Chapter 1
Program Overview and Project Start-Up

Introduction
The U.S. Department of Housing and Urban Development (HUD) allocates Community Development Block Grant (CDBG) funding to the State of Michigan, through the Michigan Strategic Fund (MSF) with assistance from the Michigan Economic Development Corporation (MEDC), for further distribution to eligible Units of General Local Government (UGLGs) to carry out MSF-approved activities. The federal statutory authority for the CDBG program is the Housing and Community Development Act of 1974, as amended (HCDA).

This Grant Administration Manual (GAM) is intended as an overarching guide for UGLGs that have received CDBG grants from MSF. It outlines the Federal rules that govern the use of CDBG awards as well as the MEDC’s policies regulating the application process and the on-going operation of its CDBG-funded programs from initial award to grant close-out. This GAM should be used in conjunction with the official Funding Guide. The GAM may also serve as a resource for the MEDC staff as well as members of the public that are interested in the details of CDBG program and how it will operate.

Role of the Michigan Strategic Fund (MSF)
The MSF was created by P.A. 270 of 1984 and has broad authority to promote economic development and create jobs. The MSF Board has the following responsibilities:

- Approve grants and loans under the Michigan Business Development Program and Michigan Community Revitalization Program.
- Approve the use of Private Activity Revenue Bonds.
- Approve grants under the Community Development Block Grant Program.
- Recommend to the State Administrative Board Agricultural Processing, Renewable Energy and Forest Products Processing Renaissance Zone designations.
- Approve Tool and Die Renaissance Recovery Zones.
- Act as the fiduciary agent with respect to the 21st Century Jobs Fund investments.
- Pursuant to statute, the Chief Compliance Officer provides advice and guidance in regard to the 21st Century Jobs Fund.

The MSF recommends the portion of the Consolidated Plan related to the CDBG program and the CDBG Action Plan for approval by HUD. The MSF approves the Funding Guide, which outlines the eligible grantees, the guidelines for program design, and the selection criteria for all economic and community development projects. The MSF also ultimately approves all CDBG grant awards, grant increases, and changes to beneficiaries.

Role of the Michigan Economic Development Authority (MEDC)
The MEDC is a public-private partnership serving as the State’s marketing arm and lead agency for business, talent and jobs, tourism, film and digital incentives, arts and cultural grants, and overall
economic growth. MEDC offers a number of business assistance services and capital programs for business attraction and acceleration, economic gardening, entrepreneurship, strategic partnerships, talent enhancement, and urban and community development.

The State CDBG Program is one of many programs managed by the MEDC. The MEDC manages this program through a Memorandum of Understanding to act as the third-party administrator for the program.

MEDC staff recommends policy documents, grant awards, grant increases, and changes to beneficiaries to the MSF for consideration. The MEDC manages all grants approved by the board, including assuring compliance, processing payments, and monitoring. The business and community development portions of the State’s CDBG program are identified and administered directly by the MEDC on behalf of the MSF.

Role of Grantee (UGLG)
The grantee (i.e., the UGLG) applies for and receives CDBG funds from the MSF. The UGLG is the responsible party for the CDBG grant and enters into the contract (Grant Agreement) with the MSF. As the award UGLG, the grantee receives CDBG grant disbursements, assures compliance, and ensures that the CDBG funds will be used for the purposes intended. The UGLG must engage a Certified Grant Administrator to assist in grant administration.

Role of the Grant Administrator
The Grant Administrator represents the UGLG participating in the CDBG program. The administrator is responsible for compliance with federal regulations, policy guidelines, and program oversight. Some examples of responsibilities are as follows:

- Coordinates with key players involved in the grant, i.e., engineers, contractors, property owners, employers.
- Ensures compliance with Grant Agreement terms.
- Reviews and submits compliance documentation including environmental review, procurement, acquisition/relocation, federal labor standards, civil rights, and National Objective.
- Prepares required reports for UGLG’s submission.
- Prepares payment requests for UGLG’s submission.
- Prepares for monitoring and site visits, and makes documents and other program information available for the monitors.
- Collects and prepares grant closeout documentation for UGLG submission.

Role of Program Specialist
Program Specialists are highly trained MEDC staff and will be the primary contact at MEDC for an UGLG and Grant Administrator after Grant Agreement. The Program Specialist has a full working knowledge of the overall state and federal program regulations, a detailed knowledge of each UGLG’s project and its major participants. Each Program Specialist is assigned the specific UGLGs and project
for whom she/he will be responsible. The Program Specialist will be responsible for oversight, problem identification, problem resolution, and UGLG relations. All communications regarding specific projects should be directed to the Program Specialist assigned to the UGLG’s project.

**Grant Process**

Applications are received on an ongoing basis and may include competitive grant rounds as well for eligible activities as defined in the Funding Guide. In either case, the process remains the same. Once a project is identified, the UGLG works with MEDC staff to perform the following steps:

1. Application
2. Term Sheet
3. Environmental Review
4. Financial Review, if applicable
5. Recommendation by the MEDC to MSF on project funding
6. Grant Approval by the MSF
7. Grant Agreement
8. Grant Administration
9. Grant Closeout

**Section 1 – Project Start-Up & Responsibilities**

Project start-up refers to the completion and execution of documents and agreements required before receiving grant funds. It also should incorporate strategic planning by the UGLG about how funded activities will be managed and implemented. Please refer to the Funding Guide on guidance regarding the process prior to submission of the Application.

This section provides an overview of the responsibilities of the UGLG grantee and the required documents that UGLGs need to submit before receiving their funding allocation. It also provides guidance to UGLGs about how to get started and information about recordkeeping and compliance with other Federal regulations. Forms are provided at the end of the chapter.

All reports and correspondence received by the MSF or MEDC must include the grant number and title.

The UGLG or the Grant Administrator should work closely with the MEDC staff during the multi-step application process. The following paragraphs serve as an overview for how the collaborative process should work, but throughout this chapter and subsequent chapters, particular topics are covered in more detail. The UGLG should familiarize themselves with all chapters of the CDBG Administrative Manual prior to embarking on a project.

Once Project Information has been approved, the UGLG will receive an Offer Letter/Letter of Interest from the MEDC outlining the terms of the proposed funding.
Application and Environmental Review
The Application is provided to the UGLG once the Offer Letter/Letter of Interest has been returned. The UGLG should also begin the Environmental Review at this time, if they have not already done so. Please note, it is essential that the UGLG not spend any funds (Federal or otherwise), with the exception of non-CDBG funded administrative funds, on the project. The UGLG must also ensure that neither it nor its agents take any actions that would limit the options for a particular property to be assisted, regardless of whether or not these actions involve expenditures. Refer to Chapter Five–Environmental Review for a detailed explanation of the environmental review process. For more information on what costs can be incurred and when, please refer to the Funding Guide. As a part of the environmental review process, the UGLG must ensure that the necessary citizen participation has occurred, work to resolve any outstanding issues or questions identified during that process or by the MEDC team.

The Application can be completed concurrently with the Environmental Review.

Grant Agreement
The Grant Agreement includes terms and conditions, which consist of guidelines, laws, and requirements under which the grant is to be administered. The Grant Agreement incorporates by reference, the CDBG application, certifications, and other materials related to the CDBG application for assistance.

- The Grant Agreement identifies the following information:
  - Grant title,
  - Project category,
  - Effective date,
  - Award amount,
  - Term of work, and
  - Grant number. (Please use on all correspondence to the Program Specialist concerning the project.)

- The Grant Agreement also identifies any special conditions to the grant. Special conditions vary from grant to grant, and may address a number of different issues. Generally, the conditions will restrict the draw down, or obligation of grant funds, until the conditions have been met and approved.

- An official of the UGLG with legal authority to execute contracts must sign and return a copy to the Program Specialist.

- The Program Specialist will return one copy once fully executed by the MSF Fund Manager for the UGLG’s project files.

CDBG Pre-Disbursement Checklist
After the Agreements referenced above have been executed, the UGLG may proceed with the implementation phase of their project. However, before the UGLG may draw down any grant funds, it must complete all Pre-Disbursement conditions. These conditions identify the actions and the
documentation that must be completed by the UGLG in order to move forward. A list of conditions will be provided by the Program Specialist. No grant funds will be released until all applicable items have been received and are found to be acceptable. At that time, the UGLG can start to process payment requests, if other terms of the agreement have been met. Chapter 8: Financial Management offers a detailed description of the financial process.

**Regular Reporting**
The Grantee shall provide semi-annual Progress Reports (Form 1-A) each year the grant is open. The Grantee shall provide a final Program Progress Report and all other required close out documents specified by the MSF within 120 days of the expiration of the Term. Grantees, if applicable, will be required to provide semi-annual Job Creation Summary Reports (Form 2-C). A Section 3 Compliance Certification form, as well as, a Section 3 Summary Report will be needed annually by June 30 as explained in detail in Chapter 9.

**Section 2 - Time Frame for Project Completion**
The Grant Agreement will indicate the period established for completion of all grant activities. Generally, UGLGs are expected to complete projects and close-out the grant within 24 months.

Completion of program activities within the established time frames identified in the approved application is extremely important because future funding decisions will take into account timely implementation. The UGLG must demonstrate satisfactory program progress within six months of receiving the grant award or otherwise described in the UGLG’s Grant Agreement.

At other times during the grant period, if UGLGs are found in significant non-compliance with their project schedules, the Program Specialist may make a determination to terminate unobligated CDBG funds or institute other sanctions, as appropriate. UGLGs should always notify the Program Specialist in writing when significant project delays have occurred and the reasons should be identified.

If, for reasons beyond the control of the UGLG, it appears that an extension beyond the approved grant period will be necessary, a written Grant Amendment Request (Form 12-B) should be sent to the Program Specialist.

**Chapter 1 Form(s)**

1-A Progress Report
2-C Job Creation Summary Report and Income Certification Calculator
9-C Section 3 Summary Report, HUD-60002
9-D Contract Solicitation and Section 3 Reporting Record
Chapter 2

National Objective

Introduction

This chapter describes the federal requirement that all CDBG funded activities fulfill one of three National Objectives established by Congress. The following paragraphs discuss the process of selecting one of the three National Objectives. This includes the procedures for documenting that the UGLG’s activities fulfill the selected objective.

As outlined in Funding Guide federal regulations stipulate that before any activity can be funded in whole or in part with CDBG funds, it must be determined that the activity (e.g., economic development, public infrastructure) is eligible under Title I of the Housing and Community Development Act of 1974, as amended. In addition, CDBG requirements mandate that each funded activity (except for program administration and some planning initiatives, and described below) must meet one of the established three National Objectives. The three National Objectives are:

- Benefiting Low and Moderate Income (LMI) persons.
- Aiding in the prevention or elimination of slums or blight.
- Meeting community development needs made urgent by conditions posing serious and immediate threats to community health or welfare, conditions that are of recent origin or recently became urgent, and where other financial resources are not reasonably available to meet such needs.

Administrative Activities

Activities that are performed to administer CDBG programs but are NOT a direct part of operating the program itself are termed “Administrative Activities.” These activities support the UGLG’s programs and, by extension, they are seen as furthering the National Objectives that are associated with those programs.

Planning Activities

If a UGLG performs planning activities that facilitate or enable a specific eligible activity, such as infrastructure or economic development, then the planning activity can be deemed to support the same National Objective as the activity itself. The MEDC may award grants to UGLG who perform planning-only activities, or to fund planning activities that are unrelated to any other activity funded by the grant. These are often referred to as “planning-only grants” or “planning-only activities.” Planning-only grants or activities must comply with the requirements of the LMI or slum or blight National Objectives.

It is not possible for a planning-only grant or activity to comply with the Urgent Needs National Objective. Planning-only grants or activities can meet the LMI benefit objective if it can be shown that at least 51 percent of the persons who would benefit from implementation of the plan are LMI persons. Planning-only grants or activities can meet the slum or blight National Objective if the plans are for a slum or blighted area, or if all planning elements are necessary for and related to an activity which, if implemented, could be shown to meet the slum or blight National Objective criteria. For either the LMI benefit or the slum or blight National Objective, such determinations are not dependent on the...
planned-for activity or project actually being implemented. Reference: 24 CFR 570.483(b)(5); 24 CFR 570.483(c)(3).

Other Activities
There are a number of different criteria by which an activity can meet a National Objective, as shown in the Funding Guide. The following sections explain each of the National Objectives in detail, including the criteria for meeting each one, and the documentation that must be provided to comply with the HUD and the MEDC’s requirements.

Section 1 – Benefit to Low/Moderate-Income (LMI) People

Introduction
The LMI National Objective is often referred to as the primary National Objective as the regulations require that States expend at least 70 percent of their CDBG funds on activities that benefit low-and moderate-income people as defined below. In addition to ensuring that the required percentage of CDBG funds serve people in the overall LMI category, UGLGs must also ensure that the activities proposed, when taken as a whole, will not benefit moderate income people to the exclusion of low-income people (see definitions below).

Activities that benefit LMI people that are allowed by the MEDC are divided into three types:

- Area-benefit activities.
- Job creation/retention activities.
- Housing activities.

Definition of Low and Moderate-Income
The definition of LMI used in the MEDC’s CDBG program is the same as that in Title I of the Housing and Community Development Act, as amended. These income limits are to be used to qualify persons/households as eligible LMI beneficiaries of CDBG-assisted activities.

Before discussing the specific income figures, it is important to note the difference between persons, families, and households. Most CDBG programs require that UGLGs target benefits to LMI people. However, LMI people are in turn defined as individuals that are members of a low-income family.

The one instance when HUD looks at households rather than families is in the case of CDBG-funded housing programs, because the beneficiary of the assistance is actually the entire household living in the unit that was assisted, regardless of whether they are in the same family. Thus if a person with little or no income was sharing a residence with an unrelated wealthy person, neither of them would be considered low-income people. Rather, they would both be part of a two-person household that did not qualify as LMI.

For purposes of determining CDBG eligibility and compliance with the LMI National Objective, family or household incomes are adjusted for family/household size.
A low-income family/household is one that has an income of less than or equal to 50 percent of the Area Median Income, as adjusted for family/household size. A moderate income family/household is one that has an income of greater than 50 percent of the Area Median Income but less than or equal to 80 percent of the Area Median income, as adjusted for family/household size. The two categories are referred to as Low and Moderate Income, or LMI.

LMI is defined slightly differently for residents of non-metropolitan counties and residents of counties within metropolitan areas. For non-metropolitan counties, an LMI person must be a member of a family with an income that is at or below 80 percent of the median income for the county of residence, or, the statewide non-metropolitan area median income (MFI), whichever is higher. Note that for housing programs, the household — rather than the family — would need to have an income below the higher figure. For metropolitan counties, an LMI person must be a member of a family with an income that is at or below 80 percent of the median income for the entire Metropolitan Statistical Area (MSA). For housing programs, household is the important measure, not family.

HUD provides specific income figures (e.g., median income, 80 percent of median income, 50 percent of median income) adjusted by household size for all counties and all metropolitan areas of the state. These figures are adjusted annually.

Note: The Consolidated Planning Regulations at 24 CFR Part 91 require the State to collect and report information on the number of extremely low, low, moderate, and middle income persons served by each activity.

**LMI Area Benefit Criteria (LMA)**

A LMI Area Benefit Criteria (LMA) Activity is one whose benefits are available to all the residents in a particular service area where at least 51 percent of the residents are LMI persons. The most readily available information on income is kept by the U.S. Census and is generally described by census tracts or larger aggregations of tracts. However, a CDBG-funded activity's service area does not need to be consistent with census tracts or other officially recognized boundaries if statistics on income are available by some other geographic unit (see subsequent description). In all cases, however, the area used to determine LMI benefit, must be the entire area served by the activity. Activities of the same type that serve different areas must be considered separately on the basis of their individual service area.

An activity that serves an area that is not primarily residential in character (e.g., a commercial area with a handful of residences, or an area LESS THAN 51% in residential structures) CANNOT qualify under the Area Benefit National Objective.
In determining whether an activity will actually benefit LMI residents, the net effect of the completed activity is considered. The mere location of an activity in an LMI area does not conclusively demonstrate that the activity benefits LMI persons. It is important to understand that not all activities that take place within a particular area will benefit that entire area. Similarly, in instances when a UGLG assists an affordable housing development, it is essential to consider the incomes of the residents of that development (i.e., those who are getting a direct benefit from the housing) rather than the incomes of the residents in the surrounding neighborhood, notwithstanding that it could be argued their lives are also improved due to the new project.

Examples of activities that may qualify as an Area Benefit Activity include:

- Adding or improving multiple facades for business along a local commercial district that serves a LMI neighborhood or community.
- Providing drainage improvements in an LMI neighborhood or community.
- Constructing a streetscape in a downtown that serves an LMI area or community.

Data establishing numbers and percentages of LMI persons in an area must be verifiable. Acceptable methods for establishing low- and moderate-income population in a particular area include:

- Census data provided by HUD.
- Methodologically-sound surveys conducted by the UGLG or a third party.

Both methods are described below.

**Census Data**

Appropriate census data must be used to establish the LMI population. HUD has historically provided detailed data arranged to show the percentage of LMI persons in each incorporated place, census tract and block group. Data is available directly from HUD at [https://www.hudexchange.info/programs/acs-low-mod-summary-data/acs-low-mod-summary-data-local-government/](https://www.hudexchange.info/programs/acs-low-mod-summary-data/acs-low-mod-summary-data-local-government/)

For federal fiscal year 2012 and beyond, HUD will provide data for incorporated places and for census tracts based on the American Community Survey (ACS). Contact the MEDC if you are unsure of the data for an area.

If the proposed activity's service area is generally the same as a census tract or block group(s), then HUD data may be used to justify the income characteristics of the area served. LMI limits by family size will be available from MEDC based on data updated by HUD. MEDC also has income data by cities and counties. If HUD data does not indicate that the service area contains at least 51 percent LMI persons, and if an UGLG has a compelling reason to believe the data is incorrect, then an UGLG may request to conduct household surveys based on a change in either population or income of the area since the census. If the service area is not generally the same as a census tract or block group, then an applicant should conduct household surveys to determine the LMI percentage for the area.

**Survey Data**

An applicant may conduct a methodologically sound income survey to establish the LMI status of households or families in a CDBG project area, but must first submit an Income Survey Application (Form 2-A) to the MEDC, documenting the need for an income survey and requesting survey instructions.
All surveys must be completed and approved by a third party provided by the MEDC prior to submission of the Application in order to be eligible for funding.

