

CHAPTER 11

CITIZEN PARTICIPATION AND OTHER REQUIREMENTS

SECTION 1 – CITIZEN PARTICIPATION GENERAL

All applicants for CDBG funding should have developed and adopted a Citizen Participation Plan to be in compliance with Section 508 of the Housing and Community Development Act of 1974, as amended. At a minimum, the plan should:

1. Provide for and encourages citizen participation, with emphasis on participation by persons of Low and Moderate Income (LMI) who are residents of slum or blighted areas and of areas in which funds are proposed to be used.
2. Provide citizens with reasonable and timely access to local meetings, information, and records relating to the UGLG's proposed method of distribution and relating to the actual use of funds under Title I of the Housing and Community Development Act of 1974, as amended.
3. Provide for technical assistance to groups representative of persons of LMI that request such assistance in developing proposals with the level and type of assistance to be determined by the UGLGs.
4. Provide for public hearings to obtain citizen views and to respond to proposals and questions at all stages of the community development program, including the development of needs, review of proposed activities, and review of program performance; which hearings shall be held after adequate notice, at times and locations convenient to potential or actual beneficiaries, and with accommodations for the handicapped. (At a minimum, two hearings are required: one at the time of application, and one at the end of the grant.)
5. Provide for a formal written procedure that will accommodate a timely written response to written complaints and grievances, within 15 days where practicable.
6. Identify how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of non-English speaking residents can be expected to participate.

Each UGLG must provide citizens with adequate opportunity to participate in the planning, implementation, and assessment of the Community Development Block Grant (CDBG) program. The UGLGs must provide adequate information to citizens, hold a public hearing at the initial stage of the planning process to obtain views and proposals of citizens, and provide opportunity to comment on the applicant's/grantee's community development performance. The Citizen Participation Plan must incorporate procedures for complying with the above regulations.

The plan must be adopted by the UGLGs and will be required during the application stage. The plan must be made available during the monitoring visit and must include procedures that meet the following requirements:

SCHEDULING AND PROVIDING NOTICES OF PUBLIC HEARINGS

Adequate notice — a minimum of five calendar days' notice — must be given of the public hearing. The initial public hearing must be scheduled early in the planning process to ensure adequate public participation and still have time to complete and submit an application. In addition, the UGLG must provide citizens with reasonable and timely access to the hearings. The location and times of these hearings must be scheduled in such a manner as to be convenient to potential or actual beneficiaries with accommodations for the handicapped and non-English speaking persons.

Citizens, with particular emphasis on persons of LMI who are residents of slum or blighted areas, must be encouraged to submit their views and proposals regarding community development and housing needs. Citizens must be made aware of where they may submit their views and proposals should they be unable to attend the public hearing. Where a significant number of non-English speaking residents can be reasonably expected to participate in a public hearing, an interpreter must be present to accommodate the needs of the non-English speaking residents. Citizens must be provided with the following information at the public hearing prior to application submittal to the state. The following items must be included in the first public notice:

1. The amount of funds available for proposed community development.
2. The range of activities that may be undertaken, including the estimated amount proposed to be used for activities that will benefit LMI persons.
3. The plans of the applicant for minimizing displacement of persons as a result of activities assisted with such funds and the benefits to be provided by persons actually displaced as a result of such activities.
4. If applicable, the applicant must provide citizens with information regarding the applicant's performance in prior CDBG programs funded by the State.

In addition, the hearing should inform citizens of the proposed objectives, proposed activities, the location of the proposed activities, and the amounts to be used for each activity. Citizens must be given the opportunity to review the application and comment on the proposed application. The notice must state the proposed submittal date of the application and must provide the location at which, and hours when, the application is available for review. The application must be available for review when the notice is **published** in the newspaper.

Written minutes of hearings and an attendance roster must be submitted to the Program Specialist and kept for review by State officials. Nothing in these requirements shall be construed to restrict the responsibility and authority of the applicant for the development of the application.

To satisfy all the requirements of citizen participation, additional information must be provided to citizens. Applicants must submit proof of notice in the form of an affidavit or a copy of newspaper page showing publication date and each public notice with the application. For a sample public hearing notice, refer to Form 11-A Public Hearing Notice – Sample.

