State of Georgia
CDBG Applicants' Manual
FY2023

APPENDIX INDEX

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§5305. Activities eligible for assistance

(a) Enumeration of eligible activities

Activities assisted under this chapter may include only—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) prevents or eliminates slums and blight;

(C) meets urgent needs;

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

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

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

(18) the rehabilitation or development of housing assisted under section 1437*o* [2] of this title;

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

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

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

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

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

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

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

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

(24) [3] the construction or improvement of tornado-safe shelters for residents of manufactured

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Activities benefiting persons of low and moderate income

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

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

(A) be carried out in a neighborhood consisting predominately of persons of low and moderate income and provide services for such persons; or

(B) involve facilities designed for use predominately by persons of low and moderate income; or

(C) involve employment of persons, a majority of whom are persons of low and moderate income.

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

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

(i) such system will contribute substantially to the safety of the residents of the area served by such system;

(ii) not less than 51 percent of the use of the system will be by persons of low and moderate income; and

(iii) other Federal funds received by the grantee are not available for the development, establishment, and operation of such system due to the insufficiency of the amount of such funds, the restrictions on the use of such funds, or the prior commitment of such funds for other purposes by the grantee.

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

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

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

(A) if an employee resides in, or the assisted activity through which he or she is employed, is located in a census tract that meets the Federal enterprise zone eligibility criteria, the employee shall be presumed to be a person of low- or moderate-income; or

(B) if an employee resides in a census tract where not less than 70 percent of the residents have incomes at or below 80 percent of the area median, the employee shall be presumed to be a person of low or moderate income.

(d) Training program

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

(e) Guidelines for evaluating and selecting economic development projects

(1) Establishment

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

(2) Project costs and financial requirements

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

(A) The project costs of such activities are reasonable.

(B) To the extent practicable, reasonable financial support has been committed for such activities from non-Federal sources prior to disbursement of Federal funds.

(C) To the extent practicable, any grant amounts to be provided for such activities do not substantially reduce the amount of non-Federal financial support for the activity.

(D) Such activities are financially feasible.

(E) To the extent practicable, such activities provide not more than a reasonable return on investment to the owner.

(F) To the extent practicable, grant amounts used for the costs of such activities are disbursed on a pro rata basis with amounts from other sources.

(3) Public benefit

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

(f) Assistance to for-profit entities

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

(g) Microenterprise and small business program requirements

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

(1) take into account the special needs and limitations arising from the size of the entity; and

(2) not consider training, technical assistance, or other support services costs provided to small businesses or microenterprises or to grantees and subgrantees to develop the capacity to provide such assistance, as a planning cost pursuant to subsection (a)(12) of this section or an administrative cost pursuant to subsection (a)(13) of this section.

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

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

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

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

References in Text

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

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

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

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

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

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

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

Codification

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

Amendments

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

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

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

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

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

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

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

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

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

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

rehabilitation" for "acquisition for rehabilitation, and rehabilitation".

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Change of Name

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

Effective Date of 2002 Amendment

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

Effective Date of 1998 Amendment

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

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

Effective Date of 1994 Amendment

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

Effective Date of 1990 Amendments

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

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

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

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

Effective Date of 1984 Amendment

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

Effective Date of 1983 Amendment

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

Effective Date of 1981 Amendment

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

Effective Date of 1978 Amendment

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

Effective Date of 1977 Amendment

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

Non-Federal Cost Sharing of Army Corps of Engineers Projects

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

Brownfields Projects as Eligible CDBG Activity

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

Similar provisions were contained in the following prior appropriation act:

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

GAO Study of Use of Grants for Economic Development Projects

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

Enhancing Job Quality; Report to Congress

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

Report to Congress on Effectiveness of Assistance in Promoting Development of Microenterprises

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

Community Investment Corporation Demonstration

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

Waiver of Limitation on Amount of Funds Which May Be Used in Fiscal Years 1982, 1983, and 1984 for Public Service Activities

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

received under this chapter for such activities.

[1] *See References in Text note below.*

[2] *See References in Text note below.*

[3] *So in original. Two pars. (24) have been enacted.*

U.S. DEPARTMENT OF HUD
STATE:GEORGIA

2022 ADJUSTED HOME INCOME LIMITS

PROGRAM	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
Albany, GA MSA								
30% LIMITS	13100	15000	16850	18700	20200	21700	23200	24700
VERY LOW INCOME	21850	24950	28050	31150	33650	36150	38650	41150
60% LIMITS	26220	29940	33660	37380	40380	43380	46380	49380
LOW INCOME	34900	39850	44850	49800	53800	57800	61800	65750
Athens-Clarke County, GA MSA								
30% LIMITS	16150	18450	20750	23050	24900	26750	28600	30450
VERY LOW INCOME	26950	30800	34650	38450	41550	44650	47700	50800
60% LIMITS	32340	36960	41580	46140	49860	53580	57240	60960
LOW INCOME	43050	49200	55350	61500	66450	71350	76300	81200
Atlanta-Sandy Springs-Roswell, GA HUD Metro FMR Area								
30% LIMITS	20250	23150	26050	28900	31250	33550	35850	38150
VERY LOW INCOME	33750	38600	43400	48200	52100	55950	59800	63650
60% LIMITS	40500	46320	52080	57840	62520	67140	71760	76380
LOW INCOME	54000	61700	69400	77100	83300	89450	95650	101800
Butts County, GA HUD Metro FMR Area								
30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Haralson County, GA HUD Metro FMR Area								
30% LIMITS	13700	15650	17600	19550	21150	22700	24250	25850
VERY LOW INCOME	22850	26100	29350	32600	35250	37850	40450	43050
60% LIMITS	27420	31320	35220	39120	42300	45420	48540	51660
LOW INCOME	36550	41750	46950	52150	56350	60500	64700	68850
Lamar County, GA HUD Metro FMR Area								
30% LIMITS	14150	16150	18150	20150	21800	23400	25000	26600
VERY LOW INCOME	23550	26900	30250	33600	36300	39000	41700	44400
60% LIMITS	28260	32280	36300	40320	43560	46800	50040	53280
LOW INCOME	37650	43000	48400	53750	58050	62350	66650	70950
Meriwether County, GA HUD Metro FMR Area								
30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850

U.S. DEPARTMENT OF HUD
STATE:GEORGIA

2022 ADJUSTED HOME INCOME LIMITS

PROGRAM	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
Morgan County, GA HUD Metro FMR Area								
30% LIMITS	16600	18950	21300	23650	25550	27450	29350	31250
VERY LOW INCOME	27650	31600	35550	39450	42650	45800	48950	52100
60% LIMITS	33180	37920	42660	47340	51180	54960	58740	62520
LOW INCOME	44200	50500	56800	63100	68150	73200	78250	83300
Augusta-Richmond County, GA-SC HUD Metro FMR Area								
30% LIMITS	15600	17800	20050	22250	24050	25850	27600	29400
VERY LOW INCOME	25950	29650	33350	37050	40050	43000	45950	48950
60% LIMITS	31140	35580	40020	44460	48060	51600	55140	58740
LOW INCOME	41550	47450	53400	59300	64050	68800	73550	78300
Lincoln County, GA HUD Metro FMR Area								
30% LIMITS	13500	15400	17350	19250	20800	22350	23900	25450
VERY LOW INCOME	22500	25700	28900	32100	34700	37250	39850	42400
60% LIMITS	27000	30840	34680	38520	41640	44700	47820	50880
LOW INCOME	35950	41100	46250	51350	55500	59600	63700	67800
Brunswick, GA MSA								
30% LIMITS	15450	17650	19850	22050	23850	25600	27350	29150
VERY LOW INCOME	25750	29400	33100	36750	39700	42650	45600	48550
60% LIMITS	30900	35280	39720	44100	47640	51180	54720	58260
LOW INCOME	41150	47000	52900	58750	63450	68150	72850	77550
Chattanooga, TN-GA MSA								
30% LIMITS	15800	18050	20300	22550	24400	26200	28000	29800
VERY LOW INCOME	26350	30100	33850	37600	40650	43650	46650	49650
60% LIMITS	31620	36120	40620	45120	48780	52380	55980	59580
LOW INCOME	42150	48150	54150	60150	65000	69800	74600	79400
Stewart County, GA HUD Metro FMR Area								
30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Talbot County, GA HUD Metro FMR Area								
30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850

U.S. DEPARTMENT OF HUD
STATE:GEORGIA

PROGRAM	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
Columbus, GA-AL HUD Metro FMR Area								
30% LIMITS	14350	16400	18450	20450	22100	23750	25400	27000
VERY LOW INCOME	23900	27300	30700	34100	36850	39600	42300	45050
60% LIMITS	28680	32760	36840	40920	44220	47520	50760	54060
LOW INCOME	38200	43650	49100	54550	58950	63300	67650	72050
Dalton, GA HUD Metro FMR Area								
30% LIMITS	13500	15400	17350	19250	20800	22350	23900	25450
VERY LOW INCOME	22500	25700	28900	32100	34700	37250	39850	42400
60% LIMITS	27000	30840	34680	38520	41640	44700	47820	50880
LOW INCOME	35950	41100	46250	51350	55500	59600	63700	67800
Murray County, GA HUD Metro FMR Area								
30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Gainesville, GA MSA								
30% LIMITS	17800	20350	22900	25400	27450	29500	31500	33550
VERY LOW INCOME	29650	33900	38150	42350	45750	49150	52550	55950
60% LIMITS	35580	40680	45780	50820	54900	58980	63060	67140
LOW INCOME	47400	54150	60900	67650	73100	78500	83900	89300
Hinesville, GA HUD Metro FMR Area								
30% LIMITS	12950	14800	16650	18500	20000	21500	22950	24450
VERY LOW INCOME	21600	24700	27800	30850	33350	35800	38300	40750
60% LIMITS	25920	29640	33360	37020	40020	42960	45960	48900
LOW INCOME	34550	39500	44450	49350	53300	57250	61200	65150
Long County, GA HUD Metro FMR Area								
30% LIMITS	13700	15650	17600	19550	21150	22700	24250	25850
VERY LOW INCOME	22800	26050	29300	32550	35200	37800	40400	43000
60% LIMITS	27360	31260	35160	39060	42240	45360	48480	51600
LOW INCOME	36500	41700	46900	52100	56300	60450	64650	68800
Macon-Bibb County, GA HUD Metro FMR Area								
30% LIMITS	13300	15200	17100	19000	20550	22050	23600	25100
VERY LOW INCOME	22200	25400	28550	31700	34250	36800	39350	41850
60% LIMITS	26640	30480	34260	38040	41100	44160	47220	50220
LOW INCOME	35500	40600	45650	50700	54800	58850	62900	66950

U.S. DEPARTMENT OF HUD
STATE:GEORGIA

2022 ADJUSTED HOME INCOME LIMITS

PROGRAM	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
Monroe County, GA HUD Metro FMR Area								
30% LIMITS	16950	19400	21800	24200	26150	28100	30050	31950
VERY LOW INCOME	28250	32300	36350	40350	43600	46850	50050	53300
60% LIMITS	33900	38760	43620	48420	52320	56220	60060	63960
LOW INCOME	45200	51650	58100	64550	69750	74900	80050	85250
Rome, GA MSA								
30% LIMITS	13100	15000	16850	18700	20200	21700	23200	24700
VERY LOW INCOME	21850	25000	28100	31200	33700	36200	38700	41200
60% LIMITS	26220	30000	33720	37440	40440	43440	46440	49440
LOW INCOME	34950	39950	44950	49900	53900	57900	61900	65900
Savannah, GA MSA								
30% LIMITS	17500	20000	22500	25000	27000	29000	31000	33000
VERY LOW INCOME	29200	33400	37550	41700	45050	48400	51750	55050
60% LIMITS	35040	40080	45060	50040	54060	58080	62100	66060
LOW INCOME	46700	53400	60050	66700	72050	77400	82750	88050
Valdosta, GA MSA								
30% LIMITS	13500	15400	17350	19250	20800	22350	23900	25450
VERY LOW INCOME	22450	25650	28850	32050	34650	37200	39750	42350
60% LIMITS	26940	30780	34620	38460	41580	44640	47700	50820
LOW INCOME	35950	41050	46200	51300	55450	59550	63650	67750
Warner Robins, GA HUD Metro FMR Area								
30% LIMITS	17300	19800	22250	24700	26700	28700	30650	32650
VERY LOW INCOME	28850	32950	37050	41150	44450	47750	51050	54350
60% LIMITS	34620	39540	44460	49380	53340	57300	61260	65220
LOW INCOME	46100	52700	59300	65850	71150	76400	81700	86950
Peach County, GA HUD Metro FMR Area								
30% LIMITS	13300	15200	17100	19000	20550	22050	23600	25100
VERY LOW INCOME	22200	25350	28500	31650	34200	36750	39250	41800
60% LIMITS	26640	30420	34200	37980	41040	44100	47100	50160
LOW INCOME	35500	40550	45600	50650	54750	58800	62850	66900
Appling County, GA								
30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850

U.S. DEPARTMENT OF HUD
STATE:GEORGIA

	PROGRAM	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
		---------- 2022 ADJUSTED HOME INCOME LIMITS ----------							
Atkinson County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Bacon County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Baker County, GA									
	30% LIMITS	13100	15000	16850	18700	20200	21700	23200	24700
	VERY LOW INCOME	21850	24950	28050	31150	33650	36150	38650	41150
	60% LIMITS	26220	29940	33660	37380	40380	43380	46380	49380
	LOW INCOME	34900	39850	44850	49800	53800	57800	61800	65750
Baldwin County, GA									
	30% LIMITS	13300	15200	17100	19000	20550	22050	23600	25100
	VERY LOW INCOME	22200	25350	28500	31650	34200	36750	39250	41800
	60% LIMITS	26640	30420	34200	37980	41040	44100	47100	50160
	LOW INCOME	35500	40550	45600	50650	54750	58800	62850	66900
Banks County, GA									
	30% LIMITS	13300	15200	17100	19000	20550	22050	23600	25100
	VERY LOW INCOME	22200	25350	28500	31650	34200	36750	39250	41800
	60% LIMITS	26640	30420	34200	37980	41040	44100	47100	50160
	LOW INCOME	35500	40550	45600	50650	54750	58800	62850	66900
Ben Hill County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Berrien County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850

U.S. DEPARTMENT OF HUD
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2022 ADJUSTED HOME INCOME LIMITS

	PROGRAM	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
Bleckley County, GA									
	30% LIMITS	13100	15000	16850	18700	20200	21700	23200	24700
	VERY LOW INCOME	21850	25000	28100	31200	33700	36200	38700	41200
	60% LIMITS	26220	30000	33720	37440	40440	43440	46440	49440
	LOW INCOME	34950	39950	44950	49900	53900	57900	61900	65900
Bulloch County, GA									
	30% LIMITS	13100	14950	16800	18650	20150	21650	23150	24650
	VERY LOW INCOME	21800	24900	28000	31100	33600	36100	38600	41100
	60% LIMITS	26160	29880	33600	37320	40320	43320	46320	49320
	LOW INCOME	34850	39800	44800	49750	53750	57750	61700	65700
Calhoun County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Camden County, GA									
	30% LIMITS	14650	16750	18850	20900	22600	24250	25950	27600
	VERY LOW INCOME	24400	27900	31400	34850	37650	40450	43250	46050
	60% LIMITS	29280	33480	37680	41820	45180	48540	51900	55260
	LOW INCOME	39050	44600	50200	55750	60250	64700	69150	73600
Candler County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Charlton County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Chattooga County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850

U.S. DEPARTMENT OF HUD
STATE:GEORGIA

2022 ADJUSTED HOME INCOME LIMITS

PROGRAM	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
Clay County, GA								
30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Clinch County, GA								
30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Coffee County, GA								
30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Colquitt County, GA								
30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Cook County, GA								
30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Crisp County, GA								
30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Decatur County, GA								
30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850

	PROGRAM	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
		2022 ADJUSTED HOME INCOME LIMITS							
Dodge County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Dooly County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Early County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Elbert County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Emanuel County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Evans County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Fannin County, GA									
	30% LIMITS	14150	16150	18150	20150	21800	23400	25000	26600
	VERY LOW INCOME	23550	26900	30250	33600	36300	39000	41700	44400
	60% LIMITS	28260	32280	36300	40320	43560	46800	50040	53280
	LOW INCOME	37650	43000	48400	53750	58050	62350	66650	70950

U.S. DEPARTMENT OF HUD
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	PROGRAM	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
		---------- 2022 ADJUSTED HOME INCOME LIMITS ----------							
Franklin County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Gilmer County, GA									
	30% LIMITS	14350	16400	18450	20450	22100	23750	25400	27000
	VERY LOW INCOME	23850	27250	30650	34050	36800	39500	42250	44950
	60% LIMITS	28620	32700	36780	40860	44160	47400	50700	53940
	LOW INCOME	38150	43600	49050	54450	58850	63200	67550	71900
Glascock County, GA									
	30% LIMITS	13300	15200	17100	19000	20550	22050	23600	25100
	VERY LOW INCOME	22200	25400	28550	31700	34250	36800	39350	41850
	60% LIMITS	26640	30480	34260	38040	41100	44160	47220	50220
	LOW INCOME	35500	40600	45650	50700	54800	58850	62900	66950
Gordon County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Grady County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Greene County, GA									
	30% LIMITS	15400	17600	19800	22000	23800	25550	27300	29050
	VERY LOW INCOME	25700	29400	33050	36700	39650	42600	45550	48450
	60% LIMITS	30840	35280	39660	44040	47580	51120	54660	58140
	LOW INCOME	41050	46900	52750	58600	63300	68000	72700	77400
Habersham County, GA									
	30% LIMITS	14350	16400	18450	20450	22100	23750	25400	27000
	VERY LOW INCOME	23850	27250	30650	34050	36800	39500	42250	44950
	60% LIMITS	28620	32700	36780	40860	44160	47400	50700	53940
	LOW INCOME	38150	43600	49050	54450	58850	63200	67550	71900

U.S. DEPARTMENT OF HUD
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PROGRAM	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
Hancock County, GA								
30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Hart County, GA								
30% LIMITS	13350	15250	17150	19050	20600	22100	23650	25150
VERY LOW INCOME	22250	25400	28600	31750	34300	36850	39400	41950
60% LIMITS	26700	30480	34320	38100	41160	44220	47280	50340
LOW INCOME	35600	40650	45750	50800	54900	58950	63000	67100
Irwin County, GA								
30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Jackson County, GA								
30% LIMITS	17850	20400	22950	25450	27500	29550	31600	33600
VERY LOW INCOME	29700	33950	38200	42400	45800	49200	52600	56000
60% LIMITS	35640	40740	45840	50880	54960	59040	63120	67200
LOW INCOME	47500	54250	61050	67800	73250	78650	84100	89500
Jeff Davis County, GA								
30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Jefferson County, GA								
30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Jenkins County, GA								
30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850

U.S. DEPARTMENT OF HUD
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---------- 2022 ADJUSTED HOME INCOME LIMITS ----------

PROGRAM	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
Johnson County, GA								
30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Laurens County, GA								
30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Lumpkin County, GA								
30% LIMITS	14750	16850	18950	21050	22750	24450	26150	27800
VERY LOW INCOME	24550	28050	31550	35050	37900	40700	43500	46300
60% LIMITS	29460	33660	37860	42060	45480	48840	52200	55560
LOW INCOME	39300	44900	50500	56100	60600	65100	69600	74100
Macon County, GA								
30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Miller County, GA								
30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Mitchell County, GA								
30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Montgomery County, GA								
30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850

	PROGRAM	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
		2022 ADJUSTED HOME INCOME LIMITS							
Pierce County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Polk County, GA									
	30% LIMITS	13200	15100	17000	18850	20400	21900	23400	24900
	VERY LOW INCOME	22000	25150	28300	31400	33950	36450	38950	41450
	60% LIMITS	26400	30180	33960	37680	40740	43740	46740	49740
	LOW INCOME	35200	40200	45250	50250	54300	58300	62350	66350
Pulaski County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Putnam County, GA									
	30% LIMITS	14700	16800	18900	20950	22650	24350	26000	27700
	VERY LOW INCOME	24450	27950	31450	34900	37700	40500	43300	46100
	60% LIMITS	29340	33540	37740	41880	45240	48600	51960	55320
	LOW INCOME	39100	44700	50300	55850	60350	64800	69300	73750
Quitman County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Rabun County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Randolph County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850

	PROGRAM	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
		---------- 2022 ADJUSTED HOME INCOME LIMITS ----------							
Schley County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Screven County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Seminole County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Stephens County, GA									
	30% LIMITS	13100	14950	16800	18650	20150	21650	23150	24650
	VERY LOW INCOME	21800	24900	28000	31100	33600	36100	38600	41100
	60% LIMITS	26160	29880	33600	37320	40320	43320	46320	49320
	LOW INCOME	34850	39800	44800	49750	53750	57750	61700	65700
Sumter County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Taliaferro County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Tattnall County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850

	PROGRAM	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
		---------- 2022 ADJUSTED HOME INCOME LIMITS ----------							
Taylor County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Telfair County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Thomas County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Tift County, GA									
	30% LIMITS	13200	15050	16950	18800	20350	21850	23350	24850
	VERY LOW INCOME	21950	25100	28250	31350	33900	36400	38900	41400
	60% LIMITS	26340	30120	33900	37620	40680	43680	46680	49680
	LOW INCOME	35150	40150	45150	50150	54200	58200	62200	66200
Toombs County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Towns County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Treutlen County, GA									
	30% LIMITS	13300	15200	17100	18950	20500	22000	23500	25050
	VERY LOW INCOME	22150	25300	28450	31600	34150	36700	39200	41750
	60% LIMITS	26580	30360	34140	37920	40980	44040	47040	50100
	LOW INCOME	35400	40450	45500	50550	54600	58650	62700	66750

U.S. DEPARTMENT OF HUD
STATE:GEORGIA

---------- 2022 ADJUSTED HOME INCOME LIMITS ----------

	PROGRAM	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
Troup County, GA									
	30% LIMITS	13850	15800	17800	19750	21350	22950	24500	26100
	VERY LOW INCOME	23100	26400	29700	32950	35600	38250	40900	43500
	60% LIMITS	27720	31680	35640	39540	42720	45900	49080	52200
	LOW INCOME	36900	42200	47450	52700	56950	61150	65350	69600
Turner County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Union County, GA									
	30% LIMITS	14300	16350	18400	20400	22050	23700	25300	26950
	VERY LOW INCOME	23800	27200	30600	34000	36750	39450	42200	44900
	60% LIMITS	28560	32640	36720	40800	44100	47340	50640	53880
	LOW INCOME	38100	43550	49000	54400	58800	63150	67500	71850
Upson County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Ware County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Warren County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Washington County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850

	PROGRAM	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON
		---------- 2022 ADJUSTED HOME INCOME LIMITS ----------							
Wayne County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Webster County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Wheeler County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
White County, GA									
	30% LIMITS	13650	15600	17550	19450	21050	22600	24150	25700
	VERY LOW INCOME	22700	25950	29200	32400	35000	37600	40200	42800
	60% LIMITS	27240	31140	35040	38880	42000	45120	48240	51360
	LOW INCOME	36300	41500	46700	51850	56000	60150	64300	68450
Wilcox County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Wilkes County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850
Wilkinson County, GA									
	30% LIMITS	12900	14750	16600	18400	19900	21350	22850	24300
	VERY LOW INCOME	21500	24600	27650	30700	33200	35650	38100	40550
	60% LIMITS	25800	29520	33180	36840	39840	42780	45720	48660
	LOW INCOME	34400	39300	44200	49100	53050	57000	60900	64850

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Acceptable Sample Income Survey Methodology

INTRODUCTION

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

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

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

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

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

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

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

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

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

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

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

STEP 1: SELECTING THE SURVEY METHOD

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

- Telephone surveys;

- Door to door surveys; and
- Mail surveys.

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

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

STEP 2: DEVELOPING A QUESTIONNAIRE

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

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

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

TABLE 1
ILLUSTRATIONS OF
INCOME CARDS

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

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

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

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

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

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

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

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

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

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

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

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

STEP 3: SELECTING THE SAMPLE

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

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

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

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

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

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

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

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

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

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

Table 2

REQUIRED SAMPLE SIZES FOR UNIVERSES OF VARIOUS SIZES

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

Table 3

EXPECTED RESPONSE RATE FOR DIFFERENT TYPE OF SURVEY

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

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

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

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

STEP 4: CONDUCTING THE SURVEY

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

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

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

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

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

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

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

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

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

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

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

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

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

STEP 5: DETERMINING THE RESULTS

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

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

LOW- AND MODERATE-INCOME SURVEY WORKSHEET

PART A. INFORMATION CONTAINED IN YOUR SURVEY

1. Enter the estimated total number of families in the target area. 1. _____

2. Enter the total number of families interviewed. 2. _____

3. Enter the total number of low- and moderate-income families interviewed. 3. _____

4. Enter the total number of persons living in the low- and moderate income families interviewed. 4. _____

5. Enter the total number of non-low and moderate-income families interviewed. 5. _____

6. Enter the total number of persons living in the non-low and moderate families. 6. _____

PART B. CALCULATIONS BASED ON DATA CONTAINED IN YOUR SURVEY

7. Divide Line 4 by Line 3. {This is the average size of the low-mod family you interviewed) 7. _____

8. Divide Line 6 by Line 5. (This is the average size of non-low-mod family you interviewed) 8. _____

9. Divide Line 3 by Line 2. (This is the proportion of families interviewed that have low and moderate incomes) 9. _____

10. Divide Line 5 by Line 2. (This is the proportion of families interviewed that do not have low and moderate incomes) 10. _____

11. Multiply Line 1 by Line 9. (This is the estimate of the total number of low-mod families in your target area) 11. _____

12. Multiply Line 1 by Line 10. (This is the estimate of the total number of non-low-mod families in your target area.) 12. _____

13. Multiply Line 7 by Line 11. (This is the estimate of the total number of low-mod persons in your target area.) 13. _____

14. Multiply Line 8 by Line 12. (This is the estimate of the total number of non-low-mod persons in your target area.) 14. _____

15. Add Line 13 and Line 14. (This is the estimate of the total number of persons in your target area) 15. _____

16. Divide Line 13 by Line 15, and multiply the resulting decimal by 100. 16._____
{This is the estimated percentage of persons in your target area who have low and moderate Incomes.)