The lifespan of a survey is dependent on when it was conducted and if HUD has updated the relevant economic data for that community. Completed surveys and documented approval by the MEDC must be accessible for review.

LMI Job Creation/Retention Overview
An LMI Job Creation/Retention (LMI) activity is one that creates or retains permanent jobs, with 51 percent being held by persons from LMI families. Jobs indirectly created by an assisted activity (i.e., “trickle-down” jobs) may not be counted.

For job creation activities, the local government and the assisted business(s) must document that permanent jobs have been created, and that at least 51 percent of the jobs, computed on a full-time equivalent (FTE) basis, have been filled by LMI persons.

For job retention activities, the local government must document that the jobs would actually be lost without the CDBG assistance, and that either or both of the following conditions apply with respect to at least 51 percent of the jobs:

- The job is known to be held by an LMI person, or
- It can be reasonably expected that the job will turn over within the following two years and be filled by an LMI person upon turnover.

Calculating FTE Jobs
The Department of Labor allows jobs of 35 hours or more per week to be classified as full time positions. All such positions that were created through CDBG assisted initiatives should be broken out from the part time positions and counted fully. For instance, if a CDBG-assisted venture created 10 permanent jobs that involved 40-hour work weeks, and five more that involved 35-hour work weeks, the total number of full-time positions would be 15. If the same venture also created permanent part-time positions, these can also be counted once they have been converted to FTE positions.

Notwithstanding the fact that 35-hour positions can be counted as full-time employment, any part-time positions requiring less than 35 hours per week must be converted to FTE positions using a factor of 40 hours for each full-time job.

Job Creation Requirements
As part of the application process, each business requiring assistance must include a written commitment to hire or retain LMI persons. The business must also provide a hiring plan that details the number of jobs to be created, the number of jobs held or to be filled by LMI persons, the type of job, average wage, any special skills or training required, the timetable for hiring, and whether or not health care was offered to employees for the positions. The plan must indicate who will be responsible for hiring, collecting required data, and for training to be provided. Generally, it is expected that initial hiring by the business will be completed within 24 months from the time of CDBG assistance.
Projections for future expansions or growth (i.e., those that are not directly related to the assistance) are generally not considered for purposes of determining the number of jobs to be created.

The job commitment should be realistic in determining the total number of jobs, the number of jobs to be filled by LMI persons, and the timeframe for hiring. Note that:

- The MEDC uses the Application and other documents to qualify the proposed project under HUD regulations and will monitor the hiring to verify that job commitments have been fulfilled.

- Failure to comply with the requirement to benefit at least 51 percent LMI persons could result in the State requiring repayment of all of CDBG funds spent on the project.

- The UGLG must meet with appropriate business representatives to discuss hiring commitments, LMI job requirements and documentation prior to CDBG funds being awarded.

- The business should track its employees by positions, such that when a position is created and an employee is hired, the LMI status of the employee in that position can be determined. Regardless of the number of jobs committed by the business, 51 percent of the total jobs actually created when hiring is complete must have been taken by LMI persons.

- The business should maintain applicant and employee income surveys, equal employment opportunity information, and payrolls or employee lists to document compliance with CDBG requirements. It is recommended that these records be maintained separately from a business’s individual personnel records.

The UGLG is required to monitor on-site the business’s progress in fulfilling the hiring and LMI job requirements and report to MEDC on a six-month basis. Every time a new job is filled, the employer must maintain documentation regarding the new job, demonstrating that it was not simply a re-hire for a position that had already been counted. The documentation for all first-time hires in new positions should include evidence that the new employee either met or didn’t meet the LMI standard (Please see later sections of this chapter for more information on the protocol for determining LMI status of new employees.)

For job creation projects, the important fact is the status of the first employee to fill a new position. For example, assume a firm had 100 employees before deciding to participate in a CDBG-funded job creation initiative through which they then brought on 10 new full-time employees to give the firm a total of 110 FTEs. Next, assume that seven of the 10 new positions were originally filled by low-income workers. However, one of the seven new LMI employees was subsequently replaced by another worker that happened NOT to be low income. In this case, it is still appropriate to say that seven of the 10 new positions were initially filled by low-income workers, even though only six of the positions were held by low-income workers once the one employee left and was replaced by another individual that did not qualify as LMI.

When all of the intended jobs have been created, MEDC will monitor the hiring and LMI job documentation at the business. Records should continue to be kept by the business until notified by MEDC that the CDBG requirements have been fulfilled. These records should be retained for at least five
years after the State has closed out a particular year’s funding award with HUD. UGLGs must retain these records until the MEDC notifies them it no longer necessary.

The business must continue to collect income verifications from all applicants and employees hired until hiring is complete and the jobs are monitored or verified by the MEDC.

**Rules for Counting Jobs**

As a general rule, each assisted business will be considered individually for purposes of determining if at least 51 percent of the jobs created or retained will be for LMI persons. However, when CDBG funds are used to acquire, develop, or improve property (e.g., a shopping center or an industrial park), the 51 percent requirement may be met by measuring jobs in the aggregate for all the businesses that locate on the property as a direct result of the CDBG assistance.

Other businesses in the service area (or that may locate to the service area) that benefit from the public facility/improvement should not be considered. [Note: The principal business(es) must meet the 51 percent requirement when hiring is completed, and the total number of jobs actually created should not raise the cost per job to $10,000 or more unless there are documented circumstances beyond the control of the business(es) that prevented the hiring of the total number of employees committed.]

The general rule is that if the CDBG “cost per job” of the public facilities or improvements that are greater than or equal to $10,000, then all jobs created or retained by all businesses in the service area must be tracked for the purpose of determining that at least 51 percent of the aggregate total jobs are for LMI persons.

This aggregation must include businesses that, as a result of the public facility/improvement, locate or expand in the service area of the public facility/improvement between the date the State awards the CDBG funds and one year after the physical completion of the public facility/improvement. This rule will rarely have any applicability, since it is not the State’s intent to fund projects that are equal to or more than $10,000 per job, except under special circumstances.

When counting jobs, the following policies apply:

- Part-time jobs must be converted to FTE.
- Only permanent jobs may be counted; temporary and contractual jobs are not allowed.
- Transferred jobs may not be counted.
- Seasonal jobs may be counted only if the season is long enough for the job to be considered the employee's principal occupation.
- Jobs indirectly created by an assisted activity (i.e., “trickle-down” jobs) may not be counted.
- Jobs must ultimately and within the term of work be located at the project site receiving the improvements.

Jobs are only counted as newly created if they involve a new hire that joined the assisted firm after the effective date of the Grant Agreement. Firms are not able to claim any new positions that were created before the UGLG actually entered into an agreement with the State.

Any jobs that were eliminated prior to a firm entering into discussions to receive assistance are generally NOT considered for purposes of determining net job growth. Assume, for instance, that two months prior to engaging the UGLG to receive assistance, a firm terminates 20 positions. Then one
month after the UGLG enters into a Grant Agreement to revitalize the firm’s local operations, the firm improves its outlook and hires 15 new positions. In this instance, it is appropriate to count all of these 15 positions as new, rather than offsetting them by the 20 terminations that occurred prior to the effective date of the agreement. If, however, the firm cut positions after it knew it was going to receive assistance (even before it signed an official agreement), then these terminations should be considered as if they happened after the Grant Agreement (i.e., they must be subtracted out of any subsequent job additions in order to calculate a net new jobs total).

**Job Retention Requirements**
For projects proposing the retention of jobs that would otherwise be lost without CDBG assistance, at least 51 percent of the jobs to be retained must be held by persons from LMI families. HUD requires that there be clear, objective evidence and documentation that jobs would be lost without the CDBG assistance; therefore, using job retention as a basis for meeting the LMI National Objective is difficult. Consequently, in the past, few projects have qualified as benefiting LMI through job retention.

The business should track its employees by position, such that the LMI status of the employee in that position can be determined.

**Certifying Low-Income Status of Employees for LMI Jobs**
UGLGs must obtain individual income certifications from each employee claimed as filling a new low-income job. New employees should provide a sworn statement (using a standardized format) as to their actual family household income at the time the CDBG assistance is provided. This actual family household income figure will be used to project an annual income over a 12-month period.

**LMI Housing-Rental Rehabilitation Overview**
An LMI Housing activity is one carried out for the purpose of providing or improving permanent, residential structures that will be occupied by LMI households upon completion. This would include, but not necessarily be limited to, the acquisition or rehabilitation of residential property, conversion of nonresidential property to residential.

Rental units occupied by LMI persons must be occupied at affordable rents as defined by MEDC as Fair Market Rent minus tenant paid utilities. Rental rehabilitation housing projects must demonstrate that there is a fair and equitable distribution of units.

Occupancy of housing shall be based on the household income of occupants using the following rules:

- If the structure contains two dwelling units, at least one must be occupied by LMI.
- For multi-unit structures that contain more than two dwelling units, at least 51 percent of the units must be occupied by LMI households after rehabilitation. Where two or more rental buildings being assisted are or will be located on the same or contiguous properties, and the buildings will be under common ownership and management, the grouped buildings may be considered for this purpose as a single structure.

**LMI Housing**
The following documentation of program benefit is required with the application for all CDBG-funded activities that are carried out under the LMI Housing National Objective:

- For each unit to be assisted, the size and income of the occupant household.
• A copy of a written agreement with each developer receiving CDBG assistance committing the total number of dwelling units in each multi-family structure assisted and the number of those units which will be occupied by LMI households after the assistance.

• For rental housing, a description of how the affordability of units occupied by LMI households will be ensured.

The following documentation of program benefit is required for all CDBG-funded activities that are carried out under the LMI Housing National Objective. Additional back-up documentation must be kept on file.

• For each assisted unit, the family size and income and ranges (30%, 50%, 80%) of occupant households and the amount of CDBG funds spent on rehabilitation.

• For rental housing, documentation that the units occupied by LMI households are affordable.

• Data on the racial, ethnic and gender characteristics of persons who are applicants for, participants in, and/or beneficiaries of CDBG activities. Regardless of whether the unit is affordable or market rate, HUD considers ALL units in the structure to be assisted, even unimproved units within the structure. Therefore, Grantees are required to report income and demographic information for the tenants living in all the units.

**Housing – Rental Rehabilitation**

Grantees that are assisting the construction of housing developments must also ensure that those developments comply with the Section 504 provisions regarding set asides of apartments for groups with specific disabilities. CDBG compliance related to Lead, Asbestos and Radon are addressed in the Environmental Review Chapter 5, Section 6.

For CDBG assisted housing activities, the benefits of the assistance are shared with all of the occupants, and require that the income of all household members must be considered to determine the L/M income status of the beneficiaries at initial occupancy of the housing following completion of the CDBG assisted work.

Link to Income Limit Data:

https://www.huduser.gov/portal/datasets/il.html

Rental units occupied by LMI households must be occupied at “affordable rents”. MEDC defines “affordable rents” as Fair Market Rent minus tenant paid utilities”.

Link to Fair Market Rents:

https://www.huduser.gov/portal/datasets/fmr.html

Link to Utility Allowances:

https://www.huduser.gov/portal/datasets/husm/uam.html

All rehabilitation must be in accordance with all locally adopted building and housing codes, standards and ordinances. If locally adopted and enforced building and housing codes do not exist, refer to the
Housing Quality Standards (HQS) as set forth in 24 CFR 982.401. HQS define "standard housing" and establish the minimum criteria for the health and safety of program participants. Current HQS regulations consist of 13 key aspects of housing quality, performance requirements, and acceptability criteria to meet each performance requirement. HQS includes requirements for all housing types, including single and multi-family dwelling units, as well as specific requirements for special housing types such as manufactured homes, congregate housing, single room occupancy, shared housing, and group residences.

**Requirements for Household Eligibility:**
Grantees must certify that CDBG program recipients meet the HUD eligibility requirements. The Grantee must follow the HUD guidance for income calculations, using the IRS Form 1040 Adjusted Gross Income Calculation method:

[https://www.hudexchange.info/incomecalculator](https://www.hudexchange.info/incomecalculator)

When using the IRS Form 1040 definition to determine an applicant's annual income, Grantees must use the **most current version** of the IRS Form 1040 – the version filed for current year tax reporting purposes. An example of the worksheet is Form 2-D.

Grantees are responsible for maintaining all documents used to determine and verify CDBG program recipient’s income used with the HUD income calculator.

The MEDC has provided sample applications that can be used by Grantee for ALL rental applicants. If a Grantee choses to use their application, it must capture the same information as the sample provided, Form 2-E and Form 2-F.

**Section 2 – Elimination or Prevention of Slums and Blight**

**Area Basis**
To qualify under this National Objective on an area basis, an activity must meet the following:

- The area must be designated as a slum or blighted area by the applicant and must meet the definition of a slum, blighted, deteriorated, or deteriorating area under a State or local law. A sample UGLG Ordinance Defining Slum and Blighted Area (Form 2-B) used to define slum or blighted areas is attached to this chapter. A sample resolution for a local government to use to declare a specific area as slum/blighted is also attached to this chapter, Form 2-B. Both are required and must be re-determined every ten years for continued qualification; **AND**

- The area must exhibit at least one of the following physical signs of blight or decay:
  - Public improvements are in a general state of deterioration throughout the designated area, **OR**
  - There are a substantial number of deteriorated or deteriorating buildings throughout the designated area. For example, at least 25 percent of properties (or such other percentage determined to be significant as stipulated in the State or local law) throughout the area must have one or more of the following conditions:
    - Physical deterioration of buildings or improvements,
• Abandonment of properties, Chronic high-occupancy turnover rates or chronic high-vacancy rates in commercial or industrial buildings,
• Significant declines in property values or abnormally low property values relative to other areas in the community, OR
• Known or suspected environmental contamination, AND
• Documentation must be maintained by the grant recipient on the boundaries of the area and the conditions that qualified the area at the time of its designation, AND
• Activities to be assisted with CDBG funds must be limited to those that address one or more of the conditions that contributed to the deterioration of the area. (Note that this does not limit the activities to those that address the blight or decay itself, but it allows an activity to qualify if it can be shown to address a condition that is deemed to have contributed to the decline of the area.)

For rehabilitation of residential properties undertaken under this category, the following two conditions also apply:

- Each deteriorated building must be considered substandard under local code. All deficiencies making such a building substandard and a blighting influence must be corrected before less critical work on the building may be undertaken. The unit of local government must develop minimum standards for building quality that take into account local conditions, AND
- All deficiencies making the building substandard must be corrected before less critical work on the building may be undertaken.

Note: These two criteria do not apply to nonresidential rehabilitation (rehabilitation of commercial or industrial buildings). Reference: 24 CFR 570.483(c)(1)

Grantees should classify an activity as addressing the Slums or Blight National Objective on an area basis only after receiving direct approval to do so by the MEDC prior to submitting a Part I Application.

**Spot Basis**

To qualify under this National Objective on a spot basis, an activity must be specifically designed to eliminate specific conditions of blight or physical decay on a spot basis (not located in a slum or blighted area). It must be limited to the following activities:

**Acquisition:** If acquisition or relocation is undertaken, it must be a precursor to other activities (funded with CDBG or other resources) that directly eliminate the specific conditions of blight or physical decay.

**Clearance:** Financial assistance offered to a business to demolish a decayed structure and construct a new building on the site.

**Relocation:** The State program generally does not involve relocation and, consequently, it is not anticipated that any UGLG would be called upon to use this eligibility category.

**Historic Preservation:** For Title I purposes, properties that qualify as historic properties are landmarks, districts, sites, buildings, structures or objectives which:
- Are listed in or eligible for listing in the National Register of Historic Places, or
- Are listed in a State or local inventory of historic places, or
- Are designated by State law or local ordinances as a State or local landmark or historic district.

Pursuant to 24 CFR 570.208(b)(2), CDBG funds may be used for acquisition, clearance, relocation, historic preservation and building rehabilitation activities which eliminate specific conditions of blight or physical decay on a spot basis not located in a slum or blighted area. While rehabilitation done under this criterion is limited to the extent necessary to eliminate specific conditions detrimental to the public health and safety, this restriction does not extend to historic preservation carried out under the Spot Blight National Objective. Historic preservation activities are limited instead to activities that are determined to contribute to the conservation, and preservation of historic buildings, places, and areas.

**Rehabilitation of Buildings:** Only allowable to the extent necessary to eliminate specific conditions detrimental to public health and safety such as rehabilitation of a decayed community center that eliminates code violations that are detrimental to the health and safety of potential occupants like faulty wiring, falling plaster, or other similar conditions.

The State can approve no more than 30 percent of its funds for activities that address the Slum or Blight National Objective, according to requirements of Title I of the Housing and Community Development Act. UGLGs should classify an activity as addressing the Slums or Blight National Objective on a spot basis only after receiving direct approval to do so by the MEDC prior to submission of a Part I Application.

**Section 3 – Urgent Need**

Use of the Urgent Need National Objective category is extremely rare. It is designed only for activities that alleviate emergency conditions. Urgent need activities must meet the following qualifying criteria:

- The existing conditions must pose a serious and immediate threat to the health or welfare of the community,
- The existing conditions are of recent origin or recently became urgent (generally, within the past 18 months),
- The recipient is unable to finance the activity on his or her own, and
- Other sources of funding are not available.

In recognition of the extraordinary circumstances that must be present in order to justify the use of this National Objective, UGLGs are generally not allowed.

**Section 4 – Additional National Objective Considerations**

**Public Facilities/Infrastructure**

In cases where the activity undertaken is a public improvement and the activity is clearly designed to serve a primarily residential area, the activity must meet the LMI Area Benefit criteria, whether or not the requirements for job creation/retention are also met, in order to qualify as benefiting LMI persons. Because it is required that all LMI persons be connected to water/sewer infrastructure at no cost, an infrastructure project must meet the 51 percent LMI area benefit test for persons and households.
Acquisition of Real Property

Qualifying an acquisition activity under one of the CDBG National Objectives depends entirely on the use of the acquired real property following its acquisition. A preliminary determination of compliance may be based on the planned use. The final determination must be based on the actual use of the property, excluding any short-term, temporary use. Where the acquisition is for the purpose of clearance that will eliminate specific conditions of blight or physical decay, the clearance activity may be considered the actual or “end” use of the funds. However, any subsequent use or disposition of the cleared property must be treated as a “change of use” under CDBG regulations.