TECHNICAL ASSISTANCE

The applicant must provide technical assistance to facilitate citizen participation when requested, particularly to groups' representative of persons of LMI. The level and type of technical assistance will be determined by the UGLG based upon the specific needs of the community's residents.

COMPLAINT PROCEDURES

Each UGLG must have written citizen and administrative complaint procedures which provide the address, phone number and times for submitting complaints and provides for a maximum of 15 working days, where practical, for a written response. The written citizen participation plan must provide citizens with information relative to these procedures or, at a minimum, provide citizens with the information relative to the location and hours at which times they may obtain a copy of these written procedures. In Citizen Participation Plan, the complaint procedure has been included in the citizen participation plan.

All written citizen complaints that identify deficiencies relative to the UGLG's community development program merit full and prompt consideration and must be handled according to the UGLG's written complaints procedure. Good faith attempts must be made to satisfactorily resolve the complaint at the local level. Complaints must be filed with the chief elected official, or his/her designee, who will investigate and review the complaint. A written response from the chief elected official to the complainant must be made within 15 working days, where feasible.

All citizen complaints relative to Fair Housing/Equal Opportunity violations involving discrimination must be forwarded to the Michigan Department of Civil Rights [*Michigan Department of Civil Rights, Intake Team, 3054 West Grand Blvd., Suite 3-600, Detroit, MI 48202*] for disposition. The complainant must be notified in writing within 10 days that, due to the nature of the complaint, it has been forwarded to the Michigan Department of Civil Rights. Citizens must be made aware that they may forward a complaint alleging discrimination directly to the Michigan Department of Civil Rights [*Michigan Department of Civil Rights, Intake Team, 3054 West Grand Blvd., Suite 3-600, Detroit, MI 48202*].

Persons wishing to object to the MSF's approval of an application may make such objection known to the MEDC. The MSF will consider objections made only on the following grounds:

- The UGLG’s description of needs and objectives is plainly inconsistent with available facts and data.
- The activities to be undertaken are plainly inappropriate to meeting the needs and objectives identified by the UGLG.
- The application does not comply with the requirements set forth in the final statement (consolidated plan) or other applicable laws.

Such objections should include both identification of the requirements not met and, in the case of objections relative to the first bullet above, must include the data upon which the objection is based.

PERFORMANCE HEARINGS

Prior to close-out of the CDBG grant, the recipient must have a public hearing to obtain citizen views and to respond to questions relative to the recipient's performance. This hearing must be conducted after any construction or other significant activity has been completed. It may be conducted during or after the lien period. The public hearing notice (see Form 11-A1 Closeout Public Hearing Notice – Sample) must be advertised in the local newspaper at least five (5) days prior to the public hearing. A copy of the public notice and minutes of the hearing must be submitted with the close-out documents.

Documentation must be kept at the local level to support compliance with the requirements.

SECTION 2 – CONFLICTS OF INTEREST

The CDBG requirements pertaining to conflict of interest are summarized in the following paragraphs.

CONFLICTS PROHIBITED

Except for the use of CDBG funds to pay salaries and other related administrative or personnel costs, the general rule is that no persons (described below under “Persons Covered”) who exercise or have exercised any functions or responsibilities with respect to CDBG activities or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

PERSONS COVERED

The conflicts of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the State, the unit of local government, or of any designated public agencies or subrecipients that are receiving CDBG funds.

EXCEPTIONS

Upon the written request of the applicant, MSF may grant an exception to the provisions of this section on a case-by-case basis when it determines that such an exception will further the purposes of Title I and the effective and efficient administration of the program, project of the State, or the unit of local government. An exception may be considered only after the local government has provided the following:

1. A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made;
2. A certification the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted activity in question; and
3. An opinion of the local government's attorney that the interest for which the exception is sought would not violate State or local law. In addition, grants administration may also require an opinion from the State Ethics Board that the conflict does not violate State law.

