from the date of initial occupancy (i.e. the demographics of neighborhood);

8. Information demonstrating that any proposed replacement of housing units with smaller dwelling units (e.g., a 2-bedroom unit with two 1-bedroom units), or any proposed replacement of efficiency or single-room occupancy (SRO) units of a different size, is appropriate and consistent with the housing needs and priorities identified in the approved Consolidated Plan).

To the extent that the specific location of the replacement housing and other data in items 4 through 8 are not available at the time of the submission, the [recipient} will identify the general location of such housing on a map and complete the disclosure and submission requirements as soon as the specific data are available.

The [name and phone number of the office] is responsible for tracking the replacement lower income housing and ensuring that it is provided within the required period.

The [name and phone number of the office] is responsible for providing relocation payments and other relocation assistance to any low/moderate income person displaced by demolition of any housing or the conversion of lower income housing to another use.

Consistent with the goals and objectives of activities assisted under the Act, the [recipient] Will take the following steps to minimize the direct and indirect displacement of persons from their homes (list only the steps the Recipient intends to take, the following are examples.)

1. Coordinate code enforcement with rehabilitation and housing assistance programs.
2. Evaluate housing codes and rehabilitation standards in reinvestment areas to prevent undue financial burden on established owner and tenants.
3. Stage rehabilitation of apartment units to allow tenants to remain in the building/complex during and after the rehabilitation, working with empty units first.
4. Arrange for facilities to house persons who must be relocated temporarily during rehabilitation and reconstruction.
5. Adopt policies to identify and mitigate displacement resulting from intensive public investment in neighborhoods.
6. Adopt policies which provide reasonable protection for tenants faced with conversion to a condominium or cooperative.
7. Adopt tax assessment policies, such as deferred tax payment plans, to reduce impact of increasing property tax assessments on lower income owner-occupants or tenants in revitalizing areas.
8. Establish counseling centers to provide homeowners and tenants with information on assistance available to help them remain in their neighborhood in the face of revitalization pressures.
9. Execute a Rent Regulatory Agreement that limits rent and utilities below "Fair Market Rent" and within tenant's "financial means". (Required for all rental rehabilitation projects)

_____ _____

Date of Submission to DCA Signature of Authorized Representative

_____

Date of CDBG Application Submission

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Section 104(d) Definitions

Section 104(d) of the Housing and Community Development Act of 1974, as amended, and HUD regulations require CDBG recipients to utilize certain definitions to determine if the "one-for-one" replacement of low and moderate income housing unites is required. This Exhibit to the CDBG Recipients Manual provides the definitions that DCA uses. Should a CDBG recipient wish to deviate from the following definitions it will be necessary to obtain prior approval from DCA.

1. Standard Condition:
   The structural/mechanical conditions of a dwelling unit comply with a locally adopted housing code (if appropriate) and/or, at the minimum, the Housing Quality Standards of the Section 8 Housing Assistance Payments Program.

2. Substandard Condition:
   The structural/mechanical conditions of a dwelling unit do not comply with a locally adopted housing code (if appropriate) or, at a minimum, the Housing Quality Standards of the Section 8 Housing Assistance Payments Program.

3. Substandard Condition Suitable for Rehabilitation:
   The Structural/mechanical conditions of a dwelling unit do not comply with a locally adopted housing code (if appropriate) or, at a minimum, the Hosing Quality Standards of the Section 8 Housing Assistance Payment Program. However, the dwelling unit is determined to be "structurally feasible for rehabilitation" according to the Housing Rehabilitation Feasibility Test.

4. Occuplable Dwelling Unit:
   Dwelling unit is in "Standard Condition" or Substandard Condition Suitable for Rehabilitation" (See above.)

5. Vacant Occuplable Dwelling Unit:
   A vacant dwelling unit that is a "Standard Condition"; or vacant dwelling unit that is in a "Substandard Condition Suitable for Rehabilitation"; or a dwelling unit in any condition that has been legally occupied at any time within the period beginning 3 months before the date of execution of the contract covering the rehabilitation or demolition of the unit.

6. Unoccuplable:
   Substandard dwelling unit is dilapidated and does not meet the 'Structural Feasibility' of the Housing Rehabilitation Feasibility Test.