PART C. INSTRUCTION AND EXPLANATIONS

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

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

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

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

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

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

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

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

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

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

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

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

Line 15. Total low-mod persons (1,169) plus total non-low-mod persons (1.039)-- Line 15 would be about 2,208 estimated total persons

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

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

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

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

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

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

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

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

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

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

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

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

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

STEP 6: DOCUMENTING YOUR EFFORT

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

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

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

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

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

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

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

OVERVIEW OF STEPS IN A SAMPLE SURVEY

STEP 1: Selecting the Type of Survey

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

STEP 2: Developing a Questionnaire

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

STEP 3: Selecting the Sample

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

STEP 4: Conducting the Survey

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

STEP 5: Determine the Results

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

STEP 6: Documenting Your Efforts

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

HOUSEHOLD SURVEY FOR PROPOSED COMMUNITY DEVELOPMENT BLOCK GRANT

Household Survey # _____
Interviewer _____
Date _____

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

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

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

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

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

Family Makeup:

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

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

Signature: _____ Printed Name: _____

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

ELECTRONIC CODE OF FEDERAL REGULATIONS

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Title 24 Subtitle B Chapter V Subchapter C Part 0

Title 24: Housing and Urban Development

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

Subpart I—State Community Development Block Grant Program

§570.483 Criteria for national objectives.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Physical deterioration of buildings or improvements;

(2) Abandonment of properties;

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

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

(5) Known or suspected environmental contamination.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DCA Applicant Form 6

Return to Index

Georgia Department of Community Affairs
CDBG Program
Low and Moderate Income and Civil Rights Benefit Calculation

Applicant: City of _____

☑ Original ☐ Amendment, dated: _____

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

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

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

THE FOLLOWING DATA WAS COMPILED FROM THE ACTUAL SURVEY:

43 Persons were 30% of Median Income
31 Persons were Very Low Income
16 Persons were Low-Income

23 Female Head of HH (23.2%)
11 Elderly Persons (11.6%)
12 Disabled Persons (12.6%)

No Hispanic Persons (0%)

9 TOTAL BENEFIT	$675,000.00	$639,473.72

Sum of Column 8 / Sum of Column 7 X 100 = 94.74%

Low to Moderate Income Survey Tally Sheet

Project Name: Insert Project Name

Updated: Insert Date | **Data Imput By:** Insert Name/ Initials | **Surveyed by:** Insert Name/ Initials | **Checked By:** Insert Name/ Initials

Street/ Apt./Route SUBTOTALS	# of HH	HH Srvyd	Not Home	VAC	30% OM Ppl	VLI Ppl	LI Ppl	Total LMI Ppl	Total Non LMI Ppl	LMI HH	Non L/M HH	Asian	Asian/ Black	Asian/ Pacific Island	Asian / WH	Black	Black/ WH	Native American	Native American/Black	Native American/WH	Pacific Islander	White	Other	Hispanic	Female Head of HH	Elderly	Disabled	LEP
Oak Street Subtotal	1	1	0	0	0	2	0	2	0	1	0	0	0	0	0	0	0	0	0	0	0	2	0	0	1	0	0	0
Pine Drive Subtotal	1	1	0	0	0	2	0	2	0	1	0	0	0	0	0	2	0	0	0	0	0	0	0	0	1	0	0	0
Cherry Street Subtotal	30	24	0	6	21	18	13	52	5	22	2	0	0	0	0	52	0	0	0	0	0	5	0	0	13	8	8	0
MLK Avenue Subtotal	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
S 13th Street Subtotal	16	13	0	3	22	9	3	34	0	13	0	0	0	0	0	17	0	0	0	0	0	17	0	0	8	3	4	0
Maple Street Subtotal	2	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
GRAND TOTALS	**50**	**39**	**0**	**11**	**43**	**31**	**16**	**90**	**5**	**37**	**2**	**0**	**0**	**0**	**0**	**71**	**0**	**0**	**0**	**0**	**0**	**24**	**0**	**0**	**23**	**11**	**12**	**0**
		50			**90**			**95**		**39**		**95**																

Total Minority: 71 persons — Total Hispanic: 0 persons

TOTAL HOUSES:	**50**	TOTAL PERSONS:	**95**
TOTAL VACANT:	**11**	OVERALL % LOW/MOD:	**95%**
TOTAL OCCUPIED:	**39**	PERCENT SURVEYED:	**100%**
TOTAL HH SURVEYED:	**39**	TOTAL LOW/MOD PERSONS:	**90**

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

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

SERVICE DELIVERY STRATEGY

FORM 2: Summary of Service Delivery Arrangements

Instructions:

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

COUNTY:SAMPLER COUNTY	**Service:*Housing Revitalization***

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

a.) ☐ Service will be provided countywide (i.e., including all cities and unincorporated areas) by a single service provider. (If this box is checked, identify the government, authority or organization providing the service.):

b.) ☐ Service will be provided only in the unincorporated portion of the county by a single service provider. (If this box is checked, identify the government, authority or organization providing the service.):

c.) ☐ One or more cities will provide this service only within their incorporated boundaries, and the service will not be provided in unincorporated areas. (If this box is checked, identify the government(s), authority or organization providing the service:

d.) ☒ One or more cities will provide this service only within their incorporated boundaries, and the county will provide the service in unincorporated areas. (If this box is checked, identify the government(s), authority or organization providing the service.): **Sampler County, City of Gotham, City of Paradise**

e.) ☐ Other (If this box is checked, **attach a legible map delineating the service area of each service provider,** and identify the government, authority, or other organization that will provide service within each service area.):

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

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

☒ ***No***

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

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

SDS FORM 2, continued

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

Local Government or Authority	*Funding Method*
Sampler County	Grant Funds
Sampler County	Local Property Tax Revenue
City of Gotham	Grant Funds
City of Paradise	Grant Funds

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

New Service

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

Agreement Name	*Contracting Parties*	*Effective and Ending Dates*

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

Sampler County Urban Development Plan

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

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

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

SERVICE DELIVERY STRATEGY

FORM 2: Summary of Service Delivery Arrangements

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COUNTY:SAMPLER COUNTY	**Service:*Water Supply & Distribution***

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

a.) ☐ Service will be provided countywide (i.e., including all cities and unincorporated areas) by a single service provider. (If this box is checked, identify the government, authority or organization providing the service.):

b.) ☐ Service will be provided only in the unincorporated portion of the county by a single service provider. (If this box is checked, identify the government, authority or organization providing the service.):

c.) ☐ One or more cities will provide this service only within their incorporated boundaries, and the service will not be provided in unincorporated areas. (If this box is checked, identify the government(s), authority or organization providing the service:

d.) ☐ One or more cities will provide this service only within their incorporated boundaries, and the county will provide the service in unincorporated areas. (If this box is checked, identify the government(s), authority or organization providing the service.):

e.) ☒ Other (If this box is checked, **attach a legible map delineating the service area of each service provider,** and identify the government, authority, or other organization that will provide service within each service area.): **Sampler County, City of Gotham, City of Paradise**

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

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

☒ ***No***

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

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

SDS FORM 2, continued

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

Local Government or Authority	*Funding Method*
City of Paradise	Grant Funds
Sampler County	User Fees
City of Paradise	User Fees
City of Gotham	User Fees

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

New Service

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

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

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

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

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

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

Georgia Department of Community Affairs

SERVICE DELIVERY STRATEGY

FORM 2: Summary of Service Delivery Arrangements

Instructions:

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

COUNTY:SAMPLER COUNTY	**Service:*Sewer Service***

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

a.) ☐ Service will be provided countywide (i.e., including all cities and unincorporated areas) by a single service provider. (If this box is checked, identify the government, authority or organization providing the service.):

b.) ☐ Service will be provided only in the unincorporated portion of the county by a single service provider. (If this box is checked, identify the government, authority or organization providing the service.):

c.) ☒ One or more cities will provide this service only within their incorporated boundaries, and the service will not be provided in unincorporated areas. (If this box is checked, identify the government(s), authority or organization providing the service: **City of Gotham, City of Paradise**

d.) ☐ One or more cities will provide this service only within their incorporated boundaries, and the county will provide the service in unincorporated areas. (If this box is checked, identify the government(s), authority or organization providing the service.):

e.) ☐ Other (If this box is checked, **attach a legible map delineating the service area of each service provider,** and identify the government, authority, or other organization that will provide service within each service area.):

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

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

☒ ***No***

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

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

SDS FORM 2, continued

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

Local Government or Authority	*Funding Method*
City of Gotham	Grant Funds
City of Paradise	User Fees
City of Gotham	User Fees

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

New Service

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

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

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

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

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

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

HUD CDBG Conflict of Interest Regulations

24 CFR §570.489 Program administrative requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(vii) Any other relevant considerations.

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

Section 12: Conflict of Interest Prohibition

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

1) When a CDBG Recipient contracts for the procurement of goods and services, the Conflict of Interest provisions in the "Common Rule" (24 CFR 85.36) are applicable. (See Chapter 3, Section 4: Procurement Standards of this Manual.) **These rules prohibit local officials and staff from being a party to any contract assisted with CDBG funds.**

2) In addition, the Conflict of Interest prohibition at 24 CFR Part 570.489 (h) (see Appendix 2) is applicable to all CDBG grants and activities. This rule, generally, prohibits elected officials, and staff who are in a position to influence decisions, from receiving any benefit in a CDBG-assisted project. This includes the benefit from living or owning property in a CDBG target area that receives CDBG improvements.

The following summarizes this regulation:

A. **Conflicts prohibited**. No persons described in paragraph B. below who exercise or have exercised any functions or responsibilities with respect to activities assisted with CDBG funds or who are in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or in the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

B. **Persons Covered**. The conflict of interest provisions of paragraph A. above applies to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the state, or of a unit of general local government, or of any designated public agencies, or subrecipients which are receiving or administering CDBG funds.

C. **Definition of Family or Business Ties**. DCA defines the meaning of the term "family or business ties" as follows:
   - Family: "A group of people related by ancestry or marriage; relatives."
   - Business: "The buying and selling of commodities and services; commerce, trade."
   - Ties: "Something that connects, binds or joins; bond; link."

D. **Exceptions:** Upon written request, **DCA may grant an exception** to the provisions of paragraph A above, on a case-by-case basis, **before federal funds are expended. Exceptions can only be granted when DCA determines that the exception will serve to further the purposes of the CDBG Program** and the effective and efficient administration of the CDBG program or project. To seek an exception, **a written request for an exception must be submitted** by the Recipient to DCA which:

- Fully discloses the conflict or potential conflict of interest, prior to the unit of government undertaking any action which results or may result in a conflict of interest, real or apparent;
- Describes how the conflict of interest was publicly disclosed;
- Includes a map showing the location of any target area property indicated in the potential conflict of interest, if applicable;
- Includes a written opinion of the local government's attorney that the conflict of interest for which the exception is sought would not violate state or local law; and,
- Includes a written statement signed by the Chief Elected Official, Authorized Representative, city or county attorney, or by the official designated by the governing body to sign such statement addressing the factors DCA must consider when allowing a prohibited conflict of interest. See item G below for more information on the factors DCA must take into account.

E. **Public Disclosure:** The request for an exception must include a description of how the conflict of interest was publicly disclosed. DCA requires, at a minimum, that the recipient include a complete description of the COI on the agenda for the public meeting where the COI will be disclosed, that the agenda be posted/advertised as required by law, that the COI be fully disclosed at a public meeting, and that the discussion of the COI be included in the minutes of the meeting. Note that state law requires the agenda to be posted prior to public meetings. The description of the method of disclosure, the public meeting announcement and the minutes of the public meeting must be included with the request for an exception.

F. **Non-Involvement:** One factor included in DCA's decision to grant a COI exception is whether or not the involved officials have abstained from involvement with the grant. The request for an exception must include an explanation of the extent of involvement of covered persons with any votes or discussion of the grant. Officials should abstain from any involvement as soon as any COI is foreseen.

G. **Factor to be considered for exceptions:** In determining whether to grant a requested exception after the CDBG Recipient has satisfactorily met the requirement of paragraph D. above, DCA will consider the cumulative effect of the following factors, where applicable:

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

2. Whether the person affected is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

3. Whether the affected person has withdrawn from his or her function or responsibilities, or the decision-making process with respect to the specific assisted activity in question;

4. Whether the interest or benefit was present before the affected person was in a position as described in paragraph (B) above;

5. Whether undue hardship will result either to the participating jurisdiction or to the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

6. Any other relevant considerations presented to DCA.

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

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

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

Excerpt from 20 0 CDBG Recipients' Manual

Chapter 2: Major Compliance Requirements and Procedures

Section 1: Applicable Laws and Regulations

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

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

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

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

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

General:

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

Financial Management:

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

Civil Rights:

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

11375, Parts II and III
11. Executive Order 11063 - Equal Employment Opportunity, as amended by Executive Order 12259.
12. Section 3 of the Housing and Development Act of 1968, as amended Section 118 of Title I, Community Development and Housing Act, 1974, and implemented by HUD regulations
13. Georgia Department of Community Affairs Civil Rights Compliance Certification Form
14. Age Discrimination Act of 1975
15. Executive Order 12432: National Priority to Develop Minority and Women Owned Businesses
16. Section 504 of the Rehabilitation Act of 1973 and implementation regulation (24 CFR Part 8)
17. Section 104 of Title I of the Housing and Community Development Act of 1974 and the implementing regulations at 24 CFR Parts 5, 91, 92, 570, 574, 576, and 903

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

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

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

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

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

Other:

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

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FINANCIAL PLAN

Applicant: _____

Unit #	Name of Owner	Occupant Name (if rental property) indicate if vacant or not	Property Address	Type of Unit (SB, Modular, MHU)	Income	Activity (rehab,recon, Acquisition & Clearance, No Action) **Select an activity from the drop-down menu.**	CDBG Cost	Owner participation amount *	Total Cost	Lead Hazard Control (25% of Total Cost) (Pre 1978 Rehab only)	Type of Assistance

TOTAL:					
	Rehab				
	Recon				
	Acquisition & Clearance				
	No Action				

* If Owner participation amount is based on cost of rehab, use cost of rehab only (without Lead Hazard Control cost) to determine required participation amount.

NOTE: Lead Hazard Control should be budgeted only for units constructed PRIOR to 1978 at 25% of total rehab cost.

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).

GEORGIA DEPARTMENT OF
COMMUNITY AFFAIRS

Mike Beatty
COMMISSIONER

Sonny Perdue
GOVERNOR

MEMORANDUM

TO: All CHIP and CDBG Housing Recipients and Administrators

FROM: Bobby Smith, Director, Office of Grant Administration

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

DATE: April 12, 2004

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

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

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

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

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

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

1. **Index** – Periodic interest rate changes on an ARM area based upon an economic index that measures the lender's ability to borrow money. These indexes usually go up or down with the general movement of interest rates. If the index goes up, so does the mortgage rate in most circumstances, and the borrower would have to pay higher monthly payments. On the other hand, if the index rate goes down, most likely the monthly payment would go down as well. While the specific index used may vary depending upon the lender, some of the common indexes are:

    a. the yield on either a 1, 3, or 5 year treasury bill (**T-bill**) or security;

    b. the national or regional cost of funds to savings and loan associations known as the Federal Cost of Funds or the 11th District Cost of Funds (**COFI**); and,

    c. the rate at which international banks operating in London inter-

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

2 **Margin** – To determine the actual interest rate on an ARM, lenders add to the index rate a few percentage points (generally 1 to 3 points but could be higher) called "the margin." The amount of the margin can differ from one lender to another, but it is usually constant over the life of the loan. The margin is also called "the spread" and it is added to the index to cover the lender's administrative costs and profits to come up with the adjusted or "calculated interest rate."

3 **Calculated interest rate** – By adding the index and the margin together, you arrive at the calculated interest rate, which is the actual rate the borrower pays. It is also the rate to which any future rate adjustments will apply, rather than the initial or "teaser" rate explained below.

4 **Adjustment Period and Teaser Rates** – Because the interest rate for an ARM may change due to economic conditions, a key feature to ask the lender is exactly how often the interest rate may change. This is referred to as the "adjustment period." Many ARMs have one-year adjustment periods, which means the rate and monthly payment is recalculated (based on the index) every year. Other ARMs have 3, 5, or 7 year adjustment periods.

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

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

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

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

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

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

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

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

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

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

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

Enclosure

JK/jk

GEORGIA DEPARTMENT OF
COMMUNITY AFFAIRS

Mike Beatty
COMMISSIONER

Sonny Perdue
GOVERNOR

MEMORANDUM

TO: All CHIP and CDBG Housing Recipients and Administrators

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

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

DATE: September 21, 2005

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

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

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

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

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

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

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

BW/jk

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

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

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

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

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

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

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

Date:

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

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

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

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

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

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

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

Date:

REGULATORY PROGRAM OVERVIEW

INTRODUCTION

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

LEGISLATIVE AUTHORITIES

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

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

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

DELEGATION OF AUTHORITY

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

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

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

GEOGRAPHIC EXTENT OF JURISDICTIONAL AUTHORITY

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

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

(1) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(2) All interstate waters, including interstate wetlands;

(3) The territorial seas;

(4) All impoundments of waters otherwise identified as waters of the United States;

(5) All tributaries of waters in (1) through (3), above;

(6) All waters adjacent to a water identified in (1) through (5), including wetlands, ponds, lakes, oxbows, impoundments, and similar waters;

(7) All waters in paragraphs (i) through (v), below, where they are determined, on a case-specific basis, to have a significant nexus to a water identified in (1) through (3).

(i) *Prairie potholes*. Prairie potholes are a complex of glacially formed wetlands, usually occurring in depressions that lack permanent natural outlets, located in the upper Midwest.

(ii) *Carolina bays and Delmarva bays*. Carolina bays and Delmarva bays are ponded, depressional wetlands that occur along the Atlantic coastal plain.

(iii) *Pocosins*. Pocosins are evergreen shrub- and tree-dominated wetlands found predominantly along the Central Atlantic coastal plain.

(iv) *Western vernal pools.* Western vernal pools are seasonal wetlands located in parts of California and associated with topographic depression, soils with poor drainage, mild, wet winters, and hot, dry summers.

(v) *Texas coastal prairie wetlands*. Texas coastal prairie wetlands are freshwater wetlands that occur as a mosaic of depressions, ridges, intermound flats, and mima mound wetlands located along the Texas Gulf Coast.

(8) All waters located within the 100-year floodplain of a water identified in (1) through (3) and all waters located within 4,000 feet of the high tide line or ordinary high water mark of a water identified in (1) through (5), where they are determined on a case-specific basis to have a significant nexus to a water identified in (1) through (3).

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

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

Graphics generally depicting the extent of Section 10 and Section 404 jurisdiction can be viewed here.

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

US Army Corps of Engineers

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Regulatory Program Frequently Asked Questions

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

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

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

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

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

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

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

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

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

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

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

When should I apply for a permit?

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

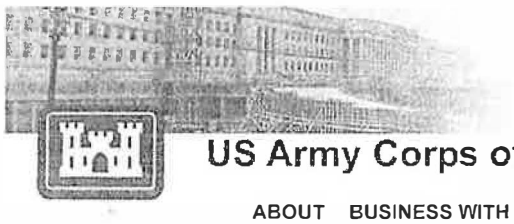
Who should apply for a permit?

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

What is a wetland and what is its value?

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

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



US Army Corps of Engineers

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Obtain a Permit

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

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

- Application Form Instructions
- Regulations and Guidance

District Specific Permit Information

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

- ⊞ **Applications and Application Information**
- ⊞ **Jurisdiction**
- ⊞ **Permit Process**
- ⊞ **Region-Specific Permits and Documents**
- ⊞ **Forms, Documents, and Publications**

Regional and Programmatic General Permits

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

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

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

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

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

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

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

- ⊞ **Alaska**
- ⊞ **Albuquerque**
- ⊞ **Baltimore**
- ⊞ **Buffalo**
- ⊞ **Charleston**
- ⊞ **Chicago**
- ⊞ **Detroit**
- ⊞ **Ft. Worth**
- ⊞ **Galveston**
- ⊞ **Honolulu**
- ⊞ **Jacksonville**

EPA Wetland Regulatory Authority

Regulatory Requirements

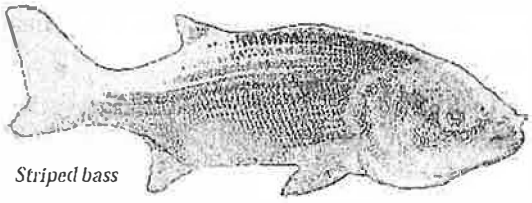
Section 404 of the Clean Water Act (CWA) establishes a program to regulate the discharge of dredged or fill material into waters of the United States, including wetlands. Activities in waters of the United States regulated under this program include fill for development, water resource projects (such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

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

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

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

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



Striped bass

Agency Roles and Responsibilities

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

U.S. Army Corps of Engineers:

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

U.S. Environmental Protection Agency:

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

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

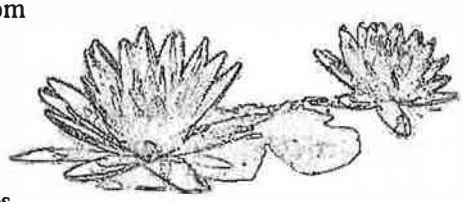
- Evaluates impacts on fish and wildlife of all new Federal projects and Federally permitted projects, including projects subject to the requirements of Section 404 (pursuant to the Fish and Wildlife Coordination Act); and
- Elevates specific cases or policy issues pursuant to Section 404(q).

Manual for Identifying Wetlands

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

Wetlands on Agricultural Lands

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



Water lilies

The Wetland Fact Sheet Series

EPA843-F-04-001
Office of Water

Wetlands Overview
Types of Wetlands
Threats to Wetlands
Wetland Restoration
Funding Wetland Projects
Functions and Values of Wetlands
Teaching About Wetlands
Wetland Regulatory Authority
Wetlands Compensatory Mitigation
Benefits of Wetland Monitoring

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

Wetland Resources

On the Internet

EPA's Wetlands Website ..... www.epa.gov/owow/wetlands/regs/

Section 404 of the Clean Water Act ..... www.epa.gov/owow/wetlands/laws/

Wetland Delineation Manual ..... www.wes.army.mil/el/wetlands/wlpubs.html

U.S. Army Corps of Engineers Regulatory Program..... www.usace.army.mil/inet/functions/cw/cecwo/reg/

U.S. Army Corps of Engineers' Waterways Experiment Station Environmental Laboratory ..... www.wes.army.mil/el/wetlands/wetlands.html

Environmental Law Institute ..... www.eli.org

In Print

America's Wetlands: Our Vital Link Between Land and Water. For a copy, order from EPA's publications web site at http://yosemite.epa.gov/water/owrccatalog.nsf or call the EPA Wetlands Helpline at 1-800-832-7828.

Wetlands Deskbook, 2nd Edition, Margaret N. Strand. Available from the Environmental Law Institute. Call 1-800-433-5120; fax your request to (202) 939-3868; or e-mail to orders@eli.org.

Our National Wetland Heritage: A Protection Guide, 2nd Edition, Jon A. Kusler, Ph.D., Executive Director, Association of State Wetland Managers. Available from the Environmental Law Institute. Call 1-800-433-5120; fax your request to (202) 939-3868; or e-mail to orders@eli.org.

EPA United States Environmental Protection Agency

What is a Jurisdictional Delineation?

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

How do I delineate a wetland?

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

LAST UPDATED ON DECEMBER 21, 2017

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

Special Attention of:

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

Notice: CPD-03-14

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

Supersedes:

Subject: Using CDBG Funds in Addressing the Challenges of Homelessness

I. Introduction:

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

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

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

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

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

II. CDBG Program:

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

III. Consolidated Plan and Continuum of Care:

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

require the grantee to describe the nature and extent of homelessness, including homelessness in rural areas. The Consolidated Plan must contain a discussion of the need for facilities and services for homeless individuals, as well as the same needs for homeless families with children and homeless subpopulations. Homeless subpopulations include, but are not limited to: homeless persons that are severely mentally ill only, alcohol/drug addicted only, severely mentally ill and alcohol/drug addicted, fleeing domestic violence, considered youth, and diagnosed with HIV/AIDS.

The Consolidated Plan must also include a brief inventory of facilities and services that meet the emergency shelter, transitional housing, permanent supportive housing, and permanent housing needs of homeless persons within the grantee's jurisdiction. In addition, there must be a description of the grantee's strategy for preventing homelessness, providing outreach/assessment, addressing emergency shelter and transitional housing needs, and helping the homeless to transition to permanent housing and independent living.

If information is available, a grantee is also to provide a description of the special needs of homeless people with specific problems. These problems often include mental illness, substance abuse, a dual diagnosis of mental illness and addiction, domestic violence, and HIV/AIDS. When possible, each grantee is also asked to describe the nature and numbers of homeless persons by race and ethnic group, as well as the characteristics and unique needs of persons who might not presently be homeless but who are threatened with homelessness.

While some of the information required is found in census data, more current and specific data might be obtained through consultation with other public agencies and social service providers. The citizen participation process and public hearings, which are requirements of developing the Consolidated Plan, can also be valuable sources of information. In addition, other local plans may provide information necessary to evaluate the needs of the homeless and coordinate a response to address those needs.

The purpose of the Continuum of Care (CoC) is to provide a coordinated, locally developed system to assist homeless persons, especially the chronically homeless, to move to self-sufficiency and permanent housing. In addition to homeless prevention, a CoC system consists of four basic components:

(a) A system of outreach and assessment for determining the needs and conditions of an individual or family who is homeless;

(b) Emergency shelters with appropriate supportive services to help ensure that homeless individuals and families receive adequate emergency shelter and referral to necessary

service providers or housing finders;

(c) Transitional housing with appropriate supportive services to help those homeless individuals and families who are not prepared to make the transition to permanent housing and independent living; and

(d) Permanent housing, or permanent supportive housing, to help meet the long-term needs of homeless individuals and families.

A CoC system is developed through a community-wide or region-wide process involving nonprofit organizations (including those representing persons with disabilities), government agencies, public housing authorities, faith-based and other community-based organizations and other homeless providers, housing developers and service providers, private businesses and business associations, law enforcement agencies, funding providers, and homeless or formerly homeless persons. To ensure that the CoC system addresses the needs of homeless veterans, it is particularly important that veteran service organizations with specific experience in serving homeless veterans are involved. A CoC system should address the specific needs of each homeless subpopulation: those experiencing chronic homelessness, veterans, persons with serious mental illnesses, persons with substance abuse issues, persons with HIV/AIDS, persons with co-occurring diagnoses, victims of domestic violence, youth, and any others. (The term "co-occurring diagnoses" may include diagnoses of multiple physical disabilities or multiple mental disabilities or a combination of these two types.)

Effective CoC-wide strategies coordinate homeless assistance with mainstream health, social services and employment programs for which homeless individuals and families may be eligible. These programs include Medicaid, Children's Health Insurance Program, Temporary Assistance for Needy Families, Food Stamps, and services funded through the Mental Health Block Grant and Substance Abuse Block Grant, Workforce Investment Act, Welfare-to-Work grant program, and Veterans Health Care.

Communities are encouraged to coordinate CDBG activities with area CoC efforts and other resources in order to target assistance to chronically homeless persons in their communities. Further, recipients of CDBG funds are encouraged to also work with the appropriate local government entity to develop and implement a discharge policy for persons leaving publicly funded institutions or systems of care (such as health care facilities, foster care or other youth facilities, or correction programs and institutions) in order to prevent such discharge from immediately resulting in homelessness for such persons. Such actions and coordination will contribute to the Department’s priority of ending chronic homelessness.

IV. Program Funding Eligibility:

While CDBG funds are a flexible resource that may be used to assist a wide range of activities that may help address the needs of homeless persons as they move through the Continuum of Care, it may also serve as a primary tool in developing or supporting the development of permanent housing, as well as emergency shelter and transitional housing.

Two of the most common ways of using CDBG funds to support the development of permanent affordable housing is to use CDBG to acquire property on which permanent housing will be built using other resources, or to fund the installation or reconstruction of public improvements that will serve the affordable housing to be constructed.

It is important to note that new housing construction is not, itself, an eligible activity under the CDBG program, but if a grantee has an entity within its jurisdiction that qualifies as a community based development organization (CBDO) and the CBDO is capable of serving as a housing developer, the CBDO may be provided CDBG funds for new construction undertaken as part of a neighborhood revitalization project.

Housing rehabilitation is also eligible under the CDBG program and may include the conversion of an existing, non-residential building into residential units.

> The House of Refuge East (HRE) is an 88 unit transitional housing facility on a portion of the closed Williams Field Air Force Base in Mesa, Arizona. Homeless families now reside in housing units formerly occupied by Air Force personnel and their families. HRE is a non-profit organization dedicated to organizing, developing and operating programs to assist homeless and displaced persons and has been in operation for seven years. They have received Supportive Housing Program funds for providing operating and support services to residents for several years. The city of Mesa has also used CDBG funds for street improvements at HRE, and more recently has approved the use of CDBG funds to match a McKinney-Vento Act grant to replace roofs in approximately half of the units.

CDBG may also be used to assist with the development of emergency shelters and transitional housing. Although transitional housing does have a residential purpose and

residents generally reside in these units for up to two years, transitional housing is not considered to be permanent housing under the CDBG program. Therefore, as long as it is owned by the grantee or a non-profit entity, it is considered to be eligible as a public facility. This is an important distinction since CDBG funds may be used to assist in the new construction of public facilities. (It is important to note that while CDBG funds may be used to construct public facilities, CDBG funds may not be used to pay for the repair, operation or maintenance of such facilities, with the exception that operating and maintenance expenses associated with a public service are eligible as part of the public service.)

Examples of using CDBG funds to assist in providing shelter, whether emergency, transitional, or permanent, include but are not limited to the following:

- Rehabilitation of a vacant building to be used as a group home to serve the chronically homeless
- Acquisition of a building by a grantee and disposition of the property by donation to a nonprofit entity which will own the property and develop permanent rental units
- Acquisition of property and construction or rehabilitation of a building on the property to be used as a homeless shelter or transitional housing
- Clearance of a site on which an emergency shelter will be constructed
- Moving a house to another site where it will be used for transitional or permanent housing
- Homeownership assistance through payment of closing costs, payment of 50% of the downpayment costs, providing an interest rate write-down and /or a “soft-second” mortgage to ensure affordability, as well as counseling provided as part of the homeownership program, to prepare persons for the on-going responsibilities of homeownership
- Acquisition and rehabilitation of an apartment building for use as permanent affordable housing for the homeless
- Extension of water and sewer lines to a new group home
- Conversion of an abandoned public school to a facility providing both shelter and services to the homeless
- Local matching share under another Federal program for CDBG-eligible activities that assist the homeless, e.g., HUD’s Shelter Plus Care Program

Crossroads in Sandusky, Ohio, is a multi-funded facility that provides shelter and services, including a child nutrition program, for homeless individuals and families. Operated by the Volunteers of America Northwest Ohio, Inc., CDBG funding provided through Erie County is just one

of several funding sources used for the operation of Crossroads, which offers a 16 bed emergency shelter (assisted with Emergency Shelter Grant funds) for homeless individuals, a 48 bed transitional housing (assisted with Supportive Housing Program funds) for individuals and families, and an 8 bed veterans program that provides transitional housing.

Homelessness is not caused merely by a lack of shelter, but involves a variety of underlying, unmet needs — physical, economic, and social. CDBG funds may be used to provide a wide range of public service activities to assist persons who are homeless or to help prevent homelessness. (To be eligible, a public service must be either a new service or a quantifiable increase in an existing service, above that which has been provided by state or local funds in the 12 calendar months prior to submission of the action plan.) Public services include but are not limited to:

- Payment of the costs of operating a homeless shelter, including costs related to implementing and operating the Homeless Management Information System (HMIS) for the shelter
- Drug abuse counseling and treatment
- Child care for homeless persons seeking employment
- Providing health care by paying for salaries or equipment at a clinic
- Job training and education programs
- Fair housing counseling
- Emergency payment of rent and utilities (paid directly to the landlord and utility provider over a limited period of time)
- Operation of a food bank or soup kitchen
- Providing supportive services, on-site, at supportive housing residences

Casa Maria is a transitional housing facility in the City of Pasadena (CA) that provides services to homeless women who have a history of chronic substance abuse. Casa Maria, which is an active partner in the city's Continuum of Care, can accommodate up to 12 women (and 4 children) and provides support services to its residents, including health care, case management, life skills development, substance abuse counseling, parenting classes, etc. Residents of the facility are allowed to stay up to two years or 24 months. Casa Maria has received funding awards under the CDBG program and was awarded McKinney-Vento Act funding. The agency was

successful in the City's competitive Request for Proposal (RFP) Process and received CDBG funds for two projects: for an electrical upgrade to the facility and for health care services (Family Prevention/ Intervention Project).

