

# State of Georgia Neighborhood Stabilization Program Recipients' Manual

## NSP I

Revised March 2011



Georgia Department Of  
Community Affairs

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## Georgia Code of Ethics for Government Service

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§45-10-1. Establishment and text of code of ethics for government service generally: There is established for and within the state and for and in all governments therein a code of ethics for government service which shall read as follows:

### CODE OF ETHICS FOR GOVERNMENT SERVICE

Any person in government service should:

- I. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or government department.
- II. Uphold the Constitution, laws, and legal regulations of the United States and the State of Georgia and of all governments therein and never be a party to their evasion.
- III. Give a full day's labor for a full day's pay and give to the performance of his duties his earnest effort and best thought.
- IV. Seek to find and employ more efficient and economical ways of getting tasks accomplished.
- V. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not, and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.
- VI. Make no private promises of any kind binding upon the duties of office, since a government employee has no private word which can be binding on public duty.
- VII. Engage in no business with the government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.
- VIII. Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.
- IX. Expose corruption wherever discovered.
- X. Uphold these principles, ever conscious that public office is a public trust.

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### Definitions

**Abandoned** - A home or residential property is abandoned if either (a) mortgage, tribal leasehold, or tax payments are at least 90 days delinquent, or (b) a code enforcement inspection has determined that the property is not habitable and the owner has taken no corrective actions within 90 days of notification of the deficiencies, or (c) the property is subject to a court-ordered receivership or nuisance abatement related to abandonment pursuant to state, local or tribal law or otherwise meets a state definition of an abandoned home or residential property.

**ACT or THE ACT** – The Housing and Economic Recovery Act of 2008 (H.R. 3221).

**AMI – Area Median Income.** For purposes of NSP, the median income for each county. The AMI varies by household size. The 50% and 120% limits are available at [http://www.huduser.org/datasets/Section8Limits\\_50\\_120.xls](http://www.huduser.org/datasets/Section8Limits_50_120.xls) and on the DCA web site.

**ARRA – American Recovery and Reinvestment Act of 2009.** This Act modifies some NSP stipulations in HERA.

**DCA** – Georgia Department of Community Affairs

**Eligible Area** – A census block group in which at least 51 % of the residents have incomes at or below 120% of AMI (LMMA-Low- Moderate- and Middle-Income Area).

**Foreclosed Upon** - A home or residential property has been foreclosed upon if any of the following conditions apply: (a) The property's current delinquency status is at least 60 days delinquent under the Mortgage Bankers of America delinquency calculation and the owner has been notified of this delinquency, or (b) the property owner is 90 days or more delinquent on tax payments, or (c) under state, local, or tribal law, foreclosure proceedings have been initiated or completed, or d) foreclosure proceedings have been completed and title has been transferred to an intermediary aggregator or servicer that is not an NSP grantee, contractor, subrecipient, developer, or end user.

**LMMI – Low- Moderate- and Middle-Income.** Households with income below 120% of Area Median Income. Low income households have incomes below 50% of AMI. Moderate income households have incomes between 50% and 80% of AMI and Middle income households have incomes between 80% and 120% of AMI.

**NSP – Neighborhood Stabilization Program** as authorized in the ACT.

**Program Income** – The gross income received by the recipient or a subrecipient directly generated from the use of NSP funds. This includes, but is not limited to, proceeds from the disposition by sale or long-term lease of real property purchased or improved with NSP funds; gross income from the use or rental of real or personal property acquired by the recipient or by a subrecipient with NSP funds, less costs incidental to generation of the income; and payments of principal and interest on loans made using NSP funds. Please see [http://edocket.access.gpo.gov/cfr\\_2009/apr/qtr/24cfr570.500.htm](http://edocket.access.gpo.gov/cfr_2009/apr/qtr/24cfr570.500.htm) for HUD's complete definition of program income. The NSP Bridge Notice published on June 19, 2009 further clarifies the definition and uses of program income via the following link:

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[http://hudnsphelp.info/media/resources/nsp1\\_bridgenotice\\_061909.pdf](http://hudnsphelp.info/media/resources/nsp1_bridgenotice_061909.pdf).

**REO – Real Estate Owned.** Property which has undergone foreclosure and title is now held by a bank or other financial institution.

**RFP – Request for Proposal.** A document inviting subrecipients and professional service providers to bid on contracts to perform services under NSP

**Subrecipient** - As defined in 24 CFR 570.500 (c) , subrecipient means a public or private nonprofit agency, authority, or organization, or a for-profit entity authorized under § 570.201(o), receiving CDBG funds from the recipient or another subrecipient to undertake activities eligible for such assistance under subpart C of part 570. The term excludes an entity receiving CDBG funds from the recipient under the authority of § 570.204, unless the grantee explicitly designates it as a subrecipient. The term includes a public agency designated by a unit of general local government to receive a loan guarantee under subpart M of part 570, but does not include contractors providing supplies, equipment, construction, or services subject to the procurement requirements in 24 CFR 85.36 or 84.40, as applicable.



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### Chapter I: General Information

#### Section 1: Implementation Timeframes

Completion of program activities within the timeframes established in the approved application is extremely important. DCA may choose to exercise its right to recapture all unobligated NSP funds during the grant award period or to take other sanctions described in this Manual.

Federal regulation requires that ALL NSP funds are obligated within 18 months of the HUD award to the state (i.e., by September 5, 2010). As such, DCA has set the expiration date for Direct Allocation Pool NSP awards as December 31, 2009. In order for the State to achieve the federal goal of timely obligation of funds, DCA shall monitor progress of all NSP awards closely, and, at its discretion, de-obligate slow or non-performing awards and reallocate NSP funds in accordance with Section B(5) of the State's Action Plan filed with HUD for the NSP program. Within 30 days prior to the award expiration date, the Recipient should submit a request for extension of their award, including accomplishments to date and an activity schedule listing specific proposed milestones and goals for the timeframe of the extension request.. All approvals of extensions will be made in the form of a Grant Adjustment Notice from DCA.

#### Section 2: Conflict Of Interest Prohibition

There are two situations involving prohibited conflicts of interest (COI) which should be avoided.

1. When a local government NSP Recipient contracts for the procurement of goods and services, the Conflict of Interest provision in the "Common Rule" (24 CFR 85.36) are applicable. See DCA's procurement requirements in Chapter III and Chapter IV of this Manual. These rules prohibit local officials and staff from being a party to any contract assisted with NSP funds.
2. In addition, the Conflict of Interest prohibition at 24 CFR Part 570.489 (h) is applicable to all NSP grants and activities. This rule generally prohibits elected officials, and staff who are in a position to influence decisions, from receiving any benefit in an NSP-assisted project. This includes the benefit from living or owning property in an NSP target area that receives NSP Public Facility 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 NSP 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 NSP-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 apply to



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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 NSP 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 NSP Program and the effective and efficient administration of the NSP program or project. To seek an exception, a written request for an exception must be submitted by the unit of local government to DCA which:

- Fully discloses the conflict or potential conflict of interest prior to the unit of government or Recipient undertaking any action which results or may result in a conflict of interest, real or apparent; and
- Describes how the conflict of interest was publicly disclosed to document that the public was made aware of the situation; and
- Includes a written opinion by the local government's attorney that the conflict of interest for which the exception is sought would not violate state or local law.
- Includes a written statement signed by the Chief Elected Official, the Authorized Representative, the city or county attorney, or by the official designated by the governing body to sign such statement addressing the factors DCA must consider before deciding whether to allow an exception to 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 be publicly disclosed. DCA recommends that the recipient disclose the COI at a public meeting and include a detailed description of the COI on the publicly posted agenda for the meeting. The discussion of the COI at the public meeting must be included in the minutes of the meeting. 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. Note that a detailed public announcement of the nature of the COI prior to the public meeting is a critical requirement and part of DCA's review of all requests for exceptions to the COI prohibition.

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- F. Non-Involvement: One of the factors DCA must include in its decision to grant an 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 discussions pertaining to 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 NSP Recipient has satisfactorily met the requirements 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 provide 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 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 NSP funds (or officer, employee, agent or consultant of the owner, developer or sponsor) whether private, for profit or non-profit may occupy a NSP-assisted affordable housing unit in a project. Any exceptions must be approved in advance by DCA and then only when the local government NSP Recipient can demonstrate to DCA that the exception will serve to further the purposes of the NSP 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.

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**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.

### Section 3: Citizen Participation Requirements

The Housing and Economic Recovery Act (HERA) by reference to the Housing and Community Development Act (HCDA) places emphasis on efforts to involve citizens, especially low- and moderate-income citizens, in all aspects of the NSP Program.

As required by HCDA, DCA has adopted a written Citizen Participation Plan as part of the Consolidated Planning process. This Plan is also applicable to applicants for and Recipients of NSP funds.

Applicants for and Recipients of NSP certify that they will follow this plan, which requires that local units of government will provide for and encourage citizen participation in the planning, implementation and assessment of their NSP program.

Applicants and Recipients must, at a minimum, meet the following requirements.

1. At least one (1) public hearing must be held in the locality before submission of an application to DCA. The purpose of this hearing is to obtain citizen views, respond to proposals, and answer questions concerning previously funded projects (if any) and to obtain citizen participation in the development of new proposals including identification of community needs and proposed activities.
2. **At least one (1) public hearing must be held to discuss the approved activities within 60 days of the grant award.** This hearing must include the estimated amount proposed to be used for the activities that will benefit low-moderate- and middle-income persons and the Recipient's plans for minimizing the displacement of persons as a result of NSP funded activities and to assist persons actually displaced as a result of such activities. (Sample notice is available on DCA's Website.)
3. At least one (1) public hearing must be held if a grantee proposes a substantive amendment to the program, as defined in Section 11 of this Manual.
4. At the completion of the project, the Recipient shall prepare a detailed Final Quarterly Report, which describes the accomplishments of the project. The Recipient shall make the report available to the public and solicit comments on performance before grant close-out. A Public Notice must be published stating the availability of the Report and soliciting comments. This Notice can be combined with the "close-out" Public Hearing.
5. At the completion of the project, the Recipient shall also hold a Public Hearing. See Chapter I, Section 14: "Close-Out Procedures".
6. The public hearings required by this section shall be held only after publication of a notice not less than five (5) full days prior to said hearing in the non-legal

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section of a local newspaper of general circulation. Local governments are encouraged to provide for other forms of public notice to persons known to be interested in the project.

A full five days must pass from the Public Notice publication date to the public hearing date. The first full day is the day after the Notice is published. For example: If the Notice is published on a Thursday the earliest the Hearing can be held is the following Wednesday. Another example: The hearing is scheduled for a Friday afternoon. Counting backward, day one is Thursday and day 5 is Sunday. The notice must be in a paper earlier than Sunday, i.e.: Saturday's paper or earlier.

7. Hearings must be held at times and locations convenient to potential or actual beneficiaries and with accommodation for the handicapped. Public hearing notices should include information to accommodate special needs.
8. The needs of non-English speaking residents must be met in the case of public hearings where a significant number of non-English speaking residents can be reasonably expected to participate.
9. Recipient files must contain documenting evidence that the actions listed in this section have been taken, including copies of actual notices and minutes of hearings.
10. Applicants and Recipients must provide technical assistance to groups representative of persons of low- moderate- and middle-income that request such assistance in developing proposals, with the level and type of assistance to be determined by the local unit of government.
11. Citizens must be provided with reasonable and timely access to local meetings, information and records relating to the local government's proposed and actual use of NSP funds as required by HUD regulations and state law.
12. In the event the local government receives a written complaint or grievance concerning the NSP program, a timely written response must be made within 15 working days, where practical.
13. This section may not be construed to restrict the responsibility or authority of the local government for the development and execution of its NSP program.

#### Citizens Complaints

**In case of receipt of a citizen complaint by DCA, the following procedure is established:**

- a. DCA shall respond to written complaints only, and then only if evidence indicates that relief has previously been sought at the local level;
- b. Upon receipt of a complaint, DCA shall transmit a copy of the complaint to the Recipient and request a response within fifteen (15) calendar

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days;

- c. If the response indicates the Recipient is in noncompliance with law or regulation, DCA shall require corrective action and advise the complainant of its decision;
- d. DCA will only take action if complaints indicate noncompliance with law or regulation. Other complaints about the program should be handled on the local level.

### Location of Program Records

Although Recipients may designate the location of the program records, DCA must be officially informed of their location. In addition, in order to ensure citizen access to NSP program records, if the location of the records is different from the Recipient's normal place of business, the following minimum information must be on file in a designated place within the locality and available for public inspection:

- The application;
- The citizen participation plan (if different from the State's Plan);
- The standard performance/financial reports, including Quarterly Reports;
- Other pertinent information deemed appropriate by the Recipient;
- The environmental review record; and
- NSP bank account statements, invoices, canceled checks, and all program accounting records.

### **Section 4: Award and Acceptance of Funds**

Upon approval of an application for Neighborhood Stabilization Program (NSP) funds, the Georgia Department of Community Affairs (DCA) will transmit to the Recipient's certifying representative the following documents:

1. An original and one copy of the Statement of NSP Grant Award signed by the Commissioner. If applicable, an original and one copy of a Statement of Revisions and/or an original and one copy of a Statement of General and Special Conditions will also be attached.

The Recipient's certifying representative (Mayor, Chairman of County Commission or other authorized official) should examine these documents closely and understand them before signing and dating all copies.

Once signed, the original (white) of the Statement of NSP Grant Award as well as the original Statement of Special Conditions, and Statement of Revisions, if any, must be returned to DCA, Office of Community Development, within fifteen (15) days of grant award as evidence of acceptance of the grant.

The copy (pink) of the Statement of NSP Grant Award and the copy(s) of the Statement of Revisions and/or the Statement of General and Special Conditions, if any, should be retained by the Recipient for its files.

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2. An **Authorization Agreement for Automatic Deposits** is to be completed and returned to DCA along with a voided check indicating the account number. A voided check, not a deposit slip, is required to set-up the wire transfer process.
3. An **Authorized Signature Card** must be signed by at least two signatories (one of which must be a local government employee) authorized to request payment (draw down) of funds under the grant agreement. **NSP RECIPIENTS ARE REQUIRED** to provide two (2) authorized signatures on each drawdown request. The Recipient's certifying representative should also sign the card to certify that the individuals named are indeed authorized to request payment and that the signatures on the card are theirs. No erasures or corrections may appear on this form. **Important: For draw downs, at least one local government representative's (elected official or employee) signature must be on the drawdown form.**
4. Civil Rights Compliance Certification:
  - a. The person responsible for the government's personnel practices should complete questions 1 through 8 to indicate compliance with government EEO requirements.
  - b. Have the chief elected official and the person preparing the report sign and date it.
  - c. Submit the report to DCA, Office of Community Development.

These should all be returned to DCA along with the Statement of NSP Grant Award.

- Samples of these forms are included on DCA's web site.
- All correspondence and submissions, except for drawdown requests (see page 16 for this address), relating to the NSP program should be mailed to the following address in care of:

Office of Community Development  
Georgia Department of Community Affairs  
60 Executive Park South, NE  
Atlanta, Georgia 30329-2231  
Telephone: (404) 679-1582  
Fax: (404) 679-1583

### **Section 5: General and Special Conditions and Revisions**

A Statement of Revisions and/or General and Special Conditions may be attached to and made part of the Statement of NSP Grant Award. When attached, they must be signed and returned to DCA along with the Statement of NSP Grant Award.

General Conditions are applicable to all grants and include the requirement for an environmental review before funds are obligated other than activities that are exempt under the environmental review.

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The Special Conditions will vary from grant to grant and may address a number of different issues. Generally, they will restrict the drawdown of funds until necessary clearances have been obtained. The Recipient should be clearly aware of all Special Conditions attached to its award and should make every effort to clear them as promptly as possible (but no later than 45 days from the date of grant award).

Clearance of Special Conditions is given by DCA by issuance of a Grant Adjustment Notice after receipt and approval of evidence of compliance. Official notification of clearance of a Special Condition should be retained by the Recipient in its files.

The Revisions (if applicable) will also vary from grant to grant and will list any changes such as budget revisions made by DCA to the application.

Recipients should be aware of the general environmental condition placed on all grants. Consult Chapter II, Section 2 for detailed information on complying with environmental review responsibilities. **The environmental review must be completed before any project funds are obligated.**

DCA reserves the right to cancel any grant award, temporarily suspend payments, or to take other actions in the event an NSP Recipient materially fails to comply with any of the terms of the Grant Award. See Chapter I, Section 16: Sanctions.

### Code of Ethics

Note that the following General Condition has been added to all Grant Awards, as follows:

The Recipient agrees and certifies that for all activities and endeavors carried out in concert with NSP monies, the Code of Ethics for Government Service as established within Title 45, Chapter 10 and Section 1 of the Official Code of Georgia Annotated will be strictly adhered to and followed.

Please see the entire text of the Georgia Code of Ethics for Government Service at the opening of this Manual.

### **Section 6: Requirements for All Administrative Contracts**

Recipients at a minimum must include in all administrative contracts the following:

- A. A clear description of the scope of work to be performed by the consultant or other service provider.
- B. A listing of specific responsibilities, tasks, goals, and milestones along with dates and deadlines that are clearly described in the contract along with provisions for recourse if the consultant or other service provider fails to perform by the deadlines imposed.
- C. A reference to the applicable NSP manuals and a statement requiring the consultant or other service provider to adhere to all requirements in the manuals (including all requirements referenced in the manuals) as well as to other directives issued by



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DCA.