7. Low-moderate-income dwelling unit:
   A dwelling unit with a market rent (including utility cost) that does not exceed the applicable HUD Fair Market Rent (FMR) for existing housing.

2011 HOUSE BILL 87 RESOURCES

SECTION 3 AFFIDAVITS

Section 3 of House Bill 87 amends O.C.G.A. §13-10-91.

O.C.G.A. §13-10-91(b)(1) states, in part, "A public employer shall not enter into a contract … for the physical performance of services unless the contractor registers and participates in the federal work authorization program. Before a bid for any such service is considered by a public employer, the bid shall include a signed, notarized affidavit from the contractor…." O.C.G.A. §13-10-91(b)(6) states, in part, "No later than August 1, 2011, the Department of Audits and Accounts shall create and post on its website form affidavits for the federal work authorization program." The Department of Audits and Accounts requested the assistance of the Department of Law to draft the affidavits required by this Code section:

Contractor Affidavit under O.C.G.A. §13-10-91(b)(1) **[PDF]** **[Microsoft Word]**

Subcontractor Affidavit under O.C.G.A. §13-10-91(b)(3) **[PDF]** **[Microsoft Word]**

Sub-subcontractor Affidavit under O.C.G.A. §13-10-91(b)(4) **[PDF]** **[Microsoft Word]**

This Code section addresses contracts for the physical performance of services. The Department of Law has been requested to provide guidance on the applicability of this Code section to contracts other than public works contracts. Public employers, as defined in O.C.G.A. §13-10-90, are strongly encouraged to review the guidance in the following PDFs. The Georgia Department of Audits and Accounts' staff cannot provide legal advice or legal assistance regarding this guidance. Please consult your agency's attorney if you need legal advice or legal assistance beyond what is provided below.

Georgia Department of Law Memoranda

Georgia Department of Law Correspondence

State Government Resources

Local Government Resources

Other Resources

2011 HOUSE BILL 87 RESOURCES

SECTION 17 AFFIDAVIT

Section 17 of House Bill 87 amends O.C.G.A. §50-36-1 regarding verification of lawful presence in the United States.

O.C.G.A. §50-36-1(e) states that an agency or political subdivision providing or administering a public benefit shall require every applicant for such benefit to execute a signed and sworn affidavit verifying the applicant's lawful presence in the United States. O.C.G.A. §50-36-1(e)(3) specifies that "The state auditor shall create affidavits for use under this Code section and shall keep a current version of such affidavits on the Department of Audits and Accounts' official website." The Department of Audits and Accounts requested the assistance of the Department of Law to draft the affidavits required by this Code section. On August 31, 2011, the Department of Law provided to the Department of Audits and Accounts the following affidavit. Rather than having three separate form affidavits for the three legal statuses listed in this Code section, one affidavit was created that provides alternative selections regarding the affiant's legal status through the use of check boxes.

O.C.G.A. §50-36-1(e)(2) Affidavit **[PDF]** **[Microsoft Word]**

Additional information on the Georgia Department of Community Affairs' Public Benefits Reporting System, including a link to the 2011 Report of the Attorney General on Public Benefits, can be found **here**.

O.C.G.A. § 13-10-90

Copy Citation

Current through the 2019 Regular Session of the General Assembly

GA - Official Code of Georgia Annotated TITLE 13. CONTRACTS CHAPTER 10. CONTRACTS FOR PUBLIC WORKS ARTICLE 3. SECURITY AND IMMIGRATION COMPLIANCE

§ 13-10-90. Definitions

As used in this article, the term:

(1) "Commissioner" means the Commissioner of Labor.

(2) "Contractor" means a person or entity that enters into a contract for the physical performance of services.

(3) "Federal work authorization program" means any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify employment eligibility information of newly hired employees, commonly known as E-Verify, or any subsequent replacement program.

(4) "Physical performance of services" means any performance of labor or services for a public employer using a bidding process or by contract wherein the labor or services exceed $2,499.99; provided, however, that such term shall not include any contract between a public employer and an individual who is licensed pursuant to Title 26 or Title 43 or by the State Bar of Georgia and is in good standing when such contract is for services to be rendered by such individual.

(5) "Public employer" means every department, agency, or instrumentality of this state or a political subdivision of this state.