These requirements are for any single piece of real property, acquired or improved, in whole or in part, using CDBG funds of $100,000 or more. Thus, if the UGLG were to obtain two properties for $60,000 each with the intent of joining them for a single project that was later reconsidered and abandoned, the above rules would not restrict the subsequent sale/reuse of these two properties. If property is to be acquired for a general purpose, such as housing or economic development, and the actual specific project is not yet identified, the grant recipient must document the general use it intends for the property, identify the National Objective category it expects will be met, and make a written commitment to use the property consistent with CDBG requirements.

Relocation

Where CDBG funds are used for required relocation assistance, the relocation assistance is considered to address the same National Objective as is addressed by the displacing activity. Where the relocation assistance is voluntary, the applicant may qualify the assistance either on the basis of the National Objective addressed by the displacing activity or, if the relocation assistance is primarily to LMI persons, on the basis of benefiting LMI persons. The State program generally does not support projects that involved relocation.

Downtown/Commercial or Essential Goods and Services Projects

To qualify under the LMI Area Benefit National Objective, the service area for downtown or commercial area revitalization projects must be primarily residential in nature and have at least 51 percent LMI residents. These types of projects may also qualify as LMI Job Creation/Retention.

If assistance is provided to one or more businesses, then the project may qualify under LMI Area benefit if the service area is primarily residential, and is 51 percent Low and Moderate Income. There must also be documentation that the business is providing essential goods and services to that service area’s population. Goods and services might include grocery stores, dry cleaners, pharmacies, health care, etc. A high-end boutique or souvenir shop would not be considered as providing essential goods and services. Assistance to a local business providing essential goods and services may also qualify as a Job Creation/Retention activity that must comply with the requirements as specified in Funding Guide.

Section 5 – Documenting National Objectives and Benefit

LMI Area Benefit Activities

The following documentation of program benefit is required at project completion for all CDBG-funded activities that are carried out under the LMI Area Benefit National Objective:

- As-built drawings of public improvements (if applicable) or other evidence showing the area actually served.
- Data showing the income characteristics of all families and unrelated individuals actually served.
• Data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the CDBG activities.

• Documentation of occupancy and income characteristics of all families and unrelated individuals receiving CDBG assistance for special assessments.

**LMI Job Creation/Retention**

The following documentation of program benefit is required with the application for all CDBG-funded activities that are carried out under the LMI Job Creation/Retention National Objective. Recipients are required to verify job creation/retention on-site on a bi-annual basis.

**Job Creation:** For an activity that creates jobs, the UGLG must document that at least 51 percent of the jobs will be for LMI persons on the Job Creation Summary Report, Form 2-C.

Documentation for each assisted business must include a copy of a written commitment by each business that at least 51 percent of the jobs created (full-time or FTE) will be held by LMI persons. The business must also provide a hiring plan that details the number of jobs to be created, the number of jobs estimated to be filled by LMI persons, the types of jobs, any special skills or training required, the timetable for hiring, and whether or not healthcare will be provided for each type of position. The plan must indicate who will be responsible for hiring and collecting required data and for any training to be provided.

**Job Retention:** The following documentation of program benefit is required at project completion on the Job Summary Report form for all CDBG-funded activities that are carried out under the LMI Job Creation/Retention National Objective. Recipients are required to verify job creation/retention on-site on a bi-annual basis.

After job creation and hiring is complete, copies of company payrolls or an employment listing (including a list of current employees), preferably by job title, of all permanent jobs filled and which were filled by LMI persons.

Information on the numbers of persons in the immediate family of all applicants and newly hired employees, and their annual (pre-employment) family income in ranges of 30 percent, 50 percent, 80 percent of median income.

For each retained job filled due to a turnover commitment, information on the size and annual income of the immediate family of all applicants (prior to being hired) for the job.

After completion of job retention commitments, copies of company payrolls or an employment listing, preferably by job title, of all permanent jobs filled through turnover, if applicable, and which were held by LMI persons.

Data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of CDBG activities.

**Slum or Blight**

The following documentation of program benefit is required with the application for all CDBG-funded activities that are carried out under the Slum or Blight National Objective:

**Area Basis:** A resolution and ordinance from the applicant governing body designating the area as slum or blighted, providing a description of the conditions that qualified the area at the time of designation, and providing a description of how the conditions contributed to the area’s deterioration.
A map and description of the boundaries of the designated area showing the location of all buildings and public improvements that are deteriorated.

Inventory and detailed description documenting those public improvements in a general state of deterioration. Deterioration of a single element of infrastructure, such as a road or a sidewalk, does not meet this criterion.

Inventory and detailed description of all buildings in the target area and their condition. Include the total number of buildings, the type of buildings, and the percentage of buildings that are deteriorated in the area as well as vacancy rates.

Evidence that the activity being proposed for CDBG assistance addresses one or more of the conditions that contributed to the deterioration of the area.

To document program benefit at project completion, the activities undertaken must address the identifying slum or blight conditions.

**Spot Basis:** A building inspection report or other evidence that describes the specific condition of slum or blight and how the activity to be assisted with CDBG funds will eliminate the blighted condition.

For rehabilitation, a description of how the assistance will be limited to the items necessary to eliminate specific conditions detrimental to the public health and safety. To document program benefit at project completion for activities qualifying under the Slum/Blight Area Basis National Objective, the unit of local government must:

- Identify all activities completed, and
- Provide evidence that the activity addressed one or more of the conditions that contributed to the deterioration of the area.

To document program benefit at project completion for those activities under the Slum or Blight Spot Basis National Objective, the unit of local government must provide evidence that the activities completed addressed the conditions that threatened the health or welfare of the community.

**Urgent Need:** Please note that the Urgent Need objective may only be used in exceptional instances, where the MEDC issues the UGLG authority to use this National Objective. In these instances, the MEDC will provide the UGLG further instructions on requirements.

### Chapter 2 Form(s)

- **2-A** Income Survey Application
- **2-B** Ordinance Defining Slum and Blighted Area
- **2-C** Job Creation Summary Report and Income Certification Calculator
- **2-D** Income Eligibility Calculation SAMPLE
- **2-E** Application, Low Mod Income Units, SAMPLE
- **2-F** Authorization to Release Information, non-LMI units SAMPLE
CHAPTER 3
CDBG LOAN PROGRAM (CLP)

I. INTRODUCTION
This chapter describes the Community Development Block Grant (CDBG) Loan Program (CLP) and outlines the specific requirements that apply to it. While activities supported through the CLP must follow all the basic CDBG rules described in the other chapters of this manual, CLP activities are also subject to several special requirements. The Michigan Economic Development Corporation (MEDC) and Michigan Strategic Fund (MSF) have developed specific policies and protocols for the operation of the CLP. These policies are outlined in this chapter.

The intended purpose of the CLP is to provide loans to eligible small businesses to meet a National Objective most often creating job opportunities for Low to Moderate Income (LMI) individuals. As such, the use of proceeds of the loans should fall into the following categories:

1. Financing and/or refinancing of real property occupied by a small business where the definition of “occupied” and “small business” meet federal Small Business Administration defined standards.
2. Financing and/or refinancing of equipment used for business purposes.
3. Financing and/or refinancing of inventory and receivables.
4. Financing of working capital, including costs associated with activities such as engineering, sales, leasehold improvements, installation expenses, technology acquisition and enhancement activities, etc.
5. Financing and/or refinancing of debt used to exit or transition ownership into or out of the company.

II. CDBG LOAN FUND TYPES (Funds)
All the CDBG Loan Fund types below are required to follow applicable Federal, HUD and CDBG regulations, laws, rules and policies; MSF policies and procedures; and the content of this Grant Administration Manual (GAM) and, specifically, this chapter.

A. Community Revolving Loan Fund (C-RLF or Local Fund)
A Unit of General Local Government (UGLG or Community) that has entered into First Restated Grant Agreement with the MSF and is administering its CDBG RLF locally.

Description of Accounts for Local Fund Administered by the UGLG
C-RLF ACCOUNT
1. interest bearing account allowed
2. interest earned from bank account must be treated as program income pursuant to GAM
3. administered by UGLG
4. not defederalized funds
5. monthly payments (principal and interest) made to UGLG received from business loans
6. report to MSF semi-annually on Accounting of Loan Funds form
7. copy of Accounting of Loan Funds form and check to Fund Manager
8. Fund Manager will place into C-RLF Account
9. Fund balance includes available Admin, if any
10. create a separate bank account OR separate accounting ledger for each business
11. up to 18% of business loans repayments (principal and interest) may be considered available admin

Roles and Responsibilities for Local Funds are set forth in detail in the Restated Grant Agreement, following is an overview of the responsibilities for the UGLG and the MSF.

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<tr>
<th>LOCAL FUNDS - ROLES AND RESPONSIBILITIES</th>
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<td>Maintenance of records</td>
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<td>Borrower compliance</td>
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B. Regional Revolving Loan Fund (R-RLF or Regionalized Fund)

The R-RLF is administered by a non-profit lender known as the Regional Loan Fund Administrator (RLFA) and is designated by the MSF, has entered into a Repaid Funds Agreement and is administering program income sub-granted by the UGLG based on regions.

Description of Accounts for Regionalized Fund
Administered by UGLG
UGLG Account - Outstanding Loan Portfolio Fund Account
1. interest bearing account allowed
2. interest income paid by bank must be treated as program income pursuant to GAM
3. administered by UGLG
4. for loans set up by UGLG prior to regionalization
5. not defederalized funds
6. monthly payments (principal and interest) made to UGLG received from business loans
7. report to MSF semi-annually on Accounting of Loan Funds form
8. copy of Accounting of Loan Funds form and check to Fund Manager
9. RLFA will place into R-RLF Account
10. When transferred to the R-RLF Account, up to 8% of old portfolio business loans repayments (principal and interest) may be considered available admin.

ADMINISTERED BY RLFA
To assist in easily identifying and tracking funds, MSF would like the following 3 accounts to be separate and individual from each other.

R-RLF ACCOUNT
1. Fund balance includes available Admin, if any
2. separate account for each UGLG
3. interest bearing account allowed
4. interest received from bank account is treated as program income and reused for lending
5. not defederalized funds
6. administered by RLFA

REPAYMENT ACCOUNT - LOAN (RE)PAYMENT ACCOUNT
1. monthly payments to RLFA received from business loans are in this account
2. these are business loans set up by RLFA after regionalization
3. create a separate bank account OR separate accounting ledger for each business
4. interest bearing account allowed
5. interest received from bank account is treated as program income and reused for lending
6. when loan has met National Objective and closeout letter/certification is received from MSF, the business loan principal payments AND interest received to date (and future payments) will transfer to Defereralized Account
7. if, for any reason, loan does not meet National Objective, the business loan principal payments AND interest received must be returned to R-RLF Account

DEFEDERALIZED ACCOUNT
1. R-RLF program income used to achieve a successful project and met a national objective
2. interest bearing account allowed
3. separate account for each region
4. interest received from bank account may be used for lending or operating expenses
5. when loan has met National Objective and closeout letter/certification is received from MSF, the loan payments AND interest are transferred from Loan Repayment Account
6. defederalized funds must be used per Repaid Funds Agreement AND within corresponding Region
7. Principal received from business loan in regional defederalized account for is used for lending
8. Interest received from business loan may be used to pay operating expenses.

Roles and Responsibilities for Regionalized Funds are set forth in detail in the Subrecipient Agreement, following is an overview of the responsibilities of the RLFA and UGLG.

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<tr>
<th>REGIONALIZED FUNDS ROLES AND RESPONSIBILITIES</th>
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<td>Obtain loan collateral</td>
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| Loan approval committee | Oversee RFLA compliance with additional statutory and program requirements, including but not limited to:  
  - National Objectives  
  - Citizen Participation  
  - Property Management  
  - Financial Management  
  - Environmental Review  
  - Fair Housing  
  - Equal Opportunity  
  - Labor Standards  
  - Acquisition and Relocation  
  - Procurement and Contract Management |
| Incurring costs | Oversee Local/Regional RLF budget and project amendments |
| Loan closing | Oversee field review and audits of project activities and overall project progress |
| Loan servicing/loan portfolio management | Review final close-out reports prepared by RFLA prior to submission to the MSF |
| Monitoring of job creation | Oversee and monitor third-party contracts related to projects that utilize its program income |
| Management of program income | Review quarterly reporting prepared by the RFLA |
| Maintenance of records | Attend on-site project monitoring with the MSF and RFLA |
| Borrower compliance | Attend on-site monitoring of RFLA with MSF, as requested |
| General Regional Fund program management | Complete annual RFLA performance report and submit to MSF |
Adoption of credit policies

A copy of all files and records as required to be kept by an UGLG or as provided in the GAM must be kept at the UGLG office and must be available to the public during regular business hours, except documents deemed confidential and exempt from disclosure pursuant to MCL 15.243.

CDBG project closure

Documents are to be made available include copies of approved written policies related to the statutory and program requirements listed above.

C. Repaid Funds (Defederalized)

Per HCDA 105(a)15, certain qualified organizations, including designated RLFAs, which issue loans and extensions of credit with CDBG grants and/or Program Income (PI) and then receive repayment of such funds may re-issue loans and other extensions of credit subject to a “Repaid Funds Agreement” between the RLFA and the MSF. Repaid Funds Agreements are subject to certain conditions which may change from time to time, in the sole discretion of the MSF or designee and which are described herein.

All funds are considered PI until the MSF has issued the RLFA written notice (Final Closeout letter and Final Certification of Completion) that the project has met its National Objective and been determined to be a Successful Project. At such time, PI governed by various CDBG agreements becomes devoid of Federal characteristics (defederalized) and is governed by a Repaid Funds Agreement.

III. CLP GENERAL REQUIREMENTS

A. ACTIVITY REQUIREMENTS

Federal law places restrictions on the use of CDBG funds which also apply to all activities. In addition, the MSF has instituted the following restrictions. Program funds may not:

1. be a grant under any circumstances.
2. provide assistance to a borrower or project while that business or any other business concern owned by the same person(s) or entity(ies) is the subject of unresolved findings of non-compliance related to previous CDBG assistance.
3. be used for the construction of new housing unless it is part of a mixed-use redevelopment project.
4. be used for political activities.
5. be used for the general promotion of a community.
6. be used to pay general fund obligations of an UGLG.
7. be used on any speculative project.

B. CONTINUING ACTIVITY REQUIREMENT

To be eligible to apply for or administer CDBG PI funds, the Continuing Activity requirement must be met. The MSF defines a “Continuing Activity” as the successful funding of a CDBG-eligible loan or extension of commercial credit within the CDBG Program Year (July 1 through June 30). The requirement is for a loan to be closed on or before June 30 each program year. Effective 3/27/18, the Continuing Activity requirement is at least one loan must be closed on or before June 30, 2019 and every 2 years thereafter.

In cases where the Fund had insufficient PI to advance on a proper loan request, the Fund must document the request and why the funding it had on hand was not sufficient for the project. Additionally, the MSF includes within its definition of Continuing Activity that the Fund must perform such activity as described...
above such that normal monitoring of the Fund resulted in no major findings or issues which remain unresolved.

C. GOVERNMENT LIMITATION REQUIREMENT
Downtown Development Authorities, Local Development Finance Authorities and other similar government entities are permitted to obtain a loan, provided (i) the risk is prudent, (ii) the project is non-speculative, and (iii) the loan is secured by the assets being financed.

D. LOAN APPROVAL COMMITTEE COMPOSITION REQUIREMENT
Below are the composition requirements for Loan Approval Committees which must be comprised of no less than 5 individuals with the following attributes:

1. One attorney with experience in the practice of providing legal advice related to loans and lending;

2. One individual who has in the past or who is currently engaged in the business of commercial banking;

3. At least one individual engaged in the professional practice of economic or community development for at least 5 years;

4. One seat shall be provided for an elected local community representative from where the loan project is located which participant shall change for each loan considered based upon the location of the project under consideration; and

5. One seat shall be provided for an economic development professional active in the geographic area where the loan project is located that is selected by the local community representative who is part of the Loan Approval Committee. This participant will also change for each loan considered based upon the location of the project under consideration.

6. Additionally, the MSF shall have one non-voting seat on the Loan Approval Committee.

The Loan Approval Committee will review all loan recommendations forwarded to it by program staff of the Subrecipient. No loan will be made under the economic development loan program without the approval of the majority of members of the Loan Approval Committee.

E. NATIONAL OBJECTIVE REQUIREMENT
If a project fails to demonstrate that it has met or made satisfactory progress toward meeting a National Objective, the project will undergo a formal review by MSF and, if necessary, by the U.S. Department of Housing and Urban Development (HUD). If the project was appropriately underwritten, documented and managed, and it is determined by HUD the project had a reasonable chance of meeting the intended National Objective, then the project may be declared unsuccessed.

If it is determined the project was improperly underwritten or could not have been reasonably expected to meet a National Objective at the time the loan was made, then the outstanding loan amount must be returned to the CLP Account of record. The UGLG as the original grantee is the obligor under this recourse
event. The UGLG may look to the RFLA as a subrecipient; however, for purposes of the MSF, recourse will be required of the UGLG.

Notwithstanding obligations of the UGLG and RLFA to attain a National Objective, the success or failure of a project does not supersede or stand still the legal obligations of the note, loan agreement, guarantee agreement or any other financial instrument in place between the C-RLF or RLFA and the borrower. In the event of a failed project, the borrower is obligated to the terms of the loan agreement.

F. PASSIVE REAL ESTATE (PRE) SPECIAL RESTRICTION REQUIREMENT

The program defines Passive Real Estate as a facility less than 51% occupied, based on leasable non-common area square feet, by a company whose ownership is related. Related ownership means a corporation or individual who owns at least a 20% interest in both a real estate holding company and an occupying tenant.

PRE projects will not become a majority (defined as 51% of all loan outstanding’s measured at the time of issue of the PRE loan) of a CLP portfolio.

The MSF desires to provide flexibility in this area, but reserves the right to restrict, through administrative notification, the ability of a Fund to underwrite PRE transactions.

G. PROJECT CLOSEOUT REQUIREMENTS

Notwithstanding any other guidance offered in this manual, this section discusses the process for closing a CDBG Project when it is connected to a loan. Borrowers receiving CDBG dollars have two main obligations (i) a financial obligation to repay the lender and (ii) a project performance obligation to the program which requires the borrower to meet a National Objective. All Funds must complete a closeout package as set forth in Chapter 13 of the GAM.