D. Applicable dates of the contract and provisions for termination.

E. Appeals and Complaints

### Section 7: Developing Local Program Policies and Procedures

Prior to implementation of each local NSP program, the NSP Recipient must adopt a resolution by the governing body approving and adopting a set of Program Policies and Procedures that outline all applicable program policies based on the approved grant application. Program Policies and Procedures should cover topics including, but not limited to, the following:

- Eligible Borrowers/Beneficiaries
- Eligible Activities
- Application Intake (including required documentation)
- Loan Terms and Conditions (including leverage loan requirements)
- Minimum Property Standards, Written Rehabilitation Standards and permitted General Property Improvements (GPI). Inspection, Work Write-up, and Bidding Procedures.
- Contractor Qualifications
- Loan Documentation and Loan Closings
- Progress Payments, Change orders, and Closeouts

### Section 8: Cash Depositories

Funds advanced under NSP Programs must be deposited as follows:

1. A separate non-interest bearing bank account must be established for each NSP grant.

Only NSP funds should be deposited into this account. Match and other funds should not be deposited into this account.
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2. A second separate bank account must be established for the receipt of program income. This account may be interest-bearing. All program income funds must be expended before additional grant funds can be disbursed.
3. The separate bank accounts must be established in a financial institution with Federal deposit insurance coverage and the balance exceeding the coverage must be collaterally secured.
4. Consistent with the national goal of expanding the opportunities for minority business enterprises, Recipients are encouraged to use minority banks.

### Section 9: Drawdown of Funds

**Requirement for Source Documentation to Accompany ALL NSP Draw Requests**

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Recipients shall submit to DCA a **Request For Drawdown Of NSP Funds For Individual Project (NSP DD 1)** for each individual NSP property AND a **Request for Drawdown of NSP Funds - Draw Summary (NSP DD 2)** whenever necessary, but ordinarily not more frequently than weekly. (See copy of forms and instructions on DCA's web site.) Prior to initial drawdown of any funds, the Statement of NSP Award, any Statement of Special Conditions and/or Revisions, the Authorization Agreement for Automatic Deposits form, a voided check, the authorized Signature Card and the Civil Rights Compliance Certification must have been properly executed and returned to DCA. In addition, any Special Conditions restricting drawdown of funds must have been satisfied and the environmental review (except for exempt activities) must have been completed.

Important: For drawdowns, two signatures are required with at least one local government representatives (elected official or employee) signature on the drawdown form.

Requests for drawdowns (only) should be mailed to the following address:

Office of Community Development  
NSP Draws  
Georgia Department of Community Affairs  
60 Executive Park South  
Atlanta, Georgia 30329-2231

*The Recipient must minimize the time elapsing between the receipt of funds and their disbursement. A period of **3 business days or less** shall be considered acceptable for any sum more than \$5,000. (See Chapter III, - "Financial Management Systems" - of this Manual.)*

Whenever cash on hand exceeds \$5,000 and appears to exceed the next 3 business days' needs, the excess should be immediately returned to DCA.

*When a Recipient demonstrates an inability to establish procedures to minimize the time elapsing between cash advances and disbursements, cannot adhere to laws, regulations or special conditions, engages in the improper award and administration of contracts, or is unable to submit reliable and/or timely reports, DCA may terminate advance financing and/or require operation of the program on a reimbursement basis only, and take additional actions as described in this Manual.*

It is the Recipient's responsibility to anticipate cash needs and to submit drawdown requests to allow sufficient time for timely receipt of funds.

### **Section 10: Limitations on Use of Administration Funds**

The following requirements are applicable to all new and existing NSP Recipients, regardless of time of award, unless otherwise noted:

Recipients may not draw down more than 25 percent of their administrative funds prior

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to clearance of all special conditions.

The last 10 percent of administrative funds may not be drawn down until all other NSP funds have been expended.

Exceptions will only be approved on a case-by-case basis. The Department may require an acceptable certification from the Recipient stating that it will provide the additional administrative funds necessary to allow the project to proceed in a timely fashion.

### Section 11: Program Amendments, Budget Revisions or Other Adjustments

Recipients must request a program amendment and receive prior approval from DCA in the following instances:

1. If the addition of a new activity or the deletion of an approved activity is proposed.
2. If any activity is proposed in an area other than the approved NSP target area(s).
3. If a budget revision is proposed that will result in a transfer between approved activities or in a change in any activity's allocation of an accumulative amount in excess of 20% of the grant award.

If a substantive amendment to the program is proposed, at least one (1) public hearing must be held. Recipients are advised to modify the format of the post award public briefing notice to advise the public of the status of the on-going grant as well as the amendment proposed. (See Section 3 of this Chapter.) Substantive amendments may include, but are not limited to, new or amended target areas, elimination of activities, significant changes in project scope, and adverse impacts on proposed beneficiaries.

A request for program amendment must provide sufficient narrative information to adequately explain and justify the proposed amendment. A copy of the public hearing notice and minutes of the meeting, a revised map, and a revised budget reflecting the proposed transfers should be submitted using the NSP Program Budget Analysis form.

All forms should reflect **all grant** funds, breakdown of funds and beneficiaries, rather than that subject only to the amendment request.

DCA shall inform the Recipient of the approval or denial by using a Grant Adjustment Notice after review of the proposed changes.

Recipients should also review Chapter II, Section 2 concerning the reevaluation of environmental assessment findings whenever a program amendment is proposed.

### Section 12: Reporting Requirements

#### 1. Quarterly Expenditures and Progress Report:

Recipients must submit an NSP Quarterly Expenditures and Progress Report through

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use of DCA's Web Grants Management System (GMS) system to DCA. A report shall be due after the end of the first three months of grant operation. **Grantees must complete the first quarterly report covering March, April and May 2009 no later than June 30, 2009, then every three months thereafter.** The final report shall be due when all activities are completed and all benefits to low-moderate- and middle-income persons has been reported, including the statutory benefit of 25% of NSP funds benefitting households at or below 50% of Area Median Income (AMI).

No drawdown of funds shall be authorized by DCA if one or more reports are delinquent.

Quarterly Reports are to be submitted using the Web Grants Management System (GMS) located at <http://destroyer.dca.ga.gov/>. A sign-up form to register for using the online system is available at DCA's web site. Detailed instructions for completing the Quarterly Reports are available online at <http://destroyer.dca.ga.gov/>.

Recipients should contact the NSP Program Representative – Jen Erdmann 404-327-6808 or Sally Adams at (404) 486-0224 or send an email to [sally.adams@dca.ga.gov](mailto:sally.adams@dca.ga.gov) if assistance is needed in the preparation of the reports. Assistance in using the Web GMS is available by sending an email to [cfdadm@dca.ga.gov](mailto:cfdadm@dca.ga.gov) or contacting Robert Shaw at (404) 679-4806.

Financial reports, including those required for internal management and those that must be submitted to DCA should be prepared in a timely manner. Financial reports submitted to DCA should be prepared using the accrual basis of accounting, which recognizes revenue when earned and expenses when incurred, regardless of when cash is actually paid out. Account records need not be maintained on the accrual method on a day-to-day basis; however, it must be possible to accumulate the necessary accrual information when the financial reports are prepared. Typically, these would include receivables and payables, in addition to accruals for interest and salaries. Quarterly Reports must be fully supported by accounting records.

#### **2. Labor Compliance Reports:**

Federal Labor (Davis Bacon, etc.) compliance and reporting requirements are described in Chapter II, Section 3, and include a Final Wage Report.

#### **3. Beneficiary and Accomplishment Reports:**

Throughout a project's progress, data will be required on the number of persons benefiting from the project and the number of these persons who are low- and moderate- and middle-income. Data will also be required on race, ethnicity and other demographic characteristics as required by HUD. This data is needed to report program accomplishments to Congress, HUD and citizens. Beneficiary data will be reported on Quarterly Reports as they occur as well as on the individual Project Completion Forms and Actual Accomplishments form.

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### 4. Other Reports:

The Recipient should review General Condition Number 3, which states that additional reports may be required. For example, information on the number of acquisitions, by type, and amounts paid for acquisition of parcels may be required from time to time.

### Section 13: Monitoring Program Performance and Compliance

Recipients must constantly monitor performance to ensure that time schedules are being met, projected milestones are being accomplished, and other performance goals are being achieved in accordance with the approved application. In addition, all activities must be conducted in compliance with a host of federal and state requirements.

Problems, delays, or adverse conditions that will affect the Recipient's ability to meet its program objectives or its time schedules should be reported to DCA on the appropriate section of the NSP Quarterly Report form or at any other time, as appropriate.

DCA shall make site visits as frequently as necessary to provide such technical assistance as may be required.

In addition to technical assistance, the Department will, at appropriate times during program activities, review Recipients' records to ensure that all applicable state and federal requirements are being met. The Department's emphasis will be on preventing and correcting problems before they develop into serious obstacles to program implementation. For instance, under normal circumstances, Recipients would be reviewed first for compliance with applicable citizen participation and environmental requirements. At this time, the DCA representative might also offer technical assistance in drafting policies for use in a rehabilitation program or assist the Recipient with acquisition procedures, etc. The next visit by the DCA representative might find the Recipient beginning to implement a rehabilitation project. At that time, a formal rehabilitation review would take place.

### Section 14: Close-Out Procedures

1. Within 30 days of project completion, the Recipient should inform DCA that the NSP program is ready for close out and advise us when the next annual audit is scheduled.
2. DCA will conduct a review to ensure that any monitoring findings are resolved, and that any excess grant funds have been refunded.
3. Recipients should have data on persons receiving benefits available for monitoring. Data should be in a form that makes it possible to determine demographic characteristics of persons benefiting, such as persons with a disability, female head of household, ethnic classification, etc. See the Quarterly Report Form and Project Completion Form and Instructions for data requirements.

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NOTE: For direct benefit activities where a person submits an application to the government or implementing agency and receives a financial benefit (such as financing mechanism assistance, housing rehabilitation or relocation assistance), this data must be available both for applicants and recipients of the assistance. In addition, the data for direct benefit activities must also be categorized by 5 family income levels: Very Low Income (30% of AMI and below), Low Income (50% of AMI and below), Moderate Income (80% of AMI and below), Middle Income (120% of AMI and below) and Above Middle Income. See DCA's web site to determine income limits to make these determinations.

4. Recipients are required to hold a Public Hearing at project completion to review accomplishments and to receive citizen comments. The Hearing must be publicized in a manner similar to other Public Hearings as described in Georgia's Community Development Block Grant (CDBG) Citizen Participation Plan. Certified minutes must be kept. (A sample hearing notice may be found on DCA's Website.)

<b>DCA must</b> be notified at least one week before the Hearing.
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The Hearing and Notice can be combined with the requirement to publicize the Final Quarterly Report. (See Section 3 of this Chapter.)

1. At program close-out, your Representative will complete the Actual Accomplishments and other certifications. Please have this data available for compilation.
2. After review and final resolution of any findings, DCA will notify the Recipient of conditional close-out pending receipt of an acceptable audit.
3. A final close-out letter will be issued after the final audit accounting for all funds has been issued and accepted by DCA.

### **Section 15: Retention of Records**

Financial records supporting documentation for all transactions required by law, whether financial or programmatic and all other records pertinent to the NSP program must be kept for 3 years from the date of issuance of notification by DCA that close out procedures are complete, except that:

1. If any litigation, claim or audit is started before the expiration of the 3 year period, the records must be kept until all litigation, claims or audit findings involving the records have been resolved.
2. Records for nonexpendable property (as defined in Chapter III, Section 5 - "Property Management Standards" - of this Manual) must be kept for 3 years after final disposition of the property.

The Georgia Department of Community Affairs, the U.S. Department of Housing and

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Urban Development and the Comptroller General of the United States or any of their authorized representatives shall have access to any pertinent books, documents, papers, and records of NSP Recipients and subrecipients to make audits, examinations, excerpts and transcripts. In addition, public access to grant records shall not be restricted unless the Recipient can demonstrate an exception from disclosure under the Georgia Open Records Act (Title 50, Chapter 1B, Article 4, Georgia Code).

### **Section 16: Sanctions**

Whenever DCA determines that a recipient of NSP assistance has failed to comply with the requirements of the NSP Program, including those requirements listed in this Manual, DCA shall notify the Chief Executive Official of the Recipient of the noncompliance and shall request appropriate compliance action.

Noncompliance includes failure to implement the proposed project as described in the approved NSP application or violation of applicable laws or regulations. If within a reasonable period, the Recipient fails or refuses to comply, then DCA may:

1. Terminate payments to the Recipient;
2. Require repayment of funds spent improperly;
3. Reduce payments to the Recipient by an amount equal to the amount of such payments which were not expended in accordance with the requirements of the NSP Program;
4. Prohibit the city or county from participation in one or more future NSP or other DCA competitions;
5. Limit the availability of payments to programs or activities not affected by such failure to comply;
6. Refer the matter to the Attorney General with a recommendation that an appropriate action be instituted; or
7. Take such other action as may be provided by law or regulation.

**Opportunity for a consultation.** Prior to a reduction, withdrawal, or adjustment of a grant or other appropriate action taken pursuant to this Section, the Recipient shall be notified of such proposed action and given an opportunity, within a reasonable, prescribed time period, for an informal consultation.



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### Chapter II: Major NSP 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 NSP program. To assist Recipients in meeting applicable requirements, the Department of Community Affairs provides guidance in the form of this Manual, on-site technical assistance, and through the sponsorship of workshops and training conferences. To obtain copies of federal publications, requests should be addressed to:

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

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

Code of Federal Regulations: <http://www.gpoaccess.gov/ecfr/>  
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. 2008 Consolidated Plan including the "Substantial Amendment" Submitted for the State of Georgia's NSP funds.
3. State of Georgia Community Development Block Grant Program Regulations.
4. Title 50, Chapter 18, Article 4, Official Georgia Code, Georgia Open Records Act.

#### Financial Management

5. 24 CFR Part 85.
6. Federal OMB Circular A-133.
7. Federal OMB Circular A-87.

#### Civil Rights

8. Title VI - Civil Rights Act of 1964.
9. Section 109 - Title I - Housing and Community Act of 1974.
10. Title VIII of the Civil Rights Act, 1968 (Fair Housing Act), as amended.
11. Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.
12. Executive Order 11246 - Equal Employment Opportunity, as amended by Executive Order 11375, Parts II and III.
13. Executive Order 11063 - Equal Employment Opportunity, as amended by

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Executive Order 12259.

14. 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.
15. Georgia Department of Community Affairs Civil Rights Compliance Certification.
16. Age Discrimination Act of 1975.
17. Executive Order 12432: National Priority to Develop Minority and Women Owned Businesses.
18. Section 504 of the Rehabilitation Act of 1973 and implementation regulation (24 CFR Part 8).

#### **Labor Standards**

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

#### **Acquisition/Relocation**

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

#### **Housing**

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

#### **Environmental**

35. 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;
36. Environmental Review Procedures for the CDBG Program, 24 CFR Part 58;
37. The National Historic Preservation Act of 1966, as amended; particularly Section 106;
38. Executive Order 11593, Protection and Enhancement of the Cultural

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Environment, May 13, 1971;

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

### Other

62. Georgia Handicap Accessibility Law (O.C.G.A., Title 30, Chapter 3) concerning handicapped accessibility to public buildings.
63. Georgia House Bill 1079 as amended by House Bill 513 (O.C.G.A § 36-91-1 through §36-91-95). This is the Georgia Public Works Construction Contract Procurement Law.
64. O.C.G.A. 50-36-1, Verification of Lawful Presence. This state law requires that recipients of Public Benefits provide verification of lawful presence in the United States.

## **Section 2: Environmental Review Requirements**

### **General Environmental Condition**

Environmental review responsibilities as outlined in this Section are a general condition of all NSP grants and must be completed prior to implementation and committal (obligation) of any funds for the approved project. Generally this is accomplished through submittal of the proper documentation as outlined below.

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The federal regulation governing the environmental review process is 24 CFR Part 58 and can be found on the Web at <http://www.hud.gov/offices/cpd/environment/review/>.

A recipient may not drawdown, obligate or expend funds for a covered activity until DCA has approved the Request For Release of Funds and Certifications, unless the recipient has completed and/or submitted a Finding of Exemption and a Statutory Checklist (if applicable) as specified in this Section.

It is important to note that in the area of environmental review compliance, meticulous adherence to all procedures is the only safeguard against costly delays, potential refunds of CDBG money and legal actions. Use of the forms found in this Manual will provide proper documentation. Any deviation may endanger your CDBG funds.

The recipient's certifying official is responsible for ensuring that all environmental requirements are met and must sign any official environmental documents.

The certifying official must be the chief elected officer or a person designated as the certifying official by resolution of the governing body.

### The Environmental Review Record (ERR)

Each NSP program must have a written record of the environmental review undertaken. The purpose of this file is to document that the grantee has complied with all environmental laws and regulations and considered the environmental effects of the project prior to committing funds for construction.