(6) "Subcontractor" means a person or entity having privity of contract with a contractor, subcontractor, or sub-subcontractor and includes a contract employee or staffing agency.

(7) "Sub-subcontractor" means a person or entity having privity of contract with a subcontractor or privity of contract with another person or entity contracting with a subcontractor or sub-subcontractor.

History

Code 1981, § 13-10-90, enacted by Ga. L. 2006, p. 105, § 2/SB 529; Ga. L. 2010, p. 308, § 2/SB 447; Ga. L. 2011, p. 794, § 2/HB 87; Ga. L. 2013, p. 111, § 1/SB 160.

O.C.G.A. § 13-10-91

Copy Citation

Current through the 2019 Regular Session of the General Assembly

GA - Official Code of Georgia Annotated TITLE 13. CONTRACTS CHAPTER 10. CONTRACTS FOR PUBLIC WORKS ARTICLE 3. SECURITY AND IMMIGRATION COMPLIANCE

§ 13-10-91. Verification of new employee eligibility; applicability; rules and regulations

(a) Every public employer, including, but not limited to, every municipality and county, shall register and participate in the federal work authorization program to verify employment eligibility of all newly hired employees. Upon federal authorization, a public employer shall permanently post the employer's federally issued user identification number and date of authorization, as established by the agreement for authorization, on the employer's website; provided, however, that if a local public employer does not maintain a website, then the local government shall submit such information to the Carl Vinson Institute of Government of the University of Georgia to be posted by the institute on the website created for local government audit and budget reporting. The Carl Vinson Institute of Government of the University of Georgia shall maintain the information submitted and provide instructions and submission guidelines for local governments. State departments, agencies, or instrumentalities may satisfy the requirement of this Code section by posting information required by this Code section on one website maintained and operated by the state.

(b) (1) A public employer shall not enter into a contract for the physical performance of services unless the contractor registers and participates in the federal work authorization program. Before a bid for any such service is considered by a public employer, the bid shall include a signed, notarized affidavit from the contractor attesting to the following:

(A) The affiant has registered with, is authorized to use, and uses the federal work authorization program;

(B) The user identification number and date of authorization for the affiant;

(C) The affiant will continue to use the federal work authorization program throughout the contract period; and

(D) The affiant will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the contractor with the same information required by subparagraphs (A), (B), and (C) of this paragraph.

An affidavit required by this subsection shall be considered an open public record once a public employer has entered into a contract for physical performance of services; provided, however, that any information protected from public disclosure by federal law or by Article 4 of Chapter 18 of Title 50 shall be redacted. Affidavits shall be maintained by the public employer for five years from the date of receipt.

(2) A contractor shall not enter into any contract with a public employer for the physical performance of services unless the contractor registers and participates in the federal work authorization program.

(3) A subcontractor shall not enter into any contract with a contractor unless such subcontractor registers and participates in the federal work authorization program. A subcontractor shall submit, at the time of such contract, an affidavit to the contractor in the same manner and with the same information required in paragraph (1) of this subsection. It shall be the duty of any subcontractor receiving an affidavit from a sub-subcontractor to forward notice to the contractor of the receipt, within five business days of receipt, of such affidavit. It shall be the duty of a subcontractor receiving notice of receipt of an affidavit from any sub-subcontractor that has contracted with a sub-subcontractor to forward, within five business days of receipt, a copy of such notice to the contractor.

(4) A sub-subcontractor shall not enter into any contract with a subcontractor or sub-subcontractor unless such sub-subcontractor registers and participates in the federal work authorization program. A sub-subcontractor shall submit, at the time of such contract, an affidavit to the subcontractor or sub-subcontractor with whom such sub-subcontractor has privity of contract, in the same manner and with the same information required in paragraph (1) of this subsection. It shall be the duty of any sub-subcontractor to forward notice of receipt of any affidavit from a sub-subcontractor to the subcontractor or sub-subcontractor with whom such receiving sub-subcontractor has privity of contract.