Once the required documentation is submitted and deemed complete, the Loan Program Specialist will complete the Closeout Review Worksheet and email the Final Closeout Letter and Certification of Completion to the C-RLF or RLFA. The Fund should keep the Closeout Letter and Certification of Completion with the project file to confirm the National Objective has been met and the project was successful. The C-RLF or RLFA will continue to record business loan repayments and include them in the financial reporting until the loan has been paid off.

H. PUBLIC INFRASTRUCTURE SPECIAL CONDITIONS

At times it may be appropriate for projects which require public infrastructure to be provided CDBG funds in the form of a loan to an UGLG, or an instrumentality of local government. Such an entity must agree to all potential recourse should the project fail to meet a National Objective as determined by the MSF.

IV. LOAN POLICY REQUIREMENTS

A. LOAN AMENDMENT

Any amendment to a loan agreement, or to the scope of an individual project, utilizing CDBG funds requires written authorization by the MSF. To request a loan amendment, a C-RLF or RLFA must submit a completed Grant Amendment Request (Form 12-B) from the authorized official to the Program Specialist
outlining the proposed changes. A draft Grant Amendment Request can be submitted to Loan Program Specialist for review and comments prior to obtaining the authorized official’s signature.

B. COLLATERAL STANDARDS AND UNSECURED LENDING
Credit risk underwritten for the program will be secured by borrower assets at reasonable advance rates, as determined by a C-RLF or RLFA. Advance rates in excess of industry norms, but at or below 100% of the value of the asset established by a C-RLF or RLFA, must be addressed in the underwriting document and mitigating factors, if any, shall be described.

Credit underwritten for the program for which no security exists is allowed but must not become a majority of the credit underwritten within a loan portfolio. C-RLFs and RLFAs are required to provide mitigating factors that justify unsecured lending, such as long-term business success, unsecured position is temporary, sponsor strength not being available to secure the loan, or other appropriate factors.

The MSF reserves the right to restrict the ability of a C-RLF or RLFA to underwrite credit with little or no security via written administrative notification. The MSF is looking for responsible CLP policies that are administered with consistency and prudently.

C. DISBURSEMENTS
Any disbursement from a C-RLF or RLFA to a business must be approved in writing (Loan Approval letter) by the State’s CDBG Loan Program Specialist in advance of the disbursement.

D. DISCHARGE OF DEBT REQUEST
A discharge of debt may be granted to a C-RLF or R-RLF for a CLP loan that meets the eligibility criteria. The community must receive approval from the CDBG Program Director in advance of discharging any existing debt.

Eligibility. In order to be eligible for a discharge of debt, a loan must:
1. have been fully funded prior to the grantee community executing either a Subrecipient Agreement, or a First Restated Grant Agreement;
2. have been in default for a minimum of 6 consecutive months prior to requesting the discharge of debt; and
3. have sufficient proof/documentation to establish that the grantee community exhausted all reasonable collection methods. The Community should document all communication to/from the borrower, all collection activities, and any information used to make its decision.

Documentation. Submit the following required documentation to the Loan Program Specialist:
1. A discharge of debt request on UGLG letterhead with the loan specific information, the request, and signed by an authorized CDBG Loan Fund representative; and
2. Documentation of the collection activities that were completed by the community.

Upon receipt and review, the Loan Program Specialist will provide the community written approval via email or, in the alternative, required next steps and/or action items.

E. GUARANTEE POLICY
The program requires a C-RLF or RLFA to obtain an unlimited and unsecured personal guarantee of any owner (corporate or natural person) who holds 20% or more of a borrower. C-RLFs and RLFAs should
have evidence of a policy and consistent implementation of the policy with respect to securing guarantees.

In a case where a C-RLF or RLFA desires to use a guarantee as a mitigating factor for not securing collateral, the C-RLF or RLFA should look to a secured guarantee.

In the case where the C-RLF or RLFA is entering into a pari passu participation agreement, it may utilize the same guarantee structure as the lead lender. Guarantees are required when the participation is subordinated with respect to collateral or payments or both.

In the instance a C-RLF or RLFA desires to limit a guarantee, it should specifically discuss and address the reasons why the guarantee must be limited. Likely acceptable reasons would be:

- An unlimited guarantee impacts the ability of the business or sponsor to secure additional debt or equity.
- An unlimited guarantee provides excessive risk mitigation given the size of the loan as compared to the resources incorporated by the guarantee.

The MSF reserves the right to restrict through administrative notification the ability of a C-RLF or RLFA to underwrite credit with limited or no guarantee of the owners of a borrower.

F. INTEREST RATE POLICY
The program will charge interest rates commensurate with the level of risk of the credit that it is underwriting but will not exceed legal limits and will not compete with traditional lending institution rates. The MSF reserves the right to require justification that the program is not in rate or fee competition and make such a determination in its sole discretion.

- Regardless of the security position and financial health of the company, a direct loan’s interest rate must be 2% over the prime rate as published in the Wall Street Journal, with a floor of 5.99% per annum.

The MSF maintains the ability to approve exceptions to the rate policy on a case by case basis or reject a proposed rate. Pricing is required to be included in the CDBG Loan Financial Review Memo submitted by a C-RLF or RLFA. If interest rate is less than stated herein, provide justification for lower interest rate in Financial Memo.

G. PERMANENT WORKING CAPITAL
Permanent Working Capital (PWC) is identified as capital used to fund current assets which are paid back as a “long term liability” (essentially repaid on a schedule exceeding 12 months). Generally, PWC is provided as a fully amortizing term loan over the course of 2 to 5 years. The use of proceeds can be to pay down a traditional working capital revolving line or can be a direct spend on current assets and immediate expenses necessary to facilitate growth in business activity.

PWC requests are frequently of a subordinated or unsecured nature and represent significant risk. These credit facilities should be as short term as possible while maintaining adequate debt service coverage
ratios and, if subordinated to other lenders, should have broad rights to all business assets behind the senior lender.

H. SUBORDINATION
Subordination of both payments and collateral are allowed under the program. At all times, a C-RLF or RLFA should seek the best possible position with respect to both payments and collateral. The best possible position for the CLP is a pari passu participation in which the interests of the private lender and the program are most closely aligned. In such cases, the program benefits from the lender’s involvement in the management of the asset and the lender benefits from the reduced exposure taken on by the program.

I. TERM AND AMORTIZATION
Terms and Amortizations are traditionally linked to the useful life of the assets that are being financed as well as the rate and re-pricing environment. Generally, term loans do not exceed 5-year terms, although they may have 20- or 30-year amortizations. A C-RLF or RLFA is required to develop and implement a consistent policy on the Term and Amortizations subject to the following conditions:

<table>
<thead>
<tr>
<th>LOAN TYPES</th>
<th>MAXIMUM TERM</th>
<th>MAXIMUM AMORTIZATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction/Permanent</td>
<td>1-year construction term followed by a maximum of 6-year permanent debt term</td>
<td>30 years</td>
</tr>
<tr>
<td>Equipment</td>
<td>10 years or the appraised useful life, whichever is shorter</td>
<td>10 years</td>
</tr>
<tr>
<td>Permanent Working Capital</td>
<td>5 years</td>
<td>10 years</td>
</tr>
<tr>
<td>Real Property</td>
<td>7 years</td>
<td>30 years</td>
</tr>
<tr>
<td>Working Capital</td>
<td>Maximum term of 18 initial months followed by 12 months (in order to time renewal with the availability of company financial statements)</td>
<td>10 years</td>
</tr>
</tbody>
</table>

Exceptions to this section require pre-authorization by the MSF, and such requests will be made in writing and accompanied by a description of risk mitigation factors. Exceptions shall require unanimous support by the Loan Approval Committee of the C-RLF or RLFA and justification shall be provided in the Financial Review Memo.

J. TROUBLED ASSET MANAGEMENT
All C-RLFs and RLFAs are required to have a Troubled Asset Management Plan (TAMP) which addresses the policy for managing defaults under its loan, collateral, and security agreements. The plan should include steps the institution will follow once it identifies defaults including the use of forbearance, the waiving of defaults, its restructuring standards and its standards for carrying loans to non-accrual and charge off.
In the event that a borrower fails to make a regularly scheduled payment for a period of 6 months, such a loan should be moved to “non-accrual” whereby its interest rate is reduced to zero but the Fund’s counsel believes the loan can be collected or rehabilitated in the near future.

In the event a loan in non-accrual is determined to have a low likelihood of collectability, the loan should be charged off.

V. REPORTING REQUIREMENTS

All Funds are required to complete various reports as provided and directed by the MSF. There are additional reporting requirements for all projects receiving CDBG funds and is described throughout the GAM.

A. ADMINISTRATIVE EXPENSES

The use of CDBG Funds to reimburse for reasonable and allowable administrative expenses is governed by HUD and the MSF and is described in detail throughout the GAM. Notwithstanding any state or federal law or administrative policy, the allowance for and use of CDBG Funds for the reimbursement of administrative expenses by a C-RLF or RLFA is provided as follows:

Community Revolving Loan Fund (C-RLF or Local)
1. 18% of the initial amount of local PI entered into IDIS in June 2013 (minus approved UGLG administrative costs disbursements) may be drawn upon until depleted or returned to MSF, whichever occurs first.
2. 18% of PI generated by a Local Fund’s loan portfolio is available for administrative expenses.
3. All funds generated by a Local Fund are considered PI.
4. No loan application or closing fees can be charged to a borrower on a CDBG Loan program loan.

Regional Revolving Loan Fund (R-RLF or Regionalized)
1. 18% of the amount of the local PI balance initially transferred to the RLFA may be drawn upon until depleted or returned to MSF, whichever occurs first.
2. 8% of PI generated by an UGLG’s loan portfolio sub-granted to the RFLA is available for administrative expenses.
3. The RLFA will need to provide a separate payment request for reimbursement for each UGLG for which administrative expenses were incurred.

For administrative expenses incurred by the RFLA that are not attributable to any one UGLG, it will be at the discretion of the RLFA to determine the breakdown of costs incurred per UGLG as set forth in its Cost Allocation Plan.
4. No loan application or closing fees can be charged to a borrower on a CLP loan.
R-RLF UGLGs (communities entering into the subrecipient agreement)
1. All PI generated by an existing loan portfolio (loans executed prior to regionalization) after July 1, 2015 will need to be sub-granted to the RLFA pursuant to the terms of the Subrecipient Agreement. Reimbursement of administrative costs are not allowed.

B. ADMINISTRATIVE EXPENSES - ELIGIBLE
The CLP will require all Funds to adhere to the rules set forth in 24 CFR 570.206, as follows, for the CLP Account and Defederalized Account separately.

Payment of reasonable program administrative costs and carrying charges related to the planning and execution of community development activities assisted in whole or in part with funds provided under this part and, where applicable.

General management, oversight and coordination. Reasonable costs of overall program management, financial management, coordination, monitoring, and evaluation. Such costs include, but are not necessarily limited to, necessary expenditures for the following:

1) Salaries, wages, and related costs of the recipient's staff engaged in program administration. In charging costs to this category, the recipient may include the pro rata share of the salary, wages, and related costs of each person whose job includes any program administration assignments. Program administration includes the following types of assignments:
   a) Providing local officials and citizens with information about the program;
   b) Preparing program budgets and schedules, and amendments thereto;
   c) Developing systems for assuring compliance with program requirements;
   d) Developing agreements with contractors to carry out program activities;
   e) Monitoring program activities for progress and compliance with program requirements;
   f) Preparing reports and other documents related to the program for submission to HUD and/or MSF;
   g) Coordinating the resolution of audit and monitoring findings;
   h) Evaluating program results against stated objectives; and

2) Travel costs incurred for official business in carrying out the program; and

3) Administrative services performed under third party contracts or agreements, including such services as CLP-related legal, accounting, audit and marketing services.

4) Other costs for goods and services required for administration of the program, including such goods and services as rental or purchase of equipment, insurance, utilities, office supplies, and rental and maintenance (but not purchase) of office space.

5) Bank fees for CLP and Defederalized Accounts are eligible admin expenses.

Defederalized Account. Eligible administrative expenses as listed above must be solely to prospect and obtain new defederalized activities. The RLFA must document the use of defederalized administrative expenses and maintain onsite; however, it is does not required to be submitted to MEDC.
C. ACCOUNTING OF LOAN FUNDS
An ongoing document to be completed by UGLGs semi-annually to report data RLF loans in place prior to regionalization and determine transfer amount to RLFA, if applicable.

D. ANNUAL PERFORMANCE REPORT
For Local Funds, pursuant to the Restated Grant Agreement, completed by the UGLG to provide comments on UGLG and MSF responsibilities on an annual basis.

For Regionalized funds, pursuant to the Subrecipient Agreement, completed by the UGLG to provide comments on RLFA and UGLG responsibilities on an annual basis.

E. FINANCIAL REPORTING
To be completed by Local and Regional funds semi-annually to report on loan payments received, loan disbursements, program interest, and defederalized funds (if applicable).

F. PAYMENT REQUESTS
For Local and Regional fund managers, all payment requests for reimbursement of eligible Administrative Expenses must be submitted quarterly to be considered for approval based on dates the costs were incurred, see below. Administrative Expenses incurred during a program year must be submitted via payment request within 90 days of the end of said program year (6/30) for reimbursement to be allowed. The Fund requesting a disbursement from the MSF for administrative expense reimbursement must use the CDBG Payment Request (PR) form located in Chapter 8 of the GAM.

<table>
<thead>
<tr>
<th>Costs Incurred Between</th>
<th>Reimbursement Request Submitted By</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jan 1 - Mar 31</td>
<td>Apr 30</td>
</tr>
<tr>
<td>Apr 1 – Jun 30</td>
<td>Jul 30</td>
</tr>
<tr>
<td>Jul 1 – Sep 30</td>
<td>Oct 30</td>
</tr>
<tr>
<td>Oct 1 – Dec 31</td>
<td>Jan 30</td>
</tr>
</tbody>
</table>

G. SINGLE AUDIT
For C-RLFs, all CLP expenditures must be reported on the UGLG’s Schedule of Expenditures of Federal Awards (SEFA) if a Single Audit is required.

For R-RLFs, all CLP expenditures must be reported on the RLFA’s Schedule of Expenditures of Federal Awards (SEFA) if a Single Audit is required.

Refer to the Single Audit Guidance for further details.

CHAPTER 3 FORMS
None

Any questions on this GAM Chapter 3 should be directed to the CDBG Loan Program Specialist.
Chapter 4
Procurement and Contracting

Introduction

This chapter describes laws, regulations, policies, and standards for the use of Community Development Block Grant (CDBG) funds to procure supplies, equipment, construction, engineering, architectural, consulting, and other professional services for CDBG programs. This chapter only applies to Units of General Local Government (UGLG). Because CDBG funds are federal funds, compliance with the federal regulations is required. The standards described in this chapter are furnished to ensure that such materials and services are obtained efficiently and economically and in compliance with the provisions of applicable federal laws.

The standards described herein do not relieve the UGLG of any contractual responsibilities under its contracts. The UGLG is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurement entered in support of a grant. These include, but are not limited to, source evaluation, protests, disputes, and claims.

This chapter further describes the policies and procedures that must be followed when entering into contractual agreements with other entities when CDBG funds are being used in whole or in part. Such entities may include sub recipients, other governmental agencies, professional services firms, construction contractors, and providers of goods and services.

In general, the procurement and contracting requirements that apply to the UGLG flow through it to any sub recipients it may engage to help operate the program and any subsequent sub recipients (i.e., sub-subcontractors) that are hired by the sub recipients themselves. Please read more on this in Chapter Three on MSF’s Revolving Loan Fund (RLF).

There are significant exceptions to this general rule when the UGLG awards the CDBG funds to private developers (home/business owners) that own a piece of property and are taking on risk as they develop/rehabilitate it. In these instances, the developer/owner is not required to follow the specific policies and procedures outlined in 2 CFR Part 200 of the regulations regarding procurement and contracting, but they are required to ensure that the services they procure are obtained at a reasonable cost.

As in all financial dealings with CDBG funds, UGLGs must also ensure that there is no conflict of interest that would lead them to pay excessive or unwarranted amounts for goods or services. For instance, an UGLG may award funds to a developer or to a private firm to develop a piece of property they own as a commercial facility in order to improve services in the area and/or create jobs for low income workers. That developer need not conduct a sealed bid process to select a construction contractor (as an UGLG would) because they own the property and are taking on risk if the development fails. In fact, a developer may hire its own subsidiary to perform the construction work provided they are able to demonstrate that they are not paying an excessive amount for the work.
Section 1 – Definition of Terms for Procurement

**Acquisition** – The acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the federal government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

**Architect-engineer services** – As defined in 40 U.S.C. 1102, means:

Professional services of an architectural or engineering nature, as defined by state law, if applicable, that are required to be performed or approved by a person licensed, registered, or certified to provide those services;

Professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; or,

- Those other professional services of an architectural or engineering nature, or incidental services, that members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services. Change order – A modification made to the contract that is approved by the contracting officer under the authority of the contract’s changes clause. Only the specific changes permitted by the particular changes clause may be made under a change order (e.g., modify the drawings, design, specifications, method of shipping or packaging, place of inspection, delivery, acceptance, or other such contractual requirement. All change orders must be within the scope of the contract.

- **Cognizant federal agency** – The federal agency that, on behalf of all federal agencies, is responsible for establishing final indirect cost rates and forward pricing rates, if applicable, and administering cost accounting standards for all contracts in a business unit. Note: The federal Office of Management and Budget (OMB) maintains a list of those state and local agencies that are required to have their indirect cost rates approved by a cognizant federal agency, including the federal agency that has authority over them (i.e., their cognizant federal agency).

- **Contract** – A mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301, et seq.
- **Contracting** – Purchasing, renting, leasing, or otherwise obtaining supplies or services from nonfederal sources. Contracting includes the description (but not determination) of supplies and services required, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration. It does not include making grants or cooperative agreements.

- **Cost analysis** – The review and evaluation of the separate cost elements and profit in an offeror's or contractor's proposal (including cost or pricing data or information other than cost or pricing data), and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.

- **Cost-reimbursement Contracts** – Provide for payment of allowable incurred costs, to the extent prescribed in the contract.

- **Firm-fixed-price contract** – Provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract.