**This written record or file is called the "Environmental Review Record" (ERR) and must be available for public review.** It must contain a description of the program and of each of its activities, as well as any other document, notice or information, and public comments received pertinent to the environmental review carried out by the Recipient. The ERR will vary in length and content depending upon whether the activities are exempt from all environmental reviews, categorically excluded from NEPA requirements, are found to have no significant impact on the environment, or require preparation of a full environmental impact statement.

The Environmental Review Record generally will contain the following documents:

- Certification of Categorical Exclusion (not subject to 24 CFR 58.5), or
- Certification of Categorical Exclusion (subject to 24 CFR 58.5), or
- 
- Environmental Assessment and documentation (maps, plans, etc).
- Certification of Exemption for exempt activities such as grant administration and design costs as well as housing rehabilitation and down payment assistance.
- Copies of Environmental Public Notices (including proof of publication),

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including:

- Concurrent Notice of the Finding of No Significant Effect and Notice of Intent to Request Release of Funds,
- Notice of Early Public Review (Floodplains and wetlands),
- Notice of Explanation (Floodplains and wetlands).
- Correspondence with environmental regulatory agencies (including documentation that the Concurrent Notice was submitted).
- Comments received pursuant to the Public Notices and the response from the local government.
- Evidence the Request for Release of Funds was submitted to DCA, and
- Release of Funds letter from DCA.

**SEE SECTION ON TIERED ENVIRONMENTAL REVIEW FOR UNSPECIFIED SITES AND SITE-SPECIFIC CHECKLIST REQUIREMENTS IN CHAPTER IV SECTION 2 OF THIS MANUAL**

### **Environmental Review Process**

The basic steps in the environmental review process in compliance with the National Environmental Policy Act (NEPA) and other applicable environmental laws and regulations are as follows:

#### **Step 1: Exempt Projects/Activities:**

Determine if any activity is exempt from NEPA requirements and other environmental reviews. If it is exempt, the Recipient is only required to document in writing that the activity is exempt and meets the conditions for exemptions. This documentation must be maintained in the Recipient's ERR file. A sample Certification of Exemption is included on DCA's Website. Use of this format is required as a means of establishing documentation and compliance.

A copy of the Certification of Exemption for grant administration and design costs does not have to be mailed to DCA. The Recipient shall maintain the certification form for these activities in the program files.

**All other activities found to be exempt or excluded must be included on an Exemption Certification mailed to DCA.** Once DCA has cleared the general conditions, funds may be drawn down using standard procedures for the exempt activity.

#### **Exempt Activities Include:**

- Environmental studies, including historic preservation clearances necessary to comply with applicable laws.
- Design and engineering costs associated with carrying out an approved eligible NSP activity.
- Eligible administrative costs.
- Activities funded because of imminent threats to health and safety, if they do not alter environmental conditions and are for improvements limited to actions necessary only to stop or control the effects of imminent threats or physical deterioration.

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- Public services that will not have a physical impact or result in any physical changes, including but not limited to services concerned with employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation and welfare or recreational needs.
- Inspections and testing of properties for hazards or defects.
- Purchase of insurance.
- Purchase of tools.
- Technical assistance and training.

Any of the categorical exclusions listed in Step 2 below can also become exempt **provided** that there are no circumstances which require compliance with any other environmentally related federal laws (such as floodplains, wetlands or historic preservation) listed in Section 1. **The Statutory Checklist must be submitted with an exemption certification to DCA to document that they do not apply.**

### Step 2: Categorically Excluded Projects/Activities

If the activity or project is not exempt from NEPA assessment requirements, the Recipient should next determine if it is categorically excluded from NEPA.

Categorical exclusion refers to a category of activities for which no environmental assessment and finding of no significant impact under NEPA is required, except in extraordinary circumstances (see 24 CFR 58.2(a) (3)) in which a normally excluded activity may have a significant impact.

The following activities are excluded from NEPA requirements **but not from the requirements of the "other environmental laws or regulations" which are listed at 24 CFR Part 58.5**. Part 58.5 includes flood plain, wetland and historic preservation compliance requirements.

- Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size or capacity of more than 20 percent (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets).
- Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons.
- Rehabilitation of buildings and improvements when the following conditions are met:
  - i. In the case of multifamily residential buildings:
    - Unit density is not changed more than 20 percent;
    - The project does not involve changes in land use from residential to non-residential; and

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The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.

ii. In the case of non-residential structures, including commercial, industrial, and public buildings:

The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and

The activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another.

- An individual action on a one- to four-family dwelling or an individual action on a project of five or more units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four units on any one site.
- Acquisition or disposition of an existing structure or acquisition of vacant land provided that the structure or land acquired or disposed of will be retained for the same use.
- Combinations of the above activities.

**Categorical exclusions not subject to 58.5.** When the following kinds of activities are undertaken, the responsible entity does not have to publish a NOI/RROF or execute a certification and the recipient does not have to submit a RROF to DCA.

- Tenant-based rental assistance;
- Supportive services including, but not limited to, health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, state, and federal government benefits and services;
- Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs;
- Economic development activities, including but not limited to, equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or expansion of existing operations;
- Activities to assist homeownership of existing "or new dwelling units not assisted with federal funds" including closing costs and down payment assistance to home buyers, interest buy downs and similar activities that result in the transfer of title to a property;
- Affordable housing pre-development costs including legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact.



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The Environmental Review Record (ERR) must contain a well organized written record of the process and determinations made under this Section.

If there are no circumstances which require compliance with any of the laws listed at 24 CFR Part 58.5, the Recipient, upon documentation of this fact, may reclassify a categorically excluded project as exempt from review and submit a Finding of Exemption accompanied by the Statutory Checklist (see Step 1 above).

**Important Note:** If a Project consists of several activities, some of which are categorically excluded from review and some which are not excluded from review, the Recipient must conduct an environmental assessment on the **entire project**, (STEP 3).

### Step 3: Complete the Environmental Assessment

If a project is neither exempt nor categorically excluded from review, the Recipient must prepare an Environmental Assessment using the Environmental Checklist, and a Statutory Checklist for the entire project. Note that the project includes all activities, no matter what the funding source.

The Environmental Checklist is found on DCA's Website at: <http://www.dca.ga.gov/communities/CDBG/programs/CDBGforms.asp>. For assistance, the Recipient should contact its NSP Program Representative or the Compliance Manager at (404) 679-3174.

When completing the environmental assessment, the Recipient should review the following essential points:

1. Complete one assessment for the entire project, including all component activities no matter what the source of funds.
2. Document how each item on the checklist was considered, including how determinations of "not applicable" were made. Documentation should include the person(s) contacted, the date of contact, and/or the authority/report being used as documentation. DCA has a technical assistance guide for documentation sources.
3. Consider and discuss all alternatives to the project, including different locations, and the "no build alternative".
4. Consider and discuss any possible mitigation measures to minimize or alleviate any possible negative effects.
5. Anticipate any possible citizen or public interest group objections and include an assessment of their concerns.
6. Coordinate the assessment with all agencies responsible for environmental compliance, such as the Georgia Department of Natural Resources, the U.S. Fish and Wildlife Service, etc.

### Step 4: Public Notice: Finding of No Significant Effect and Intent to Request Release of Funds (Concurrent Notice)

If the assessment indicates that the project will have no significant effect on the quality of the human environment, the Recipient should:

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1. Have the Certifying Officer sign the "Finding of No Significant Impact",
2. Publish a "Concurrent Notice" in a local newspaper of general circulation. All environmental notices may be published either in the legal or non-legal section of the paper.

The Concurrent Notice is a notice to the public that the Recipient has conducted an environmental review and found that the project will have no significant environmental effects and intends to request from DCA release of funds. The public is given at least 15 days to comment before the Recipient requests release of funds. There is a provision for 30 days public comment and/or a Public Hearing for projects that are expected to generate local controversy.

A sample "Concurrent Notice" is found on DCA's Website. Pay special attention to including the proper dates (comment periods) and the other required information that must be added to the Notice by the Recipient prior to publication.

3. Send copies of the "Concurrent Notice" to the following:  
Georgia Department of Community Affairs  
Attention: Rick Huber  
60 Executive Park South  
Atlanta, Georgia 30329-2231

The Recipient should document in its ERR that the Notice has been sent to the above address.

4. No sooner than 16 days after publication, upon expiration of the 15 day local comment period, and after acting on any local comments received, the Recipient should submit to DCA a signed Request for Release of Funds and Certifications (RROF/Certifications) form with a copy of the published Notice. The RROF must be properly completed and signed by the Certifying Officer of the Recipient. DCA cannot approve the RROF/Certifications before 15 calendar days have elapsed from the time of its receipt or from the time specified in the Notice, whichever is later. This time period is to allow DCA to consider any public objections. (See 24 CFR 58.75 for permissible bases for objections.)

If no public objections are received, and upon expiration of the period for objections to the Release of Funds, DCA will issue a letter releasing the funds for the activity and clearing the environmental general condition.

### **Environmental Impact Statement**

If the Environmental Assessment indicates that the activity may significantly affect the quality of the human environment, and that an Environmental Impact Statement will be required, the Recipient should immediately contact DCA for assistance.

### **Floodplain and Wetland Compliance Requirements**

If any activity is proposed to take place in a designated 100-year floodplain or a wetland area, the Recipient must do the following prior to completing the environmental review:

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1. Provide early notice and information to the public and interested parties so they can comment. Publish "Notice of Early Public Review". It must be published at least 15 days prior to the "Concurrent Notice", in the same manner as the "Concurrent Notice", and sent to the same agencies and groups, as well as the Federal Emergency Management Agency (FEMA) located at 3003 Chamblee-Tucker Rd, Atlanta, Ga. 30341-- Telephone: (770) 220-5224).
2. Identify and evaluate practical alternatives, and possible adverse impacts. Use the Environmental Assessment Checklist to document this step.
3. Where avoidance of floodplains or wetlands cannot be achieved, design the project so as to minimize effect to or from floodplain or wetlands.
4. Prepare and circulate a "Notice of Explanation" that there is no practicable alternative to locating an action in or affecting a floodplain or wetland. The same audience and means of distribution used in #1 above should be used for this finding. This second notice can be published at the same time as the "Concurrent Notice" concerning environmental review.

Copies of the two required notices are found on DCA's Website.

### **Additional Wetland Compliance Requirements**

All Recipients must also comply with Executive Order 11990 and Section 404 of the Clean Water Act which pertain to protection of wetland areas.

Executive Order 11990 is a public notification, planning, and review process similar to the process described for floodplain compliance (Notice of Early Public Review and Notice of Explanation). As part of that process, if a wetland must be affected, a Section 404 Permit from the Army Corps of Engineers may be required.

If required, the Section 404 Permit must be obtained prior to publication of the Notice of Explanation.

Each step must be documented in the ERR and completed prior to publication of the Concurrent Notice or FONSI.

- The initial step is to determine if your project is located in a wetland area. This is best done by consulting wetland maps that are available through the U.S. Fish and Wildlife Service for most of Georgia. Contact the Georgia Geologic Survey, Room 400, 19 Martin Luther King, Jr. Drive, Atlanta, Georgia 30334. Telephone: (404) 656-3214. If a map is not available, contact the Federal Fish and Wildlife Service at (404) 331-3580.
- If the activity is located in a wetland area, a mitigation plan to deal with possible adverse effects may be required by the Corps of Engineers as part of the Section 404 permit.

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### Outline of Historic Preservation Compliance

*(Note this process has been modified by the Programmatic Agreement between the State and the Advisory Council for housing activities.)*

1. Determine if National Register eligible properties are in the project impact area: Recipient and HPD.
2. Determine effect of the project on eligible properties: (Recipient and HPD.)
  - a. If **no effect**, document the file and complete environmental review.
  - b. If the effect is **not adverse**, report to Historic Preservation Division for concurrence. Document the file and complete the environmental review once concurrence is received.
  - c. If effect is **adverse**:
    - i. Examine alternatives and mitigation possibilities.
    - ii. Develop a Memorandum of Agreement (MOA) between Recipient, HPD and possibly the Advisory Council to specify what steps will be taken to minimize or mitigate adverse effect.
    - iii. Complete environmental review once MOA is signed.
    - iv. Implement the MOA, including mitigation.

### Re-evaluation of Assessment Findings (Amendments, Revisions, etc)

A Recipient must re-evaluate its environmental assessment when:

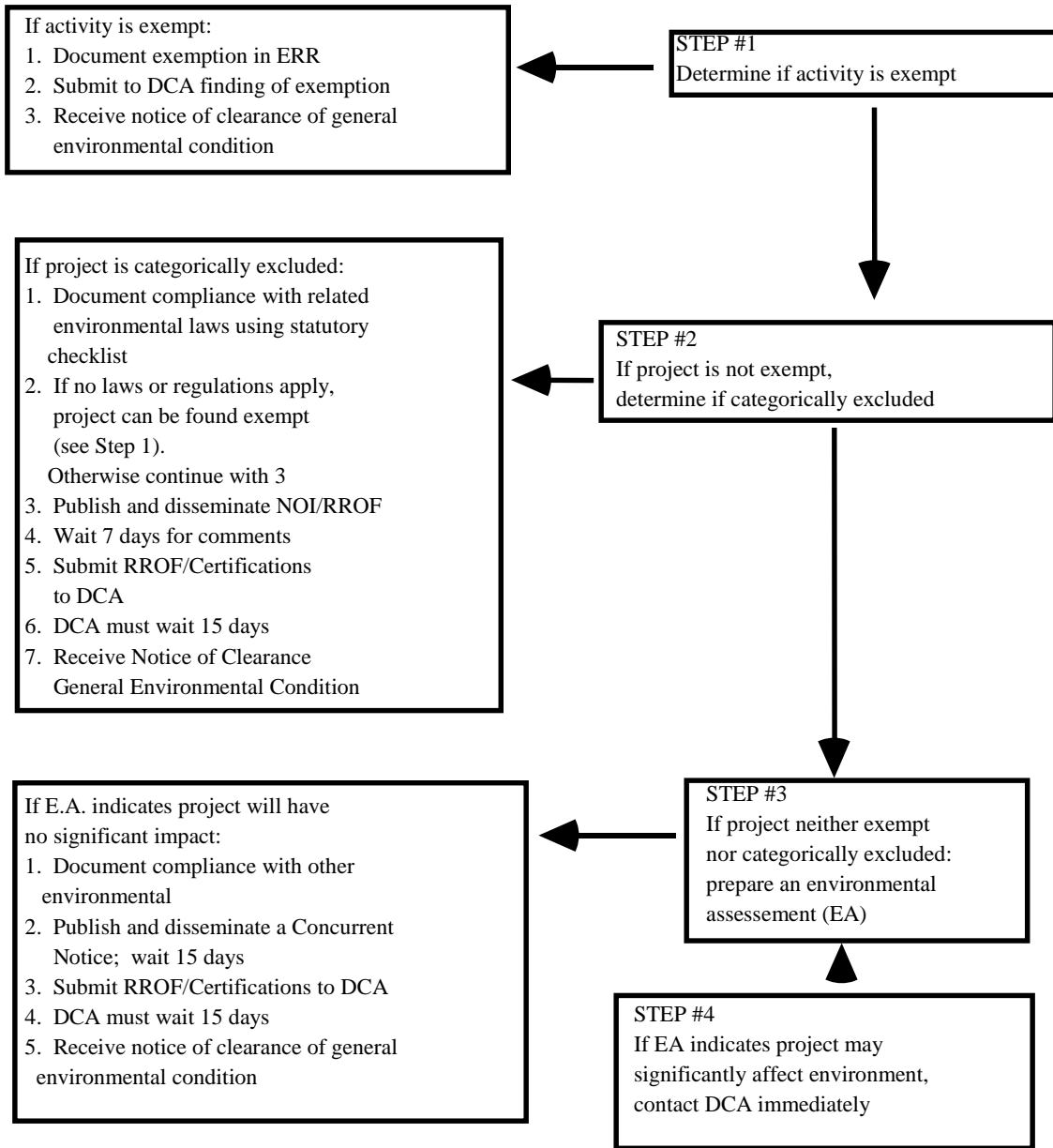
1. an amendment to the activity or program is proposed,
2. new circumstances and environmental conditions are discovered during implementation which may affect the project or have a bearing on its impact, or
3. an alternative not considered in the original environmental assessment is selected for implementation.

The purpose of the re-evaluation is to determine if the original Finding of No Significant Effect is still valid. If it is, but data or conditions upon which it was based are changed, the Recipient must amend its original assessment and update its ERR by including the re-evaluation and its determination based on its findings. This update should be sent to DCA.

If the Recipient determines that the original finding of no significant effect is no longer valid, the Recipient must notify DCA and prepare a new Environmental Assessment according to the procedures specified in Step 3 above.

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## Flow Chart of Environmental Review Process



Note on counting days: all time periods are counted in calendar days. The first day of a time period begins at 12:01 a.m. On the day following the publication date of the notice which initiates the time period. Example: a Concurrent Notice is published on March 1. The 15 day local comment period extends through March 16. The RROF/Certifications can be submitted on March 17. The DCA 15 day period begins on the date the RROF/Certifications is received or the date for objections to DCA specified in the Notice, whichever is later.