(5) In lieu of the affidavit required by this subsection, a contractor, subcontractor, or sub-subcontractor who has no employees and does not hire or intend to hire employees for purposes of satisfying or completing the terms and conditions of any part or all of the original contract with the public employer shall instead provide a copy of the state issued driver's license or state issued identification card of such contracting party and a copy of the state issued driver's license or identification card of each independent contractor utilized in the satisfaction of part or all of the original contract with a public employer. A driver's license or identification card shall only be accepted in lieu of an affidavit if it is issued by a state within the United States and such state verifies lawful immigration status prior to issuing a driver's license or identification card. For purposes of satisfying the requirements of this subsection, copies of such driver's license or identification card shall be forwarded to the public employer, contractor, subcontractor, or sub-subcontractor in the same manner as an affidavit and notice of receipt of an affidavit as required by paragraphs (1), (3), and (4) of this subsection. Not later than July 1, 2011, the Attorney General shall provide a list of the states that verify immigration status prior to the issuance of a driver's license or identification card and that only issue licenses or identification cards to persons lawfully present in the United States. The list of verified state drivers' licenses and identification cards shall be posted on the website of the State Law Department and updated annually thereafter. In the event that a contractor, subcontractor, or sub-subcontractor later determines that he or she will need to hire employees to satisfy or complete the physical performance of services under an applicable contract, then he or she shall first be required to comply with the affidavit requirements of this subsection.

(6) It shall be the duty of the contractor to submit copies of all affidavits, drivers' licenses, and identification cards required pursuant to this subsection to the public employer within five business days of receipt. No later than August 1, 2011, the Departments of Audits and Accounts shall create and post on its website form affidavits for the federal work authorization program. The affidavits shall require fields for the following information: the name of the project, the name of the contractor, subcontractor, or sub-subcontractor, the name of the public employer, and the employment eligibility information required pursuant to this subsection.

(7) (A) Public employers subject to the requirements of this subsection shall provide an annual report to the Department of Audits and Accounts pursuant to Code Section 50-36-4 as proof of compliance with this subsection. Subject to available funding, the state auditor shall conduct annual compliance audits on a minimum of at least one-half of the reporting agencies and publish the results of such audits annually on the Department of Audits and Accounts' website on or before September 30.

(B) If the state auditor finds a political subdivision to be in violation of this subsection, such political subdivision shall be provided 30 days to demonstrate to the state auditor that such political subdivision has corrected all deficiencies and is in compliance with this subsection. If, after 30 days, the political subdivision has failed to correct all deficiencies, such political subdivision shall be excluded from the list of qualified local governments under Chapter 8 of Title 50 until such time as the political subdivision demonstrates to the state auditor that such political subdivision has corrected all deficiencies and is in compliance with this subsection.

(C)

(i) At any time after the state auditor finds a political subdivision to be in violation of this subsection, such political subdivision may seek administrative relief through the Office of State Administrative Hearings. If a political subdivision seeks administrative relief, the time for correcting deficiencies shall be tolled, and any action to exclude the political subdivision from the list of qualified governments under Chapter 8 of Title 50 shall be suspended until such time as a final ruling upholding the findings of the state auditor is issued.

(ii) A new compliance report submitted to the state auditor by the political subdivision shall be deemed satisfactory and shall correct the prior deficient compliance report so long as the new report fully complies with this subsection.

(iii) No political subdivision of this state shall be found to be in violation of this subsection by the state auditor as a result of any actions of a county constitutional officer.

(D) If the state auditor finds any political subdivision which is a state department or agency to be in violation of the provisions of this subsection twice in a five-year period, the funds appropriated to such state department or agency for the fiscal year following the year in which the agency was found to be in violation for the second time shall be not greater than 90 percent of the amount so appropriated in the second year of such noncompliance. Any political subdivision found to be in violation of the provisions of this subsection shall be listed on www.open.georgia.gov or another official state website with an indication and explanation of each violation.

(8) Contingent upon appropriation or approval of necessary funding and in order to verify compliance with the provisions of this subsection, each year the Commissioner shall conduct no fewer than 100 random audits of public employers and contractors or may conduct such an audit upon reasonable grounds to suspect a violation of this subsection. The results of the audits shall be published on the www.open.georgia.gov website and on the Georgia Department of Labor's website no later than December 31 of each year. The Georgia Department of Labor shall seek funding from the United States Secretary of Labor to the extent such funding is available.