FACTORS TO BE CONSIDERED FOR EXCEPTIONS

In determining whether to grant a requested exception after the local government has satisfactorily met the above requirements, the MSF shall 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 an opportunity was provided for open, competitive bidding, or negotiation.
3. Whether the person affected is a member of a group of low or moderate income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class.
4. Whether the interest or benefit was present before the affected person was in a position as previously described.
5. Whether undue hardship will result either to the State or local government or the person affected when weighed against the public interest served by avoiding the prohibited conflicts.
6. Any other relevant considerations.

SECTION 3 – DISCLOSURES

In accordance with the Section 102 of the HUD Reform Act of 1989, all applicants for and recipients of CDBG funding must prepare disclosure reports if the aggregate amount of funding from covered programs exceeds \$200,000 in a federal fiscal year (October 1 through September 30). The primary purpose of the Disclosure Reports is to identify the sources and uses of all funds that will be used in conjunction with the CDBG funds for the project funded.

An initial disclosure report should be submitted with the application for CDBG funds. The nature of the disclosure to be reported includes the amount of CDBG assistance sought and other government assistance to be used. This includes activities to be carried out with the assistance, the financial interests of persons in the activities, and the sources of funds to be made available for the activities and the uses to which the funds are to be expended. A copy of the disclosure report form with instructions is included as Form 11-B.

Those applicants receiving CDBG funds must submit updated disclosure reports annually. Updated disclosure reports must also be submitted to the Program Specialist when the following circumstances occur:

1. Any information that should have been disclosed in connection with the application, but that was omitted.
2. Any information that would have been subject to disclosure in connection with the application, but that arose later, including information concerning an interested party that now meets the applicable disclosure threshold.
3. Changes to other previously disclosed government assistance where the revised amount of assistance exceeds the amount previously disclosed.
4. Changes in previously disclosed financial interest, where the revised amount of the financial interest of a person exceeds the amount of the previously disclosed interest by \$50,000 or by 10% of such interests, whichever is lower.
5. Changes in previously disclosed sources or uses of funds, where:
 - a. The change in a source of funds exceeds the amount of all previously disclosed sources of funds by \$250,000 or by 10% of those sources, whichever is lower.

- b. The change in a use of funds exceeds the amount of all previously disclosed uses of funds by \$250,000 or by 10% of those uses, whichever is lower.

SECTION 4 – RULES FOR CHANGE OF USE OF REAL PROPERTY

The requirements described in this section apply to real property that was acquired or improved, in whole or in part, using CDBG funds in excess of \$100,000. The provisions apply to properties assisted by the UGLG directly as well as properties that were assisted by a sub-recipient using funds provided by the UGLGs. (24 CFR Part 570.489). These requirements apply from the date CDBG funds are first spent for the property until five years after final close-out of the recipient's grant.

The UGLG may not change the use or planned use of any such property (including the beneficiaries of such use) from that for which the acquisition or improvement was made, unless the UGLG obtains prior written approval from the MEDC and provides affected citizens with reasonable notice of and opportunity to comment on any proposed change, and either:

- The new use of the property qualifies as meeting one of the National Objectives and is not a building for the general conduct of government.
- If the UGLG determines, after consultation with affected citizens, that it is appropriate to change the use of the property to a use that does not qualify as meeting a National Objective, it may retain or dispose of the property for the changed use if the CDBG program is reimbursed and funds are returned to the MEDC. The reimbursement must be in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property. The UGLG must work with the Program Specialist to ensure that the amount to be refunded is appropriate. Following the reimbursement of the CDBG program, the property no longer will be subject to any CDBG requirements.

SECTION 5 – CERTIFICATIONS

When an application for CDBG funds is submitted to MSF, it must contain a number of certifications that the local government must sign and agree to carry out as part of its approved CDBG program. These certifications are mandated by the provisions in Title I. The Program Specialist will monitor the UGLGs for compliance with the certifications. The following summarizes each certification.

RESIDENTIAL ANTI-DISPLACEMENT AND RELOCATION ASSISTANCE PLAN

UGLGs must develop and follow a plan which has two components: (1) a requirement to replace all LMI dwelling units that are demolished or converted to a use other than LMI housing as a direct result of the use of CDBG funds; and (2) a relocation assistance requirement. This plan is required of all UGLG regardless of the type of project funded. (For additional information, refer to Chapter 7: Relocation.)