- **Offer** – A response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract. Responses to invitations for bids (sealed bidding) are offers called bids or sealed bids; responses to requests for proposals (negotiation) are offers called proposals. However, responses to requests for quotations (simplified acquisition) are quotations, not offers.

- **Offeror** – Bidder.

- **Price analysis** – The process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit.

- **Requests for proposals (RFPs)** – Solicitations under negotiated procedures. RFPs are used in negotiated acquisitions to communicate government requirements to prospective contractors and to solicit proposals.

- **Requests for qualifications (RFQs)** – Solicitations under negotiated procedures and are used in negotiated acquisitions to procure the services of an engineering or architectural firm.

- **Sealed bid** – An offer in response to invitations for bids (sealed bidding).

- **Sealed bidding** – A method of contracting that employs competitive bids, public opening of bids, and awards.

- **Sole source acquisition** – A contract for the purchase of supplies or services that is entered into or proposed to be entered into by an agency after soliciting and negotiating with only one source.

- **Solicitation** – Any request to submit offers or quotations to the Government. Solicitations under sealed bid procedures are called invitations for bids. Solicitations under negotiated procedures are called RFPs. Solicitations under simplified acquisition procedures may require submission of either a quotation or an offer.

- **Subcontract** – Any contract as defined above contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract, or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.
Subcontractor – Any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

Section 2 – Procurement Policy
UGLGs must write and adopt a procurement policy. To be compliant with the CDBG regulations, this policy must be written and adopted prior to securing any contract services with CDBG funding. The procurement policy must meet all of the requirements contained in 2 CFR 200.317. If a procurement policy is already in place, the UGLG must determine whether it includes all federal requirements. If the policy does not contain all federal requirements (and the UGLG intends to use CDBG funds to secure such services), the policy must be amended accordingly. A sample procurement policy is included as Form 4-A. Note: MSF may choose to impose an earlier date than prior to having its Part 2 application approved.

The UGLG’s procurement policy must adhere to the following:

- A code of conduct that prohibits elected officials, staff, or agents from personally benefiting from CDBG procurement must be included. The policy should prohibit the solicitation or acceptance of favors or gratuities from contractors or potential contractors. Sanctions or penalties for violations of the code of conduct by either UGLG officials, staff or agents, or by contractors or their agents must be identified 2 CFR 200.318(c).

- Proposed procurements should be reviewed by staff to avoid unnecessary and duplicative purchases and to ensure costs are reasonable [2 CFR 200.318 (d-f)].

- Affirmative efforts must be undertaken to hire women-owned business enterprises, minority firms and labor surplus firms, both by the UGLG and the project’s prime contractor [2 CFR 200.321].

- The method of contracting outlined in the policy should be acceptable (fixed price, cost reimbursement, purchase orders, etc.). Cost plus a percentage of cost contracting must be specifically prohibited if CDBG funds are involved [2 CFR 200.323] and percentage construction cost.

- Procedures to handle and resolve disputes relating to procurement actions of the UGLG must be included [2 CFR 200.318].

- All procurement transactions, regardless of dollar amount, must be conducted so as to provide maximum open and free competition [2 CFR 200.319 (a-b)]. Some of the situations considered to be restrictive of competition include, but are not limited to:
  - Placing unreasonable requirements on firms in order for them to qualify to do business.
  - Requiring unnecessary experience and excessive bonding.
  - Noncompetitive pricing practices between firms or between affiliated companies.
  - Noncompetitive awards to consultants that are on retainer contracts.
  - Organizational conflicts of interest.
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.

Any arbitrary action in the procurement process.

- Methods of procurement to be followed must be described [Sections 6 through 10 below and 2 CFR 200.320.]

### Section 3 – Procurement Procedures

#### Selection Procedures

Selection procedures for procurement transactions must be written prior to securing contract services [2 CFR 200.318]. These procedures must ensure that all solicitations:

- Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured.
- List all requirements that the offerors must fulfill.
- Describe all other factors used in evaluating bids or proposals.

#### Preparing Contracting Procedures to Meet Equal Opportunity Requirements

CDBG recipients must make affirmative efforts to use small-, minority-, and woman-owned firms when possible. 2 CFR 200.321 Regulations recommend the following:

- Maintain a list of qualified small-, minority-, and woman-owned businesses and place qualified firms on solicitation lists. The Michigan Economic Development Corporation maintains a directory of woman- and minority-owned businesses that can be used by UGLGs. The directories are available at:
  
  Contractor Requirements
  A. Minority Owned Business Directory
  B. Women Owned Business Directory
  MBE, WBE, DBE List

- Divide total requirements into smaller tasks.
- Establish delivery schedules that encourage participation.
- Use Small Business Administration and Minority Business Development Agency services.
- Require prime contractors to take affirmative steps.

A description of the equal opportunity provisions and their applicability are located in Chapter 9: Fair Housing and Equal Opportunity.
Section 4 – Conflict of Interest

An organizational conflict of interest means that, because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the government, or the person’s objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

Conflicts of interest in the award and/or administration of contracts must be avoided. "No employee of the UGLG shall participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, any member of his or her immediate family, his or her partner has a financial or other interest in the firm selected for award" [2 CFR 200.318 (C)]. Other federal regulations with which the UGLG must comply are the conflict of interest requirements in 24 CFR 570.611, which are included as Form 4-C, Conflict of Interest.

Conflicts of interest may also be governed by local conflict of interest policies. The UGLG should follow the more stringent of the federal, local or state laws concerning compliance with conflict of interest provisions.

Note: HUD considers the awarding of an engineering contract and an administrative contract to the same firm as a conflict of interest. Contracts for both services to the same firm are prohibited.

Section 5 – Contract Administration and Records

2 CFR 200.318 (i-k) requires that UGLGs and sub grantees maintain records sufficient to detail the significant history of a procurement. These records must include, but are not limited to:

- Rationale for the method of procurement.
- Selection of contract type.
- Contractor selection or rejection.
- The basis for the contract price.

UGLGs must also maintain a contract administration system to monitor the contractor's performance against the terms, conditions, and specifications of their contracts or purchase orders.

The full lists of required procurement and contract documents that must be maintained are included in Chapter 13: Grant Close-Out Process. The procurement records should:

- Allow an auditor or other interested party to track the nature of the goods or services bought with public funds.
- Track the entire process used to purchase those goods and services.
- Show that the public body obtained high quality goods and services at the lowest possible price through an open, competitive process.
Section 6 – Methods of Procurement Overview

The procurement process must be in accordance with the federal requirements of 2 CFR 200.320 (b-f).

The nearby table outlines the four procurement methods that the grantee must use to procure materials, supplies, construction and services based on the type of procurement.

In developing the appropriate procurement process to be used in conjunction with a CDBG-funded project, the UGLG must follow the accepted CDBG procurement structure as outlined in the above table and as described in the following chapters. Before selecting the kind of procurement process and then executing the procurement itself, the UGLG must first obtain approval from the MSF. This approval will be a condition of disbursement of funds. Once an UGLG has received approval of its process and the particular documents it proposes to use, it may proceed to execute the procurement process as outlined in its approved plan. However, it must obtain approval from MSF before selecting a contractor.

Cost Reasonableness

When determining the appropriate procurement method to use, the UGLG must either use price analysis (price competition) or perform a cost analysis to determine reasonableness of costs.
Price Analysis
Price analysis means that the UGLG requests several bids, proposals, or quotes for the materials, supplies, or service being procured. The winning offeror is the firm that offers the most competitive price for the requested materials, supplies, and services.

Cost Analysis
A cost analysis is the review and evaluation of the separate cost elements and profit in an offeror’s or contractor’s proposal (including cost or pricing data and information other than cost or pricing data), and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency. A cost analysis is verifying that the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits are reasonable. A cost analysis is always required when the noncompetitive proposals method is used. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established. Form 4-D, Format for Cost Analysis, contains a sample format that can be used to perform the cost analysis.

UGLGs should make an independent cost estimate before receiving bids, proposals or contract modifications. This helps ensure that the actual cost of the product or service is reasonable. Although the method of the cost or price analysis may vary according to the circumstance of a particular procurement, UGLGs should have solid estimates for large items and construction based on research during the application process. Catalog or market price of products sold to the general public can suffice for cost estimates, when applicable.

A written cost analysis is required when:

- The bidder is required to submit elements of the estimated cost (e.g., professional, consulting, engineering, or architectural services).
- There is inadequate competition.
- The sole-source procurement method is used (to include change orders or contract modifications).

Profit must be negotiated as a separate element when there is no price competition and when a cost analysis is performed. Consideration should be given to the complexity of the work, any risk assumed by the contractor, the contractor’s investment, the amount of subcontracting involved, the contractor’s past performance record, and industry profit rates.

Cost-plus contracts are illegal and prohibited by HUD. Cost plus a percentage of cost and percentage of construction costs methods of contracting shall not be used, §570.489(g), Procurement. Contracts that allow payment of a set amount plus costs incurred over that set amount or require payment based on a percentage of the construction costs are considered cost-plus contracts.

Example: The architect’s proposal includes a cost of $50 per hour for the services of an administrative assistant and $4,000 for blueprint publication. Cost estimates for these two elements should be obtained by calling employment firms and printing companies. The contractor requests a change order for the cost of constructing an additional window in a façade project. This will only increase the total contract amount by 10 percent. The reasonableness of the cost can be determined by contacting other contractors or comparing the cost with bids submitted for a similar construction project.
Guidelines for Conducting a Cost Analysis

A cost or price analysis must be performed in connection with every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation. An independent estimate must be made before receiving bids or proposals if one of the following applies:

- When evaluating competitive proposals.
- When there is a sole source (or non-competitive) proposal.
- When only one bid is received after soliciting bids, the UGLG does not have sufficient data on costs to establish price reasonableness (such as prior purchases of similar nature), and the UGLG is considering making an award to the sole bidder.
- When negotiating modifications to contracts that impact the price or estimated cost.
- When terminating a contract and the contractor is entitled to payment of reasonable costs incurred as a result of termination.
- When awarding a cost-reimbursement contract.

The following lists the basic steps in conducting a cost analysis.

- Verify cost and price information, including:
  - The necessity for, and reasonableness of, the proposed cost.
  - Technical evaluation or appraisal of the proposed direct cost elements.
  - Application of audited or pre-negotiated indirect cost rates, direct labor rates, etc.
- Evaluate the effect of the offeror's/contractor's current practices on future costs.
- Compare costs proposed by the offeror/contractor with the following:
  - Actual costs previously incurred by the same firm.
  - Previous cost estimates from the same firm or other firms for the same or similar items.
  - The methodology to be used to perform the work (are the costs consistent with the technical approach being proposed?).
  - The independent cost estimate.
- Verify that the offeror/contractor's cost proposal complies with the appropriate cost principles.
- Verify that costs are allowable, allocable, and reasonable.

The major categories of costs are:

- Direct Costs, which include:
  - Direct Labor (personnel)
- Equipment
- Supplies/
- Travel and Per Diem
- Subcontractors
- Other Direct Costs

- Indirect Costs, which includes:
  - Overhead
  - General and Administrative Expenses
  - Profit (or Fee)

In the process of analyzing costs, profit should be analyzed separately. In analyzing profit, consideration should be given to:

- Complexity of the work to be performed.
- Contractor’s risk in performing the contract.
- Contractor’s investment in the contracted effort.
- Amount of subcontracting.
- Contractor’s record of past performance.
- Industry profit rates in the general area for similar work.

The objective is to establish overall cost reasonableness and not individual components. A sample format for performing a Cost Analysis is attached as Form 4-D.

**Contract Type**

**Purchase Order**
Supplies, single-task services, and produced items procured through the small purchase method will require a purchase order.

**Fixed Price**
A fixed price contract provides for a price that is not subject to any adjustment on the basis of the contractor’s cost experience in performing the contract. This contract type places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss. It provides maximum incentive for the contractor to control costs and perform effectively and imposes a minimum administrative burden upon the contracting parties. Firm fixed-price contracts are suitable for acquiring commercial items (including construction) or for acquiring other supplies or services on the basis of reasonably definite functional or detailed specifications and when the contracting officer can establish fair and reasonable prices at the outset.
Cost Reimbursement
A cost reimbursement contract provides for payment of allowable incurred costs, to the extent prescribed in the contract. These contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at its own risk) without the approval of the contracting officer. Cost-reimbursement contracts will be used when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract.

Time and Materials
A time and materials contract provides for payment of direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and actual cost for materials. This contract type should be used only after a determination is made that no other contract is suitable and the contract includes a ceiling price that the contractor exceeds at its own risk.

Solicitation Methods
Quotations
The UGLG should obtain at least three quotations (quotes) from qualified sources to procure items, supplies, or a single task service using the small purchase method. Note: HUD has issued verbal guidance that the response of “not interested” does not qualify as a quote.

Submitted Bids
When using the procurement by sealed bids method, the UGLG is required to provide a complete, adequate, and realistic specification or purchase description via publicly advertised invitation for bids. A submitted bid is a response to the UGLG’s invitation for bids. See Section 8, below, for additional information regarding the bids package process.

Submitted Proposals
Submitted proposals are the responses to a UGLG's RFP or RFQ. This type of solicitation method is used when the competitive proposal or noncompetitive proposal procurement method is used. See Section 9, below, for additional information regarding the RFP and RFQ process.

Section 7 – Procurement by Small Purchase
Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (supplies or non-construction services costing $150,000 or less). This method of procurement is typically used to purchase commodities such as equipment or other materials. If small purchase procedures are used, price or rate quotations shall be obtained from at least three qualified sources. The UGLG can request quotes from qualified sources via telephone, fax, email, mail, or any other reasonable method. The UGLG should maintain written documentation on the names of the businesses contacted and how they were contacted; the prices that were quoted; and the basis for selecting one firm over the other(s).

The small purchases procedures should not be used to acquire construction contractors. It is recommended that these acquisitions use the sealed bid approach discussed below.
Section 8 – Procurement by Sealed Bids (formal advertising)

Sealed bids should be used for goods costing more than $150,000 and all construction contracts bids are publicly solicited and a firm fixed-price contract (lump sum or unit price—see below) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions below apply.

In order for sealed bidding to be feasible, the following conditions should be present:

- A complete, adequate, and realistic specification or purchase description is available.
- Two or more responsible bidders are willing and able to compete effectively for the contract.
- The procurement lends itself to a firm fixed-price contract and the selection of the successful bidder can be made principally on the basis of price.

If sealed bids are used, the following requirements apply:

- The invitation for bids will be publicly and locally advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time, generally 30 days, prior to the date set for opening the bids.
- The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond.
- All bids will be publicly opened at the time and place prescribed in the invitation for bids.
- A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of.
- Any or all bids may be rejected if there is a sound documented reason.

Creating, Advertising, and Opening Bids

2 CFR 200.320 provides specific requirements that must be followed when bid packages are created and advertised, as well as the required steps to take to conduct bid openings.

Creating the Bid Package

- Write the technical bid specifications:
  - Usually written by the UGLG’s architect or engineer on the basis of prepared plans or working drawings.
  - Provide a clear and accurate description of technical requirements for materials and products and/or services to be provided on the project.
  - Must be sealed by an architect or engineer registered in Michigan.
- If the project falls under the jurisdiction of another State agency the plans and specifications must be approved by the cognizant State agency prior to construction.

- For fire stations/garages and buildings that are being constructed with CDBG assistance and will be accessible to the public, the architect or engineer must certify that handicap-accessible design standards will be achieved, or specify any reasons for exemption. Such certification is to be co-signed by an UGLG official, filed in the contract documents file, and a copy sent to the State.

- The base bids should include all components of the approved project. The base bids must not include any items that were not included in the approved MEDC application.

- Obtain all lands, rights-of-way, and easements necessary for carrying out the project (this can only take place after the environmental review has been completed, a signed grant agreement is in place and the UGLG has been given written permission to incur project costs).

- If the UGLG's construction project involves real property acquisition, the UGLG should make sure the acquisition is undertaken according to the provisions of the Uniform Relocation Act (URA). See Chapter 6 on acquisition for additional acquisition and URA guidance.

- When preparing the plans and specifications for the bid package, the following requirements pertaining to service connection line and hookup fees must be kept in mind:
  - As stated in Section 24 CFR 570.202(b) (6) of the Housing and Community Development Act of 1974, as amended, the "financing of costs associated with the connection of residential structures to water distribution lines or local sewer collection lines" is an eligible cost. However, unlike the cost of the public portion of water lines, which are eligible as public infrastructure, the portion of the construction that involves individual homes is only eligible as residential rehabilitation and consequently will only be able to meet the LMI National Objective if the owners of the home are a LMI household. Moreover, any such work must be considered as an integral part of the overall sewer or water project.
  - Develop cost and pricing formats.
  - Generally the street, water, sewer, utility and landscaping projects will be unit price contracts, while building type contracts will be lump sum.
  - For fixed-price contracts with unit cost pricing, the bid specifications should delineate each type of item, estimated quantity, unit price, and total cost.

**Bid Process**

The UGLG must ensure that the bid process is in compliance with federal, state and local statutes. These statutes are continually being amended, revised, and superseded; therefore, it is the UGLG's responsibility to assure compliance with the most recent and current regulations. The following steps must be taken prior to advertising for bids:

- For infrastructure projects, submit the final plans, specifications, and cost estimate to the MSF for review prior to disbursement of funds.

- The UGLG will be notified by the MSF that they may advertise for bids.
For projects that involve the development of plans and specifications, bids must be solicited by local and public advertising after approval to advertise is received from MSF. Advertisement for any contract for public works shall be published at a minimum once in a newspaper in the locality or the closest metropolitan area and shall appear at least 25 days before the opening of bids for construction projects. For materials purchases, the advertisement shall be published at a minimum once in a newspaper in the locality or the closest metropolitan area and shall appear at least 15 days before opening of the bids.

Plans and specifications shall be available to bidders on the day of the first advertisement and shall be available until 24 hours before the bid opening date.

The advertisement must call the bidders attention to the conditions of employment and requirements of federal prevailing wage rates, Segregated Facility, Section 3 of the HUD Act of 1968, Section 109 and Equal Opportunity.

If the UGLG amends the bid documents during the advertisement period, addenda must be sent to all prospective bidders who have received bid documents.