(9) Any person who knowingly and willfully makes a false, fictitious, or fraudulent statement in an affidavit submitted pursuant to this subsection shall be guilty of a violation of Code Section 16-10-20 and, upon conviction, shall be punished as provided in such Code section. Contractors, subcontractors, sub-subcontractors, and any person convicted for false statements based on a violation of this subsection shall be prohibited from bidding on or entering into any public contract for 12 months following such conviction. A contractor, subcontractor, or sub-subcontractor that has been found by the Commissioner to have violated this subsection shall be listed by the Department of Labor on www.open.georgia.gov or other official website of the state with public information regarding such violation, including the identity of the violator, the nature of the contract, and the date of conviction. A public employee, contractor, subcontractor, or sub-subcontractor shall not be held civilly liable or criminally responsible for unknowingly or unintentionally accepting a bid from or contracting with a contractor, subcontractor, or sub-subcontractor acting in violation of this subsection. Any contractor, subcontractor, or sub-subcontractor found by the Commissioner to have violated this subsection shall, on a second or subsequent violations, be prohibited from bidding on or entering into any public contract for 12 months following the date of such finding.

(10) There shall be a rebuttable presumption that a public employer, contractor, subcontractor, or sub-subcontractor receiving and acting upon an affidavit conforming to the content requirements of this subsection does so in good faith,

and such public employer, contractor, subcontractor, or sub-subcontractor may rely upon such affidavit as being true and correct. The affidavit shall be admissible in any court of law for the purpose of establishing such presumption.

(11) Documents required by this Code section may be submitted electronically, provided the submission complies with Chapter 12 of Title 10.

(c) This Code section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

(d) Except as provided in subsection (e) of this Code section, the Commissioner shall prescribe forms and promulgate rules and regulations deemed necessary in order to administer and effectuate this Code section and publish such rules and regulations on the Georgia Department of Labor's website.

(e) The commissioner of the Georgia Department of Transportation shall prescribe all forms and promulgate rules and regulations deemed necessary for the application of this Code section to any contract or agreement relating to public transportation and shall publish such rules and regulations on the Georgia Department of Transportation's website.

(f) No employer or agency or political subdivision, as such term is defined in Code Section 50-36-1, shall be subject to lawsuit or liability arising from any act to comply with the requirements of this Code section.

History

Code 1981, § 13-10-91, enacted by Ga. L. 2006, p. 105, § 2/SB 529; Ga. L. 2009, p. 970, § 1/HB 2; Ga. L. 2010, p. 308, § 2.A/SB 447; Ga. L. 2011, p. 794, § 3/HB 87; Ga. L. 2013, p. 111, § 3/SB 160.

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GA - Official Code of Georgia Annotated TITLE 50. STATE GOVERNMENT CHAPTER 36. VERIFICATION OF LAWFUL PRESENCE WITHIN UNITED STATES

§ 50-36-1. Verification requirements, procedures, and conditions; exceptions; regulations; criminal and other penalties for violations

(a) As used in this Code section, the term:

(1) "Agency head" means a director, commissioner, chairperson, mayor, councilmember, board member, sheriff, or other executive official, whether appointed or elected, responsible for establishing policy for a public employer.

(2) "Agency or political subdivision" means any department, agency, authority, commission, or government entity of this state or any subdivision of this state.

(3) "Applicant" means any natural person, 18 years of age or older, who has made application for access to public benefits on behalf of an individual, business, corporation, partnership, or other private entity.

(4) "Public benefit"' means a federal, a state, or local benefit which shall include the following:

(A) Adult education;

(B) Authorization to conduct a commercial enterprise or business;

(C) Business certificate, license, or registration;

(D) Business loan;

(E) Cash allowance;

(F) Disability assistance or insurance;

(G) Down payment assistance;

(H) Energy assistance;

(I) Food stamps;

(J) Gaming license;

(K) Grants;

(L) Health benefits;

(M) Housing allowance, grant, guarantee, or loan;

(N) Loan guarantee;

(O) Medicaid;

(P) Occupational license;

(Q) Professional license;

(R) Public and assisted housing;

(S) Registration of a regulated business;

(T) Rent assistance or subsidy;

(U) Retirement benefits;

(V) State grant or loan;

(W) State issued driver's license and identification card;

(X) Tax certificate required to conduct a commercial business;

(Y) Temporary assistance for needy families (TANF);

(Z) Unemployment insurance; and

(AA) Welfare to work.