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### Section 3: Federal Labor Standards

The major applicable laws and regulations relating to labor standards are:

- The Davis-Bacon Act.
- The Copeland "Anti-Kickback" Act.
- The Contract Work Hours and Safety Standards Act.

In addition, the U.S. Department of Labor (DOL) has issued Regulations which supplement the laws listed above. Please note that Labor Standards laws and regulations are also applicable to construction contracts administered by another party on behalf of the Recipient, including the Department of Transportation (DOT), Regional Development Centers (RDCs), Consultants, etc. The Recipient must remember that it is ultimately responsible for its NSP program. Therefore, Recipients are strongly encouraged to closely monitor their contracts. Recipients are also required to maintain all applicable records in their official NSP files.

- a. The Davis-Bacon Act is applicable to all contracts for construction, alteration and/or repairs in excess of \$2,000 which involve NSP funds (including EIP direct loans), with the exception of rehabilitation of a "project" designed for residential use by fewer than 8 families. Contact Rick Huber or Pam Truitt in DCA Office of Community Development (404) 679-5240 if you have any questions about applicability.

#### **The requirements of Davis-Bacon include:**

1. The minimum wages to be paid to contract laborers and mechanics (including apprentices) must be based on DOL's determination of the prevailing wage rates for the locality.
2. Recipients can obtain wage rate determinations by submitting a request to DCA's Office of Community Development using a Request for Determination form. (A sample form DCA-WRI can be found on DCA's Website.) **The request for a wage rate determination should be submitted to DCA at least 30 days in advance of the anticipated bid advertising date. It should not be requested so early as to cause multiple modifications to be issued.**
3. The NSP Recipient should examine the Wage Rate Determination to be sure all needed classes of laborers or mechanics are listed in the wage determination. The Recipient must request additional classification not included be added to the wage decision. The Recipient must make this request in writing to the DCA Compliance Officer.
4. Ten (10) days before the bid opening date, the Recipient must contact DCA to determine if there have been any modifications to the wage rate decision already received.
5. Changes, modifications, etc., to wage decisions published less than 10 days prior

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to bid opening do not apply if the Recipient's files include documentation establishing that reasonable time to notify all participants was not available.

6. If the Recipient fails to include a wage decision, or for any reason the wrong wage decision is included, the Department of Labor may issue a special wage decision reflecting the proper rates. Those rates must be incorporated in the contract and be retroactive to the beginning of the construction. The Recipient can either terminate and re-solicit or incorporate the wage decision by change order, provided the contractor is compensated for any increases in wages resulting from the change.
7. If a contract has not been awarded within 90 days of bid opening the Recipient must confirm the correct wage rate determination to be used.
8. Cross withholding allows for agency withholding of funds for wage restitution from a prime contractor under a current Davis-Bacon contract for under payments made under an unrelated Davis-Bacon contract which may have been with another agency.

#### **b. The Copeland "Anti-Kickback" Act requires that:**

1. Payment to employees must be made *at least once a week* and without subsequent deductions or rebate on any account except for "permissible" salary deductions.
2. The Recipient must obtain **original** payrolls and "Statements of Compliance" from contractors and subcontractors (through the general) weekly. These documents must be maintained by the Recipient for three years after completion of the work. The Recipient must check these payrolls upon receipt for accuracy and compliance with requirements.
3. The basic records supporting the payrolls must also be maintained by each employer and the Recipient for three years after completion of the work.

#### **c. The Contract Work Hours and Safety Standards Act requires that for contracts of \$100,000 or more:**

1. Laborers and mechanics shall not work in excess of forty (40) hours in any workweek unless they receive overtime compensation at a rate not less than one and one-half times the basic rate of pay for those overtime hours. The contractor or subcontractor shall be liable to any affected employee for his unpaid wages.
2. Contractors in violation of the Contract Work Hours and Safety Standards Act (overtime law) are also liable to the United States for liquidated damages, computed at \$10.00 per day for each employee who worked overtime and was not paid overtime wages. Funds may be withheld from contractors and subcontractors to satisfy unpaid wages and liquidated damages.



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3. Contractors and subcontractors must be advised in writing that if they are aggrieved by the withholding of a sum of liquidated damages, they have the right to appeal within 50 days. Written appeal must state the reason for liquidated damages and should be addressed to DCA.
  - d. **Department of Labor (DOL) guidelines** include a number of other requirements listed below. Recipients should note that they are responsible for insuring compliance by contractors and subcontractors. Inclusion of appropriate clauses in the contracts, as well as monitoring by the Recipient, is therefore very important.

### **DOL guidelines require that:**

1. The prime contractor shall be responsible for compliance by any subcontractor with all labor provisions.
2. The contractor must make pertinent records available for review and permit on the job interviews of employees.
3. Contractors and subcontractors may be terminated for noncompliance and will be liable for any excess cost involved in completing the work.
4. **Prior to awarding any prime contract, Recipients must submit to DCA the name of the proposed prime contractor for clearance.** (This can be done by telephone or by using the sample form on DCA's web site.) Any person or firm who has been declared ineligible because of previous instances of noncompliance may not participate in any contract involving NSP funds.
5. The contractor must furnish a certification from the Bureau of Apprenticeship and Training for each apprentice employed on the project. All apprentices must be identified in each payroll submission. The ratio of apprentices to journeymen must not exceed the approved ratio under their respective program and their wage rate must not be less than prescribed under those programs.
6. All applicable Equal Employment Opportunity requirements, Copeland Act requirements, and Contract Work Hours and Safety Standards Act requirements must be met. See the "Sample Contract Clauses" package available from the Office of Community Development.
7. All contracts entered into by the contractor with subcontractors must include the same provisions as those of the major contract with respect to federal laws.
8. Exceptions are made for volunteer services on a case-by-case basis. Contact DCA for information and approval.
9. Wage decisions and DOL posters must be displayed in a permanent place on the jobsite.

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10. *The Recipient must monitor the construction and conduct on-the-job interviews with workers on the jobsite. A suggested form (DCA-WR3) is cited at the end of this Chapter. The Recipient may use this form or a facsimile to gather the required information. The purpose of these interviews is to ensure workers are properly classified and paid and are not forced to give-up part of their pay. A representative number from each trade and subcontractor should be interviewed.*
11. Underpayment of wages and fringe benefits of \$1,000 or more must be reported to DCA and the Department of Labor.
12. **A pre-construction conference must be held** with all interested parties to discuss labor standards and compliance requirements. Contractors should be informed of the requirements to comply with Section 3 during the Conference. Minutes should be taken and a copy maintained in the Recipient's file.

Your NSP Program Representative should be notified of the Pre-construction Conference.

13. **A Notice of Contract Action** should be completed and sent to the DCA Labor Compliance Officer each time a contract award or construction start action is taken. (See Form DCA-WR6.) Please attach a copy of the certified and itemized bid tabulation at the time of contract award.
14. **A Final Wage Compliance Report** must be submitted to DCA before final close-out of the grant. (See Form DCA-WR4.)
15. Note that any funds collected because of violations of Federal Labor Standards resulting in liquidated damages or wage restitution must be transferred to the U.S. Treasury via a wire transfer procedure. In the event this situation arises, DCA will provide you with detailed instructions regarding the wire transfer procedures.

### Sample Labor Forms

Located on DCA's web site at:

<http://www.dca.ga.gov/communities/CDBG/programs/CDBGforms.asp>

DCA-WR1	Request for Wage Rate Determination
DCA-WR2	Clearance of Prime Contractor
DCA-WR3	Record of Employee Interviews
DCA-WR4	Final Wage Compliance Report
DCA-WR6	Notice of Contract Action
WH-347	Weekly Payroll Report for Contractors and Subcontractors—May use substitute if all info is included
WH-348	Statement of Compliance-used if an alternate Payroll form is used

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Mail or fax all Clearance Forms to:

Attention: Ms. Pamela Truitt  
Georgia Department of Community Affairs  
Division of Community Development and Finance  
60 Executive Park South  
Atlanta, GA 30329-2231  
FAX: 404-679-1583

### Section 4: Acquisition of Property and Relocation Requirements

Note that all NSP Direct Allocation Awards carry the following general condition:

The Recipient acknowledges and agrees to comply with the requirement that all purchases of foreclosed upon or abandoned units must be purchased at a minimum of 1% below appraised value with the appraisal being conducted within 60 days of the offer to purchase being made

The following requirements must therefore be adhered to given the requirement above.

The acquisition of property, including rights-of-way, permanent easements, fee simple acquisition, demolition of occupied or occupiable housing units, and the displacement of any person or business in any project that includes NSP funds is regulated by federal law and regulations. Disposition or the sale of property acquired with federal funds is also regulated by state law. The major applicable related laws and regulations include:

- The Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended, (The Uniform Act) and as implemented by DOT regulations at 49 CFR Part 24. This law and regulation governs the acquisition of property and easements and also requires relocation benefits be paid to any person(s) (regardless of their income) or business displaced as a result of a NSP assisted project. A copy of the regulation, 49 CFR Part 24 is available from DCA or on the web at:  
<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=%2Findex.tpl>.

The Uniform Act in general requires property be appraised prior to acquisition and the payment of Fair Market Value based on the appraisal.

- Section 104(d) of the Housing Community Development Act of 1974, as amended, and as implemented by HUD regulations at 24 CFR Part 570.606 and 24 CFR Part 42. This is available from DCA or on the web site noted above. This regulation requires the replacement of any occupied or occupiable "low and moderate income housing unit" demolished or converted (waived for NSP) and requires additional relocation assistance choices (generally beyond what would be required by the Uniform Act) for low- and moderate-income tenants actually displaced. As further explanation, this rule provides that each low- to moderate-income tenant household displaced as a direct result of a HUD funded activity must be provided with a **choice of**

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**relocation assistance** under the Uniform Act rules or under the Section 104(d) rules. Persons choosing to rent must be offered either (1) a Section 8 voucher or certificate (with referrals to **available** units) or (2) cash assistance.

- The Georgia Urban Redevelopment Act, O.C.G.A., Section 36-61-1, et. seq. This State law sets forth the requirements which must be followed when a public agency acquires private property for reuse or redevelopment by another private entity.
- Real Estate Appraiser, Licensing and Certification Act, OCGA, 43-39A-1 through 43-39A-27 and the rules of the Real Estate Appraisers Board. These requirements are in addition to the minimum appraisal standards in the Uniform Act regulations.

**Before proceeding with any relocation activity or property acquisition**, review the Uniform Act regulations, the HUD Handbook 1378, "Tenant Assistance Relocation and Real Property Acquisition", and applicable HUD regulations described above. DCA also offers written material, including the required brochures available in Spanish and English and on-site compliance assistance.

### Section 5: Housing Rehabilitation Requirements

#### General

Housing rehabilitation can be a complex and varied activity. Although each Recipient's local rehabilitation program will be different, reflecting different property standards and approaches to solving local housing needs, some basic requirements are applicable to all since they are based in law or regulation.

For the most part, these laws and regulations which are generally applicable include the following:

- **The Common Rule 24 CFR 85** applies if the local government is a direct party of the construction contract. This rule requires a competitive procurement for local government procurement.
- **Federal Labor Standards** - only in certain situations. Davis-bacon wage rate are applicable when NSP funds are used for rehabilitation of more than 8 housing units in one project.
- The **Lead-Based Paint Hazard Elimination** (24 CFR Part 35). These rules include inspection, testing, risk assessments, hazard control or abatement, safe work practices, clearance and notification/disclosure requirements.
- **Section 3 Clause of the Urban Development Act of 1968**, and as implemented by HUD regulations at 24 CFR Part 135 applies (regardless of the dollar amount of the contract) in the following situations:
  - If the Recipient contracts directly for rehabilitation services or acts as

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an agent for the homeowner, i.e., signs the rehabilitation contract.

- If the Recipient provides homeowners with a list of contractors eligible to participate in the local rehabilitation program, the Recipient should assure that eligible Section 3 business concerns located or owned in part by residents of the area are also included on the list.
- If the individual homeowner contracts directly for rehabilitation services and the Recipient is not a party to the contract, the Section 3 requirements do not have to be followed.
- **Section 104(d) of the Housing and Community Development Act** is applicable if rental units are converted to non- "low and moderate income dwelling units" or if occupied or occupiable housing units are demolished. See HUD regulations at 24 CFR Part 570.606 and 24 CFR Part 42.
- **The Uniform Relocation Assistance and Real Property Acquisition Act of 1970**, as amended, and as implemented by DOT regulations 49 CFR Part 24, is applicable if tenants or homeowners (regardless of income) are displaced in conjunction with a NSP activity.
- The Truth-In-Lending Act (Regulation Z) (USC 1601, et. seq.) which applies to any loan transaction between the Recipient and the homeowner provided the Recipient meets the criteria of being a "creditor", as defined by the Federal Reserve System.

For specific aid on how to implement a rehabilitation program, DCA staff is available on request to provide technical assistance. A manual entitled **Guidelines for Residential Rehabilitation Programs** is also available. It includes sample forms as well as suggested approaches and procedures to assist Recipients in implementing rehabilitation programs. For additional assistance, contact Tom Spinks, Senior Housing Consultant, at (404) 679-3128 or [thomas.spinks@dca.ga.gov](mailto:thomas.spinks@dca.ga.gov).

### Substantial Reconstruction of Housing

The "substantial reconstruction" of housing is an eligible activity under the Housing and Community Development Act. While the term "substantial reconstruction" is not defined, it includes constructing a replacement house on the same property when the need for the reconstruction was determined prior to or during rehabilitation.

On a case-by-case basis, the NSP recipient can request approval of reconstruction in situations where rehabilitation was planned but later deemed not feasible upon a detailed inspection or after rehabilitation work begins.

### Lead-Based Paint Hazard Control Policies

The U.S. Department of Housing and Urban Development (HUD) has issued a regulation to protect young children from lead-based paint hazards in housing that is financially assisted by the federal government or being sold by the government. The regulation, "Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in

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Federally Owned Residential Property and Housing Receiving Federal Assistance," was published in the Federal Register on September 15, 1999 and became effective September 15, 2000. The requirements apply to housing built before 1978; the year lead-based paint was banned nationwide for consumer use.

The regulation puts all of HUD's lead-based paint regulations in one part of the Code of Federal Regulations (24 CFR Part 35).

Lead poisoning can cause permanent damage to the brain and other organs, and can result in reduced intelligence and behavioral problems. More than 800,000 children younger than 6 years old living in the United States have lead in their blood that is above the level of concern set by the Centers for Disease Control and Prevention (CDC).

A large portion of these children are in families of low income and are living in old homes with heavy concentrations of lead-based paint. The most common sources of childhood exposure to lead are deteriorated lead-based paint and lead-contaminated dust and soil in the residential environment.

A summary of the hazard reduction requirements for the various types of housing programs is available in the regulation itself, and in HUD's explanation of the regulation, published in the Federal Register and available from DCA.

#### **Types of Housing Covered:**

- Housing receiving NSP assistance for rehabilitation, downpayment assistance, reducing homelessness, and other special needs
- Federally-owned housing being sold
- Housing receiving a federal subsidy that is associated with the property, rather than with the occupants (project-based assistance)
- Public housing
- Housing occupied by a family (with a young child) receiving a tenant-based subsidy (such as a voucher or certificate)
- Multifamily housing for which mortgage insurance is being sought

#### **Types of Housing Not Covered:**

- Housing built since January 1, 1978, when lead paint was banned for residential use
- Housing exclusively for the elderly or people with disabilities, unless a child under age 6 is expected to reside there
- Zero-bedroom dwellings, including efficiency apartments, single-room occupancy housing, dormitories, or military barracks
- Property that has been found to be free of lead-based paint by a certified lead-based paint inspector
- Property where all lead-based paint has been removed
- Unoccupied housing that will remain vacant until it is demolished
- Non-residential property
- Any rehabilitation or housing improvement that does not disturb a painted surface

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### For More Information

Copies of the regulation and additional explanatory material are available from DCA, Office of Community Development. General questions can also be answered by the National Lead Information Center at (800) 424-LEAD, or TDD (800) 526-5456 for the hearing impaired. You can also download the regulation and other educational materials at [www.hud.gov/lea](http://www.hud.gov/lea).

## Section 6: Fair Housing and Equal Opportunity (FHEO)

### General

The regulations pursuant to Title I of the Housing and Community Development Act require applicants to assure through certification that all activities will be conducted in accordance with Section 109 of the Act (the nondiscrimination clause), Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, and Executive Orders 11246 and 11063. These requirements are briefly described below:

1. *Title VI of Civil Rights Act of 1968 Nondiscrimination in any programs or activities receiving Federal financial assistance.*

2. Section 109 of Title I - Housing and Community Development Act of 1974

Nondiscrimination in any program or activity subject to the provisions of this title.

No person in the United States shall on the ground of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or part under this Title.

Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 shall also apply to any such program or activity.

3. *Title VIII of the Civil Rights Act of 1968, as amended*

Prohibition against discrimination based on sex.