V. Additional Resources

CDBG Guide to National Objectives and Eligible Activities for Entitlement Communities:

https://www.hudexchange.info/resource/89/community-development-block-grant-program-cdbg-guide-to-national-objectives-and-eligible-activities-for-entitlement-communities/

CDBG Guide to National Objectives and Eligible Activities for State CDBG programs:

https://www.hudexchange.info/resource/2179/guide-national-objectives-eligible-activities-state-cdbg-programs/

The CDBG regulations are available for both the Entitlement and State programs by clicking on the appropriate heading on the following website:

https://www.ecfr.gov/current/title-24/subtitle-B/chapter-V/subchapter-C/part-570

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410

JAN 11 2008

MEMORANDUM FOR: Community Planning and Development Field Directors
Fair Housing and Equal Opportunity Regional Directors
Community Development Block Grant and State Recipients
Fair Housing Initiatives Program Recipients
Fair Housing Assistance Program Recipients

FROM: Kim Kendrick, Assistant Secretary for Fair Housing and Equal Opportunity, E

Nelson Bregón, General Deputy Assistant Secretary for Community Planning and Development, D

SUBJECT: Fair Housing Agencies eligible for Community Development Block Grant (CDBG) and other HUD Program funding.

PURPOSE:

The purpose of this guidance is to clarify the definitions of fair housing organizations. When awarding funds in support of the entitlement communities' certifications to "Affirmatively Further Fair Housing," CDBG recipients are encouraged to ensure that recipients receiving the funds meet one of the definitions of a fair housing organization.

BACKGROUND:

Title VIII of the Civil Rights Act of 1968, as amended (the Fair Housing Act), prohibits discrimination in all housing-related activities on the basis of race, color, religion, sex, national origin, familial status (number and age of children) and disability ("handicap"). Section 808(e)(5) of the Fair Housing Act also requires the Secretary of HUD to administer the Department's housing and community development programs in a manner to affirmatively further fair housing (AFFH). CDBG recipients are also required by Section 104(b)(2) of the Housing and Community Development Act of 1974, as amended, and Section 105(b)(3) of the National Affordable Housing Act (NAHA) of 1990 to certify that they will AFFH.

The Consolidated Plan regulations at 24 CFR 91.225 and 91.325 and the AFFH certification require the grantee to engage in fair housing planning by conducting an analysis to identify impediments to fair housing choice within its jurisdiction, take appropriate actions to overcome the effects of identified impediments, and maintain records to document the analysis and the actions taken. The regulation at 24 CFR 570.205(a)(vii) makes eligible, as a planning

activity, developing an analysis of impediments to fair housing choice, while the use of CDBG to provide fair housing services may be eligible as a program administration cost in accordance with 24 CFR 570.206 or as a public service in accordance with 24 CFR 570.201(e). Eligible fair housing costs designed to AFFH are detailed in 24 CFR 570.206(c) and include making all persons aware of the range of housing options available, enforcement, education, outreach, avoiding undue concentrations of assisted persons in areas with many low- and moderate-income persons, and other appropriate activities, including testing. States may use the entitlement regulations referenced above for interpretive guidance.

DEFINITIONS OF FAIR HOUSING ORGANIZATIONS:

On February 9, 2007, the Offices of Community Planning and Development (CPD) and Fair Housing and Equal Opportunity issued a joint memorandum that encouraged CDBG recipients to fund activities in support of their certifications to Affirmatively Further Fair Housing. The agencies could be HUD-approved Fair Housing Assistance Programs (FHAP) or Fair Housing Initiaitvies Programs (FHIP). This earlier memorandum failed to define the fair housing organizations that are eligible to receive funding under the FHIP program. This memorandum provides the regulatory definition.

Regulations at 24 CFR 125.103 define two kinds of fair housing organizations:

- Qualified Fair Housing Enforcement Organization (QFHO) -- an organization, engaged in fair housing enforcement activities, whether or not enforcement is its sole activity, that: (1) Is organized as a private, tax-exempt, nonprofit, charitable organization; (2) Has at least 2 years experience in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims; and (3) Is currently engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims.

- Fair Housing Enforcement Organization (FHO) -- an organization, engaged in fair housing enforcement activities, whether or not enforcement is its sole activity, that: (1) Is organized as a private, tax-exempt, nonprofit, charitable organization; (2) Is currently engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims; and (3) Upon the receipt of FHIP funds will continue to be engaged in complaint intake, complaint investigation, testing for fair housing violations and enforcement of meritorious claims.

To ensure the quality of fair housing activities and services provided to the jurisdictions and to support their certifications to AFFH, CDBG recipients are encouraged to consider QFHO's and FHO's when awarding funds. CDBG recipients are also encouraged to market the announcements of the availability of funds for fair housing planning and other activities to QFHOs and FHOs.

CONTACTS:

CDBG grantees having questions about this guidance should contact the CPD Division in their respective HUD Field Office (see attached list). HUD staff should contact Richard Kennedy, Director, Office of Block Grant Assistance or Pamela Walsh, Director, Office of Policy, Legislative Initiatives and Outreach. Mr. Kennedy's telephone number is 202-402-4542, and Ms. Walsh's telephone number is 202-402-7017.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410

FEB - 9 2007

MEMORANDUM FOR: Community Planning and Development Field Directors
Fair Housing and Equal Opportunity Regional Directors
Community Development Block Grant and State Recipients
Fair Housing Initiatives Program Recipients
Fair Housing Assistance Program Recipients

FROM: Pamela H. Patenaude, Assistant Secretary for Community Planning and Development, D

Kim Kendrick, Assistant Secretary for Fair Housing and Equal Opportunity, E

SUBJECT: Affirmatively Furthering Fair Housing in the Community Development Block Grant Program

PURPOSE:

The purpose of this guidance is to clarify the use of Community Development Block Grant (CDBG) funds in supporting fair housing activities to assist CDBG recipients in meeting their certifications to affirmatively further fair housing (AFFH).

BACKGROUND:

Title VIII of the Civil Rights Act of 1968, as amended (the Fair Housing Act), prohibits discrimination in all housing-related activities on the basis of race, color, religion, sex, national origin, familial status (number and age of children) and disability ("handicap"). Section 808(e)(5) of the Fair Housing Act also requires the Secretary of HUD to administer the Department's housing and community development programs in a manner to affirmatively further fair housing (AFFH). CDBG grantees (metropolitan cities, urban counties, States, insular areas, and non-entitled grantees in Hawaii) are also required by Section 104(b)(2) of the Housing and Community Development Act of 1974, as amended, and Section 105(b)(3) of the National Affordable Housing Act (NAHA) of 1990 to certify that they will AFFH. Actions to AFFH should further policies of the Fair Housing Act by actively promoting wider housing opportunities for all persons while maintaining a nondiscriminatory environment in all aspects of public and private housing markets.

AFFIRMATIVELY FURTHERING FAIR HOUSING GUIDELINES:

The Consolidated Plan regulations at 24 CFR 91.225 and 91.325 establish the AFFH requirements of the Fair Housing Act that apply to the CDBG program. They specify that the AFFH certification requires the grantee to engage in fair housing planning by conducting an analysis to identify impediments to fair housing choice within its jurisdiction, taking appropriate actions to overcome the effects of identified impediments, and maintaining records to document the analysis and the actions taken.

Sections 105(a)(8) and (13) of the Housing and Community Development Act of 1974, as amended, authorize the use of CDBG funds for public services and for planning and program administration costs. The entitlement regulation at 24 CFR 570.205(a)(vii) makes eligible, as a planning activity, developing an analysis of impediments to fair housing choice, while the use of CDBG to provide fair housing services may be eligible as a program administration cost in accordance with 24 CFR 570.206 or as a public service in accordance with 24 CFR 570.201(e). Eligible public services include the use of CDBG funds for activities such as fair housing counseling. Eligible fair housing costs designed to AFFH are detailed in 24 CFR 570.206(c) and include making all persons aware of the range of housing options available, enforcement, education, outreach, avoiding undue concentrations of assisted persons in areas with many low- and moderate-income persons, and other appropriate activities, including testing, selected by the grantee to AFFH. States may use the entitlement regulations referenced above for interpretive guidance.

One major method for achieving these purposes is funding of local fair housing agencies, which includes agencies in both the Fair Housing Initiative Program (FHIP) and Fair Housing Assistance Program (FHAP). Between these programs, these agencies can:

- Undertake fair housing enforcement, *i.e.*, complaint processing;
- Draft amendments to State and local fair housing laws in order to make them substantially equivalent to the federal Fair Housing Law;
- Conduct the Analysis of Impediments to Fair Housing Choice (AI);
- Provide fair housing education and outreach;
- Provide translation and interpretation services for persons who are limited English proficient; and/or
- Assist in the development of accessible housing for persons with disabilities

RECORDKEEPING:

In accordance with 24 CFR 570.490 and 570.506(g), as applicable, grantees should establish a record-keeping system for their AFFH activities. This would include, among other items: copies of local fair housing laws and ordinances; the full history of the development of its AI; options available for overcoming impediments; local businesses, agencies, and resident-groups involved in the consultative process; planned actions and those taken; issues that arose when the actions were planned and conducted; and any other information about the community's fair housing planning process.

CONTACTS:

CDBG grantees having questions about this guidance should contact the CPD Division in their respective HUD Field Office (see attached list). HUD staff should contact Richard Kennedy, Director, Office of Block Grant Assistance, or Pamela Walsh, Acting Director, Office of Policy, Legislative Initiatives and Outreach. Mr. Kennedy's telephone number is 202-402-4542, and Ms. Walsh's telephone number is 202-402-7017.

Attachment

Sonny Perdue
Governor

Georgia™
Department of
Community Affairs

Mike Beatty
Commissioner

MEMORANDUM

To: Mayor, County Commission Chairs, RDC Executive Directors, Other Interested Parties

From: Brian Williamson
Assistant Commissioner

Date: February 27, 2008

Subject: Clarifications for the 2008 CDBG/CHIP Annual Competition; Increased Project Delivery Fees; 2008 Income Limits; Ineligible Procurement Practices

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Clarifications for the 2008 CDBG/CHIP Annual Competition

Strengthening the Strategy Component of FY 2008 CDBG Applications. The *FY 2008 Applicants' Manual* (page 34) lists the following under Program Strategy:

> ...3) an analysis of the ongoing financial effort that the applicant has made or will make to address the identified problem and to maintain and operate the proposed project, facility or system...

In addressing the item above, in the past most CDBG applicants have focused on discussing the financial arrangements for maintenance of planned infrastructure systems. **Please note that more competitive applications should also address the local government's financial condition. To ensure your application remains as competitive as possible, applicants are encouraged to include narrative that explains and documents the local government's inability to finance the proposed project through traditional public or private financing sources.** For example, a proposed activity for replacement of failing water lines could document that the local water rate structure is appropriate and that increasing rates to afford traditional financing would cause a hardship on the local residents. As an example, the U.S. EPA considers utility rates that exceed 1% of median household income as an affordability concern. See http://www.efc.unc.edu/RatesDashboards/ga.htm for additional information and explanation. Additional documentation can include turn downs from other lenders, financial statements, and community demographic information. While the discussion of financial effort will most often be applicable to utilities, applicants should discuss financial effort for other types of projects as well.

NPDES Permit Costs and the 12 Percent Limitation on Engineering Fees. National Pollutant Discharge Elimination System (NPDES) monitoring is required for many CDBG infrastructure projects (most often for erosion and sedimentation control). The costs of monitoring NPDES requirements should be reflected as a line item cost on the preliminary engineering report submitted with the CDBG application. DCA limits the amount of CDBG dollars budgeted for engineering (design and non-NPDES inspection) to 12 percent of the CDBG construction cost (excluding construction contingencies). When making the CDBG engineering budget calculation for the 2008 Annual Competition, applicants ***may*** include the CDBG cost of NPDES monitoring with the CDBG cost of construction for the purpose of calculating the maximum allowable engineering that CDBG will pay. Of course, applicants may choose to pay for engineering, NPDES monitoring, or a portion of construction costs themselves and count those costs toward an increased leverage or match. DCA reserves the right to reduce NPDES line items should these monitoring costs appear excessive.

Currently grantees, once funded, may include NPDES monitoring in either the construction contract or the engineering contract. DCA is reviewing this matter in order to decide whether to establish a uniform policy regarding the appropriate placement of these costs in CDBG-related contracts. Please keep in mind that most NPDES monitoring for erosion and sedimentation control does not have to be monitored by a professional engineering firm. See Department of Natural Resources regulations at the following link for further information on the types of firms that may design and monitor under NPDES permits:
http://www.georgiaepd.org/Files_PDF/techguide/wpb/cnstrct_swp_infrastructure.pdf

Whether in the engineering contract or in the construction contract, local governments should look for opportunities for competitive pricing for NPDES monitoring costs without compromising the quality of the required monitoring. Also, see the section below on *Ineligible Procurement Practices* for further information regarding these matters.

Clarification on Requirements to Use CDBG Funds in Revitalization Areas. As the *Applicants' Manual* (2008 edition) makes clear, recipients must "sit out" at least one year before applying for funding again **unless** a recipient falls into one or more of the categories outlined in the *Manual*. (See Part I, Page 15.) One of these categories is DCA's Revitalization Area Strategy (RAS) designation. For RAS, the requirement to "sit out" a year is lifted when the recipient proposes a project in an RAS area. This does not mean that recipients with RAS designations must always apply for projects in their RAS areas. It does mean, however, that recipients with RAS designations must "sit out" a year before being able to apply for funding **outside** their RAS areas.

Housing Project Delivery Costs (PDCs)

PDCs have not been adjusted since May 2001. Due to the length of time since the last change in PDCs and the growth in administrative costs and requirements for housing projects, PDCs are being raised for both the CDBG and CHIP programs as follows:

PDC Increases for CDBG and CHIP

Unit Type	Activity	Maximum PDC
Stick Built (including Modular)	Rehabilitation/Reconstruction	$2,500 (formerly $2,000)
Stick Built (including Modular)	Down Payment and Second Mortgage Assistance	$1,500 (formerly $1,000)
No change in PDCs for Manufactured Housing Units		

PDC Increases for CHIP Set-Aside

Unit Type	Activity	Maximum PDC
Stick Built (including Modular)	Rehabilitation/Reconstruction	$3,500 (formerly $3,000)
Stick Built (including Modular)	Down Payment and Second Mortgage Assistance	$2,500 (formerly $2,000)
No change in PDCs for Manufactured Housing Units		

These increased PDCs are effective immediately for all existing CDBG/CHIP housing awards and for projects being developed for the 2008 Annual Competition housing awards. Please make the appropriate budget adjustments on DCA-1, DCA-7, and DCA-8 when preparing your 2008 Annual Competition application. Keep in mind that the PDCs listed are maximum amounts. Maximum amounts may only be charged to the applicable grant when actual costs equal or exceed the maximum PDCs available. Documentation in the form of detailed invoices must be submitted to the local government recipient in order to receive PDCs.

2008 Income Limits

HUD has released the 2008 Low- to Moderate-Income Limits. These new limits should be used for any CDBG surveys that have not already been started. For surveys that are already underway or that have been completed, applicants may utilize the 2007 Income Limits. A copy of the new income limits may be found at:
http://www.huduser.org/Datasets/IL/IL08/ga_fy2008.pdf.

Ineligible Procurement Practices

DCA has recently become aware of ineligible procurement practices by some CDBG grantees. DCA has reviewed contract construction documents that require the general contractor to use the services of the consulting engineer for inspection services required under the NPDES permit and that specify a price for that inspection work, effectively allowing the engineer to select himself or herself for the inspection work and to set the price for that work. This is contrary to the principle of promoting fair and open competition. (See the *Recipients' Manual* (2007 edition) for further information.) **When the NPDES inspection work is included in the construction contract, the general contractor must be allowed to bid this line item without restrictions on price or inspection firm unless otherwise required by regulation. Keep in mind that ineligible procurement practices are subject to sanctions including repayment to DCA of disallowed costs.**

For questions concerning this Memorandum, please contact Steed Robinson at (404) 679-2168.

Thank you.

BW/sr

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?

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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?

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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?
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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.

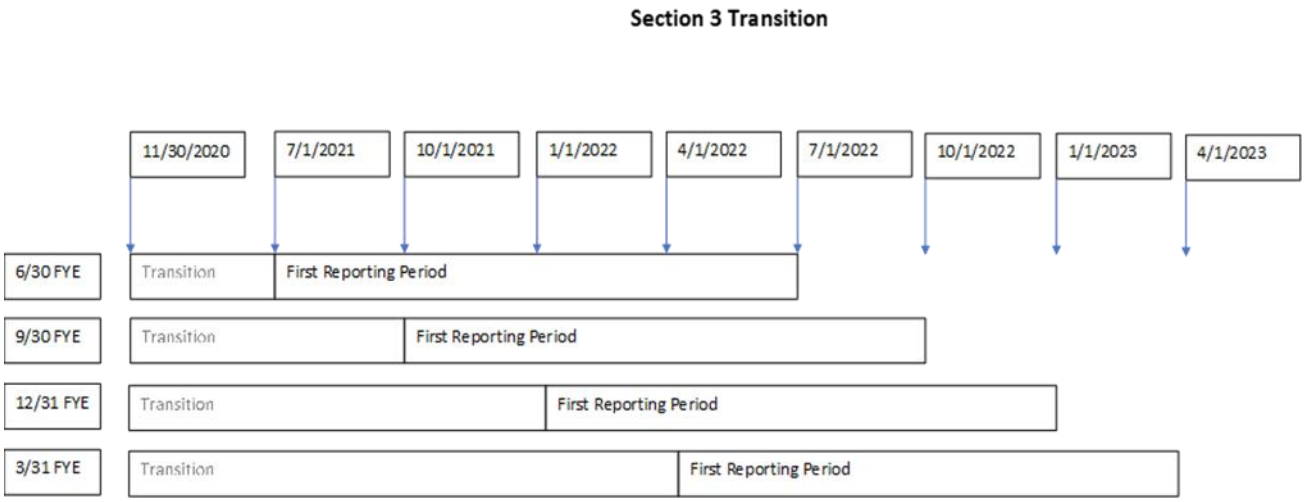
During the transition period between November 30, 2020 and July 1, 2021, recipients are expected to plan and revise processes, systems, and documents to comply with the new rule's requirements. During this time, funding recipients are still required to comply with Section 3's statutory requirements by 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/.

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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.

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." 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. [Link to checklist] If not, tribal consultation is not required. Keep a copy of the checklist in the Environmental Review Record (ERR). If needed, you may seek technical assistance from the HUD Field Environmental Officer (FEO). If consultation is required, follow the steps below.

Through written agreement with a tribe, an RE may modify the process outlined below. [See 36 CFR 800.2(c)(2)(ii)(E)] An RE may also choose to incorporate into their consultation effort any relevant provisions in existing agreements between SHPOs and tribes and in other SHPO and THPO written guidance regarding tribal consultation.

C. Consult With Tribes

If a project includes the types of activities that may affect historic properties of religious and cultural significance, the RE must consult with the relevant tribe(s) to identify any such properties in the project's Area of Potential Effect (APE). If they are present, consultation continues with evaluation of the eligibility of the properties for the National Register of Historic Places and assessment of the possible effects of the project on Register-eligible properties. The goal is to avoid adverse effects if possible.

Steps 1-4 below correspond to the steps commonly used to describe the Section 106 process in other guidance: Initiate Consultation (Step 1); Identify and Evaluate Historic Properties (Step 2); Assess Effects (Step 3); and Resolve Adverse Effects (Step 4). For the sake of efficiency, Steps

2, 3 and 4 may be treated together in consultation discussions and comments. [See 36 CFR 800.3(g) Expediting consultation]

Step1. Identify federally-recognized tribes with an interest in the project area and initiate consultation

The RE can use the Tribal Directory Assessment Tool (TDAT) to identify tribes with a current or ancestral interest in the county where the project is located. TDAT is a web-based directory of federally-recognized tribes and their geographic areas of interest. Tribes may have an interest in counties far from their current location, counties where the tribe lived centuries or millennia ago.

a. Tribal Directory Assessment Tool (TDAT)
Type the project address into the locator box in TDAT and it will return a list of tribes with interest in the area, with contact names, addresses, e-mail addresses, fax numbers and phone numbers. You can export the list as an Excel spreadsheet for mail merge in g. below. If TDAT shows no federally-recognized tribes with an interest in the area, document the result in the ERR; consultation is complete unless a previously unidentified, federally-recognized tribe expresses a desire to consult.

b. Tribe as Grant Recipient
If a tribe is a grant recipient in a HUD project and assumes the role of RE and conducts the Section 106 review, that tribe is responsible for inviting other tribes to consult if other tribes also have a religious or cultural interest in the project area.

c. Non-federally Recognized Tribes
Although REs are only required to consult with federally-recognized tribes, the RE may invite non-federally recognized tribes with a demonstrated interest in the project to consult as additional consulting parties. They may also participate as members of the public. [See pages 9-11 of *Consultation with Indian Tribes in the Section 106 Review Process: A Handbook*]

d. Contact federally-recognized tribe(s) and invite consultation
Once the RE has identified tribes with a potential interest in the project area, the RE mails a letter to each tribe to invite consultation. The letter(s), on RE letterhead, may be transmitted by email. Keep a copy of the letter(s) in the Environmental Review Record (ERR) for monitoring purposes.

e. Historic Properties of Religious and Cultural Significance
The letter that invites consultation should contain a request for assistance in identifying historic properties of religious and cultural significance in the project area - archeological sites, burial grounds, sacred landscapes or features, ceremonial areas, traditional cultural places, traditional cultural landscapes, plant and animal communities, and buildings and structures with significant tribal association - and any initial concerns with impacts of the project on those resources.

f. Tribal Historic Preservation Officer (THPO)

Some tribes have both a tribal leader and a Tribal Historic Preservation Officer (THPO) listed in TDAT. Send letters to both and ask that the tribe's response indicate a single point of contact if possible. On tribal lands, a THPO may have assumed authority for Section 106 review in lieu of the State Historic Preservation Officer (SHPO). On non-tribal lands, the THPO may have been delegated by the tribe to represent them in Section 106 reviews, but their participation does not take the place of consultation with the SHPO. [See page 6 of *Consultation with Indian Tribes in the Section 106 Review Process: A Handbook*]

g. Template Letter

Send a letter to the tribe(s) using TDAT contact info mail merged with the template letter. The RE may customize the template letter if desired. [Link to template letter]

You must add a description of the project into the letter by editing the template. The description should include, as applicable: the location and size of the property; type of project; type and scale of new building(s) or structures; construction materials; number of housing units; depth and area of ground disturbance; introduction of visual, audible or atmospheric changes; or transfer, lease or sale of property. [Link to sample project descriptions]

The RE -- not a contractor, lender, sponsor, sub-recipient or other grantee -- must sign the letter to the tribe(s). The RE is required to conduct government-to-government consultation.

h. Map

Enclose a map showing the location of the project and the Area of Potential Effect (APE), which may be larger than the project property. For urban sites, a map generated from a site like Google Earth is preferred. [Link to Google Earth] For rural sites, a USGS topographic map is preferred. [Link to topo map site]

i. Timeframes

HUD's policy is to request a response to the invitation to consult within 30 days from the date the tribe receives the letter. For gauging the beginning and end of the 30 day period, an RE may assume that an emailed letter is received on the date it is sent. For a hard copy letter, an RE may send the letter certified mail, or, if mail delivery is predictable and reliable, the RE may assume a 5-day delivery period, and assume that the period ends 35 days after the letter is mailed.

If a tribe wishes to be a consulting party, the tribe must provide within 30 days an indication of their desire to consult. The tribe does not need to actually provide information about historic properties of religious and cultural significance within 30 days; that may take longer. If a tribe responds that they do not want to consult, document the response in the ERR. If a tribe does not respond to the invitation to consult within 30 days, the RE should document the invitation and lack of response in the ERR; further consultation is not required.

j. Tiered Review

If a project is utilizing a Tiered review, consultation should usually begin in the Tier 1 broad level review. If a tribe expresses interest in further consultation on specific sites, the Tier 1 review should include a written strategy for continuing consultation on site specific reviews in Tier 2. [See 24 CFR 58.15]

Step 2. Consult with the tribe(s) to identify and evaluate historic properties of religious and cultural significance

Theoretically, the consultation process first identifies potential historic properties, then evaluates which ones are eligible for the National Register of Historic Places, and then assesses the impact(s) of the project on those resources. In practice, those efforts often occur simultaneously. It is important to remember though, that only historic properties of religious and cultural significance that are eligible for or listed on the National Register are protected under Section 106. If no such properties are present, refer to the "No Historic Properties Affected" finding in Step 3 below.

a. Consultation Meeting(s)

After receiving a response that a tribe wants to consult, contact the tribe(s) to arrange further consultation which may take place by phone, web meeting, or face-to-face meeting. Try to accommodate a tribe's preferences as to meeting location and method of communication. If needed, a site visit is an eligible project expense. If more than one tribe wants to consult, consult jointly if possible. Integrate tribal consultation with consultation with other non-tribal parties, including the SHPO, as possible and appropriate. Recognize that some tribes may not want to consult jointly, particularly where there are concerns for confidentiality of information.

b. Evaluation of Historic Properties for the National Register of Historic Places

Gather information on known historic properties from the tribe, SHPO, consultants, and other repositories. Discuss with the tribe whether known properties appear eligible for the National Register of Historic Places. HUD acknowledges that tribes possess special expertise in evaluating the eligibility of religious and cultural properties for the National Register. Generally, if the RE disagrees with a tribe's opinion, the RE or the tribe may ask the Advisory Council on Historic Preservation to enter the consultation. The tribe may also ask the Council to request the RE to obtain a formal determination of eligibility from the Keeper of the National Register.

c. Surveys to Identify Additional Historic Properties

If a convincing case is made by the tribe(s) and/or SHPO that National Register eligible historic properties potentially exist on the site, and that they may be affected by the project, the grantee may approve funding for an archeological survey as part of the project. Consult HUD's HP Fact Sheet #6, Guidance on Archeological Investigations in HUD Projects. [Link to HP Fact Sheet #6]

Sometimes, consultation results in modification of project plans to avoid potential effects on historic properties of religious and cultural significance. If effects are avoided, e.g. by designating a sensitive area as undisturbed green space, it is generally not necessary to fully identify and document resources with an archeological survey.

An RE is not required to pay for consultation. However, an RE may choose to negotiate payment to a tribe for detailed survey documentation on historic properties of religious and cultural significance to the tribe, similar to payment to a consultant. If agreed upon ahead of time, this payment may be an eligible project expense.

d. Confidentiality of Information

Tribes may be hesitant to share information on the location, character, and use of historic properties of special religious and cultural significance. Discuss with the tribe(s) ways to protect confidentiality of such information. The RE should strive to ensure confidentiality when requested. 36 CFR 800.11(c) outlines a formal process for obtaining federal authority to withhold sensitive information, in the event that practical means or state authority are not available.

Step 3. Consult with the tribe(s) to evaluate the effects of the project on identified and potential historic resources

After discussing the possible effects of the project on historic properties of religious and cultural significance to tribes, the RE determines the appropriate finding: "No Historic Properties Affected"; 'No Adverse Effect"; or "Adverse Effect". The RE will also be consulting with other parties, like the SHPO, to determine effects of the project on these and other types of resources, like historic buildings with no tribal association. It is desirable to consolidate findings of effect for all types of historic properties in one letter. Ultimately, a project has one overall finding of effect. Tribes have 30 days to object to a finding of effect.

a. Criteria of Adverse Effect

Consult with the tribe(s) and other consulting parties to apply the Criteria of Adverse Effect, and determine if the project may have an adverse effect.

b. "No Historic Properties Affected" Finding

If there are no known or potential historic properties in the project area that are listed on or eligible for the National Register of Historic Places, or if such properties exist but there will be no effect on them, notify the tribe(s) and other consulting parties of your determination of "No Historic Properties Affected." Describe which of the above circumstances applies. It is not necessary to fully identify and document resources if they will not be affected by the project.

c. "No Adverse Effect" Finding

If the project will have an effect, but it will not be adverse, notify the tribe(s) and other consulting parties of your determination of "No Adverse Effect." They have 30 days to object. If a tribe objects, the RE should consult to resolve the objection. The tribe or the RE may also ask the Advisory Council on Historic

Preservation to review the determination. The request must be made within the 30-day period and must include the documentation listed in 36 CFR 800.11 (e).

d. "Adverse Effect" Finding
If the project will affect National Register listed or eligible historic properties in any of the ways outlined in the Criteria of Adverse Effect, notify the tribe(s) and other consulting parties of your determination of "Adverse Effect" and consult to resolve the adverse effects. Typical activities that could adversely affect historic properties of religious and cultural significance include: ground disturbance (digging), new construction in undeveloped natural areas, introduction of incongruent visual, audible, or atmospheric changes, work on a building or structure with significant tribal association, or transfer, lease or sale of historic properties of religious and cultural significance.