(5) "SAVE program" means the federal Systematic Alien Verification for Entitlements program operated by the United States Department of Homeland Security or a successor program designated by the United States Department of Homeland Security for the same purpose.

(b) Except as provided in subsection (d) of this Code section or where exempted by federal law, every agency or political subdivision shall verify the lawful presence in the United States under federal immigration law of any applicant for public benefits.

(c) This Code section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

(d) Verification of lawful presence in the United States under federal immigration law under this Code section shall not be required:

(1) For any purpose for which lawful presence in the United States under federal immigration law is not required by law, ordinance, or regulation;

(2) For assistance for health care items and services that are necessary for the treatment of an emergency medical condition, as defined in 42 U.S.C. Section 1396b(v) (3), of the alien involved and are not related to an organ transplant procedure;

(3) For short-term, noncash, in-kind emergency disaster relief;

(4) For public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease;

(5) For programs, services, or assistance such as soup kitchens, crisis counseling and intervention, and short-term shelter specified by the United States Attorney General, in the United States Attorney General's sole and unreviewable discretion after consultation with appropriate federal agencies and departments, which:

(A) Deliver in-kind services at the community level, including through public or private nonprofit agencies;

(B) Do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and

(C) Are necessary for the protection of life or safety;

(6) For prenatal care; or

(7) For postsecondary education, whereby the Board of Regents of the University System of Georgia, the State Board of the Technical College System of Georgia, the board of commissioners of the Georgia Student Finance Commission, and the board of directors of the Georgia Student Finance Authority shall set forth, or cause to be set forth, policies or regulations, or both, regarding postsecondary benefits that comply with all federal law including but not limited to public benefits as described in 8 U.S.C. Section 1611, 1621, or 1623.

(e) All policies of agencies or political subdivisions regarding public benefits for postsecondary education shall comply with federal law as provided in 8 U.S.C. Section 1623.

(f) (1) Except as provided in subsection (g) of this Code section, an agency or political subdivision providing or administering a public benefit shall require every applicant for such benefit to:

(A) Provide at least one secure and verifiable document, as defined in Code Section 50-36-2, or a copy or facsimile of such document. Any document required by this subparagraph may be submitted by or on behalf of the applicant at any

time within nine months prior to the date of application so long as the document remains valid through the licensing or approval period or such other period for which the applicant is applying to receive a public benefit; and

(B) Execute a signed and sworn affidavit verifying the applicant's lawful presence in the United States under federal immigration law; provided, however, that if the applicant is younger than 18 years of age at the time of the application, he or she shall execute the affidavit required by this subparagraph within 30 days after his or her eighteenth birthday. Such affidavit shall affirm that:

(i) The applicant is a United States citizen or legal permanent resident 18 years of age or older; or

(ii) The applicant is a qualified alien or nonimmigrant under the federal Immigration and Nationality Act, Title 8 U.S.C., 18 years of age or older lawfully present in the United States and provide the applicant's alien number issued by the Department of Homeland Security or other federal immigration agency.

(2) The state auditor shall create affidavits for use under this subsection and shall keep a current version of such affidavits on the Department of Audits and Accounts' official website.

(3) Documents and copies of documents required by this subsection may be submitted in person, by mail, or electronically, provided the submission complies with Chapter 12 of Title 10. Copies of documents submitted in person, by mail, or electronically shall satisfy the requirements of this Code section. For purposes of this paragraph, electronic submission shall include a submission via facsimile, Internet, electronic texting, or any other electronically assisted transmitted method approved by the agency or political subdivision.

(4) The requirements of this subsection shall not apply to any applicant applying for or renewing an application for a public benefit within the same agency or political subdivision if the applicant has previously complied with the requirements of this subsection by submission of a secure and verifiable document, as defined in Code Section 50-36-2, and a signed and sworn affidavit affirming that such applicant is a United States citizen.

(g)

(1) The Department of Driver Services shall require every applicant for a state issued driver's license or state identification card to submit, in person, an original secure and verifiable document, as defined in Code Section 50-36-2, and execute a signed and sworn affidavit verifying the applicant's lawful presence in the United States under federal immigration law.