4. *The Fair Housing Law*

Provides protection against the following acts, if they are based on disability, race, color, religion, sex, national origin, or family status:

- Refusing to sell or rent to, deal or negotiate with any person
- Discriminating in terms or conditions for buying or renting Housing
- Discriminating by advertising that housing is available only to persons of a certain family status, race, color, religion, sex, or national origin
- Denying that housing is available for inspection, sell or rent when it really is



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available

- "Blockbusting" - For profit, persuading owners to sell or rent housing by telling them that minority groups are moving into the neighborhood
  - Denying to anyone the use of or participation in any real estate services, such as brokers' organizations, multiple listing services or other facilities related to the selling or renting of housing
  - Denying or making different terms or conditions for home loans by commercial lenders, such as banks, savings and loan associations and insurance companies
5. *Executive Order 11063 - Equal Opportunity in Housing, as amended by Executive Order 12259.*

All departments and agencies are directed to take all action necessary and appropriate to prevent discrimination in housing and related facilities owned or operated by the Federal Government or provided with Federal financial assistance and in the lending practices with respect to residential property and related facilities (including land to be developed for residential use) of lending institutions, insofar as such practices relate to loans insured or guaranteed by the Federal Government.

6. *Executive Order 11246 - Equal Employment Opportunity, as amended by Executive Order 11375.*

Part II - Employment under Federal contracts. Non-discrimination in employment by government contractors and subcontractors.

Part III - Federally assisted construction contracts. Non-discrimination in employment under federally assisted construction contracts. Parts II and III are administered by the Department of Labor.

7. *Section 3 of the Housing and Development Act of 1968, as amended and as implemented by HUD regulations at 24 CFR Part 135*

Section 3 provides that to the greatest extent feasible, training and employment opportunities shall be made available to lower income residents of project areas and that contracts be awarded to small businesses located within the project area or owned in substantial part by project area residents.

### **Section 3 Report:**

Note that DCA currently collects information about Section 3 Accomplishments on the Web Based Reporting System. HUD's recent emphasis on Section 3 will require updated reporting forms that will be available on DCA's online reporting system.

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The U.S. Department of Housing and Urban Development (HUD) requires that recipients of federal funds submit an annual report to capture Section 3 Hiring Information as well as efforts made by recipients of federal funds to hire Section 3 persons.

All local government recipients (i.e., CDBG, CDBG-R, NSP1, EIP, and RD grantees) must complete a separate Section 3 Report for each grant award over \$200,000 that was under construction during the reporting period. The report should capture all Section 3 hiring done by local governments and their contractors, if any, during the reporting period. The reporting period is from July 1 of each year to June 30 of the following year.

In addition, if the local government has entered into any contracts exceeding \$100,000 using NSP funds, the Section 3 Report must capture all Section 3 hiring done by the contractor, if any, during the reporting period. If a subcontractor has been awarded subcontracts exceeding \$100,000, then the subcontractor information is also required.

All active NSP Recipients must complete a report. If a project was not under construction during the reporting period (July 1 through June 30), Recipients should indicate this by noting this on the report.

The reporting form is part of the on-line reporting system and instructions with the report form contains specific guidance concerning the information you will have to submit based on the type of activity you engaged in during the reporting period.

Access to the on-line Section 3 Report and Instruction is through the On-Line Quarterly Report system and can be found at this web site:

<http://destroyer.dca.ga.gov/cdfd.html>

Review this HUD website for more information:

<http://www.hud.gov/offices/fheo/section3/section3.cfm>

### **Equal Opportunity Construction Contract Provisions**

Certain types of construction contracts for public works and housing rehabilitation must include specific contract clauses pertaining to the Section 3 Clause, Executive Order 11246 and Title VI of the Civil Rights Act. Refer to Chapter III, Section 3, for more information or contact your Program Representative.

### **Affirmatively Furthering Fair Housing**

Local government officials, in agreeing to accept NSP funds, certify that they will "affirmatively further fair housing". This Section of the Recipients' Manual outlines various options available to local government in meeting this grant obligation.

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While the law does not specify what type of action recipients must take, it is clear that by virtue of receipt of NSP funds, local government recipients are obligated to take action to affirmatively further the national goal of fair housing.

DCA does not dictate what action recipients must take. DCA must, however, monitor local government recipients to determine what actions are taken. To accomplish this monitoring DCA has developed a **Fair Housing Checklist** which will be completed by the NSP Program Representative as part of the normal project review process. A copy of this checklist is on DCA's Website.

In order to document what you have done to affirmatively further Fair Housing, it is important to keep records of actions taken. Copies of brochures provided to relocates, minutes of meetings where fair housing is discussed and any other records must be available for review by your NSP Program Representative.

The following checklist of possible fair housing activities is not meant to be all inclusive. It is meant to suggest the range of activities which would satisfy your obligation. Technical assistance is available from DCA if you wish to implement any of these suggestions.

#### **Possible Actions to Affirmatively Further Fair Housing**

- Analyze any impediments to fair housing choice which may exist in your community. Contact HUD or DCA for an analysis of any fair housing complaints from your area.
- Review local zoning laws and procedures to determine whether they contribute to, or detract from, progress in fair housing. Establish a collection of zoning and land use planning material to have available for the use of local fair housing groups as well as recipient staff.
- Provide funding for local fair housing groups (eligible under the CDBG Program) or provide financial or technical assistance to citizens wishing to organize such a group.
- Adopt a local Fair Housing Ordinance or a resolution supporting the state and/or federal law.
- Distribute brochures outlining fair housing law to persons attending community meetings or NSP Public Hearings.
- Post a fair housing poster at City Hall or Courthouse.
- Require owners of rental property receiving NSP assistance to sign fair housing agreements as a condition of receiving assistance.
- Develop an active public information and educational campaign to promote fair housing awareness in the community.

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- Include a discussion of fair housing in public meeting agendas.
- Provide persons relocated to new housing with fair housing information and referrals.

Remember to document and keep records of everything you do in the area of fair housing.

### **Fair Housing Resources**

- HUD, "Your Housing Rights: Live Where you Want to Live" (Fact Sheet). Copies are available from HUD.
- Fair Housing Poster, available from DCA.
- Sample "Certification of Property Owners Participating in CDBG Rental Rehabilitation Loan Program to Affirmatively Market Vacant Units", available from DCA, Office of Community Development.

### **Section 504 Requirements**

Local government recipients and subrecipients must comply with Section 504 of the Rehabilitation Act of 1973, as amended. This requirement is similar to the "Americans with Disability Act" (ADA) which is also applicable. HUD published implementation regulations (24 CFR Part 8) as a final rule on June 2, 1988.

The general requirement is that no otherwise qualified individual with a disability (physical or mental) shall, because a recipient's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, denied benefits, or otherwise be subjected to discrimination under any program or activity that receives NSP assistance. The definition of disability includes physical and mental factors and also includes those who may be regarded as handicapped (such as the spouse or children of a person with AIDS). Both building accessibility and employment practices are covered by Section 504.

There are seven (7) specific requirements which have an immediate effect on NSP Recipients:

1. NSP recipients must file an assurance of compliance.
2. NSP recipients must issue periodic public notices of nondiscrimination. This can be accomplished by including appropriate language in public hearing notices. The sample hearing notices included in this Manual reflects this requirement.
3. Employment practices are also covered by Section 504. Any NSP recipient employing 15 or more persons must:
  - a. Designate at least one person to coordinate efforts to comply with the regulation (Section 504 Coordinator); and
  - b. Adopt formal grievance procedures that incorporate due process standards and that provide for the prompt and equitable resolution of

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discrimination complaints.

4. Communications: When a recipient communicates with applicants and beneficiaries by telephone, a telecommunication device for deaf persons (TDD's) or an equally effective system is required. The Georgia Relay Service (voice at 1-800-255-0135 or TDD at 1-800-255-0056 or at 711) is also available to provide this service.
5. All meeting and public hearing spaces must be accessible and procedures should be in place to ensure that persons with impaired vision or hearing can notify the local government that assistance is required.
6. The regulations require each recipient to conduct a self-evaluation. The evaluation must be done in consultation with interested persons, including individuals with handicaps or organizations representing such people.
7. When the self-evaluation identifies structural changes as being required, a written transition plan must also be prepared. The transition plan sets forth the steps necessary to complete the changes, including a time schedule. The plan should identify the agency official responsible for implementation of the plan.

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### CHAPTER III: Financial Management and Administration

The financial management and administration of NSP programs is generally regulated by two federal regulations: 24 CFR Part 85 (The Common Rule: Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments) and OMB Circular A-87 (Cost Principles). In addition federal and state audit requirements must be met and are described in OMB Circular A-133.

The financial system should be able to produce the various financial and compliance reports required for efficient grant administration. (See reporting requirements).

This Chapter clarifies the requirements contained in these federal circulars. In addition, suggested formats and procedures have been included wherever appropriate.

#### Section 1: Financial Management Systems

##### General Requirements

Recipients' financial management system must:

1. Provide accurate, current, and complete disclosure of the financial activities funded by NSP awards and adequately meet the reporting requirements described in Chapter I, of this Manual - "Reporting Requirements". Approved budgets reflect costs **by activity** to be undertaken, and so do the requests for drawdown forms and the quarterly report forms. Therefore, financial records should be established and maintained in such a manner as to facilitate the reporting and monitoring of expenditures and obligations by activity.
2. Maintain records that identify clearly and adequately the source and application of funds of all NSP funded activities.
3. Maintain effective control over and accountability for all funds, property, and other assets, safeguarding these assets and insuring that they are used solely for authorized purposes.
4. Provide comparison of actual expenditures to budgeted expenditures.
5. Include procedures to minimize the time elapsing between the drawdown of funds from DCA and the disbursement of those funds by the Recipients. A period of three working days or less shall be considered acceptable. In addition, advances made by the Recipients to **secondary Recipients** must conform to the same standards of timing and amount as apply to advances from DCA to Recipients. (See Chapter I, Section 9, - "Drawdown of Funds" - of this Manual.)
6. Provide procedures for ensuring the reasonableness, allocability and allowability of costs in accordance with OMB Circular A-87 and the applicable grant award.
7. Include source documentation to support the accounting records.

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8. Provide for audits made by qualified and independent audit firms of management systems and internal control procedures that have been established. An audit shall be conducted annually and in accordance with Section 2 of this Chapter - "Audit Requirements".
9. Provide for source documents (appropriation ordinances, purchase orders, invoices, journal vouchers, cash receipts, bank deposit receipts, etc.) that support all financial transactions relating to NSP activities should be filed and maintained.
10. Maintain accounting records that make it possible to identify the source and application of all funds committed to NSP-supported activities. Local contributions to the program and income applied to the program should also be clearly identified.
11. Include procedures to ensure that sound internal accounting controls are maintained over financial transactions and that effective control is maintained to safeguard physical assets.
12. Ensure that costs incurred in NSP activities are allowable only under the following conditions:
  - The award has been properly accepted as described in Chapter I, Section 4 of this Manual.
  - Costs are incurred on or after the date of the Grant Award by DCA (unless pre-agreement cost approval is requested and approved by DCA).
  - Costs for projects or activities (except costs for environmental reviews) are incurred only after all necessary environmental reviews have been completed, and all applicable conditions have been satisfied.
  - Costs are accounted for in accordance with generally accepted accounting principles and are not prohibited by Federal, State or local laws.
  - Costs are authorized in the award made by DCA.
  - Costs are incurred for activities eligible under the NSP Small Cities Program.
  - All appropriate credits have been applied.

**In order to meet these requirements, the following procedures are suggested.**

#### **Suggested Accounting Procedures, Records And Filing Format**

The accounting issues that your city or county should address to comply with the state and federal requirements include:

- Organization of the accounting system,
- Fund structure and double entry bookkeeping,



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- Uniform Chart of Accounts,
- Coding the chart of accounts, and
- Accounting records and files.

### Organization of the Accounting System

One individual should be designated to oversee the financial transactions related to NSP. This individual, who serves as fiscal coordinator, should approve all purchase documents, contract invoices, payroll actions, etc., that affect NSP funds; however, this person should not perform the disbursing and recording functions which are typically accomplished by the accounting department.

The NSP accounting system should be designed to maximize internal control. The concept of internal control refers to policies and procedures of your jurisdiction designed primarily to safeguard assets such as cash, inventory, and equipment.

The person designated as fiscal coordinator might be a member of the finance or accounting department or a member of the mayor's or city manager's staff. Where a community development department has been established, a fiscal coordinator may be designated within the department to perform these duties.

### Fund Structure and Double Entry Bookkeeping

A separate special revenue fund must be established in conformance with the Uniform Chart of Accounts (H.B. 491) requirements. This fund must be established for any grant with projected expenditures that exceed 2% of the general fund's budgeted total operating expenditures. NSP funds should be accounted for within this fund.

Records must also be available to allow for confirmation of required grant match amounts and to support leverage amounts.

Note that two new separate checking accounts must be established for NSP grant funds and for NSP program income proceeds. See Chapter I Section 8 of this Manual.

A complete set of general ledger and subsidiary accounts should be maintained for the fund. Accounting within this fund should be conducted on the double entry basis where Debit (DR) and Credit (CR) balances are maintained for each general ledger account and the sum of all debits equals the sum of all credits.

Assistance is available from DCA as needed to help NSP recipients comply with these requirements.

### Uniform Chart of Accounts

In 1997, the Georgia General Assembly passed the Local Government Uniform Chart of Accounts and Reporting Act (HB 491). Beginning in fiscal years ending in 2001,

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local governments must adopt and use a state published uniform chart in their accounting records; audited financial statements, including Comprehensive Annual Financial Reports (CAFRs); and reports to state agencies.

All transactions must be classified in conformity with the fund, balance sheet, revenue, and expenditure classification descriptions contained in the state publication: Uniform Chart of Accounts for Local Governments in Georgia, available from DCA.

### Accounting Records and Suggested Files

The first step in the accounting process is to establish the accounting records and files that should be maintained. These may include the following:

- Open Purchase Order File;
- Open Contracts File;
- Pending Payment File;
- Pending Receipts File;
- Personnel Payroll File;
- Cash Receipts Register;
- Cash Disbursements Register;
- General Journal;
- General Ledger;
- Fixed Assets Ledger;
- Cash Control Ledger;
- Expenditure Summary Report;
- Receivable and Payable Subsidiary Ledgers, and
- Permanent Files.

In establishing the accounting records, the following steps are suggested:

1. Establish the **Open Purchase Order File**, which contains purchase orders that have been issued but not filled. These unfilled purchase orders should be filed in sequence according to purchase order number.
2. Establish the **Open Contracts File** with a section for each open contract. Contract summary forms, a copy of the contract, contract invoices, and related correspondence should be filed in each section.
3. Establish the **Pending Payments File**, which contains all invoices and payment vouchers that have been approved for payment. The supporting documentation should be filed by due date with periodic reviews of the file to ensure timely payment.
4. Establish the **Pending Receipts File**, which contains documents to identify payments expected to be received. When the amounts are received, supporting documentation should be attached to the invoice or other form, the transaction should be recorded on the Federal Cash Control Register and posted to the

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Receivables Subsidiary Ledger, and the funds should be deposited on a timely basis.

5. Establish the **Personnel Payroll File**, which contains a section for each city employee who has worked on NSP activities. For each employee, the file will contain the following:
  - Personnel Service Rate Computation
  - NSP Personnel Timesheet

The file should also contain a section for a copy of the Personnel Payroll Distribution Worksheet.

Items within each section should be filed by date.

6. Establish the **Cash Receipts Register**. This register should be maintained in a loose-leaf binder to document all cash receipts.
7. Establish the **Cash Disbursements Register**. This register should be maintained in a loose-leaf binder to document cash disbursements.
8. **General Journal entries** are prepared to record accounting transactions that do not involve cash receipts or disbursements. Journal entries should be prepared for adjustments and special actions such as NSP budget, year-end accruals, etc.
9. Establish a **General Ledger** account page for each general ledger account in the chart of accounts. These pages can be maintained in a loose-leaf binder so that new accounts or continuation pages can easily be added.
10. Establish a **Fixed Asset Ledger**. This ledger should be maintained in loose-leaf form to control all fixed assets acquired in whole or in part using NSP funds.
11. Establish a **Cash Control Register**. Enter the fiscal year at the top. A Separate Cash Control Register should be maintained for each fiscal year.
12. Establish an **Expenditure Summary Report** page for each budget line item. It is possible to combine more than one project on a page, depending on the volume of transactions. These pages should be maintained in loose-leaf form.
13. Establish a **Receivable and Payable Subsidiary Ledger** if advances or loans are made or goods and services are purchased on account. The ledger should be maintained in loose-leaf form. A separate record should be established for each person who has received a loan or advance, and for each individual vendor to whom money is owed.
14. Establish the **Permanent Files**, which should parallel the organization of the aforementioned accounting records, files and reports.