Step 4. Consult to resolve adverse effects

If there are possible "Adverse Effects", consult with the tribe(s) and other consulting parties to consider alternatives that would avoid or minimize adverse effects, including possible mitigation measures.

a. Notification of Advisory Council
The RE must notify the Advisory Council on Historic Preservation (ACHP) about the adverse effect and give them an opportunity to enter the consultation. The Council will decide whether to enter the consultation based on established criteria that include whether a project "Presents issues of concern to Indian tribes or Native Hawaiian organizations." The Advisory Council must respond within 15 days of receipt of the request. [See link to on-line ACHP notification system – pending]

b. Consideration of Alternatives
Consult with the tribe(s) and other consulting parties about possible ways to modify a project to avoid adverse effects. If initial discussion does not resolve the issue(s), a site visit with consulting parties and project developers is often helpful. An agreed upon alternative may be stipulated with "conditions" in a revised "No Adverse Effect" finding for the project.

c. Consideration of Mitigation Measures
If adverse effects cannot be fully resolved, and there is a compelling need for the project to proceed despite the adverse effect(s), consider ways to mitigate or compensate for the harm to the historic property(ies). Mitigation measures may include data recovery, documentation, research, publication, education, interpretation, curation, off-site preservation, and/or monitoring and may relate to the specific resource that is being affected, or other historic properties in a similar location or of a similar type.

d. If needed, prepare and execute a Memorandum of Agreement (MOA) An MOA stipulates the agreed upon measures to minimize and/or mitigate adverse effects. It is a legally binding document that obligates all named parties

to the agreement. The RE is responsible for ensuring that the measures required by the MOA are satisfactorily carried out. Model language is available. At the discretion of the RE, where deemed necessary, an MOA may also be used to codify agreed upon measures to avoid an adverse effect, in conjunction with a conditional "No Adverse Effect" finding.

e. Execution of the MOA

The MOA must be executed prior to the decision point for the project -- as applicable, prior to the dissemination or publication of public notices required by 24 CFR Part 58 (e.g., notice of finding of no significant impact (§58.43), and notice of intent to request the release of funds (§58.70)). The RE should send a digital copy of the MOA to the HUD Field Environmental Officer (FEO) who will file it in the MOA file in the central HUD shared drive. A copy must also be provided to the Advisory Council on Historic Preservation and the consulting tribe(s).

f. Signatories to the MOA

The Responsible Entity may invite the tribe(s) to sign the MOA as a consulting party. The tribal leader and the THPO may sign the MOA. For projects on tribal lands, if the tribe has a THPO who has assumed Section 106 responsibilities for the tribe, the THPO must be a signatory.

HUD does not sign Section 106 agreement documents covered by 24 CFR Part 58. HUD does sign agreements covered by 24 CFR Part 50. If a project is subject to both, HUD may sign as long as the agreement states the appropriate program reference. [See CPD Memo on HUD Environmental Regulations and Section 106 Agreement Documents]

g. Completion of MOA requirements

The RE must ensure that the stipulations and mitigation measures in the MOA are carried out and inform the tribe(s) of completion. Document completion in the Environmental Review Record (ERR).

h. Termination of Consultation

If consulting about properties on tribal lands, a THPO may determine that further consultation will not be productive and terminate consultation. Likewise, an RE, SHPO, or, if participating, the Advisory Council on Historic Preservation, may terminate consultation. Termination of consultation is detailed at 36 CFR 800.7. A tribe that is consulting about properties off tribal lands may decline an invitation to sign an MOA, but does not have a right to terminate consultation under 36 CFR 800.7.

IV. Record of Compliance

Include evidence of compliance with this protocol in the Environmental Review Record (ERR), including notes, letters, e-mails, reports, etc.

Failure to consult with tribes per this protocol may lead to HUD issuing a finding of non-compliance with 36 CFR Part 800, the regulations that implement Section 106. If HUD makes a finding, HUD may initiate sanctions, corrective actions, or other remedies specified in program regulations or agreements or contracts with the RE which may include terminating grants where appropriate and repayment of funds expended with non-federal funds. (See 24 CFR 58.77)

A. Request for Release of Funds (RROF) (Form 7015.15)

REs and grantees must certify on the Request for Release of Funds and Certification (form HUD 7015.15) that they have consulted with federally-recognized tribes per this protocol. [See Part 2, #3 of form]

V. Discoveries During Construction

Whenever previously unknown below ground historic properties of religious and cultural significance are discovered during construction, excavation in the area of the resources must immediately stop until tribal consultation can occur. The RE must notify tribes (including the THPOs), the Advisory Council on Historic Preservation, and the SHPO within 48 hours of the discovery. [See 36 CFR 800.13(b)] Contact the tribes identified in Step 1 and reenter consultation which should take place under an accelerated timeframe. A site visit with the RE, tribe(s), and SHPO (as appropriate) is recommended to resolve any potential adverse effect(s) to the historic property(ies) of religious and cultural significance.

A. Human Remains

If the discovery includes human remains, they should be respectfully covered over and secured, and the RE should contact law enforcement authorities as well as tribes and other consulting parties. If the human remains are determined to be Indian burials, the RE should follow the guidance in the "**Advisory Council on Historic Preservation Policy Statement Regarding Treatment of Burial Sites, Human Remains and Funerary Objects.**"

B. Native American Graves Protection and Repatriation Act (NAGPRA)

In undertakings on federal or tribal lands, the Native American Graves Protection and Repatriation Act (NAGPRA) *(25 U.S.C. 3001 et seq)* requires that cultural items excavated or inadvertently discovered be returned to their respective peoples. Cultural items include human remains, funerary objects, sacred objects, and objects of cultural patrimony. More information is available.

VI. Statutory and Regulatory Requirements

Federal law directs federal agencies to consult with tribes when there is a potential for a federally-funded project to affect a historic property of religious and cultural significance to tribes.

Section 106 of the National Historic Preservation Act *(16 U.S.C. 470f)* requires that prior to approving the expenditure of funds for a project, a federal agency must take into account the effect of the undertaking on historic resources.

Section 101 (d)(6)(A) and (B) of the National Historic Preservation Act identifies the types of properties to be considered and the obligation to consult. The Act provides that properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion in the National Register of Historic Places. In carrying out its responsibilities under Section 106 of the Act, a Federal agency is required to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to such properties. In projects that are reviewed under 24 CFR Part 58, the Responsible Entity (RE) assumes the role of the Federal agency, including tribal consultation. [See 24 CFR 58.4]

The regulations that implement Section 106 of the Act, 36 CFR Part 800 – "Protection of Historic Properties," define "Indian tribe" as federally-recognized tribes, and limit the need to consult to projects that have the potential to affect historic properties of religious and cultural significance to tribes.

36 CFR 800.2 (c)(2)(ii)
Consultation on historic properties of significance to Indian tribes and Native Hawaiian organizations.
Section 101(d)(6)(B) of the act requires the agency official to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking…

36 CFR 800.3
(a) *Establish undertaking*. The agency official shall determine whether the proposed Federal action is an undertaking as defined in § 800.16(y) and, if so, whether it is a type of activity that has the potential to cause effects on historic properties.
(1) *No potential to cause effects*. If the undertaking is a type of activity that does not have the potential to cause effects on historic properties, assuming such historic properties were present, the agency official has no further obligations under section 106 or this part.

Therefore, the consultation process outlined in this Notice starts by first establishing whether the project includes a type of activity that has the potential to affect historic properties of religious and cultural significance to tribes. If it does, it outlines the steps to consult with tribes to identify and evaluate resources, and to assess the effects of the project on the resources.

VII. Definitions

Definitions of some of the terms used in this Notice may be found in 24 CFR Part 58 and 36 CFR Part 800, "Protection of Historic Properties", and are repeated here for convenience.

The definition of ***Responsible Entity*** is found in 24 CFR 58.2(a)(7).

Responsible Entity. Responsible Entity means:

(i) With respect to environmental responsibilities under programs listed in §58.1(b)(1), (2), (3)(i), (4), and (5), a recipient under the program.

(ii) With respect to environmental responsibilities under the programs listed in §58.1(b)(3)(ii) and (6) through (12), a state, unit of general local government, Indian tribe or Alaska Native Village, or the Department of Hawaiian Home Lands, when it is the recipient under the program. Under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) listed in §58.1(b)(10)(i), the Indian tribe is the responsible entity whether or not a Tribally Designated Housing Entity is authorized to receive grant amounts on behalf of the tribe. The Indian tribe is also the responsible entity under the Section 184 Indian Housing Loan Guarantee program listed in §58.1(b)(11). Regional Corporations in Alaska are considered Indian tribes in this part. Non-recipient responsible entities are designated as follows:

(A) For qualified housing finance agencies, the State or a unit of general local government, Indian tribe or Alaska native village whose jurisdiction contains the project site;

(B) For public housing agencies, the unit of general local government within which the project is located that exercises land use responsibility, or if HUD determines this infeasible, the county, or if HUD determines this infeasible, the State;

(C) For non-profit organizations and other entities, the unit of general local government, Indian tribe or Alaska native village within which the project is located that exercises land use responsibility, or if HUD determines this infeasible, the county, or if HUD determines this infeasible, the State;

Definitions of some other parties in the Section 106 process are found in 36 CFR 800.16.

Council means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.

Indian tribe means an Indian tribe, band, nation, or other organized group or community, including a native village, regional corporation, or village corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Native Hawaiian organization means any organization which serves and represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of historic preservation that are significant to Native Hawaiians.

Native Hawaiian means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

State Historic Preservation Officer (SHPO) means the official appointed or designated pursuant to section 101(b)(1) of the act to administer the State historic preservation program or a representative designated to act for the State historic preservation officer.

Tribal Historic Preservation Officer (THPO) means the tribal official appointed by the tribe's chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for purposes of section 106 compliance on tribal lands in accordance with section 101(d)(2) of the act.

Other relevant definitions found in 36 CFR 800.16 include:

Area of potential effects means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

Consultation means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process. The Secretary's "Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act" provide further guidance on consultation.

Effect means alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register.

Eligible for inclusion in the National Register includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.

Historic property means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.

Memorandum of agreement means the document that records the terms and conditions agreed upon to resolve the adverse effects of an undertaking upon historic properties.

National Register means the National Register of Historic Places maintained by the Secretary of the Interior.

Programmatic agreement means a document that records the terms and conditions agreed upon to resolve the potential adverse effects of a Federal agency program, complex undertaking or other situations in accordance with §800.14(b).

Tribal lands means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.

Undertaking means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval.

Acronyms Used in This Notice

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

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**

Georgia Department of Community Affairs
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 2 Part 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 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)(l) 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)(l) 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 <u>claiming a preference</u> 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
4. The management office of the local housing authority/homeless service agency/local low income housing community
5. Local Workforce Board (i.e., Department of Labor)
6. Local office of the Georgia Division of Family and Children Services
7. Dodge Room http://www.construction.com/dodge/dodge.asp
8. Other locations as approved by DCA

B. The recipient, sub-recipient or contractor must check the HUD Section 3 Business Registry to determine if there are any Section 3 businesses in the County where the work will be performed. If there are Section 3 businesses in the County that may be able to perform the work, the recipient, sub-recipient or contractor must provide a copy of the contracting opportunity(ies) (e.g., bid notices) to the Section 3 businesses. See the HUD Section 3 Business Registry at: https://hudapps.hud.gov/OpportunityPortal/.

C. Clearly stating in notices that the position is a "Section 3 covered position under the HUD Act of 1968 and that Section 3 Residents and Business Concerns are encouraged to apply."

D. Placing the Section 3 Clause provided in Appendix A in ALL solicitations.

E. When possible, other activities may be done to demonstrate effort to comply with the Safe Harbor Limits. These other efforts are listed in the appendix to part 75 of the Code of Federal Regulations—24 CFR Part 75 and include:

Engaged in outreach efforts to generate job applicants who are Targeted Section 3 workers.

1) Provided training or apprenticeship opportunities.
2) Provided technical assistance to help Section 3 workers compete for jobs (e.g.,

resume assistance, coaching).

3) 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.
4) Held one or more job fairs.
5) Provided or referred Section 3 workers to services supporting work readiness and retention (e.g., work readiness activities, interview clothing, test fees, transportation, childcare).
6) Provided assistance to apply for/or attend community college, a four-year educational institution, or vocational/technical training.
7) Assisted Section 3 workers to obtain financial literacy training and/or coaching.
8) Engaged in outreach efforts to identify and secure bids from Section 3 business concerns.
9) Provided technical assistance to help Section 3 business concerns understand and bid on contracts.
10) Divided contracts into smaller jobs to facilitate participation by Section 3 business concerns.
11) Provided bonding assistance, guaranties, or other efforts to support viable bids from Section 3 business concerns.
12) Promoted use of business registries designed to create opportunities for disadvantaged and small businesses.
13) Outreach, engagement, or referrals with the state one-stop system as defined in Section 121(e)(2) of the Workforce Innovation and Opportunity Act

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. <u>Contractors must:</u>

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.

<u>Example:</u>

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 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 75)

(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 (meets criteria within the past 6 months):**

1. 51% or more owned and controlled by low or very-low income persons
2. 75% or more of the labor hours are performed by Section 3 workers or YouthBuild Participants
3. 51% or more owned by current residents of Public 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 **projects** 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 workers: 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 six-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 knowledge 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.

Signature: Date:

.Print name:

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 I 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 six-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 require 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 workers and Business Concerns during the course of the contract funded by DCA via its recipients or sub-recipients and contractors. Please list the status of all planned employment positions and opportunities for this contract. **Preference for all opportunities must be given to low and very low-income residents if they qualify. If awarded a contract,** regardless of whether your firm has elected a preference, **you are required to provide a list of your aggregate workforce on this project. Any changes to that workforce during the project will constitute NEW hires. You must notify DCA, its recipient, sub-recipient or contractor (respectively) overseeing your contract of any new hire opportunities that arise during the life of your contract.** The *anticipated workforce list may be provided on a separate sheet or in a different format.*

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 workers.

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 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.

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

_____

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	☐ Stucco	☐ Siding
☐ Drywall Finishing	☐ Window/Door Replacement	☐ Door Replacement
☐ Interior Painting	☐ Construction Cleaning	☐ Trim /Carpentry
☐ HVAC	☐ Exterior Framing	☐ Roofing
☐ Electrical	☐ Landscaping	☐ Welding
☐ Interior Plumbing	☐ Fencing	☐ Metal/Steel Work
☐ Exterior Plumbing	☐ Concrete/ Asphalt Work	☐ Other
☐ Cabinet hanging		
☐ Heavy Equipment Operator		

I am certifying as a Section 3 worker: ☐ **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 requested) 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 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.

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.

HUD income limits may be obtained from: https://www.huduser.gov/portal/datasets/il.html .

Please indicate the Household income $_____

Resident Section 3 Self-Certification and Skills Data Form Affidavit

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 I am a resident 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 workers:				
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: 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: _____

schedule a substance in schedule I on a temporary basis. Such an order may not be issued before the expiration of 30 days from (1) the publication of a notice in the **Federal Register** of the intention to issue such order and the grounds upon which such order is to be issued, and (2) the date that notice of a proposed temporary scheduling order is transmitted to the Assistant Secretary of HHS. 21 U.S.C. 811(h)(1).

Inasmuch as section 201(h) of the CSA directs that temporary scheduling actions be issued by order and sets forth the procedures by which such orders are to be issued, the DEA believes that the notice and comment requirements of section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, do not apply to this temporary scheduling action. In the alternative, even assuming that this action might be subject to section 553 of the APA, the Deputy Administrator finds that there is good cause to forgo the notice and comment requirements of section 553, as any further delays in the process for issuance of temporary scheduling orders would be impracticable and contrary to the public interest in view of the manifest urgency to avoid an imminent hazard to the public safety.

Further, the DEA believes that this temporary scheduling action final order is not a "rule" as defined by 5 U.S.C. 601(2), and, accordingly, is not subject to the requirements of the Regulatory Flexibility Act (RFA). The requirements for the preparation of an initial regulatory flexibility analysis in 5 U.S.C. 603(a) are not applicable where, as here, the DEA is not required by section 553 of the APA or any other law to publish a general notice of proposed rulemaking. Additionally, this action is not a significant regulatory action as defined by Executive Order 12866 (Regulatory Planning and Review), section 3(f), and, accordingly, this action has not been reviewed by the Office of Management and Budget (OMB).

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132 (Federalism) it is determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Pursuant to section 808(2) of the Congressional Review Act (CRA), "any rule for which an agency for good cause finds...that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the Federal agency promulgating the rule determines." It is in the public interest to schedule these substances immediately because they pose a public health risk. This temporary scheduling action is taken pursuant to section 811(h), which is specifically designed to enable the DEA to act in an expeditious manner to avoid an imminent hazard to the public safety from new or designer drugs or abuse of those drugs. Section 811(h) exempts the temporary scheduling order from standard notice and comment rulemaking procedures to ensure that the process moves swiftly. For the same reasons that underlie section 811(h), that is, the DEA's need to move quickly to place these substances into schedule I because they pose a threat to public health, it would be contrary to the public interest to delay implementation of the temporary scheduling order. Therefore, in accordance with section 808(2) of the CRA, this order shall take effect immediately upon its publication.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

Under the authority vested in the Attorney General by section 201(h) of the CSA, 21 U.S.C. 811(h), and delegated to the Deputy Administrator of the DEA by Department of Justice regulations, 28 CFR 0.100, Appendix to Subpart R, the Deputy Administrator hereby intends to order that 21 CFR part 1308 be amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b), unless otherwise noted.

■ 2. Section 1308.11 is amended by adding paragraphs (h)(12), (13), and (14) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(h) * * *

(12) 2-(4-iodo-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine, its optical, positional, and geometric isomers, salts and salts of isomers—7538 (Other names: 25I–NBOMe; 2C–I–NBOMe; 25I; Cimbi-5)

(13) 2-(4-chloro-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine, its optical, positional, and geometric isomers, salts and salts of isomers—7537 (Other names: 25C–NBOMe; 2C–C–NBOMe; 25C; Cimbi-82)

(14) 2-(4-bromo-2,5-dimethoxyphenyl)-*N*-(2-methoxybenzyl)ethanamine, its optical, positional, and geometric isomers, salts and salts of isomers—7536

(Other names: 25B–NBOMe; 2C–B–NBOMe; 25B; Cimbi-36)

Dated: November 7, 2013.

Thomas M. Harrigan,

Deputy Administrator.

[FR Doc. 2013–27315 Filed 11–14–13; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 50, 55, and 58

[Docket No. FR–5423–F–02]

RIN 2501–AD51

Floodplain Management and Protection of Wetlands

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule revises HUD's regulations governing the protection of wetlands and floodplains. With respect to wetlands, the rule codifies existing procedures for Executive Order 11990 (E.O. 11990), Protection of Wetlands. HUD's policy has been to require the use of the 8-Step Process for floodplains for wetlands actions performed by HUD or actions performed with HUD financial assistance. This rule codifies this wetlands policy and improves consistency and increases transparency by placing the E.O. 11990 requirements in regulation. In certain instances, the new wetlands procedures will allow recipients of HUD assistance to use individual permits issued under section 404 of the Clean Water Act (Section 404 permits) in lieu of 5 steps of the E.O. 11990's 8-Step Process, streamlining the wetlands decisionmaking processes. With respect to floodplains, with some exceptions, the rule prohibits HUD funding (e.g., Community Development Block Grants, HOME Investment Partnerships Program, Choice Neighborhoods, and others) or Federal Housing Administration (FHA) mortgage insurance for construction in Coastal High Hazard Areas. In order to ensure maximum protection for communities and wise investment of Federal resources in the face of current and future risk, this final rule also requires the use of preliminary flood maps and advisory base flood elevations where the Federal Emergency

Management Agency (FEMA) has determined that existing Flood Insurance Rate Maps (FIRMs) may not be the "best available information" for floodplain management purposes. This change in map usage requirements brings HUD's regulations into alignment with the requirement in Executive Order 11988 that agencies are to use the "best available information" and will provide greater consistency with floodplain management activities across HUD and FEMA programs. The rule also streamlines floodplain and wetland environmental procedures to avoid unnecessary processing delays. The procedures set forth in this rule would apply to HUD and to state, tribal, and local governments when they are responsible for environmental reviews under HUD programs.

DATES: Effective December 16, 2013.

FOR FURTHER INFORMATION CONTACT: Danielle Schopp, Director, Office of Environment and Energy, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., Room 7250, Washington, DC 20410–8000. For inquiry by phone or email, contact Jerimiah Sanders, Environmental Review Division, Office of Environment and Energy, Office of Community Planning and Development, at 202–402–4571 (this is not a toll-free number) or at *Jerimiah.J.Sanders@hud.gov*. Persons with hearing or speech impairments may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

A. The December 12, 2011, Proposed Rule

Federal departments and agencies (agencies) are charged by E.O. 11990, entitled Protection of Wetlands, dated May 24, 1977 (42 FR 26961) and Executive Order 11988 (E.O. 11988), entitled "Floodplain Management," dated May 24, 1977 (42 FR 26951), with incorporating floodplain management goals and wetland protection considerations in their respective planning, regulatory, and decisionmaking processes. A floodplain refers to the lowland and relatively flat areas adjoining inland and coastal waters including flood-prone areas of offshore islands that, at a minimum, are subject to a one percent or greater chance of flooding in any given year (often referred to as the "100-year" flood). Wetlands refers to those areas that are inundated by surface or ground water with a frequency sufficient to support, and under normal circumstances does or would support, a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas, such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds.

On December 12, 2011, HUD proposed revising its regulations governing floodplain management (76 FR 77162, as corrected by 76 FR 79145) to codify the procedures applicable to wetlands authorized by E.O. 11990. The procedures authorized by E.O. 11990, which focus on protection of wetlands, require the completion of an 8-step process referred to as the "8-Step Process" of evaluation, public notice, environmental review, and evaluation of alternatives. This review and evaluation process is similar to the process required for protection of floodplains under E.O. 11988, Floodplain Management, which is already codified in HUD regulations, (See 24 CFR 55.20).

The 8-Step Process is administered by HUD, state governments, units of general local government, or tribal governments. Step 1 requires a determination regarding whether or not the proposed project to be developed with HUD financial assistance will be in a wetland. If the project is in a wetland, Step 2 requires that public notice be issued to inform interested parties that a proposal to consider an action in a wetland has been made. Following this notice, Step 3 requires the identification and evaluation of practicable alternatives to avoid locating the project in a wetland. Step 4 requires the identification and evaluation of the potential direct and indirect impacts associated with the occupancy or modification of wetlands. Step 4 also requires the identification of the potential direct support of wetlands development, such as housing or public-service structures that require additional investment such as food service or parking, and indirect support of wetlands development that can be caused by infrastructure, such as water and waste water systems for the development that could induce further development due to proximity to the wetland. Step 5 requires an analysis of practicable modifications and changes to the proposal to minimize adverse impacts to the wetlands and to the project as a result of its proposed location in wetlands. Under Step 6, the practicable alternatives developed under Step 3 are evaluated. If there is no practicable alternative to the proposed wetland development, Step 7 requires a second notice to be issued to the public stating that the decision has been made and providing details associated with the decision. After this second notice, Step 8 implements the action, including any mitigating measures established during the decisionmaking process. The December 12, 2011, rule also proposed requiring appropriate compensatory mitigation for adverse impacts to more than one acre of wetlands.

The December 12, 2011, rule also proposed streamlining the wetlands decisionmaking process by allowing HUD and HUD's recipients of assistance to use permits issued under section 404 of the Clean Water Act (33 U.S.C. 1344) (Section 404) in lieu of performing the first 5 steps of the 8-Step Process. Section 404 of the Clean Water Act establishes a program to regulate the discharge of dredged or fill material into waters of the United States, including wetlands. Activities in waters of the United States regulated under this program include fill for development, water resource projects (such as dams and levees), infrastructure development (such as highways and airports) and mining projects. Section 404 requires a permit before dredged or fill material may be discharged into waters of the United States, unless the activity is exempt from Section 404 regulation (e.g., certain farming and forestry activities). In order to obtain a permit, an applicant must show that it has: (1) Taken steps to avoid wetland impacts, (2) minimized potential impacts on wetlands, and (3) provided compensation for any remaining unavoidable impacts.

The use of Section 404 permits was proposed to reduce costs and the processing time for complying with parts of the 8-Step Process. The proposed rule provided that if the applicant had obtained an individual Section 404 permit and submitted the permit with its application for a HUD program, then HUD or a responsible entity assuming HUD's authority need complete only the last 3 steps of the 8-Step Process. The rule also proposed to streamline project approvals by expanding the use of the current "5-Step Process" for repairs, rehabilitations, and improvements to facilitate rehabilitation of certain residential and nonresidential properties.

Several other changes were proposed by the December 12, 2011, rule including a proposal to require the use of FEMA's preliminary flood maps and advisory base flood elevations in post-disaster situations where the FEMA has determined that the official FIRMs may not be the most up-to-date information. In addition, the proposed rule suggested exempting certain activities, such as

leasing some already insured structures, allowing entities to adopt previous reviews performed by a responsible entity or HUD, and modifying a categorical exclusion from review under the National Environmental Policy Act of 1969 (NEPA). Further, the rule proposed prohibiting HUD funding or FHA mortgage insurance for the construction of new structures in Coastal High Hazard Areas. The rule also proposed to encourage nonstructural floodplain management, when possible, to encourage resiliency. When HUD or a recipient analyzes alternatives, the nonstructural alternative should be chosen if all other factors are considered to be equal. For a full discussion of the proposed rule, please see the December 12, 2011 **Federal Register** (76 FR 77162).

B. Solicitation of Specific Comment on Requiring That Critical Actions Be Undertaken at the 500-Year Base Flood Elevation

HUD's proposed rule also solicited specific comment regarding a potential change to § 55.20(e), Step 5 of the "Decisionmaking process" to require that all new construction of "critical actions" in the 100- or 500-year floodplain be elevated to the 500-year base flood elevation. While HUD received comments on this issue, which will be discussed later in this preamble, HUD has decided not to make any changes to address this issue at this time. HUD will continue to research the impact of allowing critical actions below the 500-year base flood elevation.

C. This Final Rule

This final rule follows publication of the December 12, 2011, proposed rule. HUD received four public comments, which are detailed in the section of this preamble labeled "Discussion of Public Comments received on the December 12, 2011 Proposed Rule," and is making several changes in response to public comment. In addition, HUD is making selected changes in the final rule to provide greater consistency between the regulatory text, the intent expressed in the proposed rule preamble language, paragraph 2(b) of E.O. 11990, and other codified HUD regulations. HUD is also revising § 55.20(a) to make it more consistent with the preamble of the proposed rule and the requirements of E.O. 11990. Section 55.28 is also revised to make it more consistent with the preamble of the proposed rule and section 404 of the Clean Water Act.

A summary of key changes in the final rule from the proposed rule follow.

Changes made in response to public comments.

- Clarification of § 55.1(c)(3), which describes the exceptions to the prohibition on HUD financial assistance for noncritical actions in high hazard areas, to allow "infrastructure" improvements and reconstruction following destruction caused by a disaster in Coastal High Hazard Areas. This change is intended to reduce confusion. It also narrows the proposed prohibition and makes HUD's policies for grantees more consistent with FEMA policies. Section 55.11(c) is also revised to make the table in this section consistent with § 55.1(c)(3).
- Revision of the definition of Coastal High Hazard Areas in § 55.2(b)(1) to allow FEMA flood insurance studies to be used in addition to flood insurance maps in making the determinations of the boundaries of the Coastal High Hazard Areas, 100- and 500-year floodplains, and floodways. HUD is also clarifying that when available, the latest interim FEMA information, such as advisory base flood elevations or preliminary maps or studies, shall be used as the source of these designations.
- Modification of the definition of wetlands in § 55.2(b)(11) to cover manmade wetlands in order to ensure that wetlands built for mitigation would be preserved as natural wetlands would be preserved.
- Revision of the scope of assistance eligible for the 5-Step Process in § 55.12(a)(3) by providing that certain types of projects not be categorized as substantial improvements as defined by § 55.2(b)(10). Projects that are "substantial improvements" remain subject to the 8-Step Process, while projects that fall below that rehabilitation threshold are eligible for the 5-Step Process for the residential and nonresidential rehabilitations at § 55.12(a)(3) and (4). This will allow less costly housing units and those housing units damaged by events to receive expedited processing, while more costly and more severely damaged units will continue to be subject to the full 8-Step Process.

Changes made to more closely align the regulatory text with the statutory language and the Executive Order.

- Revision of § 55.12(c) to remove the exclusion from part 55 for HUD's implementation of the full disclosure and other registration requirements of the Interstate Land Sales Disclosure Act (15 U.S.C. 1701–1720) (ILSDA). Section 1061(b)(7) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 5581(b)(7), transferred all of HUD's consumer protection functions under ILSDA to the Bureau of Consumer Financial Protection.
- Clarification of § 55.20(a), which describes Step 1 in the decisionmaking process. The change removes redundant language and clarifies that actions that result in new construction in a wetland are covered actions. The revised regulatory text is more consistent with E.O. 11990 and current policy to protect wetlands impacted by off-site actions. For example, it would now cover such situations as damming a stream, which could result in diking or impounding of wetlands offsite. This change will allow wetlands to be considered consistent with the hydrology of the land as opposed to the property boundaries that often do not reflect hydrological conditions. An estimated 275 8-Step Processes for wetlands and floodplains will be performed on HUD-assisted projects each year.
- Clarification of § 55.28(a)(2) to permit recipients of HUD assistance to use permits issued by state and tribal governments under section 404(h) of the Clean Water Act in lieu of 5 steps of the Executive Order's 8-Step Process. State agencies and tribes were specifically mentioned in the proposed rule preamble, and the terms are now included in the regulatory text to provide effective notice to affected parties that these entities are covered. Michigan and New Jersey currently exercise the authority under section 404(h) of the Clean Water Act to issue Section 404 permits.

II. Discussion of Public Comments Received on the December 12, 2011, Proposed Rule

By the close of the public comment period on February 10, 2012, HUD received four public comments on the proposed rule. Comments were submitted by two individuals; a national, nonprofit organization representing state floodplain managers; and the Floodplain Management Branch of FEMA. The comments generally expressed support for the proposed rule, but several raised questions about the rule or offered suggestions for additional amendments. After careful consideration of the issues raised by the commenters, HUD has decided to adopt the regulatory amendments as proposed, with some minor changes as already discussed.