(2) The requirements of this subsection shall not apply to any applicant renewing a state issued driver's license or state identification card when such applicant has previously complied with the requirements of this subsection by submission of a secure and verifiable document, as defined in Code Section 50-36-2, and a signed and sworn affidavit affirming that such applicant is a United States citizen.

(h) For any applicant who has executed an affidavit that he or she is an alien lawfully present in the United States, eligibility for public benefits shall be made through the SAVE program. Until such eligibility verification is made, the affidavit may be presumed to be proof of lawful presence in the United States under federal immigration law for the purposes of this Code section.

(i) Any person who knowingly and willfully makes a false, fictitious, or fraudulent statement of representation in an affidavit executed pursuant to this Code section shall be guilty of a violation of Code Section 16-10-20.

(j) Verification of citizenship through means required by federal law shall satisfy the requirements of this Code section.

(k) It shall be unlawful for any agency or political subdivision to provide or administer any public benefit in violation of this Code section. Agencies and political subdivisions subject to the requirements of this subsection shall provide an annual report to the Department of Audits and Accounts pursuant to Code Section 50-36-4 as proof of compliance with this subsection. Any agency or political subdivision failing to provide a report as required by this subsection shall not be entitled to any financial assistance, funds, or grants from the Department of Community Affairs.

(l) Any and all errors and significant delays by the SAVE program shall be reported to the United States Department of Homeland Security.

(m) Notwithstanding subsection (i) of this Code section, any applicant for public benefits shall not be guilty of any crime for executing an affidavit attesting to his or her lawful presence in the United States under federal immigration law that contains a false statement if such affidavit is not required by this Code section.

(n) In the event a legal action is filed against any agency or political subdivision alleging improper denial of a public benefit arising out of an effort to comply with this Code section, the Attorney General shall be served with a copy of the proceeding and shall be entitled to be heard.

(o) Compliance with this Code section by an agency or political subdivision shall include taking all reasonable, necessary steps required by a federal agency to receive authorization to utilize the SAVE program or any successor program designated by the United States Department of Homeland Security or other federal agency, including providing copies of statutory authorization for the agency or political subdivision to provide public benefits and other affidavits, letters of memorandum of understanding, or other required documents or information needed to receive authority to utilize the SAVE program or any successor program for each public benefit provided by such agency or political subdivision. An agency or political subdivision that takes all reasonable, necessary steps and submits all requested documents and information as required in this subsection but either has not been given access to use such programs by such federal agencies or has not completed the process of obtaining access to use such programs shall not be liable for failing to use the SAVE program or any such successor program to verify eligibility for public benefits.

(p) In the case of noncompliance with the provisions of this Code section by an agency or political subdivision, the appropriations committee of each house of the General Assembly may consider such noncompliance in setting the budget and appropriations.

(q) No employer, agency, or political subdivision shall be subject to lawsuit or liability arising from any act to comply with the requirements of this chapter; provided, however, that the intentional and knowing failure of any agency head to abide by the provisions of this chapter shall:

(1) Be a violation of the code of ethics for government service established in Code Section 45-10-1 and subject such agency head to the penalties provided for in Code Section 45-10-28, including removal from office and a fine not to exceed $10,000.00; and

(2) Be a high and aggravated misdemeanor offense where such agency head acts to willfully violate the provisions of this Code section or acts so as to intentionally and deliberately interfere with the implementation of the requirements of this Code section.

The Attorney General shall have the authority to conduct a criminal and civil investigation of an alleged violation of this chapter by an agency or agency head and to bring a prosecution or civil action against an agency or agency head for all cases of violations under this chapter. In the event that an order is entered against an employer, the state shall be awarded attorney's fees and expenses of litigation incurred in bringing such an action and investigating such violation.

History

Code 1981, § 50-36-1, enacted by Ga. L. 2006, p. 105, § 9/SB 529; Ga. L. 2009, p. 8, § 50/SB 46; Ga. L. 2009, p. 970, § 3/HB 2; Ga. L. 2011, p. 632, § 3/HB 49; Ga. L. 2011, p. 794, §§ 16, 17, 18/HB 87; Ga. L. 2012, p. 775, § 50/HB 942; Ga. L. 2013, p. 111, § 6/SB 160; Ga. L. 2013, p. 125, § 1/HB 324.