No public entity shall issue or cause to be issued any addenda modifying plans and specifications within a period of 72 hours prior to the advertised time for the opening of bids, excluding Saturdays, Sundays, and any other legal holidays. However, if the necessity arises to issue an addendum modifying plans and specifications within the 72-hour period prior to the advertised time for the opening of bids, then the opening of bids shall be extended for at least seven days, but not to exceed 21 days, without the requirement of re-advertising the project. The addendum shall state the revised time and date for the opening of bids. A copy of each addendum shall be submitted to the MSF at the time the addendum is issued, including addenda solely pertaining to federal wage rate decisions. All bids received prior to the opening of bids must remain sealed and in a secure place until the bid opening.

A copy of the publicized bid advertisement, including the publication date, must be submitted to the Program Specialist who is assigned to the grant once the required advertisement has been published.

Public Bid Opening

All bid openings must be conducted according to the following:

The bids should be read aloud during bid opening and the apparent low-bidder should be determined during the bid opening.

Bids must be reviewed for both technical and legal responsiveness of bids.

The bidders must be evaluated as having the capacity to furnish products and/or services required.

Minutes of the bid opening, along with a tabulation of bids, should be placed in the contract file and sent to MSF.

After the bid opening, the UGLG must take action within 45 days to either award a contract to the lowest responsible bidder or to reject bids. The UGLG and the lowest responsible bidder may, by mutual written consent, agree to extend the deadline for award by one or more extensions of 30 calendar days. Please contact MSF for any exceptions. A public entity may reject any and all bids for just cause. Also, a contract
cannot be awarded with an incorrect federal wage decision. Make sure the UGLG has verified the proper choice of the federal wage decision per the process described in Chapter 10: Construction Management and Labor Standards.

Section 9 – Procurement by Competitive Proposals

Competitive proposals are used to purchase professional services where the total cost will exceed $150,000. The UGLG must publish a written request for submissions and then review these submissions based on established selection criteria. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- RFPs will be publicized and made available on the internet for a minimum of 14 days, except in situations where it would be in the best interest of the local government or state and approved and documented by the MSF. Requests for proposals will identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent possible.

- Proposals will be solicited from at least three qualified sources.

- UGLGs and sub-grantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees.

- Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

- UGLGs and sub-grantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. This qualifications-based approach to the competitive proposals method may not be used to purchase other than A/E services.

- If only one bid or proposal is received, the UGLG must provide an explanation and receive approval from the MSF.

Request for Proposals

RFPs are used to procure professional services except for A/E professional (design) services when the competitive negotiation method is used. RFPs are also required to procure Certified Grant Administrators (CGAs). RFQs are used to procure A/E professional services. RFPs for competitive acquisitions shall, at a minimum, describe the:

- UGLG’s requirement;

- Anticipated terms and conditions that will apply to the contract;

- The solicitation may authorize offerors to propose alternative terms and conditions;
When alternative terms and conditions are permitted, the evaluation approach should consider the potential impact on other terms and conditions or the requirement (e.g., place of performance or payment and funding requirements);

- Information required to be in the offeror's proposal; and,

- Factors and significant sub-factors that will be used to evaluate the proposal and their relative importance. **Cost must be a factor considered.**

A sample advertisement for an RFP to provide administrative consulting services is included as Form 4-E. A sample RFP for a professional consultant is included as Form 4-F.

**Requests for Qualifications – Architectural/Engineering Services**

Requests for Qualifications (RFQs) are used to procure the professional (design) services of an engineering firm or architectural firm when using the competitive negotiation method. Qualification statements cannot be used to procure any other service. Cost is not a factor in RFQs. See Form 4-G for a sample of an RFQ for procuring architectural/engineering services.

A selection is made based on the competitors’ qualifications, subject to negotiation of fair and reasonable compensation. The qualification statements must be evaluated by the selection criteria identified in the RFQ. The UGLG should negotiate costs with the top-ranked firm.

RFQs cannot be used to procure project management or construction management services. These types of services must be procured using an RFP (See Chapter 4, Section 9).

**Review of Responses**

One of two procedures can be used to review responses to an RFP or an RFQ. The procedure chosen must be identified in the advertisement, and the procedure cannot be changed once the procurement process is initiated.

- Establish a predetermined competitive range of points for proposals that would be considered to qualify for the job. All firms whose proposals scored within that range would be invited to an oral interview and asked to submit a “best and final offer.” The proposals would be re-evaluated and the highest scoring firm would be chosen.

- Evaluate the proposal(s) according to the selection criteria and award the contract to the highest scoring firm.

**Section 10 – Procurement by Noncompetitive Proposals**

Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. **UGLGS MUST OBTAIN APPROVAL FROM THEIR PROGRAM SPECIALIST PRIOR TO USING THIS PROCUREMENT METHOD.** A letter should be submitted to the CDBG program specialist requesting to use this procurement method. Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and one of the following circumstances applies:
• The item is available only from a single source.

• The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.

• The awarding agency authorizes noncompetitive proposals.

• After solicitation of a number of sources, competition is determined inadequate.

• Cost analysis (i.e., verifying the proposed cost data) the projections of the data, and the evaluation of the specific elements of costs and profits, is required.

Section 11 – Developing Procedures for When Bids Exceed Cost Estimates

In some cases the lowest bid received will exceed the amount of funds allocated for the project. When this happens, the Program Specialist should be consulted to determine the best option to proceed. Procedures should be developed to execute the following available options:

• Reject all bids received.

• Rework the specifications within the bid package.

  – Consult with the Program Specialist as to any proposed changes to the plans and/or specifications.

  – Once authorized by the Program Specialist, re-advertise the project.

• Make up the difference between the available funds and the amount of the lowest bid through the reallocation of funds.

• Make up the difference between the available funds and the amount of the lowest bid with other sources of funding such as local funds.

• Enter into a contract with the low bidder for the amount of the bid and subsequently, execute change orders to bring the project within the allocated funds. See Chapter 10, Section 10 if this process may result in the execution of change orders.

Note: It is strongly advised that the UGLG investigates how exercising this option would affect the other bidders prior to awarding a contract. Since these types of change orders affect the project’s scope, they must be reviewed by the MSF prior to execution.

Section 12 – Verification of Contractor Eligibility

UGLGs must ensure that all contractors and subcontractors receiving CDBG funds meet all eligibility requirements. The following steps should be taken to verify and document contractor and subcontractor eligibility for all services procured.

Prime Contractor Clearance

Prior to the award of a construction contract with a prime contractor, the UGLG must obtain contractor clearance. To obtain clearance, the following steps should be taken:
The UGLG should search the following web site to determine whether the contractor is debarred at the federal level at www.sam.gov or the LDP list at https://www5.hud.gov/Ecpcis/main/ECPCIS_List/main/ECPCIS_List.jsp. The UGLG must complete the Verification of Contractor Eligibility Form, (Form 4-H) and provide a copy to the MSF and maintain a copy in their project file.

Consulting and/or engineering firms who are new to the CDBG program or have not performed services associated with a CDBG program within the previous five years must also follow the same clearance steps as the prime contractors, as outlined above – they will use the Verification of Professional Services Contractor Eligibility Form, (Form 4-I).

Subcontractor Clearance

The MSF does not clear subcontractors. The UGLGs must make prime contractors aware that it is their responsibility to verify subcontractor eligibility based on factors such as past performance, a yellow page listing, verification of liability insurance, possession of a federal identification tax number, debarment, and state licensing requirements. The prime contractor may use the web sites www.sam.gov or the LDP list at https://www5.hud.gov/ecpcis/main/ECPCIS_List.jsp to determine if a subcontractor has been debarred at the federal level.

All prime contractors engaging subcontractors should submit a signed statement attesting that they have evaluated the subcontractor for legitimacy, as noted in the previous paragraph. The prime contractor assumes responsibility for the performance of the subcontractor; therefore, the MSF urges prime contractors to closely scrutinize subcontractors. If a contractor or subcontractor is found to be ineligible after award of a contract, the contract must be immediately terminated and the matter reported to the MSF.

Section 13 – Notice of Contract Award

Once a contractor has been selected using the appropriate solicitation method, the UGLG must submit a completed Notice of Contract Award form to the MSF for all prime contracts. This form must be received by the MSF within 30 days after award. This form, along with instructions, is provided as Form 4-J. Along with the Notice of Contract Award, the UGLG must send a certified and itemized bid tabulation for sealed bids, which is a listing of bidders and bid amounts for the project.

Section 14 – Preparation of a Contract

An UGLG’s and a sub grantee’s contracts must contain provisions in 2 CFR 200.326 of the federal regulations, as provided below:

- Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold.)

- Termination for cause and for convenience by the UGLG or sub grantee, including the manner by which it will be effected and the basis for settlement. (All contracts in excess of $10,000.)

- Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60). (All construction contracts awarded in excess of $10,000 by UGLGs and their contractors or sub grantees.)
• Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and sub grants for construction or repair.)

• Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of $2,000 awarded by UGLGs and sub grantees when required by federal grant program legislation.)

• Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327A 330), as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by UGLGs and sub grantees in excess of $2,000, and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers.)

• Notice of awarding agency requirements and regulations pertaining to reporting.

• Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

• Awarding agency requirements and regulations pertaining to copyrights and rights in data.

• Access by the UGLG, the sub grantee, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

• Retention of all required records for three years after UGLGs or sub grantees make final payments and all other pending matters are closed.

• Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act [42 U.S.C. 1857 (h)], section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and sub grants of amounts in excess of $100,000).

• 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 (Pub. L. 94A 163, 89 Stat. 871).

Depending on the type of procurement used, the UGLG should execute the required contract type (see Section 6 above). Any standard contract shall be modified to include CDBG program requirements. The program requirements are:

- Construction contracts shall not contain any **cost plus or incentive** savings provisions. Therefore, the contract shall not make reference to compensation adjustments for cost-plus or incentive savings provisions.

- The method of contracting cannot be **cost plus a percentage of cost or a percentage of construction cost**. For example, the UGLG cannot add a 15 percent handling fee to process an invoice for geotechnical services.

- The requirements within a contract depend on the type of services provided. The following sections provide guidance on these specific requirements for consulting, appraisal, A/E, and
construction services. Regardless of the services provided or templates used, all contracts must include all required CDBG compliance provisions.

**Consulting and Appraisal Contract Requirements**

The UGLG must execute its contracts according to the specific project requirements. The sample contracts included as exhibits must be modified to include the specific scope of services procured and required CDBG compliance provisions for professional services contracts. A sample contract for consulting services is included as Form 4-K.

**Architectural/Engineering Contract Requirements**

The UGLG may use the standard A/E contract templates (AIA or EJCDC – Engineers Joint Contract Documents Committee) when executing a contract for professional design services with architectural and engineering firms or other contract. The contract must include all required CDBG compliance provisions for professional services contracts (see Form 4-L).

A/E fees, even those provided under either a fixed price contract or cost reimbursement contract, must be reasonable and justifiable. Sole justification that the fees are within the amount allowed by the MSF is not adequate. The funds allowed will not exceed those identified in the applicable application package. If, after a project has been funded, the scope of the project changes significantly, the MSF will make a determination of any additional amount that will be allowed. Justification for additional services should be provided to MSF.

It is understood that the amount of funds available for engineering/architectural services is contingent upon the amount of CDBG funds the MEDC allows. The firm will not be compensated from the applicable CDBG Program if the project does not receive funding.

The final plans and specifications and cost estimate must be submitted to the MEDC for review prior to advertising for bids.

**Construction Services Contract Requirements**

The UGLG can use a generic construction contract, but must include the CDBG compliance provisions for construction contracts. A generic construction bid document with contract is included as Form 4-B.

Firm-fixed-price contracts used to acquire construction may be priced (1) on a lump-sum basis (when a lump sum is paid for the total work or defined parts of the work) or (2) on a unit-price basis.

Lump-sum pricing shall be used in preference to unit pricing except when:

- Large quantities of work such as grading, paving, building outside utilities, or site preparation are involved.
- Quantities of work, such as excavation, cannot be estimated with sufficient confidence to permit a lump-sum offer without a substantial contingency.
- Estimated quantities of work required may change significantly during construction.
- Offerors would have to expend unusual effort to develop adequate estimates.
Bonding
For construction or facility improvement contracts or subcontracts not exceeding the simplified acquisition threshold ($150,000), the awarding agency may accept the bonding policy and requirements of the UGLG or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- A bid guarantee from each bidder equivalent to five percent of the bid price. The bid guarantee must consist of a firm commitment, such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

- A performance bond on the part of the contractor for 100 percent of the contract price. A performance bond is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract. A sample performance bond is included in Exhibit 4-N.

- A payment bond on the part of the contractor for 100 percent of the contract price. A payment bond is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract. A sample payment bond is included in Form 4-O.

Form 4-M can be used to verify the contractor's bonding arrangement.

Reporting
The UGLG must submit a Contract and Subcontract Activity Report to MEDC within ten days of contract signing. A copy of the Contract and Subcontract Activity Report and Instructions is included at the end of this chapter as Form 4-P.

Section 15 – HUD Act of 1968 (Section 3) Covered Contracts Requirements
Compliance requirements of Section 3 of the HUD Act of 1968 are triggered when a recipient receives a grant award in excess of $200,000. If Section 3 of the HUD Act of 1968 is triggered for the UGLG, then contractors/subcontractors whose contracts exceed $100,000 must also comply. See Chapter 9 - Fair Housing and Equal Opportunity for additional information regarding Section 3 of the HUD Act of 1968. Form 4-B, Sample Bid Documents, contains the necessary Section 3 language and forms for contractors and subcontractors to complete.

Section 16 – Davis Bacon
Many CDBG-assisted construction contracts trigger federal requirements regarding wages (including anti-kickback provisions), safety standards, and other labor practices. Chapter 10: Construction Management and Labor Standards includes a full discussion of when these provisions are applicable and what UGLGs and contractors must do to comply.
Forms

4-A  Procurement Policy SAMPLE
4-B  Bid and Contract Document SAMPLE
4-C  Conflict of Interest
4-D  Format for Cost Analysis SAMPLE
4-E  Advertisement for RFP for Administrative Consulting Services SAMPLE
4-F  RFP for Administrative Consultant SAMPLE
4-G  RFQ for Engineering Services SAMPLE
4-H  Verification of Prime Contractor Eligibility
4-I  Verification Professional Services Contractor Eligibility
4-J  Notice of Contract Award
4-K  Contract for Consultant Services SAMPLE
4-L  Contract Special Provisions
4-M  Verification of Contractors Bonding and Insurance
4-N  Performance Bond, Dual Obligee, HUD-92452
4-O  Payment Bond, HUD-92452A-OHF
4-P  Contract and Subcontract Activity, HUD-2516
4-Q  Section 3 Clause
4-R  DBRA Packet, HUD-4010
4-S  DBRA Posters
Chapter 5
Environmental Review

Introduction

Units of General Local Government (UGLG) are required to ensure that an appropriate environmental review is completed for each Community Development Block Grant (CDBG) funded project they are administering before they—or their agents—may incur any project costs or take other actions that would “limit choices” for the project. Note, some activities may be determined by the Certifying Officer (CO) to be exempt activities and may proceed before the full environmental review of other activities is complete. However, even these activities cannot be undertaken until they have been formally determined to be exempt in consultation with the Program Specialist.

In addition, the UGLG or its agents may not commit any project funds (regardless of whether the funding being committed is from CDBG or other sources) to a project (except funds for those activities that have been determined to be exempt) before the full environmental review has been completed and the release of funds has been issued. These requirements are in place in order to comply with the National Environmental Policy Act (NEPA). The purpose of NEPA is to protect and enhance our environment by mitigating the environmental impacts of federally assisted projects. The requirements of NEPA apply to the entire project and include project activities funded with CDBG funds and activities funded by other sources such as private or other public funds.

The CDBG environmental review process described below requires UGLGs to evaluate and certify that they are in compliance with NEPA and other applicable Federal laws, regulations, and executive orders. In addition, many CDBG grantee activities will require state, or local approvals or permits through relevant state or local laws. Applicants are encouraged to contact the relevant state or local agency regarding environmental regulatory permits or approvals.

This chapter covers the environmental regulations that must be followed on all CDBG funded projects. UGLGs should also refer to the CDBG Funding Guide for further guidance on incurring costs.

Section 1 – Background and Responsibilities

Applicable Regulations

The rules and regulations that govern the environmental review process for CDBG funded projects are found under 24 CFR Part 58—Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities.

Responsible Entity and Responsible Parties

The Responsible Entity (RE) is a governmental agency that is empowered to conduct environmental reviews in conjunction with CDBG funded projects. For the CDBG programs operated by the Michigan Economic Development Corporation (MEDC), the RE is the UGLG. To carry out its environmental review responsibilities, the UGLG is required to designate two responsible parties:

- **Certifying Officer:** The UGLG must designate a Certifying Officer (CO) -- the “responsible Federal official” -- to ensure compliance with NEPA and the related provisions in 24 CFR Part 58, including the Federal laws and authorities cited at §58.5. This person is the chief elected official, chief executive official, or other official designated by formal resolution of the governing body ....
The CO has the authority to assume legal responsibility for certifying that all environmental requirements have been followed, is authorized to certify the Request for Release of Funds and to represent the UGLG in federal court. This function may not be assumed by administering agencies or consultants.

- **Environmental Review Officer**: The UGLG should also designate an Environmental Review Officer (ERO). The ERO is responsible for completing the environmental review for the project.

### Environmental Review Record

As the RE for projects administered by the MEDC, the UGLG must maintain a written record of the environmental review undertaken for each project, covering all activities, including exempt activities. This written record is the environmental review record (ERR). As required by Federal regulations, the ERR is available for public review and contains all of the environmental review documents, public notices, and written determinations or environmental findings required under Part 58. The actual content of the ERR will vary according to the level of environmental review under which a project falls.

**Note:** The grantee is required to maintain a separate environmental file on each project, which may include the following documents:

- Level of Environmental Review
- Finding of Exempt Activity
- Finding of Categorical Exclusion Not Subject to §58.5
- Finding of Categorical Exclusion Subject to §58.5
- Exemption Memo
- Section 106 SHPO documentation and letter
- Tribal Coordination letters
- Statutory Checklist
- Early Floodplain Wetland Notice
- Final Floodplain Wetland Notice
- Notice of Intent to Request Release of Funds
- Environmental Assessment
- Combined Finding of No Significant Impact and Notice of Intent to Request Release of Funds
- Request for Release of Funds and Certification

The final ERR must be submitted to the Program Specialist for review and approval.