The following section of this preamble summarizes the significant issues raised by the commenters on the December 12, 2011, proposed rule and HUD's responses to these comments. To ease review of the comments, the comments and responses are presented in the sequence of the sections presented for proposed amendment in the proposed rule.

Comment: Prohibit HUD funding or FHA multifamily mortgage insurance for construction of new structures in Coastal High Hazard Areas. One commenter supported the prohibition on construction in Coastal High Hazard Areas (V Zones, one of the FEMA-defined Special Flood Hazard Areas in the 100-year Floodplain) that was contained in the proposed rule. The commenter stated that HUD may, under existing regulations, fund construction activities in the Coastal High Hazard Area as long as the structures meet FEMA regulations establishing acceptable construction standards. The commenter referenced HUD's current policy in relationship to current FEMA regulations in 44 CFR 60.3(e), "Floodplain management criteria for flood-prone areas" and stated that these minimal construction standards would still result in significant residual risk and an increased flood risk, particularly given the current sea level rise projections. Accordingly, the commenter supported HUD's proposal to completely eliminate HUD funding for construction in these areas.

Another commenter addressing this issue stated that the regulatory text of proposed § 55.1(c)(3), which lists some regulatory exceptions to the general prohibition on HUD assistance, was not clear as to the meaning of "an improvement of an existing structure" and "reconstruction." The commenter also stated that it was unclear as to whether some definitions would be retained. In addition, the commenter suggested minimization for V Zones and floodways, which are defined in § 55.2(b)(4).

HUD Response. HUD appreciates these comments. In response, HUD has decided to clarify § 55.1(c)(3), which would prohibit the use of HUD financial assistance with respect to most noncritical actions in Coastal High Hazard Areas, by removing reference to improvements to existing "structures" and "structures" destroyed by disasters. HUD is making this clarification since HUD's proposed rule prohibited new construction of structures, a term that is defined by FEMA regulations at 44 CFR 9.4 to mean walled or roofed buildings, including mobile homes and gas or liquid storage tanks. HUD believes that referencing the term "structures" could be misinterpreted as limiting improvements of projects that are not structures under the FEMA regulations, such as roads and utility lines. Such an interpretation does not accurately describe current HUD regulations and policies or accurately portray the intent of the proposed rule changes. Namely, HUD has been interpreting currently codified § 55.1(c)(3) to allow infrastructure reconstruction in V Zones. HUD has changed the language to "existing construction (including improvements)" to better describe the eligible activities and in order to make the provision more consistent with § 55.1(c)(3)(ii), which uses the term "existing construction." Under the same rationale, HUD has changed the § 55.1(c)(3) language from "reconstruction of a structure destroyed by a disaster" to "reconstruction following destruction caused by a disaster." HUD made the change to follow the intent of the proposed rule, which was not to limit reconstruction to structures alone. Additionally, these changes are consistent with the intent of the preamble to the December 12, 2011, proposed rule, which expresses HUD's goal of aligning HUD's development standards with those of FEMA grant programs.

Section 55.11(c) is also revised to make a corresponding change to a table in this section describing the type of proposed actions allowed in various locations.

Comment: The "Coastal High Hazard Area" definition is confusing and seems to address multiple topics. A commenter stated that too many references were made within the "Coastal High Hazard Area" definition at § 55.2(b)(1). The commenter also stated that the "Coastal High Hazard Area" definition is not consistent with that of the National Flood Insurance Program (NFIP). In addition, the commenter expressed concern as to whether other terms from the codified regulations not mentioned in the proposed rule would be retained.

HUD Response. HUD has decided to retain the current definition of "Coastal High Hazard Area" in order to maintain consistency with HUD's preexisting codified environmental regulations. This definition is also consistent with FEMA's "Coastal High Hazard Area" definition at 44 CFR 9.4, which is used for FEMA grant programs. Terms are retained as indicated in the proposed rule.

Comment: Require the use of preliminary flood maps, Flood Insurance Studies, and Advisory Base Flood Elevations where they may be deemed best available data. A commenter stated that HUD's requirement to use updated and preliminary data where existing official published data, such as FIRMs, is not the "best available information" is a useful course of action. The commenter also stated that past experience has shown that flood events frequently highlight the inadequacy of older flood maps and studies. A commenter also recommended the use of Flood Insurance Studies (FIS).

HUD Response. HUD agrees with this comment and will, in the interest of public safety, require the use of the latest interim FEMA information. HUD has also added a reference to FIS at § 55.2(b)(1). In addition, HUD clarifies that, when available, the latest interim FEMA information, such as an Advisory Base Flood Elevation or preliminary map or study, is the best available information for the designation of flood hazard areas or equivalents. If FEMA information is unavailable or insufficiently detailed, other Federal, state, or local data may be used as "best available information" in accordance with E.O.11988.

Comment: Mitigation banking should not be used in an urban area and this term should be restricted to areas of open space and significant environmental areas. Mitigation banking means the restoration, creation, enhancement, and, in exceptional circumstances, preservation of wetlands and/or other aquatic resources expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources. A commenter stated that mitigation banking could be a "check the box" analysis.

HUD Response. HUD declines to adopt the commenter's recommendation, although HUD agrees that mitigation banking, or compensatory mitigation as defined in the rule, is not appropriate for all sites. Due to the various different state and local mitigation programs around the United States, HUD supports the flexibility to allow state and local governments to determine what is best for projects. For this reason, the definition of compensatory mitigation at § 55.2(b)(2) will remain broad as presented in the proposed rule.

Comment: The proposed definition of wetlands does not include manmade wetlands. The commenter stated that the Environmental Protection Agency (EPA) and United States Army Corps of Engineers (USACE) programs often create wetlands, and these wetlands are not covered by the definition.

HUD Response. HUD has clarified the definition based on the commenter's recommendation. The definition in the proposed rule is the definition that is stated in E.O. 11990. HUD has added a sentence to the regulatory text of § 55.2(b)(11) to ensure that the definition covers manmade wetlands under compensatory programs. The definition of wetlands at § 55.2(b)(11)

now includes "constructed wetlands" in the final regulatory text.

Comment: The Department of Fish and Wildlife should be involved in wetlands protection. One commenter stated that consultation with, or permit approvals from, the "Department of Fish and Wildlife" should be involved with wetlands protection.

HUD Response. HUD has decided not to revise the proposed rule language. HUD encourages its employees and recipients of financial assistance from HUD to consult with the United States Fish and Wildlife Service (USFWS). If the HUD employee or responsible entity wants to challenge the USFWS National Wetlands Inventory (NWI) maps, they must consult with the USFWS, under § 55.2(b)(11)(ii-iv). In addition, all federal requirements (including Section 404 permits) and state and local laws apply to HUD assistance.

Comment: HUD should include all available sources in wetlands evaluations. One commenter stated that all sources should be used in the wetlands evaluation and not just federal sources.

HUD Response. HUD declines to adopt the commenter's recommendation. The final rule encourages the use of other sources in the wetlands evaluation after using the NWI maps as primary screening. HUD does not require, but recommends, other sources as well as the NWI maps. At § 55.2(b)(11)(iii), the regulatory text states: "As secondary screening used in conjunction with NWI maps, HUD or the responsible entity is encouraged to use the Department of Agriculture, Natural Resources Conservation Service (NRCS) National Soil Survey (NSS) and any state and local information concerning the location, boundaries, scale, and classification of wetlands within the action area."

Comment: Opposition to HUD's broadening the use of the 5-Step Process for repairs, rehabilitations, and improvements. One commenter opposed HUD's proposal to broaden use of the 5-Step Process which eliminates the consideration of alternatives at Step 3, and the two notices at Step 2 and Step 7. The commenter stated that applications of the 5-Step Process as provided in the proposed rule would increase the possible risk to federal investments in these floodplain areas. The commenter also stated opposition to placing some critical actions under the 5-Step Process; for example, making hospitals and nursing homes, which are critical facilities that must be operable and accessible during flood events, eligible for the 5-Step Process. A commenter also questioned what was meant by the terminology not "significantly increasing the footprint or paved areas."

HUD Response. HUD declines to accept all of these recommendations, but has made some changes. HUD has found that the 5-Step Process has worked well for repairs, rehabilitations, and improvements under HUD mortgage insurance programs, and that using the full 8-Step Process for these activities has not resulted in significant differences in comments or project outcomes.

HUD has revised the proposed expansion of types of assistance subject to the 5-Step Process by requiring in paragraph (a)(3) and (a)(4) of § 55.12 that a project be below a threshold of a "substantial improvement" to be eligible for the 5-Step Process for residential and nonresidential rehabilitations.

"Substantial improvement" is generally defined as any repair, reconstruction, modernization, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either: (1) before the improvement is started; or (2) if the structure has been damaged and is being restored, before the damage occurred. Setting the substantial improvement criteria as a threshold will allow less costly repairs and less damaged housing units to be subject to expedited processing, while more costly repairs and more severely damaged units will continue to be subject to the full 8-Step Process.

In general, HUD has not received public comments during its administration of the 8-Step notice and comment process for the vast majority of HUD or HUD-assisted projects that have not risen to the level of substantial improvements. However, the public remains welcome to inspect the full environmental review record developed on floodplain impacts, or any other aspect of environmental reviews.

HUD considers an increase in the footprint up to 10 percent not to be significant. This is consistent with the policy regarding reconstruction in V Zones under § 55.1(c)(3).

Comment: Exemption of certain activities from the 8-Step Process for floodplain management compliance. One commenter opposed the proposed exemptions for leasing structures (except those that are in floodways or Coastal High Hazard Areas, and critical actions in either the 100-year or 500-year floodplains), special projects to increase access for those with special needs, and activities involving ships or waterborne vessels. However, the commenter supported the exemption for activities that preserve or enhance natural and beneficial functions of floodplains.

HUD Response. HUD declines to adopt the commenter's recommendation to delete the exemptions proposed in the proposed rule, but appreciates the commenter's statement supporting the proposed exemption of activities that preserve or restore beneficial functions.

HUD has found that the 8-Step Process has not been beneficial for projects that only allow access for those with special needs or involving ships and waterborne vessels due to the activities' lack of impacts or alternatives. HUD supports greater participation in the National Flood Insurance Program. The exception for leasing requires the purchase of flood insurance for the structure. HUD also believes that the economic costs of the premiums and the financial protection of the property through insurance are adequate mitigation where the building is not owned by HUD or the recipient of financial assistance.

Comment: Environmental justice is an unresolved issue. One commenter questioned how environmental justice was addressed by HUD.

HUD Response. HUD is charged with addressing environmental justice under Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (dated February 11, 1994 (59 FR 7629)). Executive Order 12898 requires Federal agencies to ensure that consideration is given to disproportionately high and adverse health and environmental effects on minority and low-income populations. This analysis is done on a site-by-site basis by determining the concentration of minority and low-income populations and then analyzing environmental and health risks in the area. Environmental justice is an integral part of HUD's mission. HUD works with multiple stakeholders and other Federal agencies in its efforts to assure environmental justice concerns are addressed and are part of the environmental review for HUD-assisted projects. HUD recently published a final strategy on environmental justice. (See Department of Housing and Urban Development Summary of Public Comments, Response to Public Comments, and Final 2012–2015 Environmental Justice Strategy, dated April 16, 2012 (77 FR 22599). For a copy of that notice see the following Web site: *http://portal.hud.gov/hudportal/HUD?src=/program_offices/sustainable_housing_communities.* HUD requires consideration of environmental justice as part of the floodplain management

process at § 55.20(c)(2)(ii). Additional background information on environmental justice and links can be found at the following Web site: *http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/environment/review/justice.*

Comment: HUD should include birds, fish, and wildlife in the floodplain evaluation. A commenter suggested that HUD include language specifying that effects on birds, fish, and wildlife be included in the final rule.

HUD Response. HUD believes that the proposed rule already included this language. The rule includes an evaluation of "Living resources such as flora and fauna" at § 55.20(d)(1)(ii). Fauna is typically interpreted to include all birds, fish, and wildlife of an area.

Comment: Infiltration and stormwater capture and reuse should have standards as they can be subject to contamination or disease. The commenter stated that oil and gas contamination as well as aviary disease should be addressed and suggested that HUD impose standards.

HUD Response. HUD declines to adopt the commenter's recommendation. HUD relies on other Federal, state, and local agencies to regulate water quality issues. Typically, stormwater capture and reuse involves a cistern to store the water pending reuse. This storage isolates the water from groundwater. In addition, this water is normally not used for human consumption. Instead, the water is most often used for toilets or landscaping. For these reasons, stormwater standards are beyond the scope of this rule and are unnecessary.

Infiltration, as used in this rule, relates only to flooding and is not meant to address industrial or other contamination issues. Any contamination issues should be addressed during the environmental review regulated under the processes established by § 50.3(i) or § 58.5(i)(2). If contamination issues cannot be sufficiently remediated, the project and HUD financial assistance should be cancelled, and these techniques should not be used under § 55.20(c)(1).

Comment: The evacuation plans and routes established by HUD are not feasible or enforceable. The commenter stated that the plans and routes were not feasible or enforceable, and that the responsible party for the evacuation plans and routes for critical actions was not clearly identified.

HUD Response. HUD declines to adopt any changes to the regulations as these issues are already addressed. Depending on the program, either HUD employees or state or local authorities are responsible for approving these routes and plans. All routes and plans are included in the environmental record and subject to public review and monitoring by HUD staff. Further, the current language has been in the regulation for at least 18 years and has produced a number of evacuation plans for subject properties. HUD will continue to monitor its own employees and state and local authorities and to provide guidance regarding evacuation plans and routes. HUD also encourages its employees' involvement with local emergency response staff to attain higher levels of preparedness and safety.

Comment: Allow HUD or a responsible entity to adopt previous review processes that were performed by another responsible entity or HUD. One commenter supported the provision in the proposed rule that allows reviews performed by HUD or a responsible entity under E.O. 11988 and E.O. 11990 to be adopted by HUD or a different responsible entity for the same project.

HUD Response. HUD agrees with the commenter and believes this provision will eliminate duplication and speed processing for projects receiving assistance from multiple programs.

Comment: Use permits issued under section 404 of the Clean Water Act for E.O. 11990, Protection of Wetlands, purposes. A commenter supported explicitly allowing HUD and HUD's recipients of assistance to use permits issued by state and tribal governments under section 404 of the Clean Water Act (33 U.S.C. 1344) (Section 404) in lieu of performing the first 5 steps of the 8-Step Process.

HUD Response. HUD agrees with this comment and this provision remains in the final rule. HUD has changed the text of the rule to explicitly allow Section 404 permits issued by state and tribal governments under programs approved by EPA. HUD also discussed this policy in the preamble of the proposed rule, and accordingly, inclusion of specific language on state and tribal governments in the final rule language is consistent with the preamble of the proposed rule.

Comment: HUD should allow USACE nationwide permits issued under the authority provided by Section 404 to be used in lieu of 5 steps. One commenter requested that nationwide permits under Section 404 be allowed to be used in place of 5 of the steps of the 8-Step Process.[1] The commenter also requested that these permits be allowed to substitute for 5 steps in the 8-Step Process for floodplains.

HUD Response. HUD cannot adopt the commenter's recommendation as it is inconsistent with the requirements of E.O. 11988 to provide two notices to the public, it focuses on wetlands as opposed to floodplains, and it would not result in adequate permitting. Further, while HUD agrees that many wetlands are in 100-year floodplains, HUD is also aware of many wetlands that are not in floodplains. HUD does not believe that wetlands outside of the 100-year floodplain are rare on a nationwide basis and believes that the Department must provide for these situations in the rule.

HUD, therefore, cannot allow the abbreviated 3-Step Process to substitute for the 8-Step Process in floodplains, because E.O. 11988 requires two notices at sec. 2(a)(2) and (4) instead of just one notice as required by E.O. 11990. As a result, the single notice under the 3-Step Process would be insufficient for E.O. 11988 purposes. In addition, the USACE Section 404 permitting process does not provide notice or analysis regarding floodplain impacts, so the permitting process would not adequately address the 5 steps, for which HUD is allowing the permit, to substitute for the purposes of floodplains and E.O. 11988.

HUD has also chosen not to allow nationwide permits at this time because the permits are not as site-specific in nature as individual permits. While HUD supports the use of nationwide permits, it has chosen not to allow these permits to substitute for 5 steps of the process. HUD believes that the more intense review under individual permits is a better starting point to begin this process. If HUD and grantees encounter the anticipated high degree of success with the streamlined process provided by this rule using individual permits, HUD will consider expanding this streamlined process to nationwide permits. Additionally, any mitigation under the nationwide permit could be used as part of HUD's 8-Step Process for E.O. 11990 compliance.

Comment: HUD should allow applicants to forego 5 steps of the 8-Step Process for wetlands before a Section 404 permit is secured. One commenter stated that it is an unreasonable hardship on the applicant to require the acquisition of a wetlands permit prior to

[1] USACE issues nationwide permits (NWPs) to authorize certain activities that require Department of the Army permits under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899. The NWPs authorize activities that have minimal individual and cumulative adverse effects on the aquatic environment. The NWPs authorize a variety of activities, such as aids to navigation, utility lines, bank stabilization activities, road crossings, stream and wetland restoration activities, residential developments, mining activities, commercial shellfish aquaculture activities, and agricultural activities.

entering the abbreviated 3-Step wetlands process.

HUD Response. The 3-Step Process is only applicable when a permit has been granted. If the permit has not yet been granted, the public would not have access to supporting documentation that was necessary for the permit. This information is necessary for HUD to adequately perform the 8-Step Process and for HUD to provide adequate notice to the public as required by E.O. 11990 at sec. 2(b) and NEPA. For these reasons, HUD will require the full 8-Step Process unless a Section 404 permit has been issued prior to the environmental review.

Comment: HUD should not modify the Categorical Exclusion (CatEx) from environmental review under NEPA for minor rehabilitation of one- to four-unit residential properties by removing the qualification that the footprint of the structure may not be increased in a floodplain or wetland. Two commenters objected to the proposed removal of the footprint qualification for the categorical exclusion for minor rehabilitation of one- to four-unit residential properties. One commenter recognized that this may seem like a trivial matter, but the expansion can increase risk to the property or adjacent properties and may increase the base flood elevation level.

HUD Response. HUD declines to adopt the commenters' recommendations, and will retain the proposed language to remove the footprint qualification in the final rule. HUD assistance for minor rehabilitations in a floodplain or wetland will remain subject to E.O. 11988 and E.O. 11990 8-Step-process review, unless 24 CFR 55.12(b)(2) or another exception applies. However, a full environmental assessment will no longer be required unless extraordinary circumstances indicate the potential of significant environmental impact. HUD has found that a full environmental assessment has not been productive in the past. Further, this change will subject rehabilitations of one- to four-unit properties to the same review level as new construction of one- to four-unit buildings, which are currently categorically excluded at 24 CFR 58.35(a)(4), instead of requiring a greater level of review.

III. Comment on Solicitation of Views on Requirement That Critical Actions Be Undertaken at the 500-Year Base Flood Elevation

Comment: HUD should require that critical actions be elevated to the 500-year floodplain level. The commenter supported HUD's potential change submitted for public comment requiring that all new construction of "critical actions" in the 100- or 500-year floodplain level be elevated to the 500-year base flood elevation. The commenter supported making this change because those actions, such as funding a community wastewater facility, can be among the most significant investments a community will make. Further, such type of facility must be operable during and after a flood event. The commenter also supported, as HUD requested comment on, consistency with the Water Resources Council guidance on critical actions.

HUD Response. HUD appreciates the commenter's support. HUD has decided, however, not to make any changes to address moving "critical actions" at this time. HUD intends to gather more data to analyze factors such as, perhaps, costs and benefits, safety, and project viability. HUD will continue to research the impact of allowing critical actions below the 500-year base flood elevation, and, if adequate data is available, propose changes to HUD regulations at § 55.20(e).

IV. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (E.O. 12866) (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order.

Executive Order 13563 (E.O. 13563) (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are "outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned." E.O. 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This rule was determined to be a "significant regulatory action" as defined in section 3(f) of E.O. 12866 (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Executive Order).

As discussed in this preamble, this rule revises HUD's regulations for the protection of wetlands and floodplains to incorporate existing procedures for E.O. 11990 Protection of Wetlands and, in certain instances, to allow recipients of HUD assistance to use permits issued under section 404 of the Clean Water Act in lieu of 5 steps of E.O. 11990's 8-Step Process. With respect to floodplains, with some exceptions, the rule prohibits HUD funds or mortgage insurance for the construction of new structures in Coastal High Hazard Areas. The rule thus streamlines processes and codifies procedures that are currently addressed in guidance.

Regulatory Impact Analysis

The Office of Management and Budget (OMB) reviewed this regulation under E.O. 12866 (entitled "Regulatory Planning and Review"). The regulation has been determined to be a "significant regulatory action," as defined in section 3(f) of E.O. 12866, but not economically significant, as provided in section 3(f)(1) of the Executive Order.

The majority of the regulatory changes made by this rule will have minor economic effects. The primary purpose of this rule is to streamline the existing procedures pertaining to floodplain management and protection of wetlands. However, two changes proposed by HUD are anticipated to have some economic effect. These two changes are: (1) HUD's streamlining the approval process for rehabilitations, repairs, and improvements of HUD-funded properties in floodplains and wetlands; and (2) HUD's prohibiting new construction that would either be funded by HUD or have mortgages insured by FHA in Coastal High Hazard Areas. The streamlined process for rehabilitations will lower costs for projects, which could induce more improvement activities. The prohibition of new construction in Coastal High Hazard Areas could affect the siting of properties, but these projects are rarely proposed or approved even in the absence of a prohibition.

Streamlined Procedures for Minor Repairs and Improvements of Properties in Floodplains

HUD or responsible entities reviewing proposals for rehabilitations, repairs, and improvements to multifamily properties located in floodplains are required to follow the 8-Step Process to minimize the impact to floodplains. This rule abbreviates the process for these proposals because the process no longer requires public notices or the consideration of alternatives for floodplain Executive order compliance. The benefits of this change arise from the reduced compliance costs associated with the eliminated steps. Total labor compliance costs for the entire 8-Step Process have been estimated at $320 per

project. A more detailed step-by-step cost estimate is not available.

Without precise estimate concerning the costs of the specific steps eliminated, HUD ran Monte Carlo simulations to estimate the percentage reduction in costs. Any one step is assumed to have a cost of either 0 and 1 units of effort. Fixed costs are assumed to equal the number of steps less variable costs so that all of the randomized cost functions result in the same total cost. Expected variable costs are equal to 4 units ½ × 8). Eliminating 3 steps could result in a reduction of between 0 and 3 units of effort. Of the eight possible combinations, a reduction of 1.5 is the average. Thus, the average reduction in total costs would be 18.75 percent, which we observe in simulations. The median and mode of our distribution is often lower, however, and equal to 12.5 percent. For this reason we use a range of between 10 and 15 percent as a measure of central tendency.

If eliminating the 3 steps saves 10 to 15 percent of the total labor cost of compliance, then each rehabilitation project would save between $32 and $48. Costs to publish the notices would be added to this amount for the overall cost of compliance. The precise number of proposed rehabilitation, repair, and improvement projects is not available, although the overall number is estimated through a survey of HUD field staff to be less than 100 annually. Although the reduced compliance costs could, on the margin, induce an increase in the requests for funding, that increase is unlikely considering that the cost of these projects generally range from thousands to millions of dollars. For this analysis, HUD estimates an annual total of 100 projects, including the induced projects. One hundred such projects would produce benefits ranging from $3,200 and $4,800 plus minimal costs of publication. Since these assessments rarely lead to a different outcome for rehabilitation, repair, and improvement projects, the lost benefits (additional public notice) of not conducting a full floodplain assessment—the cost of this provision—are negligible. These publication steps are typically not costly beyond the publication costs due to HUD providing notice templates to HUD staff and recipients.

Prohibition on New Construction in Coastal High Hazard Areas

Prohibiting new construction in Coastal High Hazard Areas would force developers to locate HUD-funded or FHA-insured properties out of hazard areas subject to high velocity waters. This prohibition would not affect developments that are destroyed by floods and that need to be rebuilt. Existing property owners interested in developing in Coastal High Hazard Areas would either incur transaction costs from selling the existing property and purchasing an alternative site, or obtain a more expensive source of funding/assistance. HUD would prefer to mitigate existing units from storm damage rather than increase the number of units in these areas. In addition, increasing the footprint of structures in Coastal High Hazard Areas can prevent open spaces from absorbing the storm surge and increase debris that will be carried inland causing additional damage to preexisting structures.

Based on HUD's records, it is extremely rare for HUD to fund, or provide mortgage insurance for, a new construction proposal in these coastal areas. HUD found only one project that had been completed in a Coastal High Hazard Area, and one additional project was recently under review but never built. These projects were approximately 6 years apart.

The benefits are not expected to be significant because only very few properties appear to be affected (2 over 6 years). Calculating the benefits (as measured by the reduction in expected damage) would require an extensive analysis of weather data. Additionally, the use of sea walls and dunes has effectively removed areas from V Zones[2] in many areas by protecting structures from storm surge. This type of approach would eliminate some risk and lower flood insurance costs while allowing the land to be developed with HUD funds. However, it would be difficult to estimate the number of seawalls and dunes, if any, that would be built due to this rule change. HUD believes that this provision will not have a significant impact. For developers preferring to build in V Zones, this rule would require them to acquire an alternate source of funding or mortgage insurance or relocate to a potentially less preferable location.

Preference for Nonstructural Alternatives

When HUD or recipients analyze alternatives, the nonstructural alternative should be chosen if all other factors are considered to be equal. This complies with E.O. 11988's purpose of avoiding floodplain development. This provision is intended to focus on resiliency in the 8-Step Process.

[2] Coastal areas with a 1 percent or greater chance of flooding and an additional hazard associated with storm waves.

The provision is advisory and is not a binding requirement. If a decisionmaker were to avoid floodplain development, the cost savings associated with not purchasing flood insurance, floodproofing or elevating, or creating and maintaining a levee would result in cost savings. In addition, threats to safety and investment would also decrease as the hazard area is avoided. This provision helps HUD accomplish its mission of supplying safe, decent, and affordable housing.

Use of Individual Permits Under Section 404 of the Clean Water Act for HUD Executive Order 11990 Processing Where All Wetlands Are Covered by the Permit

This final rule permits recipients of HUD assistance to use permits issued by state and tribal governments under section 404 of the Clean Water Act in lieu of 5 steps of the E.O. 11990 8-Step Process. Specifically, the rule permits applicants that have obtained an individual Section 404 permit to submit it with his or her application for a HUD program. By doing so, HUD or the responsible entity assuming HUD's authority would only need to complete the last 3 steps of the 8-Step Process. HUD expects that this provision would apply to fewer than five projects a year since recipients generally complete an environmental review prior to obtaining a Section 404 permit or general or nationwide permit. As a result, HUD has determined that the costs and benefits of eliminating these steps, specifically the reduced delay of one notice and cost of documenting other steps, would be minimal.

Accordingly, this regulation is expected to create an annual economic impact ranging from $3,200 to $4,800, which are avoided costs resulting from a streamlined approval process for rehabilitations of properties located in floodplains. Thus, the implementation of this rule will not create an impact exceeding the $100 million threshold established by E.O. 12866.

The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. This final rule will not have a significant economic impact on a substantial number of small entities.

As discussed more fully in the Background section of the preamble, this final rule is largely a procedural rule that codifies HUD's existing policies and procedures implementing E.O. 11990, Protection of Wetlands. The goal of E.O. 11990 is to prevent adverse impacts associated with the destruction or modification of wetlands. E.O. 11990 establishes a uniform set of requirements designed to meet this goal, which are applicable to both large and small entities that propose to use HUD financial assistance in wetlands. HUD is codifying these procedures in 24 CFR part 55 to increase consistency and transparency in these processes and to reduce confusion when working with other Federal agencies. The rule also broadens the use of the abbreviated 8-Step Process, also known as the 5-Step Process, used by HUD and responsible entities when considering the impact on floodplains in connection with the repair of existing structures. Specifically, the rule authorizes the use of the abbreviated process for all of HUD's rehabilitation programs. The current regulations limit the use of the abbreviated process to repairs financed under HUD's mortgage insurance programs. Finally, the rule requires the use of preliminary flood maps and advisory base flood elevations where FEMA has determined that existing FIRMs may not be the best available information.

Section 601 of the Regulatory Flexibility Act defines the term "small entity" to include small businesses, small organizations, and small governmental jurisdictions. HUD asserts that this rule would neither increase the incidence of floodplain and wetlands assessments nor increase the burdens associated with carrying out such an assessment. As discussed above, the focus of this rule is to codify procedures for protection of wetlands that are already in place. The rule would not prohibit HUD support of activities in floodplains or wetlands (except for certain activities in Coastal High Hazard Areas), but would create a consistent departmental policy governing such support. HUD's codification of these procedures will neither increase the incidence of floodplain and wetlands assessment nor increase the burdens of carrying out an assessment. The rule also streamlines floodplain and wetland environmental review procedures to avoid unnecessary processing delays. As described in HUD's Regulatory Impact Analysis, the benefits of HUD's streamlined floodplain and wetland review will provide a beneficial cost impact on entities of all sizes and decrease burdens on both large and small entities.