MINIMIZE DISPLACEMENT

The UGLG certify that it will minimize the displacement of persons as a result of activities that are CDBG funded. CDBG funds should not be used to carry out activities that result in displacement unless there is a health and safety threat. The local government must provide a certification that there are no other feasible alternatives.

PUBLIC ACCESS TO RECORDS

The public must be provided reasonable access to records regarding the past use of CDBG funds. This provision should be included in the Citizen Participation Plan. UGLGs are required to hold two or more public hearings to inform the public of the accomplishments of the CDBG program and to assess performance.

SPECIAL ASSESSMENTS

Where CDBG funds are used to pay all or part of the cost of public improvements, special assessments may only be used to recover capital costs as follows:

1. Special assessments to recover CDBG funds may be made only against properties not owned and not occupied by LMI persons. Such assessments are considered program income (for additional information regarding program income, refer to Chapter 8: Financial Management).
2. Special assessments to recover the non-CDBG portion of a project may be made, but CDBG funds must be used to pay the special assessment on behalf of all properties owned and occupied by LMI persons. CDBG funds need not be used to pay the special assessments on behalf of properties owned and occupied by LMI persons if the grant recipient certifies that it does not have sufficient CDBG funds to pay the assessments in their behalf. Non-CDBG funds collected through such special assessments are not program income.
3. The payment of special assessments with CDBG funds constitutes CDBG assistance to the public improvement. Therefore, CDBG funds may be used to pay special assessments only if installation of the public improvements was carried out in compliance with requirements applicable to activities assisted with CDBG funds including environmental, citizen participation and Davis-Bacon requirements; and installation of the public improvement meets a criterion for one of the National Objectives.

COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 AND THE FAIR HOUSING ACT

UGLGs are required to take a proactive role in affirmatively furthering fair housing in the community. Actions to promote fair housing are required to be taken and documented prior to close-out of a CDBG project. UGLGs also agree that no person will be excluded from participation, denied program benefits, or subjected to discrimination based on race, color, disability, familial status or national origin. (See Chapter 9: Fair Housing and Equal Opportunity).

COMPLIANCE WITH TITLE I AND OTHER APPLICABLE LAWS

The CDBG program will be conducted in accordance with the provisions of Title I of the Housing and Community Development Act, as amended, as well as other federal or State requirements and laws. These other requirements include environmental standards, labor standards, acquisition and relocation requirements, fair housing and equal opportunity, Section 504 disability requirements, etc.

EXCESSIVE FORCE

The Armstrong/Walker Excessive Force Amendment – (P.L. 101-144) is found in Section 519 of the Department of Veteran Affairs and Housing and Urban Development and Independent Agencies Appropriation Act of 1990. A recipient must certify that it has adopted or will adopt and enforce a policy to prohibit the use of excessive force against any individuals engaged in non-violent civil rights demonstrations by law enforcement agencies within the jurisdiction. The legislative history of this provision indicates that it may be satisfied by any means that will stand a practicable test of use. The policy may be adopted by a local legislative act, such as an ordinance, or by a local administrative act, such as a written statement of policy by the chief executive, an executive order, or regulation within the police department. An UGLG need not adopt a new policy if it has and is enforcing a written policy that meets the requirements of Section 519. This provision does not amend Title I of the Housing and Community Development Act of 1974, as amended, but applies to the CDBG program.

LOBBYING

The lobbying certification is a result of the requirements contained in Section 319 of Public Law 101-121. It is applicable to the lobbying of federal officials using CDBG funds. CDBG funds may not be used to influence or attempt to influence the awarding of any CDBG project, loan, contract or cooperative agreement. This provision also applies to the renewal or modifications to any CDBG project, loan, contract or agreement. If non-CDBG funds are used for this purpose, the recipient must file a Disclosure of Lobbying Activities (Form 11-C).

CHAPTER 11 FORMS

- 11-A Notice of Public Hearing SAMPLE
- 11-A1 Notice of Closeout Public Hearing SAMPLE
- 11-B Disclosure and Update Report, HUD-2880
- 11-C Disclosure of Lobbying Activities