### Section 2 – Actions Triggering Environmental Review and Limitations Pending Clearance

**Actions Triggering the Requirements at Part 58**

Part 58 requirements are applicable to all projects. The recipient and any other project participants must cease all project activity (with limited exceptions as outlined below) until the environmental review has been completed or the project has been determined not to be eligible for Federal funding through the CDBG program. Part 58 prohibits further project activities and actions from being undertaken until the environmental review is completed and a release of funds is granted.
Neither an UGLG nor any participant in the development process may commit CDBG or non-CDBG funds, including private and other public funds, until the environmental review is completed and a release of funds is granted. If an UGLG commits funds to a project before the appropriate environmental review is completed, they risk losing their grant and incurring other Federal penalties. Commitment of funds includes execution of a legally binding agreement for property acquisition, demolition, rehabilitation, conversion, repair, or construction pertaining to a specific site.

While it may be argued that the purchase of a property does not materially change the physical property and therefore does not itself have an impact on the environment, the NEPA statute has been interpreted to consider actions such as property acquisition or demolition of derelict buildings as “choice limiting actions” which are likely to impact what does happen to the project in the future. As such, they should not be undertaken until a full environmental review has been completed and release of funds given. Further, it is HUD policy to not allow the release of bids or other procurement processes for choice limiting actions (such as construction, demolition, etc.) before the environmental review is complete. The environmental review must be completed prior to bidding to allow for an unprejudiced decision about the action and to allow for any modifications or project cancellation based on the environmental review. However, with prior approval from the MEDC and with sufficient language added to the bid document, the MEDC may approve the release of bids prior to the completion of the environmental review. The language added to the bid document shall clearly indicate that the overall project is contingent on the approval of Federal funding, and that no contract awards will occur prior to the completion of the environmental review.

If a project or activity is exempt under §58.34 or categorically excluded under §58.35(b), the recipient may undertake the activity immediately after the RE has documented its determination and requested and received approval by the Program Specialist. (See Section 3 for more details).

Section 3 – Classifying the Activity and Conducting the Appropriate Level of Review

To begin the environmental review process, the RE must first determine the level of environmental review required for the project. An important first step is to describe the project in detail (including the elements funded with and without CDBG) in order to determine what possible impacts the project may have on the environment and to establish a basis for properly ascertaining which exemptions/exclusions apply and which level of review applies. This description should describe all of the major elements of the project budget (including CDBG and non-CDBG funded activities) as well as a narrative of how the property will be changed as a result of the project.

Project Description

The project description, along with other project details, should be included in the project information section of the Level of Environmental Review (Form 5-A) and the form submitted to the ERO of the RE. The ERO completes the project determination section of the form to identify the level of environmental review required for the project. In general, UGLGs should submit the above materials to the Program Specialist after the project activities have been clarified. The determination of the level of environmental review must aggregate (or group together) and evaluate as a single project all individual activities which are related either on a geographical or functional basis, or are logical parts of a composite of contemplated actions. Often a project includes both exempt activities (e.g., administration and preparation of environmental reports) and non-exempt activities (e.g., acquisition, construction, and rehabilitation).
It is the responsibility of the ERO to make the determination as to which activities have been considered exempt. Prior to a release of funds, exempt activities may be undertaken as long as the RE has documented in writing its determination that an activity is exempt and has requested and received approval by the Program Specialist.

The five levels of environmental review are as follows:

1. Exempt activities.
2. Categorical exclusion not subject to §58.5.
3. Categorical exclusion subject to §58.5.
5. Environmental impact statement.

Each level of environmental review is described in the subsections that follow.

**Exempt Activities**

As identified at §58.34, exempt activities are:

1. Environmental and other studies, resource identification and the development of plans and strategies.
2. Information and financial services.
3. Administrative and management activities.
4. Public services that will not have a physical impact or result in any physical changes, including but not limited to services concerned with employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation and welfare or recreational needs.
5. Inspections and testing of properties for hazards or defects.
6. Purchase of insurance.
7. Purchase of tools.
8. Engineering or design costs.
9. Technical assistance and training.
10. Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration.
11. Payment of principal and interest on loans made or obligations guaranteed by HUD.
12. Any of the categorical exclusions listed in §58.35(a) provided that there are no circumstances which require compliance with any other Federal laws and authorities cited in §58.5.

Note: In this particular case, there must be a separate and additional review that determines that the activity does not trigger compliance with §58.5. This process is commonly referred to as moving from “categorically excluded to exempt.”
For exempt activities, the UGLG completes the project information section of the Level of Environmental Review (Form 5-A) and submits the form to the ERO of the RE. The ERO completes the project determination section of the form and completes the Finding of Exempt Activity (Form 5-B). The Finding of Exempt Activity form documents the applicable regulation for the determination and addresses the other requirements listed in §58.6 that must be documented. The other requirements listed in §58.6 include flood insurance, the Coastal Barriers Resources Act, and airport runway clear zone disclosure.

All forms in the Exempt Project Package are submitted to the Program Specialist, as well as kept with the UGLG.

**Categorical Exclusion Not Subject to §58.5 (CENST)**

As identified at §58.35(b) categorical exclusions not subject to §58.5 (CENST) are:

1. Tenant-based rental assistance.
2. Supportive services including, but not limited to, health care, housing services, permanent housing placement, day care, nutritional services, short-term payments for rent/mortgage/utility costs, and assistance in gaining access to local, State, and Federal government benefits and services.
3. Operating costs including maintenance, security, operation, utilities, furnishings, equipment, supplies, staff training and recruitment and other incidental costs.
4. Economic development activities, including but not limited to, equipment purchase, inventory financing, interest subsidy, operating expenses and similar costs not associated with construction or expansion of existing operations.
5. Activities to assist homebuyers to purchase existing dwelling units or dwelling units under construction, including closing costs and down payment assistance, interest buy downs, and similar activities that result in the transfer of title.
6. Affordable housing pre-development costs including legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact.
7. Approval of supplemental assistance (including insurance or guarantee) to a project previously approved under this part, if the approval is made by the same responsible entity that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under §58.47.

Note: The exception for “equipment” as a part of the project’s operating costs is limited to equipment that is used in the operation or maintenance of the site (e.g. lawn mower) and does not in and of itself render the use of all equipment as categorically excluded not subject to §58.5. For instance, equipment (e.g. installation of a newer, higher capacity sewer pump) that is being used or installed as a part of a construction effort, would clearly indicate that the activity taking place was not categorically excluded not subject to §58.5. In general, any equipment that could be seen as having a significant impact on the water or air quality surrounding the site should not be viewed as categorically excluded not subject to §58.5. UGLGs wishing to employ equipment that is not clearly identifiable as for operation and/or maintenance of the site, or for construction activities, should contact the Program Specialist to determine what level of environmental review is required.
For categorically excluded not subject to §58.5 activities, the UGLG completes the project information section of the Level of Environmental Review (Form 5-A) and submits the form to the ERO of the RE. The ERO completes the project determination section of the form and completes the Finding of Categorical Exclusion Not Subject to §58.5 (Form 5-C). The Finding of Categorical Exclusion Not Subject to §58.5 documents the applicable regulation for the determination and addresses the other requirements listed in §58.6 that must be documented. The other requirements listed in §58.6 include flood insurance, the Coastal Barriers Resources Act, and airport runway clear zone disclosure.

All forms in the CENST Project Package are submitted to the Program Specialist, as well as kept with the UGLG.

Categorical Exclusion Subject to §58.5 (CEST)
As identified at §58.35(a) categorical exclusions that ARE subject to §58.5 (CEST) are:

1. Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size or capacity of more than 20 percent (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets).

2. Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons.

3. Rehabilitation of buildings and improvements when the following conditions are met:
   a. In the case of a building for residential use (with one to four units), the density is not increased beyond four units, the land use is not changed, and the footprint of the building is not increased in a floodplain or in a wetland.
   b. 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 the estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.
   c. 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.

4. An “individual action” on up to four dwelling units where there is a maximum of four units on any one site. The units can be four one-unit buildings or one four-unit building or any combination in between. [This section does not apply to rehabilitation of a building for residential use (with one to four units)].

5. An “individual action” on a project of five or more housing units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four housing units on any one site. [This section does not apply to rehabilitation of a building for residential use (with one to four units)].
6. Acquisition (including leasing) or disposition of, or equity loans on an existing structure, or acquisition (including leasing) of vacant land provided that the structure or land acquired, financed, or disposed of will be retained for the same use.

7. Combinations of the above activities.

For categorically excluded subject to §58.5 projects, the UGLG completes the project information section of the Level of Environmental Review (Form 5-A) and submits the form to the ERO of the RE. The ERO completes the project determination section of the form and completes the Finding of Categorical Exclusion Subject to §58.5 (Form 5-D). The Finding of Categorical Exclusion Subject to §58.5 form documents the applicable regulation for the determination.

As part of completing the Statutory Checklist, the State Historic Preservation Office (SHPO) must be consulted in compliance with Section 106. (www.michigan.gov/shposection106).

After receiving a sign-off letter from SHPO and coordinating with other laws and authorities and interested agencies and groups and Michigan Department of Environmental Quality (MDEQ), the Statutory Checklist (Form 5-F) should be completed by the ERO. This form includes documenting and demonstrating compliance with the Federal laws and authorities cited at §58.5. The Federal laws and authorities cited at §58.5 are grouped in the following categories:

1. Historic properties: Compliance includes consultation with the SHPO and federally-recognized Indian tribes (if applicable). Consultation with Indian tribes is required when a project may affect a historic property of religious and cultural significance to the tribe. The type of activities that may affect historic properties of religious and cultural significance include: ground disturbance (digging), new construction in undeveloped natural areas, introduction of incongruent visual, audible or atmospheric changes, work on a building with significant tribal association, and transfer, lease or sale of properties of the types listed above.

2. Floodplain management and wetland protection: **If a project is located in a floodplain or in a wetland, an 8 step decision making process must be completed (see Section 5).**

3. Site Contamination
4. Coastal zone management.
5. Sole source aquifers.
7. Wild and scenic rivers.
8. Air quality.
10. HUD environmental standards: HUD environmental standards include noise abatement and control; explosive and flammable operations; hazardous, toxic, or radioactive materials and substances; and airport clear zones and accident potential zones.
11. Environmental justice.

The Statutory Checklist (Form 5-F) also includes documenting compliance with the other requirements listed in §58.6. The other requirements listed in §58.6 include flood insurance, the Coastal Barriers Resources Act, and airport runway clear zone disclosure.
If, after completing the Statutory Checklist (Form 5-F), the project is found by the ERO to not require compliance with any authority under §58.5 (such as mitigation measures, additional studies, conditions or further consultation), then the project can convert to exempt pursuant to §58.34(a)(12). The publication/posting of a public notice and a submission of a Request for Release of Funds (RROF) is not required in these cases.

For a categorically excluded subject to §58.5 project that cannot in the judgment of the ERO be converted to exempt status, a Notice of Intent to Request Release of Funds (NOI/RROF) (Form 6-M) must be completed by the ERO and approved by the CO. This notice may be published or posted. (See Section 4 for more details). All forms in the CEST Project Package are submitted to the Program Specialist, as well as kept with the UGLG.

On the day after the public comment period has expired and once any received comments have been addressed by the UGLG as the RE, the RROF and Certification (Form 5-G) should be completed by the ERO. The RROF and Certification (Form 5-G) must be executed by the CO and submitted to MEDC. After a 15 day objections period, MEDC may issue a release of funds.

**Environmental Assessment (EA)**

If a project is not exempt or categorically excluded under §58.34 and §58.35, then an environmental assessment (EA) must be prepared. The UGLG completes the project information section of the Level of Environmental Review (Form 5-A) and submits the form to the ERO of the RE. The ERO completes the project determination section of the form to determine a project requires an EA. The Environmental Assessment (Form 5-H) must be completed.

As part of completing the Environmental Assessment (Form 5-H), the SHPO must be consulted in compliance with Section 106. ([www.michigan.gov/shposection106](http://www.michigan.gov/shposection106)).

Completing the Environmental Assessment (Form 5-H) includes documenting and demonstrating compliance with the Federal laws and authorities cited at §58.5. The Federal laws and authorities cited at §58.5 are grouped in the following categories:

1. **Historic properties**: Compliance includes consultation with the SHPO and receiving a sign off letter from them. Compliance also includes consultation with federally-recognized Indian tribes. Consultation with Indian tribes is required when a project may affect a historic property of religious and cultural significance to the tribe. The type of activities that may affect historic properties of religious and cultural significance include: ground disturbance (digging), new construction in undeveloped natural areas, introduction of incongruent visual, audible or atmospheric changes, work on a building with significant tribal association, and transfer, lease or sale of properties of the types listed above.

2. **Floodplain management and wetland protection**: If a project is located in a floodplain or in a wetland, an 8 step decision making process must be completed (see Section 5).

3. **Site Contamination**
4. **Coastal zone management.**
5. **Sole source aquifers.**
6. **Endangered species.**
7. **Wild and scenic rivers.**
8. Air quality.


10. HUD environmental standards: HUD environmental standards include noise abatement and control; explosive and flammable operations; hazardous, toxic, or radioactive materials and substances; and airport clear zones and accident potential zones.

11. Environmental justice.

The Environmental Assessment (EA) (Form 5-H) also includes the following:

1. An environmental finding determination, either a Finding of No Significant Impact (FONSI) or a Finding of Significant Impact.

2. Statement of purpose and need for the proposal.

3. Description of the proposal.

4. Existing conditions and trends.

5. An environmental assessment checklist that evaluates the significance of the effects of the proposal on the character, features, and resources of the project area. This checklist includes the other requirements listed in §58.6.

6. A summary of findings and conclusions that describes alternatives to the proposed action including the no action alternative, mitigation measures recommended, additional studies performed, and a list of persons or agencies consulted.

If the EA results in a Finding of Significant Impact, an Environmental Impact Statement (EIS) must be prepared by the ERO. If the EA results in a Finding of No Significant Impact (FONSI), the Combined Notice of FONSI and Notice of Intent to Request for Release of Funds (NOI/RROF) (Form 5-I) should be prepared by the ERO. This notice may be published or posted. (See Section 4 for more details). All forms in the EA Project Package are submitted to the Program Specialist, as well as kept with the UGLG.

On the day after the local public comment period has expired and once any received comments have been addressed by the UGLG as the RE, the RROF and Certification (Form 5-G) should be completed by the ERO. The RROF and Certification (Form 5-G) must be executed by the CO and submitted to Program Specialist. After a 15 day State comment period, the Program Specialist may issue a release of funds.

**Environmental Impact Statement**

An EIS is required when a project has been determined to have a significant impact on the human environment as a result of completing an EA, or if a project meets a 2,500 unit threshold (see §58.37 for more details). The EIS must meet the minimum requirements for an EIS format of the Council on Environmental Quality’s NEPA regulations found at 40 CFR 1502.10. Consult the Program Specialist regarding the EIS.
Section 4 – Publication of Public Notices

The UGLG as the RE may publish or post the NOI/RROF or the Combined Notice.

Note: The notices required for the eight step decision making process must be published and cannot be posted (see Section 5).

A published notice must be published in a newspaper of general circulation in the affected community. A posted notice must be prominently displayed in public buildings, such as the local post office and within the project area.

All public notices, whether posted or published, must also be sent to:

- U.S. Environmental Protection Agency
  Region V
  77 West Jackson Boulevard
  Chicago, Illinois 60604

- Michigan Department of Environmental Quality
  525 West Allegan Street
  P.O. Box 30473
  Lansing, Michigan 48909

- Michigan Economic Development Corporation
  Community Development Block Grant Program
  300 North Washington Square
  Lansing, Michigan 48913

Also send public notices to any agencies, individuals, and groups known to be interested in the project.

Comment periods start the day after a notice is published. The minimum number of calendar days for the various notices are outlined below. When populating the dates in the notices, attention should be given to when the comment periods end on a weekend or holiday.

- For a published NOI/RROF, 7 days must be provided in the notice for local public comment and 15 days must be provided in the notice for the State comment period. For a posted NOI/RROF, 10 days must be provided in the notice for local public comment and 15 days must be provided for the State comment period.

- For a published Combined Notice of FONSI and NOI/RROF, 15 days must be provided in the notice for local public comment and 15 days must be provided in the notice for the State comment period. For a posted Combined Notice, 18 days must be provided for local public comment and 15 days must be provided for the State comment period.
Section 5 – Floodplain/Wetland Compliance Requirements and Stormwater Management Act

This section discusses the eight step decision making process that is required for projects located in a floodplain or proposing new construction in a wetland. The eight step decision making process is required for compliance with Executive Order 11988 (floodplains) and Executive Order 11990 (wetlands). HUD’s implementing regulations at 24 CFR Part 55 prescribes measures for protecting floodplains. This process is also suitable for protecting wetlands. The steps are summarized below.

Michigan is one of only two states that have legally assumed the federal Clean Water Act Section 404 (wetlands protection) permitting and compliance program. As such, Michigan is the primary permitting and enforcement agency for both state and federal wetlands protection laws and regulations. Wetlands in the state are regulated under Part 303 Wetlands Protection and Part 323 Shorelands Protection and Management of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended [(Natural Resources and Environmental Protection Act)NREPA]. In conducting an environmental review under NEPA, UGLGs must evaluate impacts to floodplains and wetlands as they are defined and protected under Parts 303 and 323 of NREPA. In particular, the environmental review must evaluate impacts to “isolated wetlands” (those not adjacent to the Great Lakes or navigable waterbodies), which are protected under NREPA, but not under Clean Water Act Section 404.

The steps following are for environmental review of impacts, and do not constitute compliance with wetland or floodplain permitting requirements of NREPA.

Step 1: Determine if the Project is in a Floodplain or Wetland

The first step is to determine if the project is located in a 100-year floodplain (or 500-year floodplain for a critical action) or wetland, including “isolated wetlands” as protected under Michigan's NREPA. Critical actions include actions on facilities such as nursing homes and hospitals. For floodplains, maps published by the Federal Emergency Management Agency (FEMA), available online at www.msc.fema.gov, should be checked. For wetlands, National Wetland Inventory (NWI) maps, available online at www.fws.gov/wetlands/Data/Mapper.html, should be checked. If a project is not located in a floodplain or is not proposing new construction in a wetland, no further review under the eight step decision making process is needed. Complete Flood Determination (Form 5-L) and return with environmental review package documents to the Program Specialist.