This final rule contains several other provisions that will reduce administrative burden for entities of all sizes. It removes the footprint qualification for the categorical exclusion for minor rehabilitation of one- to four-unit residential properties and, to avoid unnecessary delays, exempts leasing from the 8-Step Process for floodplain management where the building is insured with the National Flood Insurance Program and not located in a floodway or Coastal High Hazard Area. Exemptions are also added for special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and persons with disabilities, and activities that involve ships or waterborne vessels. The rule also exempts from review activities that restore and preserve natural and beneficial functions of floodplains and wetlands. Together, these changes will reduce administrative burdens and unnecessary delays and assist communities that choose to engage in actions beneficial to floodplains and wetlands.

In HUD's December 12, 2011, proposed rule, HUD certified that this rule would not have a significant economic impact on a substantial number of small entities and invited public comment on HUD's certification. HUD received no comment in response to its certification. Therefore, the undersigned has determined that the rule will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to environment was made at the proposed rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of NEPA (42 U.S.C. 4332(2)(C)). The FONSI remains applicable to this final rule and is available for public inspection at *www.regulations.gov* under docket number FR–5423–F–02. The FONSI is also available for public inspection between the hours of 8 a.m. and 5 p.m., weekdays, in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339 (this is a toll-free number).

E.O. 13132 Federalism

E.O. 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Order. This rule does not have federalism implications and would not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule does not impose any Federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of UMRA.

Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to OMB for review and approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520 *et seq.*). The information collection requirement for Floodplain Management and Wetland Protection is assigned OMB control number 2506–0151. The information collection requirements in this final rule include largely preexisting information collection requirements. However, the preexisting information collection requirements are being revised to reduce the paperwork burden. Specifically, the information collection requirements reflect a slight decrease to the paperwork burden as a result of revising the scope of assistance eligible for the streamlined 5-Step

Process. Under the rule, recipients' actions under any HUD program for the repair, rehabilitation, modernization, or improvement of existing multifamily housing projects are eligible for the 5-Step Process for residential and nonresidential rehabilitations as long as the action does not meet the threshold of substantial improvement under § 55.2(b)(10). Similarly, financial assistance for weatherizations and floodplain and wetland restoration activities would also be granted the use of the shortened 5-Step Process. These changes will allow for expedited processing and a decreased amount of analysis for projects that have no or little adverse impact or have beneficial effects.

The sections in this rule that contain the current information collection requirements and the upcoming revisions that are awaiting OMB approval, as well as the estimated adjusted burden of the pending revisions, are set forth in the following table.

CFR Section	Number of respondents	Total annual responses	Average hours per response	Total annual burden hours	Total annual cost ($40/hr)
§ 55.20 Decisionmaking process	275	1	8	2200	$88,000
§ 55.21 Notification of floodplain hazard	300	1	1	300	12,000
Totals	575	2	9	2500	100,000

All estimates include the time for reviewing instructions, searching existing data sources, gathering or maintaining the needed data, and reviewing the information. The docket file is available for public inspection. For information on, or a copy of, the paperwork package submitted to OMB, contact Colette Pollard at 202–708–0306 (this is not a toll-free number) or via email at *Colette.Pollard@hud.gov*. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a valid OMB control number.

List of Subjects

24 CFR Part 50

Environmental impact statements.

24 CFR Part 55

Environmental impact statements, Floodplains, Wetlands.

24 CFR Part 58

Community development block grants, Environmental impact statements, Grant programs—housing and community development, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble above, HUD amends 24 CFR parts 50, 55, and 58 as follows:

PART 50—PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

■ 1. The authority citation for part 50 is revised to read as follows:

Authority: 42 U.S.C. 3535(d) and 4332; and Executive Order 11991, 3 CFR, 1977 Comp., p. 123.

■ 2. In § 50.4, revise paragraphs (b)(2) and (3) to read as follows:

§ 50.4 Related federal laws and authorities.

* * * * *

(b) * * *

(2) HUD procedure for the implementation of Executive Order 11988 (Floodplain Management), (3 CFR, 1977 Comp., p. 117)—24 CFR part 55, Floodplain Management and Protection of Wetlands.

(3) HUD procedure for the implementation of Executive Order 11990 (Protection of Wetlands), (3 CFR, 1977 Comp., p. 121)—24 CFR part 55, Floodplain Management and Protection of Wetlands.

* * * * *

PART 55—FLOODPLAIN MANAGEMENT AND PROTECTION OF WETLANDS

■ 3. The authority citation for part 55 is revised to read as follows:

Authority: 42 U.S.C. 3535(d), 4001–4128 and 5154a; E.O. 11988, 42 FR 26951, 3 CFR, 1977 Comp., p. 117; E.O. 11990, 42 FR 26961, 3 CFR, 1977 Comp., p 121.

■ 4. Revise the part heading for part 55 to read as set forth above.

■ 5. Amend § 55.1 as follows:

■ a. Revise paragraph (a);

■ b. Redesignate paragraph (b) as paragraph (b)(1);

■ c. Add paragraph (b)(2); and

■ d. Revise paragraphs (c)(1), (c)(3) introductory text, and (c)(3)(i).

The revisions and addition read as follows:

§ 55.1 Purpose and basic responsibility.

(a)(1) The purpose of Executive Order 11988, Floodplain Management, is "to avoid to the extent possible the long and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative."

(2) The purpose of Executive Order 11990, Protection of Wetlands, is "to avoid to the extent possible the long- and short-term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative."

(3) This part implements the requirements of Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands, and employs the principles of the Unified National Program for Floodplain Management. These regulations apply to all HUD (or responsible entity) actions that are subject to potential harm by location in floodplains or wetlands. Covered actions include the proposed acquisition, construction, demolition, improvement, disposition, financing, and use of properties located in floodplains or wetlands for which approval is required either from HUD, under any applicable HUD program, or from a responsible entity authorized by 24 CFR part 58.

(4) This part does not prohibit approval of such actions (except for certain actions in Coastal High Hazard Areas), but provides a consistent means for implementing the Department's interpretation of the Executive Orders in the project approval decisionmaking processes of HUD and of responsible entities subject to 24 CFR part 58. The implementation of Executive Orders 11988 and 11990 under this part shall be conducted by HUD for Department-administered programs subject to environmental review under 24 CFR part 50 and by authorized responsible entities that are responsible for environmental review under 24 CFR part 58.

(5) Nonstructural alternatives to floodplain development and the destruction of wetlands are both favored and encouraged to reduce the loss of life and property caused by floods, and to restore the natural resources and functions of floodplains and wetlands. Nonstructural alternatives should be discussed in the decisionmaking process where practicable.

(b) * * *

(2) Under section 582 of the National Flood Insurance Reform Act of 1994 (42 U.S.C. 5154a), HUD disaster assistance that is made available in a special flood hazard area may not be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration of damage to any personal, residential, or commercial property if:

(i) The person had previously received Federal flood disaster assistance conditioned on obtaining and maintaining flood insurance; and

(ii) The person failed to obtain and maintain the flood insurance.

(c) * * *

(1) Any action other than a functionally dependent use or floodplain function restoration activity, located in a floodway;

* * * * *

(3) Any noncritical action located in a Coastal High Hazard Area, unless the action is a functionally dependent use, existing construction (including improvements), or reconstruction following destruction caused by a disaster. If the action is not a functionally dependent use, the action must be designed for location in a Coastal High Hazard Area. An action will be considered designed for a Coastal High Hazard Area if:

(i) In the case of reconstruction following destruction caused by a disaster or substantial improvement, the work meets the current standards for V zones in FEMA regulations (44 CFR 60.3(e)) and, if applicable, the Minimum Property Standards for such construction in 24 CFR 200.926d(c)(4)(iii); or

* * * * *

■ 6. Amend § 55.2 as follows:

■ a. Revise paragraph (a);

■ b. Revise paragraphs (b) introductory text and (b)(1);

■ c. Redesignate paragraphs (b)(2) through (6) and (7) and (8) as paragraphs (b)(3) through (7) and (9) and (10), respectively;

■ d. Add new paragraphs (b)(2) and (b)(8);

■ e. Revise newly designated paragraph (b)(9); and

■ f. Add paragraph (b)(11).

The revisions read as follows:

§ 55.2 Terminology.

(a) With the exception of those terms defined in paragraph (b) of this section, the terms used in this part shall follow the definitions contained in section 6 of Executive Order 11988, section 7 of Executive Order 11990, and the Floodplain Management Guidelines for Implementing Executive Order 11988 (43 FR 6030, February 10, 1978), issued by the Water Resources Council; the terms "special flood hazard area," "criteria," and "Regular Program" shall follow the definitions contained in FEMA regulations at 44 CFR 59.1; and the terms "Letter of Map Revision" and "Letter of Map Amendment" shall refer to letters issued by FEMA, as provided in 44 CFR part 65 and 44 CFR part 70, respectively.

(b) For purposes of this part, the following definitions apply:

(1) *Coastal high hazard area* means the area subject to high velocity waters, including but not limited to hurricane wave wash or tsunamis. The area is designated on a Flood Insurance Rate Map (FIRM) or Flood Insurance Study (FIS) under FEMA regulations. FIRMs and FISs are also relied upon for the designation of "100-year floodplains" (§ 55.2(b)(9)), "500-year floodplains" (§ 55.2(b)(4)), and "floodways" (§ 55.2(b)(5)). When FEMA provides interim flood hazard data, such as Advisory Base Flood Elevations (ABFE) or preliminary maps and studies, HUD or the responsible entity shall use the latest of these sources. If FEMA information is unavailable or insufficiently detailed, other Federal, state, or local data may be used as "best available information" in accordance with Executive Order 11988. However, a base flood elevation from an interim or preliminary or non-FEMA source cannot be used if it is lower than the current FIRM and FIS.

(2) *Compensatory mitigation* means the restoration (reestablishment or rehabilitation), establishment (creation), enhancement, and/or, in certain circumstances, preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts that remain after all appropriate and practicable avoidance and minimization have been achieved.

Examples include, but are not limited to:

(i) *Permittee-responsible mitigation:* On-site or off-site mitigation undertaken by the holder of a wetlands permit under section 404 of the Clean Water Act (or an authorized agent or contractor), for which the permittee retains full responsibility;

(ii) *Mitigation banking:* A permittee's purchase of credits from a wetlands mitigation bank, comprising wetlands that have been set aside to compensate for conversions of other wetlands; the mitigation obligation is transferred to the sponsor of the mitigation bank; and

(iii) *In-lieu fee mitigation:* A permittee's provision of funds to an in-lieu fee sponsor (public agency or nonprofit organization) that builds and maintains a mitigation site, often after the permitted adverse wetland impacts have occurred; the mitigation obligation is transferred to the in-lieu fee sponsor.

* * * * *

(8) *New construction* includes draining, dredging, channelizing, filling, diking, impounding, and related activities and any structures or facilities begun after the effective date of Executive Order 11990. (See section 7(b) of Executive Order 11990.)

(9) *100-year floodplain* means the floodplain of concern for this part and is the area subject to inundation from a flood having a one percent or greater chance of being equaled or exceeded in any given year. (See § 55.2(b)(1) for appropriate data sources.)

* * * * *

(11) *Wetlands* means those areas that are inundated by surface or ground water with a frequency sufficient to support, and under normal circumstances does or would support, a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds. This definition includes those wetland areas separated from their natural supply of water as a result of activities such as the construction of structural flood protection methods or solid-fill road beds and activities such as mineral extraction and navigation improvements. This definition includes both wetlands subject to and those not subject to section 404 of the Clean Water Act as well as constructed wetlands. The following process shall be followed in making the wetlands determination:

(i) HUD or, for programs subject to 24 CFR part 58, the responsible entity, shall make a determination whether the action is new construction that is located in a wetland. These actions are subject to processing under the § 55.20 decisionmaking process for the protection of wetlands.

(ii) As primary screening, HUD or the responsible entity shall verify whether the project area is located in proximity

to wetlands identified on the National Wetlands Inventory (NWI). If so, HUD or the responsible entity should make a reasonable attempt to consult with the Department of the Interior, Fish and Wildlife Service (FWS), for information concerning the location, boundaries, scale, and classification of wetlands within the area. If an NWI map indicates the presence of wetlands, FWS staff, if available, must find that no wetland is present in order for the action to proceed without further processing. Where FWS staff is unavailable to resolve any NWI map ambiguity or controversy, an appropriate wetlands professional must find that no wetland is present in order for the action to proceed without § 55.20 processing.

(iii) As secondary screening used in conjunction with NWI maps, HUD or the responsible entity is encouraged to use the Department of Agriculture, Natural Resources Conservation Service (NRCS) National Soil Survey (NSS) and any state and local information concerning the location, boundaries, scale, and classification of wetlands within the action area.

(iv) Any challenges from the public or other interested parties to the wetlands determinations made under this part must be made in writing to HUD (or the responsible entity authorized under 24 CFR part 58) during the commenting period and must be substantiated with verifiable scientific information. Commenters may request a reasonable extension of the time for the commenting period for the purpose of substantiating any objections with verifiable scientific information. HUD or the responsible entity shall consult FWS staff, if available, on the validity of the challenger's scientific information prior to making a final wetlands determination.

■ 7. In § 55.3, revise paragraphs (a)(1), (b)(1) and (2), and (c) and add paragraph (d) to read as follows:

§ 55.3 Assignment of responsibilities.

(a)(1) *The Assistant Secretary for Community Planning and Development (CPD)* shall oversee:

(i) The Department's implementation of Executive Orders 11988 and 11990 and this part in all HUD programs; and

(ii) The implementation activities of HUD program managers and, for HUD financial assistance subject to 24 CFR part 58, of grant recipients and responsible entities.

* * * * *

(b) * * *

(1) Ensure compliance with this part for all actions under their jurisdiction that are proposed to be conducted, supported, or permitted in a floodplain or wetland;

(2) Ensure that actions approved by HUD or responsible entities are monitored and that any prescribed mitigation is implemented;

* * * * *

(c) *Responsible Entity Certifying Officer.* Certifying Officers of responsible entities administering or reviewing activities subject to 24 CFR part 58 shall comply with this part in carrying out HUD-assisted programs. Certifying Officers of responsible entities subject to 24 CFR part 58 shall monitor approved actions and ensure that any prescribed mitigation is implemented.

(d) *Recipient.* Recipients subject to 24 CFR part 58 shall monitor approved actions and ensure that any prescribed mitigation is implemented. Recipients shall:

(1) Supply HUD (or the responsible entity authorized by 24 CFR part 58) with all available, relevant information necessary for HUD (or the responsible entity) to perform the compliance required by this part; and

(2) Implement mitigating measures required by HUD (or the responsible entity authorized by 24 CFR part 58) under this part or select alternate eligible property.

■ 8. The heading for subpart B is revised to read as follows:

Subpart B—Application of Executive Orders on Floodplain Management and Protection of Wetlands

■ 9. Revise § 55.10 to read as follows:

§ 55.10 Environmental review procedures under 24 CFR parts 50 and 58.

(a) Where an environmental review is required under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), and 24 CFR part 50 or part 58, compliance with this part shall be completed before the completion of an environmental assessment (EA), including a finding of no significant impact (FONSI), or an environmental impact statement (EIS), in accordance with the decision points listed in 24 CFR 50.17(a) through (h), or before the preparation of an EA under 24 CFR 58.40 or an EIS under 24 CFR 58.37. For types of proposed actions that are categorically excluded from NEPA requirements under 24 CFR part 50 (or part 58), compliance with this part shall be completed before the Department's initial approval (or approval by a responsible entity authorized by 24 CFR part 58) of proposed actions in a floodplain or wetland.

(b) The categorical exclusion of certain proposed actions from environmental review requirements under NEPA and 24 CFR parts 50 and 58 (see 24 CFR 50.20 and 58.35(a)) does not exclude those actions from compliance with this part.

■ 10. Revise § 55.11 to read as follows:

§ 55.11 Applicability of Subpart C decisionmaking process.

(a) Before reaching the decision points described in § 55.10(a), HUD (for Department-administered programs) or the responsible entity (for HUD financial assistance subject to 24 CFR part 58) shall determine whether Executive Order 11988, Executive Order 11990, and this part apply to the proposed action.

(b) If Executive Order 11988 or Executive Order 11990 and this part apply, the approval of a proposed action or initial commitment shall be made in accordance with this part. The primary purpose of Executive Order 11988 is "to avoid to the extent possible the long and short term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative." The primary purpose of Executive Order 11990 is "to avoid to the extent possible the long and short-term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative."

(c) The following table indicates the applicability, by location and type of action, of the decisionmaking process for implementing Executive Order 11988 and Executive Order 11990 under subpart C of this part.

TABLE 1

Type of proposed action (new reviewable action or an amendment) [1]	Type of proposed action			
	Floodways	Coastal high hazard areas	Wetlands or 100-year floodplain outside coastal high hazard area and floodways	Nonwetlands area outside of the 100-year and within the 500-year floodplain
Critical Actions as defined in § 55.12(b)(2).	Critical actions not allowed.	Critical actions not allowed.	Allowed if the proposed critical action is processed under § 55.20.[2]	Allowed if the proposed critical action is processed under § 55.20.[2]
Noncritical actions not excluded under § 55.12(b) or (c).	Allowed only if the proposed non-critical action is a functionally dependent use and processed under § 55.20.[2]	Allowed only if the proposed noncritical action is processed under § 55.20[2] and is (1) a functionally dependent use, (2) existing construction (including improvements), or (3) reconstruction following destruction caused by a disaster. If the action is not a functionally dependent use, the action must be designed for location in a Coastal High Hazard Area under § 55.1(c)(3).	Allowed if proposed noncritical action is processed under § 55.20.[2]	Any noncritical action is allowed without processing under this part.

[1] Under Executive Order 11990, the decisionmaking process in § 55.20 only applies to Federal assistance for new construction in wetlands locations.
[2] Or those paragraphs of § 55.20 that are applicable to an action listed in § 55.12(a).

■ 11. Revise 55.12 to read as follows:

§ 55.12 Inapplicability of 24 CFR part 55 to certain categories of proposed actions.

(a) The decisionmaking steps in § 55.20(b), (c), and (g) (steps 2, 3, and 7) do not apply to the following categories of proposed actions:

(1) HUD's or the recipient's actions involving the disposition of acquired multifamily housing projects or "bulk sales" of HUD-acquired (or under part 58 of recipients') one- to four-family properties in communities that are in the Regular Program of National Flood Insurance Program and in good standing (i.e., not suspended from program eligibility or placed on probation under 44 CFR 59.24). For programs subject to part 58, this paragraph applies only to recipients' disposition activities that are subject to review under part 58.

(2) HUD's actions under the National Housing Act (12 U.S.C. 1701) for the purchase or refinancing of existing multifamily housing projects, hospitals, nursing homes, assisted living facilities, board and care facilities, and intermediate care facilities, in communities that are in good standing under the NFIP.

(3) HUD's or the recipient's actions under any HUD program involving the repair, rehabilitation, modernization, weatherization, or improvement of existing multifamily housing projects, hospitals, nursing homes, assisted living facilities, board and care facilities, intermediate care facilities, and one- to four-family properties, in communities that are in the Regular Program of the National Flood Insurance Program (NFIP) and are in good standing, provided that the number of units is not increased more than 20 percent, the action does not involve a conversion from nonresidential to residential land use, the action does not meet the thresholds for "substantial improvement" under § 55.2(b)(10), and the footprint of the structure and paved areas is not significantly increased.

(4) HUD's or the recipient's actions under any HUD program involving the repair, rehabilitation, modernization, weatherization, or improvement of existing nonresidential buildings and structures, in communities that are in the Regular Program of the NFIP and are in good standing, provided that the action does not meet the thresholds for "substantial improvement" under § 55.2(b)(10) and that the footprint of the structure and paved areas is not significantly increased.

(b) The decisionmaking process in § 55.20 shall not apply to the following categories of proposed actions:

(1) HUD's mortgage insurance actions and other financial assistance for the purchasing, mortgaging or refinancing of existing one- to four-family properties in communities that are in the Regular Program of the NFIP and in good standing (i.e., not suspended from program eligibility or placed on probation under 44 CFR 59.24), where the action is not a critical action and the property is not located in a floodway or Coastal High Hazard Area;

(2) Financial assistance for minor repairs or improvements on one- to four-family properties that do not meet the thresholds for "substantial improvement" under § 55.2(b)(10);

(3) HUD or a recipient's actions involving the disposition of individual HUD-acquired, one- to four-family properties;

(4) HUD guarantees under the Loan Guarantee Recovery Fund Program (24 CFR part 573) of loans that refinance existing loans and mortgages, where any new construction or rehabilitation financed by the existing loan or mortgage has been completed prior to the filing of an application under the program, and the refinancing will not allow further construction or rehabilitation, nor result in any physical impacts or changes except for routine maintenance; and

(5) The approval of financial assistance to lease an existing structure located within the floodplain, but only if;

(i) The structure is located outside the floodway or Coastal High Hazard Area, and is in a community that is in the Regular Program of the NFIP and in good standing (i.e., not suspended from program eligibility or placed on probation under 44 CFR 59.24);

(ii) The project is not a critical action; and

(iii) The entire structure is or will be fully insured or insured to the maximum under the NFIP for at least the term of the lease.

(c) This part shall not apply to the following categories of proposed HUD actions:

(1) HUD-assisted activities described in 24 CFR 58.34 and 58.35(b);

(2) HUD-assisted activities described in 24 CFR 50.19, except as otherwise indicated in § 50.19;

(3) The approval of financial assistance for restoring and preserving the natural and beneficial functions and values of floodplains and wetlands, including through acquisition of such floodplain and wetland property, but only if:

(i) The property is cleared of all existing structures and related improvements;

(ii) The property is dedicated for permanent use for flood control, wetland protection, park land, or open space; and

(iii) A permanent covenant or comparable restriction is placed on the property's continued use to preserve the floodplain or wetland from future development.

(4) An action involving a repossession, receivership, foreclosure, or similar acquisition of property to protect or enforce HUD's financial interests under previously approved loans, grants, mortgage insurance, or other HUD assistance;

(5) Policy-level actions described at 24 CFR 50.16 that do not involve site-based decisions;

(6) A minor amendment to a previously approved action with no additional adverse impact on or from a floodplain or wetland;

(7) HUD's or the responsible entity's approval of a project site, an incidental portion of which is situated in an adjacent floodplain, including the floodway or Coastal High Hazard Area, or wetland, but only if:

(i) The proposed construction and landscaping activities (except for minor grubbing, clearing of debris, pruning, sodding, seeding, or other similar activities) do not occupy or modify the 100-year floodplain (or the 500-year floodplain for critical actions) or the wetland;

(ii) Appropriate provision is made for site drainage that would not have an adverse effect on the wetland; and

(iii) A permanent covenant or comparable restriction is placed on the property's continued use to preserve the floodplain or wetland;

(8) HUD's or the responsible entity's approval of financial assistance for a project on any nonwetland site in a floodplain for which FEMA has issued:

(i) A final Letter of Map Amendment (LOMA), final Letter of Map Revision (LOMR), or final Letter of Map Revision Based on Fill (LOMR–F) that removed the property from a FEMA-designated floodplain location; or

(ii) A conditional LOMA, conditional LOMR, or conditional LOMR–F if HUD or the responsible entity's approval is subject to the requirements and conditions of the conditional LOMA or conditional LOMR;

(9) Issuance or use of Housing Vouchers, Certificates under the Section 8 Existing Housing Program, or other forms of rental subsidy where HUD, the awarding community, or the public housing agency that administers the contract awards rental subsidies that are not project-based (i.e., do not involve site-specific subsidies);

(10) Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and persons with disabilities;

(11) The approval of financial assistance for acquisition, leasing, construction, rehabilitation, repair, maintenance, or operation of ships and other waterborne vessels that will be used for transportation or cruises and will not be permanently moored.

(12) The approval of financial assistance for restoring and preserving the natural and beneficial functions and values of floodplains and wetlands, including through acquisition of such floodplain and wetland property, but only if:

(i) The property is cleared of all existing structures and related improvements;

(ii) The property is dedicated for permanent use for flood control, wetland protection, park land, or open space; and

(iii) A permanent covenant or comparable restriction is placed on the property's continued use to preserve the floodplain or wetland from future development.

■ 12. The heading for subpart C is revised to read as follows:

Subpart C—Procedures for Making Determinations on Floodplain Management and Protection of Wetlands

■ 13. Amend § 55.20 by revising the introductory text and paragraphs (a), (b) introductory text, (b)(3), (c), (d), (e), (f), (g)(1), and (h) to read as follows:

§ 55.20 Decisionmaking process.

Except for actions covered by § 55.12(a), the decisionmaking process for compliance with this part contains eight steps, including public notices and an examination of practicable alternatives when addressing floodplains and wetlands. The steps to be followed in the decisionmaking process are as follows:

(a) *Step 1.* Determine whether the proposed action is located in the 100-year floodplain (500-year floodplain for critical actions) or results in new construction in a wetland. If the action does not occur in a floodplain or result in new construction in a wetland, then no further compliance with this part is required. The following process shall be followed by HUD (or the responsible entity) in making wetland determinations.

(1) Refer to § 55.28(a) where an applicant has submitted with its application to HUD (or to the recipient under programs subject to 24 CFR part 58) an individual Section 404 permit (including approval conditions and related environmental review).

(2) Refer to § 55.2(b)(11) for making wetland determinations under this part.

(3) For proposed actions occurring in both a wetland and a floodplain, completion of the decisionmaking process under § 55.20 is required regardless of the issuance of a Section 404 permit. In such a case, the wetland will be considered among the primary natural and beneficial functions and values of the floodplain.

(b) *Step 2.* Notify the public and agencies responsible for floodplain management or wetlands protection at the earliest possible time of a proposal to consider an action in a 100-year floodplain (or a 500-year floodplain for a Critical Action) or wetland and involve the affected and interested public and agencies in the decisionmaking process.

* * * * *

(3) A notice under this paragraph shall state: The name, proposed location, and description of the activity; the total number of acres of floodplain or wetland involved; the related natural and beneficial functions and values of the floodplain or wetland that may be adversely affected by the proposed activity; the HUD approving official (or the Certifying Officer of the responsible entity authorized by 24 CFR part 58); and the phone number to call for information. The notice shall indicate the hours of HUD or the responsible entity's office, and any Web site at which a full description of the proposed action may be reviewed.

(c) *Step 3.* Identify and evaluate practicable alternatives to locating the proposed action in a 100-year floodplain

(or a 500-year floodplain for a Critical Action) or wetland.

(1) Except as provided in paragraph (c)(3) of this section, HUD's or the responsible entity's consideration of practicable alternatives to the proposed site selected for a project should include:

(i) Locations outside and not affecting the 100-year floodplain (or the 500-year floodplain for a Critical Action) or wetland;

(ii) Alternative methods to serve the identical project objective, including feasible technological alternatives; and

(iii) A determination not to approve any action proposing the occupancy or modification of a floodplain or wetland.

(2) Practicability of alternative sites should be addressed in light of the following:

(i) Natural values such as topography, habitat, and hazards;

(ii) Social values such as aesthetics, historic and cultural values, land use patterns, and environmental justice; and

(iii) Economic values such as the cost of space, construction, services, and relocation.

(3) For multifamily projects involving HUD mortgage insurance that are initiated by third parties, HUD's consideration of practicable alternatives should include a determination not to approve the request.

(d) *Step 4.* Identify and evaluate the potential direct and indirect impacts associated with the occupancy or modification of the 100-year floodplain (or the 500-year floodplain for a Critical Action) or the wetland and the potential direct and indirect support of floodplain and wetland development that could result from the proposed action.

(1) *Floodplain evaluation:* The focus of the floodplain evaluation should be on adverse impacts to lives and property, and on natural and beneficial floodplain values. Natural and beneficial values include:

(i) Water resources such as natural moderation of floods, water quality maintenance, and groundwater recharge;

(ii) Living resources such as flora and fauna;

(iii) Cultural resources such as archaeological, historic, and recreational aspects; and

(iv) Agricultural, aquacultural, and forestry resources.

(2) *Wetland evaluation:* In accordance with Section 5 of Executive Order 11990, the decisionmaker shall consider factors relevant to a proposal's effect on the survival and quality of the wetland. Among these factors that should be evaluated are:

(i) Public health, safety, and welfare, including water supply, quality, recharge, and discharge; pollution; flood and storm hazards and hazard protection; and sediment and erosion;

(ii) Maintenance of natural systems, including conservation and long-term productivity of existing flora and fauna; species and habitat diversity and stability; natural hydrologic function; wetland type; fish; wildlife; timber; and food and fiber resources;

(iii) Cost increases attributed to wetland-required new construction and mitigation measures to minimize harm to wetlands that may result from such use; and

(iv) Other uses of wetlands in the public interest, including recreational, scientific, and cultural uses.

(e) *Step 5.* Where practicable, design or modify the proposed action to minimize the potential adverse impacts to and from the 100-year floodplain (or the 500-year floodplain for a Critical Action) or the wetland and to restore and preserve its natural and beneficial functions and values.

(1) Minimization techniques for floodplain and wetland purposes include, but are not limited to: the use of permeable surfaces, natural landscape enhancements that maintain or restore natural hydrology through infiltration, native plant species, bioswales, evapotranspiration, stormwater capture and reuse, green or vegetative roofs with drainage provisions, and Natural Resource Conservation Service conservation easements. Floodproofing and elevating structures, including freeboard above the required base flood elevations, are also minimization techniques for floodplain purposes.

(2) Appropriate and practicable compensatory mitigation is recommended for unavoidable adverse impacts to more than one acre of wetland. Compensatory mitigation includes, but is not limited to: permittee-responsible mitigation, mitigation banking, in-lieu fee mitigation, the use of preservation easements or protective covenants, and any form of mitigation promoted by state or Federal agencies. The use of compensatory mitigation may not substitute for the requirement to avoid and minimize impacts to the maximum extent practicable.