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### SAMPLE FILING FORMAT

**File No.   Content**

1.       **Grant Application File:**
  - Copy of Application
  - Correspondence about application
  - Low/moderate income data
  - Target area surveys
  
2.       **Grant Award File:**
  - Award Statement
  - Special Conditions
  - Revisions
  - Correspondence
  - Grant Adjustment Notices
  
3.       **Drawdown Information:**
  - Authorization Agreement for Automatic Deposits
  - Authorized Signature
  - Certification
  - Request for drawdowns
  
4.       **Reports:**
  - Quarterly Progress and Expenditures
  - Annual Program Income Report
  - Final Wage Compliance Report
  - Other required reports
  
5.       **Citizen Participation Documentation:**
  - Dated Public Hearing Notice(s)
  - Minutes of hearing(s)
  
6.       **Environmental Review Record (ERR):**
  - Environmental Assessment Format II
  - Public Notice(s)
  - Public comments and response
  - Finding of Exemption (if applicable)
  - Statutory Checklist
  - Request for Release of Funds/Certifications
  - Release of Funds letter from DCA
  
7.       **Equal Opportunity Files:**
  - Civil Rights Checklist
  - Beneficiary Data (Both applicants and recipients of direct benefits)
  - Sex (Female Head of Household)
  - Racial and Ethnicity

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- Income
- Handicapped

### 8. Labor and Contract Documentation:

- Request for proposals
- Invitation to Bid
- Bid opening minutes
- Contracts
- Contract Change Orders
- Contract budget spreadsheets
- Contract monitoring activities
- Contractor approval forms
- Wage Rate Determinations
- Payroll reports
- Certification of compliance
- Employee Interviews

### 9. Financial Expenditure Documentation:

- Invoices
- Approved payment forms
- Check copies

### 10. Audit Records

NSP files should include source documentation concerning program transactions between your community and DCA. The format of the filing system may vary from community to community. However, the basic files listed above should be maintained by all communities to ensure compliance with the conditions of grant award and facilitate day to day administration. In addition, for housing projects, individual contractor and case files should be maintained for each beneficiary.

## Section 2: Audit Requirements

1. Recipients must contract for annual independent audits of their financial operations, including compliance with Federal and State law and regulations. The contracts for independent audit must be done in accordance with OMB Circular A-133 if the following circumstances occur:
  - If recipients expend \$500,000 or more in a year in **total federal funds** (NSP plus any other federal funds), they must submit an annual audit that should be made in accordance with OMB Circular A-133, the General Accounting Office Government Auditing Standards and the Single Audit Act Amendments of 1996.
  - This audit should also include a Project Cost Schedule and a Source and Application of Funds Schedule.
2. Recipients that expend **less than \$500,000 in a year in total federal** (NSP plus any other federal funds) awards are exempt from Federal (but not State of

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Georgia) audit requirements for that year. However, records must be available for review. In these cases a copy of the State Audit as well as the Project Cost Schedule and Source and Application Schedule must be submitted. NSP funds may be used for pay for these financial schedules.

3. Recipients are required to submit audits according to State laws and regulations.
4. Small business concerns and business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts for audit services awarded with NSP funds. Recipients shall take the following affirmative action to further their goal:
  - Assure that audit firms owned and controlled by socially and economically disadvantaged individuals as defined in PL 95-507 are used to the fullest extent practicable.
  - Make information on forthcoming opportunities available, and arrange timeframes for the audit so as to encourage and facilitate participation by small or economically disadvantaged firms.
  - Consider in the contract process whether firms competing for larger audits intend to subcontract with small or economically disadvantaged firms.
  - Encourage contracting with small or economically disadvantaged audit firms which have traditionally audited government programs, and in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.
  - Encourage contracting with consortiums of small or economically disadvantaged audit firms as described in paragraph a when a contract is too large for an individual small or economically disadvantaged firm.
  - Use the services and assistance, as appropriate, of the Small Business Administration, the Minority Business Development Agency of the Department of Commerce, and the Community Services Administration in the solicitation and utilization of small or economically disadvantaged audit firms.
  - A copy of all audit reports shall be provided by the Recipient to DCA no later than 30 days after issuance of the reports and no later than one year plus 30 days after the end of the audit period.
5. Audits must include an examination of internal control systems established to ensure compliance with laws and regulations affecting the expenditure of NSP funds, financial transactions, and accounts and financial statements, and reports of Recipient organizations. These examinations are to determine whether:

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- There is effective control over and proper accounting for revenues, expenditures, assets and liabilities.
  - The financial statements are presented fairly in accordance with generally accepted governmental accounting principles.
  - The quarterly reports to DCA and claims for advances contain accurate and reliable financial data, and are presented in accordance with the terms of applicable agreements.
  - NSP funds are being expended in accordance with the terms of the grant award and those provisions of Federal and State law or DCA regulations that could have a material effect on the financial statements.
6. In order to accomplish the purposes set forth above, a representative number of charges to the NSP award shall be tested. The test shall be representative of all cost categories that materially affect the award. The test is to determine whether the charges:
- Are necessary and reasonable for the proper administration of the program.
  - Conform to any limitations or exclusions of the NSP award itself.
  - Were given consistent accounting treatment and applied uniformly to both NSP assisted and other activities of the Recipient.
  - Were net of applicable credits.
  - Did not include costs properly chargeable to other programs.
  - Were properly recorded (i.e., correct amount and date) and supported by source documentation.
  - Were approved in advance if subject to prior approval.
  - Were incurred in accordance with competitive purchasing procedures if covered by this Manual.
  - Were allocated equitably to benefiting activities, including non-NSP activities.
7. Audits should be made annually. If an acceptable annual audit is completed within a short period of time prior to close out of a NSP program, DCA will request payment documentation of the unaudited funds and then formally close the grant.
8. If the auditor becomes aware of irregularities in the Recipient organization, the auditor shall promptly notify DCA and Recipient management officials above the level of involvement. Irregularities include such matters as conflicts of interest, falsification of records and reports, and misappropriation of funds or other assets.
9. The annual audited financial statements shall include:



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- A statement that the audit was conducted in accordance with OMB Circular A-133.
- Financial statements, including the schedule of expenditures of Federal awards, including footnotes, of the Recipient organization.
- The auditor's report on the financial statement which should:
  - Identify the statements examined and the period covered.
  - State that the audit was done in accordance with the Generally Accepted Government Auditing Standards.
  - Express an opinion as to whether the financial statements of the Federal program is presented fairly in all material respects in conformity with the stated accounting policies
  - Report on internal control related to the Federal program, which shall describe the scope of testing of internal control and the results of the test
  - Report on compliance which includes an opinion as to whether the audit is in compliance with laws, regulations, and the provisions of contracts or grant agreements which could have a direct and material effect on the Federal program.
  - Include a schedule of findings and questioned costs for the Federal program.
  - Identify the of Major programs
  - State the dollar Threshold used to distinguish between Type A and B programs
  - Determine whether the audit qualifies as a low-risk audit

10. The auditor's reports on compliance and internal control should:

- a. Include comments on weaknesses or noncompliance with the systems of internal control, separately identifying material weaknesses.
- b. Report the scope of testing of internal control and the results of the tests, and where applicable, a separate schedule of findings and questioned cost.
- c. Include statement that the audit is in compliance with laws, regulations, and the provisions of contracts or grant agreement that could have a direct and material effect on each major program according to the Federal and State law and where applicable, a separate schedule of findings and questioned costs.
- d. Provide a summary schedule of prior audit findings that report the status of all audit findings included in the prior audit's schedule of findings and questioned costs relative to Federal awards. The summary schedule shall also include audit findings reported in the prior audit's summary schedule of prior audit findings except audit findings listed as corrected.
- e. When audit findings were fully corrected, the summary schedule need only list the audit findings and state that corrective action was taken or a statement on planned actions taken by recipient.

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- f. A Source and Application of Funds schedule and a Project Cost schedule for all NSP funds. The appropriate grant numbers should also be shown. Please note that if the city/county's total federal expenditures meet or exceed the guidelines of OMB circular A-133 (\$500,000), the Federal Schedule of Financial Assistance can be substituted for the Source and Application Schedule.
  - g. Comments on the accuracy and completeness of financial reports and claims for advances or reimbursement to DCA.
  - h. Comments on corrective action taken or planned by the Recipient.
11. Work papers and reports must be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by DCA of the need to extend the retention period. The audit work papers must be made available upon request of DCA or its designees and the General Accounting Office or its designees.
12. When an audit discloses significant findings, the Recipient will be called upon by DCA to take corrective action. Depending upon the nature of the inadequacies, drawdown of funds, final close out or subsequent award of a NSP program may be delayed or denied until corrective action has been taken.

### Section 3: Program Income

Program Income is the gross revenue received by the recipient or a subrecipient directly generated from the use of NSP funds. This includes, but is not limited to, proceeds from the disposition by sale or long-term lease of real property purchased or improved with NSP funds; gross income from the use or rental of real or personal property acquired by the recipient or by a subrecipient with NSP funds, less costs incidental to generation of the income; and payments of principal and interest on loans made using NSP funds. A maximum of 10% of program income earned may be used for general administration purposes. A comprehensive definition of Program Income (PI) is found in the Community Development Block Grant regulations via the following link:  
[http://edocket.access.gpo.gov/cfr\\_2006/aprqrtr/pdf/24cfr570.500.pdf](http://edocket.access.gpo.gov/cfr_2006/aprqrtr/pdf/24cfr570.500.pdf)

Program Income may be managed by the Grantee and must be used to fund NSP1-eligible activities only. Any Program Income received must be expended before additional Program Fund (Treasury funds) dollars can be requested. The draw request process for the disbursement of PI is identical to the process required to draw Treasury funds. The draw request forms and a listing of required support documentation are available on the DCA website. Please see [http://edocket.access.gpo.gov/cfr\\_2009/aprqrtr/24cfr570.500.htm](http://edocket.access.gpo.gov/cfr_2009/aprqrtr/24cfr570.500.htm) for HUD's complete definition of program income. The NSP Bridge Notice published on June 19, 2009 further clarifies the definition and uses of program income via the following link:  
[http://hudnsphelp.info/media/resources/nsp1\\_bridgenotice\\_061909.pdf](http://hudnsphelp.info/media/resources/nsp1_bridgenotice_061909.pdf). Another important resource is HUD's NSP Policy Alert entitled "Program Income in the Neighborhood Stabilization Program" published in July 2011 and available through at:  
[http://hudnsphelp.info/media/resources/NSP%20Policy%20Alert\\_ProgramIncome.pdf](http://hudnsphelp.info/media/resources/NSP%20Policy%20Alert_ProgramIncome.pdf)

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A separate bank account must be established which contains only NSP1 Program Income proceeds. This account can be an interest-bearing account.

**NOTE: All program income received AFTER October 19, 2010 is subject to the requirement that 25% of NSP 1 funds are spent to house individuals or households at or below 50% of AMI.**

### Section 4: General Procurement Requirements

The Recipient is the responsible authority under its contracts, and without recourse to DCA regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into, in connection with the NSP program. Matters concerning violation of law are to be referred to such local, State or Federal authority as may have proper jurisdiction. However, Recipients are encouraged to contact DCA for assistance in any procurement matter.

A. Recipients may use their own procurement regulations which reflect applicable State and local law, rules and regulations provided that **all procurements made with NSP funds meet the following standards:**

(1) NSP Recipients must maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(2) NSP Recipients must maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the NSP Recipient shall participate in selection, or in the award or administration of a contract supported by NSP funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents.

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- B. It is national policy to award a fair share of contracts to small and minority business firms. Accordingly, affirmative steps must be taken to assure that small and minority businesses are utilized where possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:
- a. Including qualified small and minority businesses on solicitation lists.
  - b. Assuring that small and minority businesses are solicited whenever they are potential sources.
  - c. When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation.
  - d. Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority business.
  - e. Using the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce and the Community Services Administration as required.
  - f. If any subcontracts are to be let, requiring the prime contractor to take the affirmative steps in 1. through 5. above.
  - g. Grantees shall take similar appropriate affirmative action in support of women's business enterprises.
  - h. Grantees are encouraged to obtain goods and services from labor surplus areas.
- C. **Competition:** All procurement transactions will be conducted in a manner providing full and open competition. Some of the situations considered to be restrictive of competition include but are not limited to:
- (i) Placing unreasonable requirements on firms in order for them to qualify to do business,
  - (ii) Requiring unnecessary experience and excessive bonding,
  - (iii) Noncompetitive pricing practices between firms or between affiliated companies,
  - (iv) Noncompetitive awards to consultants that are on retainer contracts,
  - (v) Organizational conflicts of interest,
  - (vi) Specifying only a brand name product instead of allowing an equal product to be offered and describing the performance of other relevant requirements of the procurement, and

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(vii) Any arbitrary action in the procurement process.

D. Recipients must have written selection procedures that provide, as a minimum, the following procedural requirements:

- a. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, set forth minimum essential characteristics and standards to which it must conform to be satisfactory. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other important requirements of a procurement. The specific features of the named brand that must be met by offerors must be clearly stated.
- b. Clearly set forth all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- c. Awards shall be made only to responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration must be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
- d. Proposed procurement actions must be reviewed by Recipient officials to avoid purchasing unnecessary or duplicative items. Where appropriate, an analysis must be made of lease and purchase alternatives to determine which would be the most economical practical procurement. Consideration should be given to consolidated or breaking out to obtain a more economical purchase. To foster greater economy and efficiency, Recipients are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goals and services.
- e. Recipients must perform some type of cost or price analysis concerning every procurement action including contract modifications and must only permit allowable costs to be included.

The cost plus a percentage of cost and the percentage of cost method of contracting shall not be used. In addition, contracts with other public agencies will only allow actual cost to be paid. No profit is allowable when contracting with other public agencies.

- f. Recipients must maintain records sufficient to detail the significant

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history of a procurement. These records must include, but are not necessarily limited to, information pertinent to rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the cost or price.

- g.** Recipients must maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase order.

### Methods Of Procurement

There are four methods of procurement that can be used by Recipients, if authorized by locally adopted standards:

1. **Small purchase procedures** which can be used for procurements under \$100,000 (**if allowed by local policy**) and which require that price or rate quotations be obtained from an adequate number of qualified sources. Note that this method is not appropriate for procurement of administrative or professional services.
2. **Public Works Construction: Competitive sealed bids (formal advertising)** where sealed bids are publicly solicited and a firm-fixed-price contract (lump-sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is lower in price.

In order for formal advertising to be feasible, appropriate conditions must be present, including, as a minimum the following:

- a.** A complete, adequate and realistic specification or purchase description is available.
- b.** Two or more responsible suppliers are willing and able to compete effectively for the grantee's business.
- c.** The procurement lends itself to a firm-fixed-price contract, and selection of the successful bidder can appropriately be made principally based on price.

The invitation for bids, including specifications and pertinent attachments, must clearly define the items or services needed in order for bidders to properly respond to the invitation.

All bids must be opened publicly at the time and place stated in the invitation for bids.

A firm-fixed-price contract award must be made by written notice to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. Where specified in the bidding documents, factors such as discounts, transportation costs and life cycle

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costs must be considered in determining which bid is lowest.

Any or all bids may be rejected when there are sound documented business reasons that to do so would be in the best interest of the program.

DCA, under the authority of 24 CFR 570.489(g), has adopted Title 36, Chapter 91 of the Official Code of Georgia, Georgia Public Works Construction Law, for procurement of public works construction projects.

In addition to the traditional design–bid–construct method of public works projects, the law allows for other alternative construction delivery methods. These include the design-build and construction management methods. Before using alternative methods available in addition to those discussed in the “Common Rule” (24 CFR Part 85), the Recipient must consult with DCA and seek the advice of legal counsel.

The Georgia law's advertising requirements must be followed by NSP Recipients and include:

- √ The contract opportunity must be posted in the governing authority's office;
- √ The contract opportunity must be advertised in either the legal organ of the government, or on an Internet website of the government entity or one identified by the entity; and
- √ Contract opportunities must be advertised at least two times:
  - The first advertisement must be at least 4 weeks prior to the bid opening date; and
  - The second advertisement must follow at least 2 weeks after the first advertisement.

**Note:** Advertisements placed on an Internet website should run continuously for at least four weeks.

Recipients are encouraged to use additional auxiliary methods of publication other than those cited above in order to ensure maximum competition in the procurement process.

### 3. **Competitive negotiation** – [see Chapter IV](#).

#### **Contract Requirements**

The Recipient must include, in addition to the provisions needed to define a sound and complete agreement, the following provisions in all contracts:

1. Contracts other than small purchases must contain such contractual provisions or conditions which will allow for administrative, contractual or legal remedies in instances where contractors violate or breach contract terms, and provide for appropriate sanctions and penalties.
2. All contracts in excess of \$10,000 must contain provisions for terminations "for convenience" by Recipient, including when and how termination may occur and



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the basis for settlement. In addition, all contracts must describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

3. All contracts awarded by Recipients and their contractors or subgrantees having a value of more than \$10,000 must contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented in the Department of Labor regulations (41 CFR, Part 60).
4. All contracts and subcontracts over \$2,000 for construction or repair must include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (23 CFR, Part 3). This act provides that each contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The Recipient must report all suspected or reported violations to DCA.
5. All construction contracts awarded by Recipients and their subgrantees in excess of \$2,000 must include a provision for compliance with Davis- Bacon Act (40 U.S.C. 27a to a-7) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under this act contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The Recipient must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract must be conditioned upon acceptance of the wage determination.

The Recipient must report all suspected or reported violations to DCA.

6. Where applicable, all contracts awarded by Recipients and subgrantees in excess of \$100,000 for construction contracts which involve the employment of mechanics or laborers must include a provision for compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under Section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer based on a standard workday of 8 hours and a standard workweek of 40 hours.

Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay of all hours worked in excess of 40 hours in the workweek. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined

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under construction, safety and health standards promulgated by the Secretary of Labor.