(3) Actions covered by § 55.12(a) must be rejected if the proposed minimization is financially or physically unworkable. All critical actions in the 500-year floodplain shall be designed and built at or above the 100-year floodplain (in the case of new construction) and modified to include:

(i) Preparation of and participation in an early warning system;

(ii) An emergency evacuation and relocation plan;

(iii) Identification of evacuation route(s) out of the 500-year floodplain; and

(iv) Identification marks of past or estimated flood levels on all structures.

(f) *Step 6.* Reevaluate the proposed action to determine:

(1) Whether the action is still practicable in light of exposure to flood hazards in the floodplain or wetland, possible adverse impacts on the floodplain or wetland, the extent to which it will aggravate the current hazards to other floodplains or wetlands, and the potential to disrupt the natural and beneficial functions and values of floodplains or wetlands; and

(2) Whether alternatives preliminarily rejected at Step 3 (paragraph (c)) of this section are practicable in light of information gained in Steps 4 and 5 (paragraphs (d) and (e)) of this section.

(i) The reevaluation of alternatives shall include the potential impacts avoided or caused inside and outside the floodplain or wetland area. The impacts should include the protection of human life, real property, and the natural and beneficial functions and values served by the floodplain or wetland.

(ii) A reevaluation of alternatives under this step should include a discussion of economic costs. For floodplains, the cost estimates should include savings or the costs of flood insurance, where applicable; flood proofing; replacement of services or functions of critical actions that might be lost; and elevation to at least the base flood elevation for sites located in floodplains, as appropriate on the applicable source under § 55.2(b)(1). For wetlands, the cost estimates should include the cost of filling the wetlands and mitigation.

(g) *Step 7.* (1) If the reevaluation results in a determination that there is no practicable alternative to locating the proposal in the 100-year floodplain (or the 500-year floodplain for a Critical Action) or the wetland, publish a final notice that includes:

(i) The reasons why the proposal must be located in the floodplain or wetland;

(ii) A list of the alternatives considered in accordance with paragraphs(c)(1) and (c)(2) of this section; and

(iii) All mitigation measures to be taken to minimize adverse impacts and to restore and preserve natural and beneficial functions and values.

* * * * *

(h) *Step 8.* Upon completion of the decisionmaking process in Steps 1 through 7, implement the proposed action. There is a continuing

responsibility on HUD (or on the responsible entity authorized by 24 CFR part 58) and the recipient (if other than the responsible entity) to ensure that the mitigating measures identified in Step 7 are implemented.

§ 55.21 [Amended]

■ 14. Amend § 55.21 by removing the term "grant recipient" and adding in its place the term "responsible entity."

■ 15. Revise § 55.24 to read as follows:

§ 55.24 Aggregation.

Where two or more actions have been proposed, require compliance with subpart C of this part, affect the same floodplain or wetland, and are currently under review by HUD (or by a responsible entity authorized by 24 CFR part 58), individual or aggregated approvals may be issued. A single compliance review and approval under this section is subject to compliance with the decisionmaking process in § 55.20.

§ 55.25 [Amended]

■ 16. Amend § 55.25 as follows:

■ a. Remove, in paragraph (c), the term "grant recipient" and add in its place the term "responsible entity;" and

■ b. Remove in paragraph (d)(2) the term "grant recipients" and add in its place the term "responsible entities."

■ 17. In § 55.26, revise the introductory text and paragraph (a) to read as follows:

§ 55.26 Adoption of another agency's review under the executive orders.

If a proposed action covered under this part is already covered in a prior review performed under either or both of the Executive Orders by another agency, including HUD or a different responsible entity, that review may be adopted by HUD or by a responsible entity authorized under 24 CFR part 58, provided that:

(a) There is no pending litigation relating to the other agency's review for floodplain management or wetland protection;

* * * * *

■ 18. Amend § 55.27 as follows:

■ a. Revise paragraph (a);

■ b. Remove, in paragraph (b), the term "grant recipient" and add, in its place, the words "responsible entity" and;

■ c. Remove, in paragraph (c), the term "grant recipients" and add, in its place, the words "responsible entities".

The revision reads as follows:

§ 55.27 Documentation.

(a) For purposes of compliance with § 55.20, the responsible HUD official who would approve the proposed action (or Certifying Officer for a responsible entity authorized by 24 CFR part 58) shall require that the following actions be documented:

(1) When required by § 55.20(c), practicable alternative sites have been considered outside the floodplain or wetland, but within the local housing market area, the local public utility service area, or the jurisdictional boundaries of a recipient unit of general local government, whichever geographic area is most appropriate to the proposed action. Actual sites under review must be identified and the reasons for the nonselection of those sites as practicable alternatives must be described; and

(2) Under § 55.20(e)(2), measures to minimize the potential adverse impacts of the proposed action on the affected floodplain or wetland as identified in § 55.20(d) have been applied to the design for the proposed action.

* * * * *

■ 19. Add § 55.28 to read as follows:

§ 55.28 Use of individual permits under section 404 of the Clean Water Act for HUD Executive Order 11990 processing where all wetlands are covered by the permit.

(a) *Processing requirements.* HUD (or the responsible entity subject to 24 CFR part 58) shall not be required to perform the steps at § 55.20(a) through (e) upon adoption by HUD (or the responsible entity) of the terms and conditions of a Section 404 permit so long as:

(1) The project involves new construction on a property located outside of the 100-year floodplain (or the 500-year floodplain for critical actions);

(2) The applicant has submitted, with its application to HUD (or to the recipient under programs subject to 24 CFR part 58), an individual Section 404 permit (including approval conditions) issued by the U.S. Army Corps of Engineers (USACE) (or by a State or Tribal government under Section 404(h) of the Clean Water Act) for the proposed project; and

(3) All wetlands adversely affected by the action are covered by the permit.

(b) Unless a project is excluded under § 55.12, processing under all of § 55.20 is required for new construction in wetlands that are not subject to section 404 of the Clean Water Act and for new construction for which the USACE (or a State or Tribal government under section 404(h) of the Clean Water Act) issues a general permit under Section 404.

PART 58—ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES

■ 20. The authority citation for part 58 continues to read as follows:

Authority: 12 U.S.C. 1707 note; 42 U.S.C. 1437o(i)(1) and (2), 1437x, 3535(d), 3547, 4332, 4852, 5304(g), 11402, and 12838; E.O. 11514, 3 CFR, 1966–1970, Comp., p. 902, as amended by E.O. 11991, 3 CFR, 1977 Comp., p.123.

■ 21. In § 58.5, revise paragraph (b)(2) to read as follows:

§ 58.5 Related federal laws and authorities.

* * * * *

(b) * * *

(2) Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961), 3 CFR, 1977 Comp., p. 121, as interpreted in HUD regulations at 24 CFR part 55, particularly sections 2 and 5 of the order.

* * * * *

■ 22. In § 58.6, add paragraph (a)(4) to read as follows:

§ 58.6 Other requirements.

* * * * *

(a) * * *

(4) Flood insurance requirements cannot be fulfilled by self-insurance except as authorized by law for assistance to state-owned projects within states approved by the Federal Insurance Administrator consistent with 44 CFR 75.11.

* * * * *

■ 23. In § 58.35, revise paragraph (a)(3)(i) to read as follows:

§ 58.35 Categorical exclusions.

* * * * *

(a) * * *

(3) * * *

(i) In the case of a building for residential use (with one to four units), the density is not increased beyond four units, and the land use is not changed;

* * * * *

Dated: November 6, 2013.

Mark Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 2013–27427 Filed 11–14–13; 8:45 am]

BILLING CODE 4210–67–P

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Sample Public Hearing Notice

The (city or county) of (name of city or county) is considering applying to the Georgia Department of Community Affairs for a Community Development Block Grant of up to $(amount of funds). These funds must be used to primarily benefit low- and moderate-income persons.

The activities for which these funds may be used are in the areas of housing, public facilities, and economic development. More specific details regarding eligible activities, plans to assist displaced persons (if any), the estimated amount of funds proposed to be used for activities to benefit low- and moderate-income persons, and the rating system will be provided at a public hearing which will be held at (place/address) on (date), at (time).

The purpose of this hearing will be to obtain citizen input into the development of the application and to review progress on the previous CDBG grant (if applicable). The (City or County) of (name of City or County) is committed to providing all persons with equal access to its services, programs, activities, education and employment regardless of race, color, national origin, religion, sex, familial status, disability or age. Persons with special needs relating to handicapped accessibility or foreign language shall contact (name/phone) prior to (date). This person can be located at (complete address) between the hours of (hours am - pm), Monday through Friday, except holidays. Persons with hearing disabilities can contact us at our TDD number (AC + number). [Applicants who do not have a TDD phone may consider using the Georgia Relay Service, at (TDD) 1-800-255-0056 or (Voice) 1-800-255-0135.]

Equal Housing Opportunity

Muestra de Aviso de Audiencia Pública - Pre-solicitud de fondos para CDBG

La/el (ciudad o condado) de (nombre de ciudad o condado) está considerando solicitar un Community Development Block Grant (Subvención en bloque para el desarrollo de la comunidad) de hasta $(cantidad de fondos) del Departamento de Asuntos Comunitarios de Georgia. Se deben usar estos fondos principalmente para beneficiar a personas de ingreso bajo o medio.

Se pueden usar estos fundos para actividades en las áreas de vivienda, instalaciones públicas y desarrollo econ6mico. Se proporcionarán detalles más específicos sobre las actividades elegibles, los planes para dar asistencia a personas desplazadas (si existen), la cantidad aproximada de fondos propuestos para actividades que benefician a personas de ingreso bajo y medio, y el sistema de clasificaci6n en una audiencia pública que tendrá lugar en (lugar/direcci6n) el (fecha), a las (hora).

El motivo de esta audiencia será obtener opiniones de ciudadanos sobre el desarrollo de la solicitud y revisar el progreso de la subvenci6n de CDBG previa (si procede). La/el (ciudad o condado) de la/el (nombre de ciudad o condado) está comprometido a proporcionarles a todas personas acceso igual a sus servicios, programas, actividades, educación y empleo de manera independiente de su raza, color, origen nacional, religión, sexo, estatus familiar, discapacidad o edad. Las personas con necesidades especiales o adecuaciones relacionadas con accesibilidad de discapacitados o idiomas extranjeras contactaran a (nombre/número de teléfono) antes de (fecha). Se puede encontrar a tal persona en (dirección completa) entre las horas (horas am - pm), Junes a viernes, excepto durante fiestas. Personas con discapacidades auditivas pueden contactarnos a nuestro número telef6nico TDD (número AC +). [Los solicitantes quienes no tienen un teléfono TDD pueden considerar usar el Georgia Relay Service, al (TDD) 1-800-255-0056 o (Voz) 1-800-255-0135.]

Equal Housing Opportunity

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 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.

Endangered Species Act (ESA): The U.S. Fish and Wildlife Service published a final 4(d) rule on January 14, 2016 that established prohibitions against the purposeful and incidental take of the Northern Long-Eared Bat (NLEB) as part of the Endangered Species Act. The ***information below*** gives background on the regulation, activities that trigger compliance with the rule, and links to websites to assist in complying with the regulation.

Final 4(d) rule went into effect on February 16, 2016. The final rule established Section 9 prohibitions against both purposeful and incidental take of the Northern Long-Eared Bat (NLEB). The NLEB was listed as a threatened species under the Endangered Species Act (ESA) on April 2, 2015 because of the white-nose syndrome (WNS). The WNS is a fungal disease affecting many hibernating bat species. As a result of this listing, the NLEB is now protected under Sections 7 and 9 of the ESA.

Section 7 applies only to federal actions. It requires agencies not to jeopardize the existence of threatened and endangered species and requires agencies to consult with the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS).

Section 9 applies to federal and non-federal actions. It prohibits the taking of endangered fish and wildlife.

The ESA defines take as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect". According to the ESA, a purposeful take occurs when the reason for the activity or action is to conduct some form of take and incidental take is a take that is incidental to the carrying out of an otherwise lawful activity.

All **purposeful take** of the NLEB throughout the species range is prohibited, unless authorized by a permit, except the removal of the bat from human structures, defense of human life (including public health monitoring) and the removal of hazardous trees for human life and property protection.

Take within the WNS zones:

- Incidental take is prohibited if it occurs in the hibernaculum (i.e. bat cave or other locations bats hibernate in the winter), unless permitted under Section 10(a)(1)9A) of the ESA.

- Incidental take of the NLEB outside of hibernacula is not prohibited as long as it does not involve tree removal.

- Incidental take caused by tree removal is prohibited (without a permit):
    - if the tree removal occurs within ¼ mile of a known hibernaculum (at any time of the year),
    - tree removal cuts or destroys a known occupied maternity roost tree or any other trees within a 150 foot radius of the maternity roots tree during the pup season (June 1 – July 31)

Take outside of the WNS Zones:

- Incidental take is not prohibited.

The incidental take actions that are not prohibited under the 4(d) rule are considered effects under Section 7 of the ESA and requires a Section 7 consultation process. The Responsible Entity may

choose to complete the Streamlined Consultation Form (Northern Long-Eared Bat 4(d) Rule Streamlined Consultation Form) only for non-prohibited actions that may affect the NLEB.

For more information on the NLEB see the USFWS NELB 4(d) Rule page at https://www.fws.gov/midwest/endangered/mammals/nleb/4drule.html

Information on the Section 7 Consultation process, including what constitutes an effect, may be found at http://www.fws.gov/Midwest/endangered/mammals/nleb/s7.html.

Detailed information regarding actions that may affect the NLEB is found in the *Programmatic Biological Opinion of the Final 4(d) Rule for the Northern Long Eared Bat and Activities Excepted from Take Prohibitions https://www.fws.gov/midwest/endangered/section7/bo/16_Rangewide_FHWA_FTA_FRA_ProgrammaticINBAandNLEB20May2016.pdf*

Brian Kemp
Governor

Christopher Nunn
Commissioner

Georgia® Department of Community Affairs

Language Access Plan Template
CDBG Recipients

Instructions:

Refer to the *DCA LAP Policy* and the *DCA Sub recipient Language Access Plan Guidance* and follow the following steps described in detail below:

Step 1: Provide General Information

Step 2: Perform the Four Factor Analysis

Factor 1: The number of LEP people in the jurisdiction

- Use the most recent data release of American Community Survey Table S1601 (Language Spoken at Home) published in December of each year. ***Please source all data provided to DCA.***
- ***This information can be accessed via https://data.census.gov/cedsci/ or the 2021 CDBG Applicant Concentration Map.***
- Determine the threshold for providing translation

Factor 2: The frequency of interaction

Factor 3: The nature and importance of the activity

Factor 4: The resources available

Step 3: Prepare the Language Access Plan

- Four-Factor Analysis
- Responsible staff and training plan
- Documents to be translated (if needed)
- Plan for complaints and appeals
- Records retention and update plan

Step 1: Provide General Information:

Provide the following information at the beginning of the local government's Language Access plan

- Grantee
- CDBG Grant Number
- Target Area
- Preparer's name, phone number, email address

Step 2: Conduct a Four-Factor Analysis to determine how to provide needed language assistance

The Four Factors are:

Factor 1: The number or proportion of LEP persons eligible to be served or likely to be encountered by the Agency or its federally funded programs.

Use data to answer the question:

How many Limited English Proficient people are in your local government's city or county's jurisdiction?

Attach maps (if applicable) or other relevant data to your Language Access Plan. All data or maps provided must be accurately sourced.

Please use the Census Table B16001 and Table S1601 to find this information. The size of the language group determines the recommended provision for written language assistance.

Size of Language Group	Recommended Provision of Written Language Assistance
1,000 or more in the eligible population	Translated vital documents
More than 5% of the eligible population or beneficiaries and more than 50 in number	Translated vital documents
More than 5% of the eligible population or beneficiaries and 50 or less in number	Translated written notice of right to receive free oral interpretation of documents.
5% or less of the eligible population or beneficiaries and less than 1,000 in number	No written translation is required.

Note: In the case where the overall jurisdiction numbers fall below the threshold to provide translated written documents but existing or planned DCA target areas exist, the DCA Sub recipient must evaluate whether there are limited English proficient households within the target areas that may need notification or other LAP services. The Sub recipient's evaluation should use local knowledge or data or other relevant data in conducting its evaluation and should indicate its conclusions regarding the steps necessary reach out to these households in the language they speak to ensure that adequate notification is achieved. This evaluation will be particularly important for housing grants where eligible applicants for assistance may need application or other documents translated to take advantage of available services.

Factor 2: The frequency with which LEP persons come into contact with the Agency's programs: The frequency with which a program engages with the public can vary. For example: *Daily:* walk-ins at a housing counseling agency; *Annually*: A program accepts applications for assistance once a year.

For CDBG grants, grantees must engage with the public at these critical steps:

a. When notifying the public about a grant award application and its proposed activities
b. When notifying the public about the grant award and its funded activities

c. When seeking applicants to participate in the program (e.g., when seeking homeowners for rehabilitation assistance)
d. When seeking qualified contractors
e. When working with homeowners selected for assistance
f. When seeking bids from builders to construct the homes
g. When notifying the public about the grant award closeout and its accomplishments

Identify how your program engages with the public and how frequently does this occur

Factor 3: The nature and importance of the programs, activities, or services to people's lives
The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP persons, the more likely the need for language services. The obligations to communicate rights to a person who is being evicted differ, for example, from those to provide recreational programming. A recipient needs to determine whether denial or delay of access to services or information could have serious or even life-threatening implications for the LEP individual.

Answer the following questions:

What is the nature of the program? e.g. Providing improved water and sewer services

What is the importance of the program? Would denial or delay of access to services or information could serious or even life-threatening implications for the LEP individual?

Factor 4: The resources available and costs to the recipient.
Read the section in the guidance on this factor and the expectations from HUD about cost reasonableness. DCA can assist with translation services if necessary. Language assistance that a sub recipient might provide to LEP persons includes, but is not limited to

- Oral interpretation services;
- Bilingual staff;
- Telephone service lines interpreter;
- Written translation services;
- Notices to staff and sub recipients of the availability of LEP services; or
- Referrals to community liaisons proficient in the language of LEP persons.
- Provide "I speak" card (see policy documents for details)

Determine the resources to be made available if any

Step 3: Prepare a Language Access Plan (LAP) and submit it to your DCA representative that includes:

a. The Four-Factor Analysis
b. The name of the individual responsible for coordination of LEP compliance
c. A training plan on LEP requirements for all staff involved in programs and activities funded by the federal government and awarded by DCA

d. A list of vital documents to be translated (if necessary) and schedule for translating and disseminating vital documents
e. A plan for complaints and appeals. See the complaints and appeals requirement in the DCA policy.
f. A policy for updating the Four-Factor Analysis and the LAP every five years. Note: The CDBG grant term is two years. A grantee can apply for CDBG and use the established LAP for multiple grant terms.
g. A plan to maintain records regarding its efforts to comply with Title VI LEP obligations.

DCA Sub Recipient Language Access Plan Guidance

Pursuant to the requirements of Title VI of the Civil Rights Act of 1964, all DCA sub recipients (including State recipients) must take timely and reasonable steps to provide Limited English Proficient (LEP) persons with meaningful access to programs and activities funded by the federal government and awarded by DCA.

Within sixty days of award of funds, sub recipients must undertake the following steps:

1.) Conduct a Four-Factor Analysis to determine how to provide needed language assistance.
2.) Prepare a Language Access Plan (LAP) and submit it to your DCA representative that includes:

   a. The Four-Factor Analysis
   b. The name of the individual responsible for coordination of LEP compliance
   c. A training plan on LEP requirements for all staff involved in programs and activities funded by the federal government and awarded by DCA
   d. A list of vital documents to be translated (if necessary) and schedule for translating and disseminating vital documents
   e. A policy for updating the Four-Factor Analysis and the LAP every five years
   f. A plan to maintain records regarding its efforts to comply with Title VI LEP obligations.
   g. A plan for complaints and appeals. See the complaints and appeals requirement in the DCA Policy.

The following document provides guidance on how to accomplish these steps. Addition resources on HUD compliance policies and guidance can be found in the Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons Notice: https://www.gpo.gov/fdsys/pkg/FR-2007-01-22/pdf/07-217.pdf. Complete LEP resources and information for all federal programs can be found on this website: https://www.lep.gov/

Conducting the Four-Factor Analysis

The Four-Factor Analysis includes:

1.) The number or proportion of LEP persons served or encountered in the eligible service population ("served or encountered" includes those persons who would be served or encountered by the sub recipient if the persons received adequate education and outreach and the sub recipient provided sufficient language services).
2.) The frequency with which LEP persons come into contact with the program;
3.) The nature and importance of the program, activity, or service provided by the program; and
4.) The resources available and costs to the recipient.

Factor 1: Determining the number of LEP persons served or encountered in the eligible service population:

Sub recipients must use the most recent and relevant data to determine the number of LEP persons in the service area. Most sub recipients will depend on the most recent release of data from the American Community Survey Table S1601, updated each year in December. This data may be supplemented by local

knowledge or data, especially when evaluating sub jurisdictional areas such as target areas. All data provided must be accurately sourced.

The size of the language group determines the recommended provision for written language assistance.

Size of Language Group	**Recommended Provision of Written Language Assistance**
1,000 or more in the eligible population	Translated vital documents
More than 5% of the eligible population or beneficiaries and more than 50 in number	Translated vital documents
More than 5% of the eligible population or beneficiaries and 50 or less in number	Translated written notice of right to receive free oral interpretation of documents.
5% or less of the eligible population or beneficiaries and less than 1,000 in number	No written translation is required.

A vital document is any document that is critical for ensuring meaningful access to the recipients' major activities and programs by beneficiaries generally and LEP persons specifically. Leases, rental agreements and other housing documents of a legal nature enforceable in U.S. courts should be in English. See more about vital documents and legal documents in the FAQ below.

Factor 2: The frequency with which LEP persons come into contact with the program:
Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with an LEP individual from different language groups seeking assistance. The more frequent the contact with a particular language group, the more likely the need for enhanced language services in that language. The steps that are reasonable for a recipient that serves an LEP person on a one-time basis will be very different than those expected from a recipient that serves LEP persons daily. It is also advisable to consider the frequency of different types of language contacts. For example, frequent contacts with Spanish-speaking people who are LEP may require extensive assistance in Spanish. Less frequent contact with different language groups may suggest a different and less intensified solution. If an LEP individual accesses a program or service on a daily basis, a recipient has greater duties than if the same individual's program or activity contact is unpredictable or infrequent. But even recipients that serve LEP persons on an unpredictable or infrequent basis should determine what to do if an LEP individual seeks services under the program in question. This plan need not be intricate. It may be as simple as being prepared to use one of the commercially available telephonic interpretation services to obtain immediate interpreter services. In applying this standard, recipients should consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.

Factor 3: The nature and importance of the program, activity, or service provided by the program:

The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP persons, the more likely the need for language services. The obligations to communicate rights to a person who is being evicted differ, for example, from those to provide recreational programming. A recipient needs to determine whether denial or delay of access to services or information could have serious or even life-threatening implications for the LEP individual. Decisions by HUD, another federal, state, or local entity, or the recipient to make a specific activity

compulsory in order to participate in the program, such as filling out particular forms, participating in administrative hearings, or other activities, can serve as strong evidence of the program's importance.

Factor 4: The resources available and costs to the recipient:

Language assistance that a sub recipient might provide to LEP persons includes, but is not limited to

- Oral interpretation services;
- Bilingual staff;
- Telephone service lines interpreter;
- Written translation services;
- Notices to staff and sub recipients of the availability of LEP services; or
- Referrals to community liaisons proficient in the language of LEP persons.
- Provide "I speak" card (more in the FAQ below)

A recipient's level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. In addition, "reasonable steps" may cease to be reasonable where the costs imposed substantially exceed the benefits. Resource and cost issues, however, can often be reduced by technological advances; sharing of language assistance materials and services among and between recipients, advocacy groups, and federal grant agencies; and reasonable business practices. Where appropriate, training bilingual staff to act as interpreters and translators, information sharing through industry groups, telephonic and video conferencing interpretation services, pooling resources and standardizing documents to reduce translation needs, using qualified translators and interpreters to ensure that documents need not be "fixed" later and that inaccurate interpretations do not cause delay or other costs, centralizing interpreter and translator services to achieve economies of scale, or the formalized use of qualified community volunteers, for example, may help reduce costs. Recipients should carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. Small recipients with limited resources may find that entering into a bulk telephonic interpretation service contract will prove cost effective. Large entities and those entities serving a significant substantiated before using this factor as a reason to limit language assistance. Such recipients may find it useful to articulate, through documentation or in some other reasonable manner, their process for determining that language services would be limited based on resources or costs. This four-factor analysis necessarily implicates the "mix" of LEP services the recipient will provide. Recipients have two main ways to provide language services: Oral interpretation in person or via telephone interpretation service (hereinafter "interpretation") and through written translation (hereinafter "translation"). Oral interpretation can range from on-site interpreters for critical services provided to a high volume of LEP persons through commercially available telephonic interpretation services. Written translation, likewise, can range from translation of an entire document to translation of a short description of the document. In some cases, language services should be made available on an expedited basis, while in others the LEP individual may be referred to another office of the recipient for language assistance. The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. For instance, a public housing provider in a largely Hispanic neighborhood may need immediate oral interpreters available and should give serious consideration to hiring some bilingual staff. (Of course, many have

already made such arrangements.) By contrast, there may be circumstances where the importance and nature of the activity and number or proportion and frequency of contact with LEP persons may be low and the costs and resources needed to provide language services may be high – such as in the case of a voluntary public tour of a recreational facility – in which pre-arranged language services for the particular service may not be necessary. Regardless of the type of language service provided, quality and accuracy of those services can be critical in order to avoid serious consequences to the LEP person and to the recipient. Recipients have substantial flexibility in determining the appropriate mix.

Language Access Plan Frequently Asked Questions:

Who are limited English proficient (LEP) persons?

For persons who, as a result of national origin, do not speak English as their primary language and who have a limited ability to speak, read, write, or understand. For purposes of Title VI and the LEP Guidance, persons may be entitled to language assistance with respect to a particular service, benefit, or encounter.

What is Title VI and how does it relate to providing meaningful access to LEP persons?

Title VI of the Civil Rights Act of 1964 is the federal law that protects individuals from discrimination on the basis of their race, color, or national origin in programs that receive federal financial assistance. In certain situations, failure to ensure that persons who are LEP can effectively participate in, or benefit from, federally assisted programs may violate Title VI's prohibition against national origin discrimination.

What do Executive Order (EO) 13166 and the Guidance require?

EO 13166, signed on August 11, 2000, directs all federal agencies, including the Department of Housing and Urban Development (HUD), to work to ensure that programs receiving federal financial assistance provide meaningful access to LEP persons. Pursuant to EO 13166, the meaningful access requirement of the Title VI regulations and the four-factor analysis set forth in the Department of Justice (DOJ) LEP Guidance apply to the programs and activities of federal agencies, including HUD. In addition, EO 13166 requires federal agencies to issue LEP Guidance to assist their federally assisted recipients in providing such meaningful access to their programs. This Guidance must be consistent with the DOJ Guidance. Each federal agency is required to specifically tailor the general standards established in DOJ's Guidance to its federally assisted recipients. On December 19, 2003, HUD published such proposed Guidance.

Who must comply with the Title VI LEP obligations?

All programs and operations of entities that receive financial assistance from the federal government, including but not limited to state agencies, local agencies and for-profit and non-profit entities, must comply with the Title VI requirements. A listing of most, but not necessarily all, HUD programs that are federally assisted may be found at the "List of Federally Assisted Programs" published in the Federal Register on November 24, 2004 (69 FR 68700). Sub-recipients must also comply (i.e., when federal funds are passed through a recipient to a sub-recipient). As an example, Federal Housing Administration (FHA) insurance is not considered federal financial assistance, and participants in that program are not required

to comply with Title VI's LEP obligations, unless they receive federal financial assistance as well. [24 CFR 1.2 (e)].

Does a person's citizenship and immigration status determine the applicability of the Title VI LEP obligations?

United States citizenship does not determine whether a person is LEP. It is possible for a person who is a United States citizen to be LEP. It is also possible for a person who is not a United States citizen to be fluent in the English language. Title VI is interpreted to apply to citizens, documented non-citizens, and undocumented non-citizens. Some HUD programs require recipients to document citizenship or eligible immigrant status of beneficiaries; other programs do not. Title VI LEP obligations apply to every beneficiary who meets the program requirements, regardless of the beneficiary's citizenship status.

What is expected of recipients under the Guidance?

Federally assisted recipients are required to make reasonable efforts to provide language assistance to ensure meaningful access for LEP persons to the recipient's programs and activities. To do this, the recipient should

(1) Conduct the four-factor analysis;

(2) Develop a Language Access Plan (LAP); and

(3) Provide appropriate language assistance.

The actions that the recipient may be expected to take to meet its LEP obligations depend upon the results of the four-factor analysis including the services the recipient offers, the community the recipient serves, the resources the recipient possesses, and the costs of various language service options. All organizations would ensure nondiscrimination by taking reasonable steps to ensure meaningful access for persons who are LEP. HUD recognizes that some projects' budgets and resources are constrained by contracts and agreements with HUD. These constraints may impose a material burden upon the projects. Where a HUD recipient can demonstrate such a material burden, HUD views this as a critical item in the consideration of costs in the four-factor analysis. However, refusing to serve LEP persons or not adequately serving or delaying services to LEP persons would violate Title VI. The agency may, for example, have a contract with another organization to supply an interpreter when needed; use a telephone service line interpreter; or, if it would not impose an undue burden, or delay or deny meaningful access to the client, the agency may seek the assistance of another agency in the same community with bilingual staff to help provide oral interpretation service.