These requirements do not apply to the purchases of supplies or material or articles ordinarily available on the open market.

7. All negotiated contracts (except those of \$10,000 or less) must include a provision that DCA, HUD, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific grant program for the purposes of making audit, examination, excerpts, and transcriptions for 3 years after final payment of the Recipient and all pending matters are closed.
8. Contracts, subcontracts and subgrants of amounts in excess of \$100,000 must contain a provision which requires compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h) or Section 508 of the Clean Air Act (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR, Part 15), that prohibit the use of facilities included on the EPA List of Violating Facilities.
9. Contracts must recognize mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PL 94-163).

#### **Bonding and Insurance**

The minimum Bonding and Insurance requirements under state law are applicable to public works contracts valued over \$100,000 and require:

- a. A performance bond from contractors executed in connection with each contract.
- b. A payment bond on the part of the contractor for 100% of the contract price.

In addition, for construction contracts over \$100,000, the minimum federal requirements are as follows:

- a. A bid guarantee from each bidder equal to 5% of the bid price. The bid guarantee may consist of a bid bond, certified check, or other negotiable instrument accompanying the bid.
- b. A performance bond from contractors for 100% of the contract shall be executed in connection with each contract.
- c. A payment bond on the part of the contractor for 100% of the contract price.

All bonds shall be obtained from companies holding certificates of authority as acceptable sureties under state and federal requirements.

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In addition, DCA requires that Recipients require adequate contractor's liability insurance from all contractors. A minimum coverage of \$25,000 property and \$50,000 bodily injury coverage should be required.

### Section 5: Property Management Standards

Recipients shall use their own property management standards and procedures provided that the minimum standards listed below are met. These standards apply to all property acquired with NSP funds for administrative purposes. Property acquired in carrying out the programmatic activities approved in the award shall be used and disposed of in accordance with the terms and conditions of the NSP award itself whenever specified in the application.

A. The various kinds of property are defined as follows:

1. **Real property.** Real property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.
2. **Personal property.** Personal property of any kind except real property. It may be tangible - having physical existence, or intangible - having no physical existence, such as patents, inventions and copyrights.
3. **Nonexpendable personal property.** Nonexpendable personal property means tangible personal property having a useful life of more than one year and an acquisition cost of \$300 or more per unit.
4. **Expendable personal property.** Expendable personal property refers to all tangible personal property other than non-expendable property.
5. **Acquisition cost of purchased nonexpendable personal property.** Acquisition cost of an item of purchased nonexpendable personal property means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purposes for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protection in transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the Recipient's usual accounting practices.

B. The minimum standards are as follows:

1. When the NSP award under which the property was acquired is closed out, the Recipient may use the property for any subsequent NSP activities, or if there is no subsequent NSP award, for any eligible Community Development activities.
2. When the Recipient no longer needs the property for any eligible Community Development activities, the following regulations apply:
  - a. The Recipient shall request disposition instructions from DCA for all non-expendable property with a unit acquisition cost of \$1,000 or more, for all real property regardless of acquisition cost, and for all expendable

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personal property with an aggregate fair market value of \$1,000 or more.

- b. Non-expendable property with a unit acquisition cost of less than \$1,000 and expendable personal property with an aggregate fair market value of less than \$1,000 shall be retained by the Recipient and used or disposed of at his discretion.
3. The Recipient's property management standards for non-expendable personal property shall provide that:
    - a. Property records are maintained accurately and include a description of the property, a manufacturer's serial number or other identification number, the NSP grant number with which it was acquired, the acquisition date and cost, the location, use and condition of the property and the date the information was reported, the unit acquisition cost and the ultimate disposition date.
    - b. A physical inventory shall be taken and the results reconciled with the property records at least once every two years. Any differences shall be investigated to determine the cause.
  4. A control system shall be in effect to ensure adequate safeguards to prevent loss, damage or theft of property. Any loss, damage, or theft shall be investigated and fully documented.
  5. Adequate maintenance procedures shall be implemented to keep the property in good condition.
  6. Where the Recipient is authorized or required to sell the property, proper sales procedures shall be established which would provide for competition to the extent practicable and result in the highest possible return.
  7. Shared use. During the time nonexpendable personal property is held for use on the project or program for which it was acquired, the grantee shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the property was originally acquired. First preference for such other use shall be given to other NSP projects or programs sponsored by DCA. Second preference shall be given to other programs. User charges should be considered if appropriate.
  8. Adequate dwelling and liability insurance coverage must be secured by the Recipient whenever it acquires or manages property.

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### CHAPTER IV: Special Topics for NSP

#### Section 1: Eligible Activities

For guidance regarding eligible activities, please visit the HUD and DCA web pages at the following links:

<http://www.hud.gov/offices/cpd/communitydevelopment/programs/neighborhoodspg/>.

<http://www.dca.ga.gov/communities/CDBG/programs/nsp.asp>.

Also, please reference DCA's Georgia NSP Action Plan Substantial Amendment – Revised 2/2/2009 – as well as to the following table for further guidance.

NSP Eligible Uses	Correlated eligible activities from the CDBG entitlement regulations
<p>(A) Establish financing mechanisms for purchase and redevelopment of foreclosed upon homes and residential properties, including such mechanisms as soft-seconds, loan loss reserves, and shared-equity loans for low- and moderate-income homebuyers.</p> <p>(B) Purchase and rehabilitate homes and residential properties that have been abandoned or foreclosed upon, in order to sell, rent, or redevelop such homes and properties.</p>	<ul style="list-style-type: none"> <li>• As part of an activity delivery cost for an eligible activity as defined in 24 CFR 570.206.</li> <li>• Also, the eligible activities listed below to the extent financing mechanisms are used to carry them out.</li> <li>• 24 CFR 570.201(a) Acquisition</li> <li>(b) Disposition,</li> <li>(i) Relocation, and</li> <li>(n) Direct homeownership assistance (as modified below);</li> <li>• 570.202 eligible rehabilitation and preservation activities for homes and other residential properties (HUD notes that rehabilitation may include counseling for those seeking to take part in the activity).</li> </ul>
<p>(C) Establish and operate land banks for homes that have been foreclosed upon.....</p>	<p>24 CFR 570.201(a) Acquisition and (b) Disposition.</p>
<p>(D) Demolish blighted structures .....</p>	<ul style="list-style-type: none"> <li>• 24 CFR 570.201(d) Clearance for blighted structures only.</li> </ul>
<p>(E) Redevelop demolished or vacant properties .....</p>	<ul style="list-style-type: none"> <li>• 24 CFR 570.201(a) Acquisition,</li> <li>(b) Disposition,</li> <li>(c) Public facilities and improvements,</li> <li>(e) Public services for housing counseling, but only to the extent that counseling beneficiaries are limited to prospective purchasers or tenants of the redeveloped properties,</li> <li>(i) Relocation, and</li> <li>(n) Direct homeownership assistance (as modified below).</li> </ul> <p>204 Community Based Development Organizations</p>

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It is important to note that only certain activities can be carried out depending upon the status of the property. For example, financing mechanisms may be provided to finance the purchase of ONLY foreclosed upon housing units (NSP Eligible Activity A); However, a foreclosed upon OR abandoned unit can be purchased for rehabilitation and resale (NSP eligible Activity B); Only foreclosed upon units can be acquired for Land Banks (NSP Eligible Activity C); Only blighted structures can be demolished (NSP Eligible Activity D. NOTE: under this activity, property cannot be acquired with NSP funds unless combined with an activity that permits acquisition; Vacant or demolished property can be redeveloped (NSP Eligible Activity E).

All property purchases must be at a discount of at least 1% below the appraised price (with the appraisal completed by a state certified appraiser within 60 days of the first offer to purchase.)

Properties sold to LMMI purchasers for use as a primary residence must be priced at a maximum of the initial purchase price plus cost of rehabilitation plus reasonable developer fees. Maintenance costs for the upkeep of the property are eligible NSP expenses, but cannot be considered in setting the purchase price.

Purchase price for an investor may be set higher than the sum above, but the difference is considered program income and must be treated as such.

The period of affordability is determined based on the amount of NSP funds in the unit. See the minimum schedule listed in Section 6 below.

HERA (Section 2301(f)(3)(A)(ii) AS AMMENDED states: "not less than 25 percent of the funds appropriated or otherwise made available under NSP shall be used to house individuals or families whose incomes do not exceed 50 percent of area median income".

PLEASE NOTE: The Frank Dodd Act removed the requirement that only foreclosed upon or abandoned units could count toward the 25% minimum. Therefore, as of the effective date of the Dodd-Frank Act, any NSP eligible activity used to house individuals or families at or below 50 percent area medium income may be used to satisfy this requirement (*i.e.*, vacant properties that are not abandoned or foreclosed may be used to meet the requirement as well as eligible commercial properties that are reused to house individuals and families at or below 50% AMI). However, NSP1 funds already obligated or expended prior July 21, 2010, do not retroactively satisfy this requirement.

**ADDITIONALLY, The HUD Notice of October 19, 2010 includes language which requires that all program income received AFTER October 19, 2010 is subject to the requirement that 25% of NSP 1 funds are spent to house individuals or households at or below 50% of AMI**

### **Section 2: Environmental Review for Unspecified Sites**

Many of the projects funded with NSP are "categorically excluded" by regulation from the requirement to conduct an environmental assessment. However, they are still subject to the list of environmental laws and regulations listed at 24 CFR Part 58.5

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The HUD Tiering process is an appropriate method of handling the environmental review for these projects. The HUD environmental review regulation (24 CFR Part 58) states this:

### §58.15 Tiering.

Responsible entities may tier their environmental reviews and assessments to eliminate repetitive discussions of the same issues at subsequent levels of review. Tiering is appropriate when there is a requirement to evaluate a policy or proposal in the early stages of development or when site-specific analysis or mitigation is not currently feasible and a more narrow or focused analysis is better done at a later date. The site specific review need only reference or summarize the issues addressed in the broader review. The broader review should identify and evaluate those issues ripe for decision and exclude those issues not relevant to the policy, program or project under consideration. The broader review should also establish the policy, standard or process to be followed in the site specific review. The Finding of No Significant Impact (FONSI) with respect to the broader assessment shall include a summary of the assessment and identify the significant issues to be considered in site specific reviews. Subsequent site-specific reviews will not require notices or a Request for Release of Funds unless the Certifying Officer determines that there are unanticipated impacts or impacts not adequately addressed in the prior review. A tiering approach can be used for meeting environmental review requirements in areas designated for special focus in local Consolidated Plans. Local and State Governments are encouraged to use the Consolidated Plan process to facilitate environmental reviews.

### What is Tiering?

- A method for evaluating projects at early stages when the particular sites are not yet known,
- A method for streamlining the environmental review for similar activities that are grouped into projects,

Tiering, or Unspecified Site Strategy as it is sometimes called, should be used for projects when sites have not been identified. The Tiered review allows the Responsible Entity (RE) to review broad environmental impacts at the early stage of a project and site-specific impacts when the sites are identified. It also allows the RE to obtain a release of funds, for a particular project and timeframe prior to identification of the individual sites (24 CFR Part 58.15).

A project is a group of related activities (24 CFR Part 58.2 (a)(1 and 4)). Grouping activities together into projects is called aggregation; projects can be functionally (all single family actions) or geographically related (the Farley Poplar Historic District) (24 CFR Part 58.32). A project is not a Program or a group of Programs such as CDBG or HOME.

The Tiered review must contain four parts:

- The environmental form at the appropriate level of review



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- The Written Strategy
- The Site Specific Review Checklist
- The Request for Release of Funds and Certification, Public Notice and Authority to Use Grant Funds

The environmental form must document compliance with environmental factors that are not triggered in the area of the project. Items that are not in compliance must be on the written strategy. The strategy must explain how the remaining compliance factors will be addressed as the sites are identified. The site-specific review checklist must be filled out for each site and must contain all items that were not documented to be in compliance at the broad level of review.

The RE must establish an Environmental Review Record (ERR) which must contain the written strategy, as well as the Statutory Checklist, Public Notice, Release Letter, and individual site screening forms. All of these are described below.

To begin the environmental review for a project where the sites are not yet known, the level of review must be determined, and the environmental review on the appropriate HUD form (Statutory Checklist) must be conducted. Each of the compliance factors on the HUD form should be evaluated. The compliance factors that can be documented not to occur in the project area should be eliminated when developing the site-specific strategy and checklist. For example, since Coastal Zones do not occur in Macon, Georgia; Macon, Georgia can eliminate Coastal Zones from the Strategy and Site-Specific Checklist.

Upon completion of the Statutory Checklist, the R. E. can publish the Notice of Intent to Request Release of Funds. A sample of the Notice is available on DCA website.

At the expiration of the local comment period, the R.E. will submit the Request for Release of Funds and Certification (RROF) form with a copy of the Public Notice to DCA.

Please note that **funds can not be committed** until DCA responds to the RROF.

Upon Release of Funds from DCA, and as individual sites are identified, the RE must "screen" the sites against a Site Specific Checklist.

The Site-Specific Checklist should only include the items that cannot be eliminated because conditions are not known until the actual sites are identified. Generally that includes Noise, Historic Preservation, Flood Plain and Hazards. Conditions in your community will determine what Laws and Authorities must be addressed in the Site-Specific phase of the environmental process.

As individual sites are identified, the sites must be screened on the Site-Specific Checklists. The documentation for each compliance factor on the Site-Specific Checklists should be attached to each site review and funds should not be committed prior to the completion of the site-specific review. Each form must be signed and dated and the dates will be compared with the project file to determine if funds have been committed prior to the date on the Site Specific Review form.

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### What Tiering is not

- Tiering is not a way to avoid public notice – The National Environmental Policy Act requires that the public be notified when there is a potential for environmental impact. Under 24 CFR Part 58, public notice is required for a Categorically Excluded projects that triggers compliance with the Laws and Authorities at 24 CFR Part 58.5 or any time a full assessment is required. The required Notice is the “Notice of Intent to Request Release of Funds”.
- Tiering is not a way to avoid conducting the environmental review – The environmental impact of each project must be determined through interdisciplinary study and analysis using qualified data sources.

### **Section 3: Section 106 Compliance**

The Programmatic Agreement (PA) between DCA, DNR/HPD and the Advisory Council for Historic Preservation will be a part of every NSP Grant Award. The Agreement can be found in on the DCA web site.

The RE can cite their compliance with the PA as evidence of Section 106 compliance on the Statutory Checklist as part of the Tiered Environmental Review process cited above. This will allow the NSP grantee to publish the NOIRROF, and obtain release of funds from DCA.

The PA will apply to acquisition, resale, rehabilitation, or demolition of any housing over 50 years of age and therefore possibly eligible for listing on the National Register of Historic Places.

Below is an outline of the Programmatic Agreement process:

1. Document the age of every home in the ERR.
2. For homes less than 50 year old no further compliance is required.
3. For home more then 50 year old:
  - a. Purchase and Resale only: No additional compliance is required
  - b. Rehabilitation: Determine if work falls within scope of exempt rehabilitation activities.
  - c. If work is not exempt: Using a “Qualified Historic Preservation Professional” determine the effect of the activity.
    - i. If work meets the Historic Preservation Rehabilitation Standards contained in the P.A. the grantee can make a determination of No Adverse Effect document the Site Screening record for every home and proceed.
    - ii. If the proposed work does not meet these standards, as determined in consultation with the “Qualified Historic Preservation Professional”, there will be an Adverse Effect and DNR/HP must be consulted to agree on mitigation, before the activity can proceed.

### **Section 4: Competitive Negotiation**

**Competitive negotiation** is a method of procurement for professional services where

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proposals are requested from a number of sources and the Request for Proposal (RFP) or Request for Qualifications (RFQ) is publicized. Negotiations must be conducted with more than one of the sources submitting offers, and either a fixed-price or cost-reimbursable type contract is awarded, as appropriate. Recipients should perform a systematic analysis of each contract item or task to assure adequate service and to offer reasonable opportunities for cost reductions. Competitive negotiation may be used if conditions are not appropriate for the use of formal advertising. If competitive negotiation is used for procurement under a grant, the following requirements apply:

- a. Proposals must be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The Request for Proposals must be publicized and reasonable requests by other sources to compete must be honored to the maximum extent practicable. "Solicitation" requests by the Recipient must be specifically addressed to a list of more than one potential proposer identified by the City/County. To "publicize" the RFP, the Recipient must also offer the RFP through publication in a newspaper with adequate circulation or publication by other means such that reasonable exposure to potential proposers can be expected.
- b. The Request for Proposal must identify all significant evaluation factors, including price or cost where required and their relative importance.
- c. The Recipient must have mechanisms for technical evaluation of proposals received, for determinations of responsible offerors for the purpose of written or oral discussions, and for selection for contract award.
- d. Award may be made to the responsible offeror whose proposal will be most advantageous to the procuring party, price and other factors considered. Unsuccessful offerors should be notified promptly.
- e. Recipients may use competitive negotiation procedures for procurement of Architectural/Engineering professional services, whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.
- f. If "competitive negotiation" is not successful, then the Recipient must receive "sole source" approval from DCA before contracting.

#### **Special Note on Procurement for Grant Administration and other Professional Services**

Note that this process is not required when contracting with Regional Commissions (RC's). These provisions apply, typically, to contracts with private consultants, engineers and architects.

Recipients are advised that NSP payments for subrecipients and professional services are subject to the "competitive negotiation" requirements of 24 CFR, Part 85.

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To comply, the recipient government (not the individual or firm proposing to provide services) should:

- Develop a request for proposal (RFP) which includes an explanation of how proposals will be evaluated, including any "evaluation factors" selected by the applicant. A Request for Qualifications may also be acceptable for engineering procurement.
  - Publicize the RFP. This is most often accomplished by publishing it in the recipient's "legal organ;" The publication must be at least 30-days prior to the deadline for receipt of proposals.
  - Send a letter with copy of RFP to a number of "known providers". When soliciting firms to administer projects, RFP's should be sent to at least 7 known providers. When soliciting engineering/architectural services, RFP's should be sent to at least 10 known providers. As a service to applicants, recipients and others, DCA maintains a list of professionals who have expressed an interest in proposing on NSP projects. This is not an "approved" list. DCA does not approve or disapprove professionals. This is the applicant or recipient's responsibility;
  - Negotiate with (preferably with at least 2) respondents to the RFP;
  - Prepare documentation (file memo, etc.) which evaluates proposals and establishes reasons (based on criteria in RFP) for contractual recommendations;
  - Consult city or county attorney with above recommendations and proposed contract; and
  - Based upon established reasons and attorney's recommendation, obtain full council/commission approval and execute contract. Letter(s) thanking unsuccessful respondents for making a proposal should then be sent. Based on evaluation criteria contained in the RFP, this letter should state reasons why the respondent was not hired.
4. **Non-competitive** or "sole source" procurement requires prior DCA approval and may be considered when:
- a. the item or service is available from only one source,
  - b. urgent public need will not allow for the delay caused by advertising,
  - c. although a number of bids were solicited, only one response was received.
5. All contracts must be made with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a

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proposed procurement. Consideration may be given to such matters as contractor integrity, record of past performance, financial and other technical resources, or accessibility to other necessary resources.

6. Procurement records or files shall provide at least the following pertinent information: Justification for the use of negotiation instead of advertising, contractor selection, and the basis for the cost or price negotiated.
7. **A system for contract administration must be maintained by the Recipient to assure contractor conformance with terms, conditions, and specifications of the contract or order, and to assure adequate and timely follow-up of all purchases.**

### Section 5: Written Agreements and Contracts

Before disbursing any NSP funds to any entity, the Recipient must enter into a written agreement with that entity. Before disbursing any NSP funds to any entity, the Recipient must either directly or indirectly oversee the execution of written agreements with that entity, including sub-recipients, contractors, and property owners, that ensure the proper use of funds and compliance with applicable regulations. Sub-recipients and administrative agencies must also enter into, or oversee the execution of, written agreements with or between any contractors, property owners, or other entities, prior to disbursing NSP funds.

The following must be covered in all written agreements:

- A. Sub-Recipient Agreements. A sub-recipient is a public agency or non-profit organization selected to administer all or a portion of the NSP Recipient's program. Whenever the NSP Recipient is passing funding through a local Sub-Recipient, the NSP Recipient must enter into an agreement covering, at minimum, the following items:
  1. Use of the NSP funds. The agreement must describe the use of the NSP funds, including the task to be performed, a schedule for completing the tasks, and a budget. These items must be in sufficient detail to provide a sound basis for the State to effectively monitor performance under the agreement (or contract);
  2. Affordability and other Project Requirements. The agreement must require housing assisted with NSP funds to meet the NSP affordability requirements, as applicable, and must require repayment of the funds if the housing does not meet the affordability requirements for the specified time period;
  3. Program Income. The agreement must state if program income is to be remitted to the State or kept by the NSP Recipient for additional NSP eligible activities;
  4. Uniform Administrative Requirements. The agreement must require the Sub-Recipient to comply with applicable uniform administrative requirements, as described at 24 CFR Part 85.

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5. Other Program Requirements. The agreement must detail which responsibilities are being passed down to the Sub-Recipient or administrative agent, including but not limited to Affirmative Marketing and MBE/WBE Outreach requirements. The agreement must require the Sub-Recipient to carry out each activity in compliance with all Federal laws and regulations, except that the Sub-Recipient does not assume the NSP Recipient's responsibilities for release of funds under 24 CFR Part 58.
  6. Requests for disbursement of funds. The agreement must specify that the Recipient may not request disbursement of NSP funds under the agreement until the funds are needed for the payment of eligible costs. The amount of each request must be limited to the amount needed. Program income must be disbursed before the Recipient requests funds from the state.
  7. Reversion of Assets. The agreement must specify that upon expiration or termination of the agreement, the Sub-Recipient must transfer to the NSP Award Recipient any NSP funds on hand at the time of expiration or termination, all assets purchased with NSP funds (and still held by the entity) as an agent of the NSP Award Recipient, and any accounts receivable attributable to the use of NSP funds.
  8. Records and Reports. The agreement must specify the particular records that must be maintained and the information or reports that must be submitted in order to assist the Recipient in meeting its recordkeeping and reporting requirements to DCA;
  9. Enforcement of the Agreement. The agreement must provide for a means of enforcement of affordable housing requirements including deed restrictions, covenants, and loan agreements. In addition, the agreement must specify remedies for breach of the NSP requirements. The agreement must specify that suspension or termination may occur if the sub-recipient or beneficiary fails to comply with any term of the agreement.
  10. Duration of the Agreement. The agreement must specify a time limit for funding that conforms to limits placed on the award by DCA. In addition, depending on the type of program and responsibilities passed down to the Sub-Recipient, the agreement must specify the length of time the Sub-Recipient is responsible for any long term monitoring, reporting, and recordkeeping functions.
- B. If the subrecipient provides NSP funds to for-profit owners or developers, non-profit owners or developers, homeowners or homebuyers, the subrecipient must enter into a written agreement that includes the elements set forth in this Section.
- C. Written Agreement between Recipient and Administrative Contractor. If the Recipient selects a contractor through applicable procurement procedures and requirements, the contractor must provide goods or services in accordance with a written agreement (the contract). For contractors who are administering all or a portion of the NSP program, the contract must include at a minimum the following

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provisions:

1. Use of the NSP funds. The agreement must describe the use of the NSP funds, including the tasks to be performed, a schedule for completing the tasks, a budget, and length of the agreement.
2. Program Requirements. The agreement must provide that the contractor is subject to the requirements of 24 CFR Part 92 that are applicable to the NSP Recipient, except that 92.505 and 92.506 do not apply, and the contractor cannot assume the NSP Recipient's responsibilities for environmental review or decision making and action under 24 CFR 92.352. Where the contractor is administering only a portion of the program, the agreement must list the requirements applicable to the activities the contractor is administering.

### D. Homebuyer and Homeowner Written Agreements.

1. For homebuyers, the Recipient must enter into a written agreement that conforms to the requirements in 24 CFR 92.254 (a) including the value of the property, principal residence, lease-purchase, if applicable, and the resale/recapture provisions. The agreement must specify the amount of the NSP funds, the form of assistance (e.g., grant, down payment, amortizing loan, deferred payment loan, the use of the funds (e.g., down payment, closing costs, rehabilitation) and the time by which the housing must be acquired. Please see DCA's web page for sample NSP loan documents.
2. For homeowners, the agreement must conform to the requirements in 24 CFR 02.254(b) and specify the amount and form of assistance, rehabilitation work to be undertaken, date for completion, and property standards to be met. Please see DCA's web page for sample NSP loan documents.

### E. NSP Loan Documents

**Financing Mechanism Projects.** The Recipient and the Borrower will execute three documents in connection with a NSP down payment, closing cost and/or second mortgage assistance loan: a Loan Agreement as described above, a Security Deed, and a Promissory Note. Please see DCA's Website for a general explanation of the documents and for the appropriate documents.

**Property Purchase Projects.** The Recipient and the Borrower will execute the above documents to purchase the property then execute a construction contract for the rehabilitation or re-construction project. Resale of the property is subject to restrictions described in Section 1 of this chapter.

### F. Rental Property

For Rental Property, the written agreement, in addition to the Real Estate Note and the Deed to Secure Debt, must also explain that the borrower must execute a Land Use Restriction (Restrictive Covenant) document which enforces the NSP rents, tenant



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income restrictions, minimum property standards, etc. Even if the current owner should sell the property during the applicable period of affordability, the covenants set forth in the Real Estate Note, Deed to Secure Debt and Land Use Restriction Agreement remain in force for the required affordability period. For information regarding NSP rental property requirements, please contact DCA, Office of Community Development.

### G. Construction Contract between contractor and recipient.

This agreement must be between the recipient and a company that is providing construction services. This document should contain provisions that define a sound and complete agreement including pricing, timeframes, general conditions (job site behavior, insurance requirements, licensing, draw procedures, change order procedures, warranties, etc), scope of work (work write-up), material specifications and minimum workmanship, subcontractor requirements (licensed trades, etc.) and any other local requirements.

**NOTE:** The period of affordability begins on the date DCA receives a properly completed Project Completion Report. Therefore, all loan documentation must be written so that the end dates of the Real Estate Note and Deed to Secure Debt correspond at a minimum to the appropriate number of years beyond the date contemplated for project completion.

**For example:** If \$10,000 in NSP funds is used, the Promissory Note and Deed to Secure Debt must be in effect for at least five years from the date DCA receives the Project Completion Report.

### Section 6: Securing the Long Term Affordability of the Project

To ensure that NSP investments yield affordable housing over the long term, NSP imposes occupancy and rent requirements over the length of the affordability period.

For NSP assisted projects, the length of the affordability period depends on the amount of NSP investment in the property and the nature of the activity funded. The table below provides the required affordability periods.

<b>NSP Investment Per Unit</b>	<b>Length of Affordability Period</b>
Less than \$15,000	5 years
\$15,000 - \$40,000	10 years
More than \$40,000	15 years
New construction of rental housing	20 years
Refinancing of a rehabilitation rental project	15 years

Throughout the affordability period, the NSP assisted housing must be occupied by income-eligible households. For homebuyer assistance and homeowner rehabilitation projects, recapture provisions apply to ensure continued availability of affordable homeownership opportunities.

NSP assisted rental units carry rent and occupancy restrictions depending on the average amount of NSP funds invested per unit and length of affordability as set forth in

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the above chart. **Affordability restrictions for NSP rental projects remain in force regardless of transfer of ownership.**

NOTE: The period of affordability begins on the date DCA receives a properly completed Project Completion Form.

### Section 7: Project Delivery Costs

**Project Delivery Costs (PDCs).** Staff and overhead costs incurred by the Recipient (or administrative agent) directly related to carrying out a project and charged to a specific NSP-funded project for performance. See PDC schedule below.

**It is the responsibility of Recipients to maintain detailed project records reflecting the actual staff and overhead cost for the completed project.**

NSP PDC Schedule for performance based activities for single family units:

Activity	PDC
Acquisition	\$4000
Rehabilitation/Reconstruction/New Construction	10% Rehab Cost (including Approved Change Orders) not to exceed \$3000
Homebuyer Assistance	\$2000
Disposition (Sale)	\$4000
Demolition	\$1000
<b>Maximum per unit</b>	<b>\$14000</b>

### Section 8: Administrative Costs

Itemized invoices must be submitted to or prepared by the Recipient detailing the costs incurred in administering the award. **It is the responsibility of the administrator or Recipient (if self-administered) to maintain detailed project records reflecting the actual staff and overhead cost for the completed project.**

### Section 9: Drawdown Procedure

#### A. Project Set-Up Report

All projects (individual properties) must be set up by DCA in order to draw funds to pay for NSP activities. NSP administrators must use the NSP Project Set-up Report form and instructions are available on DCA's Website. This system will assign a specific project ID number to each NSP assisted property which must be used to drawdown funds for that property.

#### B. Project Draw Down

Once a project has received a Set-up confirmation, a recipient may begin to draw funds down for NSP Activities, Project Delivery Costs and other soft costs.

1. A **Request For Drawdown Of NSP Funds For Individual Project** for each individual NSP property must be submitted for each property for which funds are being requested. REQUIRED SUPPORT DOCUMENTATION FOR ALL AMOUNTS

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REQUESTED MUST BE INCLUDED WITH EACH DRAW FORM. For more information regarding completion and required documentation, please see the instructions on Page 2 of the Individual Project Draw Form.

2. A **Request for Drawdown of NSP Funds – Draw Summary** must be completed and accompany the Request for Drawdown for Individual Project forms submitted. For more information regarding completion and required documentation, please see the instructions included with that form.

Draw requests must be **mailed or hand-delivered**, and will be reviewed for completeness and accuracy by DCA.

No draws will be processed if any Special Conditions remain outstanding or any Quarterly Reports are past due.

*Please mail all Draw Request Forms to:*

Office of Community Development  
NSP Draws  
Georgia Department of Community Affairs  
60 Executive Park South  
Atlanta, Georgia 30329-2231

- C. **Maximum Disbursement Timeframe.**

All funds received from DCA must be disbursed (checks written and distributed) from your non-interest bearing NSP account within three (3) business days. If you need to keep a minimum balance in your account, you should arrange to place a minimum amount (suggest \$100) administrative or other funds in the account.

The RECIPIENT must place all funds received from DCA into a separate bank account established for the local NSP program and disburse these funds to the appropriate vendor or other payee within three (3) days of receipt of the funds from DCA. All funds not disbursed must be returned promptly to DCA which must in turn refund the unused cash to the United States Treasury.

- D. **Project Completion Report**

A project completion report must be completed for each property assisted with NSP funds once the property is occupied. The NSP Project Completion Report form and instructions are available on DCA's Website.

**NOTE:** If an NSP project has units that are vacant at the time of final drawdown for the project, the report should be submitted after the units are occupied.

- E. DCA will not disburse the final administrative draw until all project completion reports are received by DCA.

- F. **Period of Affordability.**

For all rental and homebuyer projects, NSP regulations dictate specific periods of

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affordability and monitoring requirements based on the amount of NSP funds invested. (See Section 6 in this Chapter.) The period of affordability begins after the Project Completion Report had been received by DCA.

#### **Section 10: NSP Program Monitoring**

The NSP program staff (with assistance from the Division's Compliance Manager, as needed) will conduct, at a minimum, the following monitoring reviews of NSP Recipients:

**Grant Award Review:** An initial site visit review of the grant award includes: review of the general and special conditions of the award; grant adjustment notices; financial management procedures; citizen participation requirements; affirmative marketing requirements; fair housing requirements; environmental review; historic preservation; written agreements; and, location of program records. Technical assistance is also provided on any special requirements of the award such as Davis Bacon or Uniform Relocation and Real Properties Acquisition Act.

**Program Start-Up Review:** NSP staff conducts an on-site start-up review to verify that the local government is on target with award timelines and in compliance with program regulations. A review of the local government's program policies and procedures is also conducted. Special condition compliance, fair housing, use of manuals and forms and all required written agreements are discussed.

**Financial Management Review:** DCA will conduct an on-site financial management review including case file reviews, site visits to completed projects, verification of income, verification of property ownership, owner occupancy, property type and value, property standards, loan and grant documentation, construction documentation, environmental screening, reconciliation of NSP checking account, source documentation for all invoices and other financial management review.

**Close-Out Review:** After all project funds have been drawn, DCA conducts an on-site close-out review to monitor program and project records for compliance with NSP regulations including reconciliation of draw down records, final quarterly reporting, outstanding monitoring issues, unused funds return, administrative draws, case file reviews and record retention.

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## FORMS LIST

Forms may be found at

<http://www.dca.ga.gov/communities/CDBG/programs/CDBGforms.asp>.

**Note: Forms will be updated as needed and additional forms may be added in order to assist NSP Recipients in meeting program requirements.**

### **General and Financial:**

- Project Set Up Form
- Request For Drawdown Of NSP Funds For Individual Project
- Request for Drawdown of NSP Funds - Draw Summary
- Project Completion Form (Web-based on Grants Management System Report)
- Authorized Signature Card for NSP
- Vendor Management Bank Account Form

### **Fair Housing and Equal Opportunity:**

- Civil Rights Compliance Certification

### **Environmental:**

- Concurrent Notice
- Early Notice
- Environmental Assessment
- Certification of Exemption
- Certification of Categorical Exclusion (Not subject to 58.5)
- Certification of Categorical Exclusion (Subject to 58.5)
- Notice of Intent to Release Funds
- Notice of Explanation
- Statutory Checklist
- Programmatic Agreement for Historic Preservation (Section 106 Compliance)
- Site-Specific Environmental Screening Checklist

### **Labor:**

- Clearance Prime Contractor
- Final Wage Compliance Report
- Notice of Contract Action
- Wage Determination Request
- Weekly Payroll Report (sample)
- Statement of Compliance for Weekly Payroll Reports
- Record of Employee Job Site Interviews
- Instructions for Record of Employee Job Site Interviews

### **Quarterly Reports:**

- Online Grants Management System Report (GMS) (Web based)
- NSP Quarterly Report Instructions

### **Income Limits:**

- NSP Income Limits

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### **Certifications/Additional Forms:**

- Neighborhood Stabilization Program Sub-Recipient's Affidavit And Certification
- Sample Subrecipient Agreement(s)
- Sample Loan Documents