What is the four-factor analysis?

Recipients are required to take reasonable steps to ensure meaningful access to LEP persons. This "reasonableness" standard is intended to be flexible and fact-dependent. It is also intended to balance the need to ensure meaningful access by LEP persons to critical services while not imposing undue

financial burdens on small businesses, small local governments, or small nonprofit organizations. As a starting point, a recipient may conduct an individualized assessment that balances the following four factors:

5.) The number or proportion of LEP persons served or encountered in the eligible service population ("served or encountered" includes those persons who would be served or encountered by the sub recipient if the persons received adequate education and outreach and the sub recipient provided sufficient language services);
6.) The frequency with which LEP persons come into contact with the program;
7.) The nature and importance of the program, activity, or service provided by the program; and
8.) The resources available and costs to the sub recipient. Examples of applying the four-factor analysis to HUD-specific programs are located in Appendix A of the LEP Final Guidance.

What are examples of language assistance?

Language assistance that a sub recipient might provide to LEP persons includes, but is not limited to

- Oral interpretation services;
- Bilingual staff;
- Telephone service lines interpreter;
- Written translation services;
- Notices to staff and sub recipients of the availability of LEP services; or
- Referrals to community liaisons proficient in the language of LEP persons.

What is a Language Access Plan (LAP) and what are the elements of an effective LAP?

After completing the four-factor analysis and deciding what language assistance services are appropriate, a sub recipient may develop an implementation plan or LAP to address identified needs of the LEP populations it serves. Some elements that may be helpful in designing an LAP include
Identifying LEP persons who need language assistance and the specific language assistance that is needed;

- Identifying the points and types of contact the agency and staff may have with LEP persons;
- Identifying ways in which language assistance will be provided; · Outreaching effectively to the LEP community;
- Training staff;
- Determining which documents and informational materials are vital;
- Translating informational materials in identified language(s) that detail services and activities provided to beneficiaries (e.g., model leases, tenants' rights and responsibilities brochures, fair housing materials, first-time homebuyer guide);
- Providing appropriately translated notices to LEP persons (e.g., eviction notices, security information, emergency plans);
- Providing interpreters for large, medium, small, and one-on-one meetings;
- Developing community resources, partnerships, and other relationships to help with the provision of language services; and
- Making provisions for monitoring and updating the LAP, including seeking input from beneficiaries and the community on how it is working and on what other actions should be taken.

What is a vital document?

A vital document is any document that is critical for ensuring meaningful access to the sub recipients' major activities and programs by beneficiaries generally and LEP persons specifically. Whether or not a document (or the information it solicits) is "vital" may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in is not provided accurately or in a timely manner. For instance, applications for auxiliary activities, such as certain recreational programs in public housing, would not generally be considered a vital document, whereas applications for housing would be considered vital. However, if the major purpose for funding the sub recipient were its recreational program, documents related to those programs would be considered vital. Where appropriate, sub recipients are encouraged to create a plan for consistently determining, over time and across its various activities, what documents are "vital" to the meaningful access of the LEP populations they serve.

How may a sub recipient determine the language service needs of a beneficiary?

Sub recipients should elicit language service needs from all prospective beneficiaries (regardless of the prospective beneficiary's race or national origin). If the prospective beneficiary's response indicates a need for language assistance, the sub recipient may want to give applicants or prospective beneficiaries a language identification card (or "I speak" card). Language identification cards invite LEP persons to identify their own language needs. Such cards, for instance, might say "I speak Spanish" in both Spanish and English, "I speak Vietnamese" in both Vietnamese and English, etc. To reduce costs of compliance, the federal government has made a set of these cards available on the Internet. Download the “I speak” card here.

How may a sub recipient's limited resources be supplemented to provide the necessary LEP services?

A sub recipient should be resourceful in providing language assistance as long as quality and accuracy of language services are not compromised. The sub recipient itself need not provide the assistance, but may decide to partner with other organizations to provide the services. In addition, local community resources may be used if they can ensure that language services are competently provided. In the case of oral interpretation, for example, demonstrating competency requires more than self-identification as bilingual. Some bilingual persons may be able to communicate effectively in a different language when communicating information directly in that language, but may not be competent to interpret between English and that language.

In addition, the skill of translating is very different than the skill of interpreting and a person who is a competent interpreter may not be a competent translator. To ensure the quality of written translations and oral interpretations, HUD encourages sub recipients to use members of professional organizations. Examples of such organizations are national organizations, including American Translators Association (written translations), National Association of Judicial Interpreters and Translators, and International Organization of Conference Interpreters (oral interpretation); state organizations, including Colorado

Association of Professional Interpreters and Florida Chapter of the American Translators Association; and local legal organizations such as Bay Area Court Interpreters.

While HUD recommends using the list posted on the official LEP website, its limitations must be recognized. Use of the list is encouraged, but not required or endorsed by HUD. It does not come with a presumption of compliance. There are many other qualified interpretation and translation providers, including in the private sector.

May sub recipients rely upon family members or friends of the LEP person as interpreters?

Generally, sub recipients should not rely on family members, friends of the LEP person, or other informal interpreters. In many circumstances, family members (especially children) or friends may not be competent to provide quality and accurate interpretations. Therefore, such language assistance may not result in an LEP person obtaining meaningful access to the sub recipients' programs and activities. However, when LEP persons choose not to utilize the free language assistance services expressly offered to them by the sub recipient but rather choose to rely upon an interpreter of their own choosing (whether a professional interpreter, family member, or friend), LEP persons should be permitted to do so, at their own expense. Sub recipients may consult HUD LEP Guidance for more specific information on the use of family members or friends as interpreters. While HUD guidance does not preclude use of friends or family as interpreters in every instance, HUD recommends that the sub recipient use caution when such services are provided.

Are leases, rental agreements and other housing documents of a legal nature enforceable in U.S. courts when they are in languages other than English?

Generally, the English language document prevails. The translated documents may carry a disclaimer. For example, "This document is a translation of a HUD-issued legal document. HUD provides this translation to you merely as a convenience to assist in your understanding of your rights and obligations. The English language version of this document is the official, legal, controlling document. This translated document is not an official document."

Where both the landlord and tenant contracts are in languages other than English, state contract law governs the leases and rental agreements. HUD does not interpret state contract law. Therefore, s regarding the enforceability of housing documents of a legal nature that are in languages other than English should be referred to a lawyer well-versed in contract law of the appropriate state or locality. Neither EO 13166 nor HUD LEP Guidance grants an individual the right to proceed to court alleging violations of EO 13166 or HUD LEP Guidance.

In addition, current Title VI case law only permits a private right of action for intentional discrimination and not for action based on the discriminatory effects of a sub recipient's practices. However, individuals may file administrative complaints with HUD alleging violations of Title VI because the HUD sub recipient failed to take reasonable steps to provide meaningful access to LEP persons.

The local HUD office will intake the complaint, in writing, by date and time, detailing the complainant's allegation as to how the state failed to provide meaningful access to LEP persons. HUD will determine jurisdiction and follow up with an investigation of the complaint.

Who enforces Title VI as it relates to discrimination against LEP persons?

Most federal agencies have an office that is responsible for enforcing Title VI of the Civil Rights Act of 1964. To the extent that a sub recipient's actions violate Title VI obligations, then such federal agencies will take the necessary corrective steps. The Secretary of HUD has designated the Office of Fair Housing and Equal Opportunity (FHEO) to take the lead in coordinating and implementing EO 13166 for HUD, but each program office is responsible for its sub recipients' compliance with the civil-rights related program requirements (CRRPRs) under Title VI.

How does a person file a complaint if he/she believes the state is not meeting its Title VI LEP obligations?

If a person believes that the state is not taking reasonable steps to ensure meaningful access to LEP persons, that individual may file a complaint with HUD's local Office of FHEO. For contact information of the local HUD office, go to the HUD website or call the housing discrimination toll free hotline at 800-669-9777 (voice) or 800-927-9275 (TTY).

What will HUD do with a complaint alleging noncompliance with Title VI obligations?

HUD's Office of FHEO will conduct an investigation or compliance review whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI obligations by the state. If HUD's investigation or review results in a finding of compliance, HUD will inform the state in writing of its determination. If an investigation or review results in a finding of noncompliance, HUD also will inform the state in writing of its finding and identify steps that the state must take to correct the noncompliance. In a case of noncompliance, HUD will first attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, HUD may then secure compliance by

(1) Terminating the financial assistance of the state only after the state has been given an opportunity for an administrative hearing; and/or

(2) Referring the matter to DOJ for enforcement proceedings.

How will HUD evaluate evidence in the investigation of a complaint alleging noncompliance with Title VI obligations?

Title VI is the enforceable statute by which HUD investigates complaints alleging a sub recipient's failure to take reasonable steps to ensure meaningful access to LEP persons. In evaluating the evidence in such complaints, HUD will consider the extent to which the state followed the LEP Guidance or otherwise demonstrated its efforts to serve LEP persons. HUD's review of the evidence will include, but may not be limited to, application of the four-factor analysis identified in HUD LEP Guidance. The four-factor analysis

provides HUD a framework by which it may look at all the programs and services that the sub recipient provides to persons who are LEP to ensure meaningful access while not imposing undue burdens on sub recipients.

What is a safe harbor?

A "safe harbor," in the context of this guidance, means that the sub recipient has undertaken efforts to comply with respect to the needed translation of vital written materials. If a sub recipient conducts the four-factor analysis, determines that translated documents are needed by LEP applicants or beneficiaries, adopts an LAP that specifies the translation of vital materials, and makes the necessary translations, then the sub recipient provides strong evidence, in its records or in reports to the agency providing federal financial assistance, that it has made reasonable efforts to provide written language assistance.

What "safe harbors" may sub recipients follow to ensure they have no compliance finding with Title VI LEP obligations?

HUD has adopted a "safe harbor" for translation of written materials. The Guidance identifies actions that will be considered strong evidence of compliance with Title VI obligations. Failure to provide written translations under these cited circumstances does not mean that the sub recipient is in noncompliance.

Rather, the "safe harbors" provide a starting point for sub recipients to consider

- Whether and at what point the importance of the service, benefit, or activity involved warrants written translations of commonly used forms into frequently encountered languages other than English;
- Whether the nature of the information sought warrants written translations of commonly used forms into frequently encountered languages other than English;
- Whether the number or proportion of LEP persons served warrants written translations of commonly used forms into frequently encountered languages other than English; and
- Whether the demographics of the eligible population are specific to the situations for which the need for language services is being evaluated. In many cases, use of the "safe harbor" would mean provision of written language services when marketing to the eligible LEP population within the market area. However, when the actual population served (e.g., occupants of, or applicants to, the housing project) is used to determine the need for written translation services, written translations may not be necessary.

The table below sets forth safe harbors for written translations.

Size of Language Group	**Recommended Provision of Written Language Assistance**
1,000 or more in the eligible population in the market area or among current beneficiaries	Translated vital documents
More than 5% of the eligible population or beneficiaries and more than 50 in number	Translated vital documents

More than 5% of the eligible population or beneficiaries and 50 or less in number	Translated written notice of right to receive free oral interpretation of documents.
5% or less of the eligible population or beneficiaries and less than 1,000 in number	No written translation is required.

When HUD conducts a review or investigation, it will look at the total services the sub recipient provides, rather than a few isolated instances.

Is the sub recipient expected to provide any language assistance to persons in a language group when fewer than 5 percent of the eligible population and fewer than 50 in number are members of the language group?

HUD recommends that sub recipients use the four-factor analysis to determine whether to provide these persons with oral interpretation of vital documents if requested.

Are there "safe harbors" provided for oral interpretation services?

There are no "safe harbors" for oral interpretation services. Sub recipients should use the four-factor analysis to determine whether they should provide reasonable, timely, oral language assistance free of charge to any beneficiary that is LEP (depending on the circumstances, reasonable oral language assistance might be an in-person interpreter or telephone interpreter line).

Is there a continued commitment by the Executive Branch to EO 13166?

There has been no change to the EO 13166. The President and Secretary of HUD are fully committed to ensuring that LEP persons have meaningful access to federally conducted programs and activities.

Did the Supreme Court address and reject the LEP obligation under Title VI in Alexander v. Sandoval [121 S. Ct. 1511 (2001)]?

The Supreme Court did not reject the LEP obligations of Title VI in its Sandoval ruling. In Sandoval, 121 S. Ct. 1511 (2001), the Supreme Court held that there is no right of action for private parties to enforce the federal agencies' disparate impact regulations under Title VI. It ruled that, even if the Alabama Department of Public Safety's policy of administering driver's license examinations only in English violates Title VI regulations, a private party may not bring a lawsuit under those regulations to enjoin Alabama's policy. Sandoval did not invalidate Title VI or the Title VI disparate impact regulations, and federal agencies' (versus private parties) obligations to enforce Title VI. Therefore, Title VI regulations remain in effect. Because the legal basis for the Guidance required under EO 13166 is Title VI and, in HUD's case, the civil rights-related program requirements (CRRPR), dealing with differential treatment, and since Sandoval did not invalidate either, the EO remains in effect.

What are the obligations of HUD sub recipients if they operate in jurisdictions in which English has been declared the official language?

In a jurisdiction where English has been declared the official language, a HUD sub recipient is still subject to federal nondiscrimination requirements, including Title VI requirements as they relate to LEP persons.

Where can I find more information on LEP?

You should review HUD's LEP Guidance: https://www.gpo.gov/fdsys/pkg/FR-2007-01-22/pdf/07-217.pdf

Additional information may also be obtained through the federal-wide LEP website and HUD's LEP website: https://www.lep.gov/

For CDBG LAP technical assistance, contact Kathleen Vaughn at kathleen.vaughn@dca.ga.gov or (404) 679-0594.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Docket No. FR-6331-N-08

Public Interest *De Minimis* and Small Grants Waiver of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance

AGENCY: Office of the Secretary, U.S. Department of Housing and Urban Development (HUD).

ACTION: Final Notice.

SUMMARY: In accordance with the Build America, Buy America Act ("BABA" or "the Act") this notice advises that HUD has issued a departmentwide public interest *De Minimis* and Small Grants waiver to the Buy America Domestic Content Procurement Preference ("Buy America Preference," or "BAP") as applied to the iron, steel, manufactured products, and construction materials requirement of the Act for recipients of Federal Financial Assistance ("FFA"). For the purposes of this waiver, HUD has waived the application of the BAP for infrastructure projects whose total cost (including HUD funding and funding from any other source) is an amount equal to or less than the 2 CFR 200.1 Simplified acquisition threshold, which is currently $250,000. HUD has also waived the application of the BAP for all Small Grants of FFA provided by HUD that are equal to or below the Simplified acquisition threshold, which is currently $250,000. However, if FFA provided by HUD is combined with other FFA from another Federal agency, and the total amount of FFA in a single project is greater than the Simplified acquisition threshold, currently $250,000, then the waiver shall not apply to the FFA provided by HUD. Additionally, HUD has waived the application of the BAP for a *De Minimis* portion of an infrastructure project, meaning a cumulative total of no more than 5 percent of the total cost of the iron, steel, manufactured products, and construction materials used in and incorporated into the infrastructure project, up to a maximum of $1 million.

In accordance with the Act, HUD has found that such *De Minimis* and Small Grants waivers are in the public interest. The waiver will assist HUD and its grantees and funding recipients in preventing immediate delays to critically important projects that serve to ensuring the safety and health of HUD constituents and continuing to provide economic opportunity through housing and community development projects. Moreover, this waiver will assist HUD in working to strengthen the housing market to bolster the economy and protect consumers, meet the need for quality affordable rental homes, utilize housing as a platform for improving quality of life, and build inclusive and sustainable communities free from discrimination.

DATES: As required under section 70914 of the Act**,** HUD published this proposed waiver on its website on October 31, 2022, for public comment. In addition, HUD published the proposed waiver in the Federal Register. Comments on the proposed waiver set out in this document were due on or before November 15, 2022. Through this Final Notice, HUD is announcing that it has issued this waiver effective November 23, 2022. This waiver will remain effective for a period of five years or such shorter time period as HUD may announce via Notice.

FOR FURTHER INFORMATION CONTACT: Joseph Carlile, Department of Housing and Urban Development, 451 Seventh Street SW, Room 10226, Washington, DC 20410-5000, at (202) 402-7082 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs. HUD encourages submission of questions about this document be sent to BuildAmericaBuyAmerica@hud.gov.

SUPPLEMENTARY INFORMATION:

I. Build America, Buy America

The Build America, Buy America Act ("BABA" or "the Act") was enacted on November 15, 2021, as part of the Infrastructure Investment and Jobs Act (IIJA). Pub. L. 117-58. The Act establishes a domestic content procurement preference, the BAP, for Federal infrastructure programs. Section 70914(a) of the Act establishes that no later than 180 days after the date of enactment, HUD must ensure that none of the funds made available for infrastructure projects may be obligated by the Department unless it has taken steps to ensure that the iron, steel, manufactured products, and construction materials used in a project are produced in the United States. In section 70912, the Act further defines a project to include "the construction, alteration, maintenance, or repair of infrastructure in the United States" and includes within the definition of infrastructure those items traditionally included along with buildings and real property. Thus, starting May 14, 2022, new awards of FFA from a program for infrastructure, and any of those funds obligated by the grantee, are covered under BABA provisions of the Act, 41 U.S.C. 8301 note, unless covered by a waiver.

II. HUD's Progress in Implementation of the Act

Since the enactment of the Act, HUD has worked diligently to implement the BAP. Consistent with the requirements of section 70913 of the Act, HUD produced a report identifying and evaluating all of HUD's FFA programs for compliance with the BAP on January 19, 2022, through Federal Register notice "Identification of Federal Financial Assistance Infrastructure Programs Subject to the Build America, Buy America Provisions of the Infrastructure Investment and Jobs Act". (87 FR 2894) In order to ensure orderly implementation of the BAP across HUD's programs, HUD published two general applicability waivers for HUD's programs

on May 3, 2022. The first notice, "General Applicability Waiver of Build America, Buy America Provisions as Applied to Recipients of HUD Federal Financial Assistance" (87 FR 26219), extended the implementation date for the BAP until November 14, 2022, unless covered by a subsequent waiver. Thus, no funds obligated by HUD before November 14, 2022, are subject to the BAP. The second notice, "General Applicability Waiver of Build America, Buy America Provisions as Applied to Tribal Recipients of HUD Federal Financial Assistance" (87 FR 26221), extended the implementation date for the BAP for Federal Financial Assistance ("FFA") provided to Tribal recipients for a period of one year. HUD published a Notice proposing the waiver that is being finalized through this notice on its website on October 31, 2022, and via the Federal Register. Additional details on HUD's implementation of the BABA requirements can be found at https://www.hud.gov/program offices/general counsel/BABA.

III. Waiver Authority

Under section 70914(b), HUD has authority to waive the application of a domestic content procurement preference when (1) application of the preference would be contrary to the public interest, (2) the materials and products subject to the preference are not produced in the United States at a sufficient and reasonably available quantity or satisfactory quality, or (3) inclusion of domestically produced materials and products would increase the cost of completing the infrastructure project by more than 25 percent. Section 70914(c) provides that a waiver under 70914(b) must be published by the agency with a detailed written explanation for the proposed determination and provide a public comment period of not less than 15 days.

IV. Public Interest in this General Applicability Waiver of Buy America Provisions

The Office of Management and Budget's April 18, 2022, memorandum, "Initial Implementation Guidance on Application of Buy America Preference in Federal Financial

Assistance Programs for Infrastructure" (M-22-11) encourages agencies to consider whether it is in the public interest to waive application of a BAP to awards below the Simplified acquisition threshold. HUD is issuing this waiver not as an alternative to increasing domestic production, but as an important tool to implement the Buy American provisions in the most efficient manner. HUD understands that advancing Made in America objectives is a continuous effort. HUD plans to move forward to implement the new requirements in a way that maximizes coordination and collaboration to support long-term investments in domestic production.

Through this notice, HUD has waived the application of the BAP for infrastructure projects whose total cost (including HUD funding and funding from any other source) is an amount equal to or less than the 2 CFR 200.1 Simplified acquisition threshold, which is currently $250,000. HUD has also waived the application of the BAP for all Small Grants of Federal Financial Assistance provided by HUD that are equal to or below the 2 CFR 200.1 Simplified acquisition threshold, which is currently $250,000. However, if FFA provided by HUD is combined with other FFA from another Federal agency, and the total amount of FFA in a single project is greater than the Simplified acquisition threshold, currently $250,000, then the waiver shall not apply to the FFA provided by HUD. HUD has also waived the application of the BAP for a *De Minimis* portion of an infrastructure project, meaning a cumulative total of no more than 5 percent of the total cost of the iron, steel, manufactured products, and construction materials used in and incorporated into the infrastructure project, up to a maximum of $1 million.

For purposes of the Act, an infrastructure project involves the undertaking of any "construction, alteration, maintenance, or repair" of "infrastructure," which includes, among other things, the "structures, facilities and equipment" of "buildings and real property."

In accordance with the Act, HUD has found that such *De Minimis* and Small Grants waivers are in the public interest. Such waivers will allow HUD, grantees and funding recipients to focus their efforts on such critical projects. Issuing the waivers is not an alternative to increasing domestic production. The waivers are in the interest of efficiency, to ease burdens for HUD grantees and funding recipients, and will also allow HUD to focus, particularly in the early phases of BABA implementation, on key products, and critical supply chains where increased U.S. manufacturing can best advance our economic and national security. These waivers will allow HUD grantees and funding recipients to continue with projects. Without these waivers, HUD grantee and funding recipient participation could be impacted, such as modification of current plans.

HUD is issuing this waiver to facilitate the effective implementation of the BAP and will therefore not permit the artificial subdivision of infrastructure projects to fit within the scope of this waiver of the BAP. Thus, for purposes of this waiver, HUD will evaluate the total cost of the infrastructure project as it would for purposes of the review contemplated under 24 CFR Part 58, i.e., by defining the scope consistent with 24 CFR 58.2(a)(4), as "the activity, or a group of integrally related activities, designed by the recipient to accomplish, in whole or in part, a specific objective." HUD believes its grantees and recipients of FFA that will be used for infrastructure projects are familiar with this regulation and understand the proper application of the concept in connection with their activities, or as otherwise defined by HUD in a notice. However, in connection with the public housing program, evaluation of certain maintenance and repair activities within the definition of infrastructure projects under the Act is not appropriate using this standard. Therefore, for the purposes of determining the applicability of this waiver in connection with the maintenance and repair of public housing, HUD will evaluate the

infrastructure project as including the single relevant procurement contract for such maintenance or repairs, or, where applicable, the collection of procurements focused on the same specific objective (e.g., construction of a resident service space) or limited scope of work (e.g., lead based paint abatement).

In fiscal year 2022, HUD grantees will receive more than $15 billion through the Department's programs where infrastructure is an eligible activity and may be subject to the BAP. For example, Community Development Block Grant ("CDBG") funds may be used for infrastructure projects (e.g., water and sewer improvements, street improvements, neighborhood facilities) or non-infrastructure uses (e.g., senior services, youth services, operation of food banks, administrative and planning expenses). HUD estimates that 40 percent of CDBG funds awarded in 2021 ($1.4 billion of $3.5 billion total) were used on infrastructure projects where the BAP could apply.

As HUD's initial waivers advised and as supported by several comments received during the comment period on those waivers, many of HUD's programs may be subject to the BAP and have previously not required compliance with similar Buy American preferences. Because the potential application of BAP mandated by the Act is new to the majority of HUD's programs and FFA, this waiver advances BABA by reducing the administrative burden to potential assistance recipients where the costs of compliance with BABA could distract from the focus on higher value BABA compliant items. Failure to provide recipients such flexibilities could delay the award for infrastructure projects as grantees and funding recipients must exert considerable effort accounting for the sourcing for miscellaneous, low-cost items. Moreover, HUD does not believe the waiver of the BAP for such awards will undermine the full and robust implementation of the Act or the ability of the agency to support the purposes behind the Act.

HUD expects to review this waiver every five years from the effective date of this waiver or more often as appropriate. No funds obligated by HUD or the grantee/funding recipient during the period of the waiver that are exempted from compliance with BAP as a result of the waiver will be required to apply the BAP.

V. Public Comments on the Waiver

As required under section 70914 of the Act, HUD solicited comment from the public on the public interest waiver announced in this Notice on its website and then published the proposed waiver in the Federal Register. A total of 14 comments were received in response to the proposed waiver. HUD thoroughly reviewed and considered each of the comments in determining to move forward with the issuance of this waiver as published in this Final Notice. The comments generally favored a *De Minimis* and Small Dollar waiver as proposed.

A few commenters expressed support for a broader scope waiver, including requesting higher limits for a Small Grants exclusion, a higher percentage exclusion on portions of infrastructure projects, and a higher cap on the total cost under the *De Minimis* waiver. A similar number of commenters requested that the limits be lowered to afford more opportunities for the application of the BAP. HUD appreciates the comments from both perspectives, but believes that, as an initial matter, the limits proposed in the initial waiver are set at the appropriate levels to balance the intent of the Act with the public interest in the continued efficiency and success of infrastructure projects funded through HUD's affordable housing and community development programs. HUD declines to make changes to the amounts represented by these limits at this time, but is clarifying that all FFA, whether received by HUD or from another Federal source, in connection with infrastructure projects must be used to calculate the total, cumulative FFA in a single project to determine the applicability of a Small Grants waiver. HUD will continue to

monitor the implementation of the BAP across its programs to ensure the most robust application possible in light of the important public interests discussed above.

Several proponents of the waiver requested that HUD provide greater clarity regarding the implementation of the BAP and the appropriate application of this waiver. HUD appreciates these comments and will continue to work to develop robust guidance regarding the implementation of the BAP across its programs. HUD remains committed to reviewing the waivers it issues every five years or more often if necessary and appropriate.

A few comments were received from manufacturers and trade organizations that opposed portions of the proposed waiver because they would prefer a more narrowly tailored waiver, if a waiver is issued at all. These commenters expressed confusion over the reference to Minor Components in the proposed waiver. HUD agrees that use of the term Minor Components did not accurately reflect the waiver HUD was proposing. As a result, the waiver issued by HUD and announced via this Final Notice deletes all references to Minor Components and instead focuses on the true intent of the waiver – coverage for small grants and a *De Minimis* waiver.

Additionally, several of the opponents expressed concern that the waiver could give rise to a loophole to avoid compliance with the BAP. HUD appreciates the comments but believes that the waiver is sufficiently narrowly tailored with protections in place to avoid artificial manipulation of project size and that the risk of abuse is outweighed by the need to provide this important flexibility for Small Grants and the *De Minimis* portions of larger infrastructure projects. HUD expects the future guidance and technical assistance it provides to grantees regarding the implementation of the Act to further address any concerns that the scope or applicability of this waiver will be misconstrued by grantees. HUD will not allow the use of the waiver in any artificial or contrived circumstances designed to avoid the proper application of the

BAP requirements. HUD has therefore declined to modify the waiver at this time, beyond the clarification of the use of the cumulative total of all FFA funding the infrastructure project in determining application of this waiver. As previously indicated, HUD will continue to monitor the usage of the waiver so it may swiftly address any potential confusion concerning the proper application of the waiver.

The complexities of applying the BAP in connection with Small Grants and *De Minimis* portions of projects are such that the Agency maintains, for the reasons outlined herein, the public interest necessitates this waiver of the BAP. HUD will continue its work to assess compliance alternatives and options best suited to enable grantees and funding recipients to more efficiently and effectively implement the BAP in connection with Small Grants and *De Minimis* portions of infrastructure projects and will reevaluate this waiver in five years or sooner as appropriate. Additionally, HUD will continue to assess the need for and provide additional guidance for funding recipients and grantees to ensure the appropriate implementation of the BAP in its programs. At this time, however, HUD has issued this Small Grant and *De Minimis* waiver with the minimal substantive changes described herein and with other minor, inconsequential grammatical revisions.

V. Impact of this Waiver on other Federal Financial Assistance

Where the BAP or other BABA requirements are made applicable to projects of a grantee or funding recipient by another Federal agency, the grantee or funding recipient may not rely on this waiver as a waiver of any requirement imposed by the other Federal agency for the projects, nor is the grantee or funding recipient exempt from the application of those requirements in accordance with the requirements of the Federal agency providing such FFA.

VI. Assessment of Cost Advantage of a Foreign-Sourced Product

Under OMB Memorandum M-22-11, "Memorandum for Heads of Executive Departments and Agencies," published on April 18, 2022, agencies are expected to assess "whether a significant portion of any cost advantage of a foreign-sourced product is the result of the use of dumped steel, iron, or manufactured products or the use of injuriously subsidized steel, iron, or manufactured products" as appropriate before granting a public interest waiver.[1] HUD's analysis has concluded that this assessment is not applicable to this waiver, as this waiver is not based in the cost of foreign-sourced products. HUD will perform additional market research during the duration of the waiver to better understand the market to limit the use of waivers caused by dumping of foreign-sourced products.

Dated: 11/23/2022

Marcia L. Fudge

Marcia L. Fudge
Secretary

[Billing Code 4210-67]

[1] See OMB Memorandum M-22-08, Identification of Federal Financial Assistance Infrastructure Programs Subject to the Build America, Buy America Provisions of the Infrastructure Investment and Jobs Act, https://www.whitehouse.gov/wp-content/uploads/2021/12/M-22-08.pdf