Step 2: Engage Public Comment

After the UGLG as the RE determines that the project is located in a floodplain or is proposing new construction in a wetland, the second step is to formally involve the public in the decision making process by publishing a notice in the local newspaper [see sample notice, Early Floodplain Wetland Notice (Form 5-J)]. This notice must also be sent to agencies, individuals, and groups known to be interested in the project. A minimum of 15 calendar days must be provided for local public comment and the comment period starts the day after a notice is published.

Note: UGLGs are encouraged to involve the public at as many stages in the process as possible and are free to inform the community of their intentions and receive feedback as early as they are evident. However, the formal responsibility to offer the public opportunity to comment begins with the declaration that the project is in a floodplain or wetland.
Step 3: Identification and Evaluation of Alternative Locations
The third step involves identification and evaluation of the practicable alternatives to locating the project in a floodplain or wetland. This requires the UGLG as the RE to evaluate:

- Alternative locations for the project outside a floodplain or wetland.
- Alternative methods to serve the identical project objective.
- The consequences of a determination not to approve any action.

Step 4: Identify Impacts of Proposed Project
In this step, the potential direct and indirect impacts associated with the occupancy or modification of the floodplain or wetland is identified by the UGLG, in consultation with the MDEQ. If the project directly or indirectly supports floodplain or wetland development, these impacts also need to be identified.

Step 5: Minimize Potential Impacts & Identify Methods to Restore and Preserve Beneficial Values
In this step, the project is designed or modified, where practicable, to minimize the potential adverse impacts to lives, property, and natural values within the floodplain or wetland and to restore and preserve the values of the floodplain or wetland.

Step 6: Reevaluate Project
The project is reevaluated by the UGLG to determine:

- Whether it is still practicable in light of its exposure to flood hazards in the floodplain, the extent to which it will aggravate the current hazards to other floodplains, and its potential to disrupt floodplain or wetland values.
- Whether alternatives preliminarily rejected at Step 3 are practicable in light of the information gained in Steps 4 and 5.

Step 7: Publish Statement of Findings and Public Explanation
If the reevaluation results in the determination that there is no practicable alternative to locating the project in a floodplain or wetland, a final notice must be published in the local newspaper [see sample notice, Final Floodplain Wetland Notice (Form 5-K)]. This notice must also be sent to agencies, individuals, and groups known to be interested in the project. A minimum of 7 calendar days must be provided for local public comment and the comment period starts the day after a notice is published.

Step 8: Implement the Project
Upon completion of Steps 1 through 7, the UGLG can move to the next step in the environmental review process. There is a continuing responsibility of the UGLG as the RE to ensure that the mitigation measures identified in Step 7 are implemented.
Section 6 – Lead, Asbestos, and Radon

Lead-Based Paint
Whenever Federal funds, such as CDBG, are used to assist housing built before 1978, steps must be taken to address lead hazards. The purpose of this section is to provide grantees with a general understanding of HUD’s Lead Safe Housing Rule (24 CFR Part 35). The Rule applies to all housing units assisted with CDBG funds, including single and multi-family units, whether publicly or privately owned. The requirements differ, however, depending on the activity – rehabilitation or acquisition.

The lead-based paint regulations consolidate all lead-based paint requirements for HUD-assisted housing. The purpose of the regulation is to identify and address lead-based paint hazards before children are exposed to lead. The regulation is divided into subparts, of which the following apply to the CDBG program:

- Subpart A Disclosure
- Subpart B General Requirements and Definitions
- Subpart J Rehabilitation
- Subpart K Acquisition, Leasing, Support Services, and Operations
- Subpart R Methods and Standards for Lead-Based Paint Hazard Evaluation and Reduction

Types of Requirements (Subpart A)
For CDBG projects, the lead-based paint requirements established by the regulation fall into the three major categories listed below:

1. Notification: Recipients must meet four notification requirements:
   b. Pamphlets should be provided to all households at time of application. See Protect Your Family from Lead in Your Home (Form 5-Q).
   c. It is recommended that states develop an acknowledgement form and have all households sign to document they received and understood the pamphlet. See Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards (Form 5-R).
   d. A copy of this acknowledgment form should then be placed in the file.
   e. Disclosure - Check that property owners have provided purchasers and tenant households with available information or knowledge regarding the presence of lead-based paint and lead-based paint hazards prior to selling or leasing a residence.
   f. A disclosure notice must be provided to purchasers before closing so that they are aware that there may be lead in the home they are purchasing. A copy of the disclosure notice must be placed in the file.
   g. Tenants must receive a disclosure notice before moving into the unit. Ideally, they should receive a disclosure notice at time of application so they can make an informed decision when choosing housing for their household. A copy of the disclosure notice should be kept by the landlord in the tenant's file.
   h. Notice of Lead Hazard Evaluation or Presumption - Occupants, owners, and purchasers must be notified of the results of any lead hazard evaluation work or the presumption of lead-based paint or lead hazards.
   i. A copy of this notice must be provided to owners and tenants within 15 days of the evaluation.
   j. A copy of this notice should be kept in the project file.
k. Notice of Lead Hazard Reduction Activity - Occupants, owners, and purchasers must be notified of the results of any lead hazard reduction work.
l. A copy of this notice must be provided to owners and tenants within 15 days of the project achieving clearance.
m. A copy of this notice should be kept in the project file.

2. Lead Hazard Assessment/Evaluation: Assessment/evaluation methods include visual assessments, paint testing, and risk assessments. Each method has specific requirements (defined in Subpart R of the regulation) and must be done by qualified professionals. The specific method required depends on the activity undertaken.

3. Lead Hazard Reduction: Lead hazard reduction may include paint stabilization, interim controls, standard treatments, or abatement. Each method has specific requirements (defined in Subpart R of the regulation) and must be done by qualified professionals. The specific method required depends on the activity undertaken (for definitions, refer to 24 CFR 35.110).

**Exemptions (Subpart B)**

1. Some CDBG projects may be exempt from the Lead Safe Housing Rule if they meet the criteria listed below:
   a. Housing units constructed after 1978.
   b. Emergency repairs to the property are being performed to safeguard against imminent danger to human life, health or safety, or to protect the property from further structural damage due to natural disaster, fire or structural collapse. The exemption applies only to repairs necessary to respond to the emergency.
   c. The property will not be used for human residential habitation. This does not apply to common areas such as hallways and stairways of residential and mixed-use properties.
   d. Housing "exclusively" for the elderly or persons with disabilities, with the provision that children less than six years of age will not reside in the dwelling unit. This language must be specifically mentioned in the lease.
   e. An inspection performed according to HUD standards found the property contained no lead-based paint.
   f. According to documented methodologies, lead-based paint has been identified and removed, and the property has achieved clearance.
   g. The rehabilitation will not disturb any painted surface.
   h. The property has no bedrooms.
   i. The property is currently vacant and will remain vacant until demolition.

2. UGLGs administering emergency repair programs should pay particular attention to the exemption "The rehabilitation will not disturb any painted surfaces." Many emergency repair programs replace only water heaters or roofs where no painted surfaces are disturbed and thus may be exempt from the Rule.

3. All exemptions must be documented in the project file via the Lead-Based Paint Requirements Applicability Worksheet (Form 5-S).

**Requirements for Rehabilitation Projects (Subpart J)**

CDBG funds may be used for the rehabilitation of existing units. When such an activity is undertaken using Federal funds on a unit built before 1978, the Lead Safe Housing Rule applies. This section briefly...
describes the relevant requirements. See Four Approaches to Implementing Lead Hazard Evaluation and Reduction (Form 5-T).

**Calculating the Level of Assistance**

1. The lead hazard evaluation and reduction activities required for rehabilitation projects depend on the level of rehabilitation assistance received by the project. This level of assistance is determined by taking the lower of:
   a. Per unit rehabilitation hard costs (regardless of source of funds); or
   b. Per unit Federal assistance (regardless of the use of the funds).

2. To make this determination, it helps to understand several terms:
   a. Rehabilitation Hard Costs. The rehabilitation costs are calculated using only hard costs. They do not include soft costs or the costs of lead hazard evaluation and reduction, as described below.
   b. Lead Hazard Evaluation and Reduction Costs. Lead hazard evaluation and reduction costs include costs associated with site preparation, occupant protection, relocation, interim controls, abatement, clearance, and waste handling attributable to lead-based paint hazard reduction.
   c. Federal Assistance. Federal assistance includes all Federal funds provided to the rehabilitation project, regardless of whether the funds are used for acquisition, construction, soft costs or other purposes. This also includes funds from program income, but excludes low-income housing tax credit funds (LIHTC), Department of Energy Weatherization Program funds, or non-Federal HOME Program match funds.

**Requirements for Projects Receiving Rehabilitation Assistance Up to and Including $5,000 per Unit (Subpart R)**

Projects where the level of rehabilitation assistance is less than or equal to $5,000 per unit must meet the following requirements:

1. The goal is to “do no harm.” Therefore all work must be conducted using lead safe work practices. Workers must be trained in lead safe work practices.

2. Lead Hazard Evaluation. UGLGs should presume that these surfaces contain lead-based paint.

3. Lead Hazard Reduction. UGLGs must repair all paint that will be disturbed during rehabilitation, unless such paint is found not to be lead-based paint.
   a. If lead-based paint is detected or presumed, safe work practices must be used during rehabilitation.
   b. Clearance is required by a certified clearance examiner. For assistance and clarification regarding what constitutes a certified clearance examiner, please contact your CDBG Program Specialist.

4. Notices must be provided to owners and tenants:
   a. The Lead Hazard Information pamphlet;
   b. The Notice of Evaluation (if paint testing is performed) or Notice of Presumption (if paint testing is not performed); and
   c. The Notice of Lead Hazard Reduction.
In short, for rehabilitation projects where the level of assistance is less than or equal to $5,000 per unit, workers must be trained in safe work practices, notices must be provided to owners and tenants, and clearance must be achieved.

**Requirements for Projects Receiving Rehabilitation Assistance Between $5,000-$25,000 per Unit**

Projects where the level of rehabilitation assistance is between $5,000 and $25,000 per unit must meet the following requirements.

1. The goal is to “identify and address lead hazards.” A risk assessment is required to identify lead hazards and identified hazards must be addressed by interim controls.

2. Lead Hazard Evaluation. A risk assessment must be conducted by a qualified professional prior to rehabilitation to find lead-based paint hazards in assisted units, in common areas that service those units, and on exterior surfaces. The risk assessment must include paint testing of any surfaces to be disturbed by the rehabilitation.

3. Lead Hazard Reduction. If the risk assessment identifies lead-based paint hazards interim controls must be implemented to address lead-based paint hazards.
   a. Interim controls must be performed by qualified professionals using safe work practices.
   b. Clearance, conducted by a qualified clearance examiner, is required when lead hazard reduction activities are complete.

4. Options. There are two options, as follows:
   a. The UGLG is permitted to presume that lead-based paint is present and that lead-based paint hazards exist. In such cases, evaluation is not required. The UGLG must perform standard treatments in lieu of interim controls on all applicable painted surfaces and presumed lead-based paint hazards.
   b. The UGLG is also permitted to conduct a lead hazard screen instead of a risk assessment. The lead hazard screen has more stringent requirements and is only recommended in units in good condition. If the lead hazard screen indicates that there is no lead contamination, no lead hazard reduction is required. If the lead hazard screen indicates the presence of lead hazards, the UGLG must then conduct a risk assessment. (Note: Passing a lead hazard screen, or a risk assessment, does not eliminate the requirement to perform interim controls on lead-based paint hazards created as a result of the rehabilitation work.)

5. Notices must be provided to owners and tenants:
   a. The Lead Hazard Information pamphlet;
   b. The Notice of Evaluation (if a risk assessment is performed) or Notice of Presumption (if a risk assessment is not performed). For assistance in determining the correct notice, please contact your CDBG Program Specialist; and
   c. The Notice of Lead Hazard Reduction.

6. In short, compliance with the Lead Safe Housing Rule for such rehabilitation projects will affect the project planning, timeline, scope of work, contracting and budget.
Requirements Projects Receiving Rehabilitation Assistance over $25,000 per Unit

Projects where the level of rehabilitation assistance is over $25,000 per unit must meet the following requirements.

1. The goal is to "identify and eliminate lead hazards." A risk assessment is required to identify hazards and any identified hazards must be abated by a certified abatement professional.

2. Lead Hazard Evaluation. A risk assessment must be conducted prior to rehabilitation to find lead-based paint hazards in assisted units, in common areas that service those units, and on exterior surfaces. The risk assessment must include paint testing of any surfaces to be disturbed by the rehabilitation or UGLG may assume that lead-based paint hazards exist.

3. Lead Hazard Reduction. To address hazards identified:
   a. Abatement must be conducted to reduce all identified lead-based paint hazards except those described below. Abatement must be conducted by a certified abatement contractor.
   b. If lead-based paint hazards are detected during the risk assessment on the exterior surfaces that are not to be disturbed by rehabilitation, interim controls may be completed instead of abatement to reduce these hazards.
   c. Clearance is required when lead hazard reduction activities are complete.

4. Options. There are two options, as follows:
   a. The UGLG is permitted to presume that lead-based paint hazards exist. In such cases, a risk assessment is not required. The UGLG must abate all applicable painted surfaces that will be disturbed during rehabilitation and all presumed lead hazards.
   b. The UGLG is permitted to conduct a lead hazard screen instead of a risk assessment. The lead hazard screen has more stringent requirements and is only recommended in units in good condition. If the lead hazard screen indicates that there is no lead contamination, no lead hazard reduction is required. If the lead hazard screen indicates the presence of lead hazards, the UGLG must then conduct a risk assessment. (Note: Passing a lead hazard screen, or a risk assessment, does not eliminate the requirement to perform abatement on lead-based paint hazards created as a result of the rehabilitation work.)

5. Notices must be provided to owners and tenants:
   a. The Lead Hazard Information pamphlet;
   b. The Notice of Evaluation (if a risk assessment is conducted) or Notice of Presumption (if a risk assessment is not conducted), For assistance in determining the correct notice, please contact your CDBG Program Specialist; and
   c. The Notice of Lead Hazard Reduction.

6. In short, compliance with the Lead Safe Housing Rule for such rehabilitation projects will affect the project planning, timeline, scope of work, contracting, and budget. In particular, it involves the engagement of a certified abatement contractor.
**Requirements for Acquisition, Leasing or Supportive Services Projects (Subpart K)**

CDBG funds may be used for acquisition, leasing and supportive services. When such an activity is undertaken using Federal funds on a unit built before 1978, the Lead Safe Housing Rule applies. This section briefly describes the requirements needed to follow to be in compliance.

1. **Lead Hazard Assessment.** A visual assessment must be conducted during initial and periodic inspections by a person who is trained to detect deteriorated paint. Lead hazard evaluation activities must be completed prior to occupancy, or if the unit is already occupied, immediately after receipt of Federal assistance.

2. **Lead Hazard Reduction.** Deteriorated paint must be corrected using paint stabilization methods. Paint stabilization must be completed prior to occupancy, or if the unit is already occupied, immediately after receipt of Federal assistance.
   a. **Safe Work Practices.** Safe work practices are required so workers must be appropriately trained or supervised.
   b. **Clearance.** Clearance, by a qualified clearance examiner, is required when paint stabilization is complete.

3. **Notification**
   a. **Lead Hazard Information Pamphlet.** The lead hazard information pamphlet must be provided prior to selling or providing leasing, support services, or operations activities to a house or unit that was built prior to 1978. UGLG do not have to provide the pamphlet if they can document that it has already been received.
   b. **Notice of Lead Hazard Reduction Activity.** The notice must be provided within 15 calendar days of the date when the paint stabilization is completed.

**Compliance**

Failure to comply with the lead-based paint requirements under the regulation will subject a recipient to sanctions authorized under the Federal funding programs providing assistance to the property, and violations may be subject a recipient to other penalties available under state or local law. Notifying owners, purchasers, or occupants of possible lead-based paint hazards does not relieve recipients of their responsibilities under the new regulation.

Not complying may expose households and contractors with potentially dangerous levels of lead dust and debris that can cause life threatening illnesses and developmental delays. Refer to Summary of Required Activities to Address Lead-Based Paint (Form 5-U).

**Asbestos**

Asbestos is a mineral fiber that was commonly added to products to strengthen them, and to provide heat insulation and fire resistance. Asbestos is commonly found in older homes where it was used for pipe and furnace insulation, in asbestos shingles, millboard and transite siding, floor tiles, and a variety of other coating materials. The only way to determine whether a material is asbestos (containing more than 1% asbestos by volume) is through Polarized Light Microscopy.

The handling of asbestos-containing materials is regulated by the Environmental Protection Agency (EPA) under the National Emissions Standards for Hazardous Air Pollutants (NESHAP), 40 CFR Part 61, and the Occupational Safety and Health Administration (OSHA) under regulation delineated in 29 CFR 1926.1101.
**General Asbestos Policy**

All construction, demolition, and rehabilitation that is done in whole or in part with CDBG funds must comply with state and federal asbestos removal requirements. It is the responsibility of the grantee, developers, owners, and contractors to know and comply with local, state, and federal construction standards. See For 5-V, Asbestos Applicability Worksheet.

1. Before renovation or demolition begins:
   a. an Asbestos Applicability Worksheet (Form 5-V) should be completed,
   b. a National Standards for Hazardous Air Pollutants (NESHAP) asbestos inspection should be completed, and
   c. any asbestos survey that has been completed should be placed in file.

2. Leave undamaged asbestos in place. Asbestos should only be removed when it is friable (defined as when asbestos can be crumbled to a powder by hand pressure) or when it will be disturbed by building rehabilitation or demolition.

3. Removal of asbestos-containing material can be legally performed by certified/licensed contractors.

4. Regulations regarding disposal of asbestos in approved landfills must be followed.

5. There are notification requirements to the Michigan Department of Environmental Quality (MDEQ) and the Michigan Occupational Safety and Health Administration (MIOSHA), depending on the level of remediation necessary:
   a. If doing friable asbestos removal or encapsulation, contractors must provide the start and ending dates with a specified timeframe for remediation.
   b. Notification must be given 10 days prior to any non-exempt asbestos abatement project exceeding 10 linear feet or 15 square feet of friable asbestos materials.

**Radon**

Radon is a radioactive gas that cannot be seen, smelled or tasted. Radon gas is a natural substance that can be found in the dirt and rocks beneath houses, in well water and in some building materials. It can enter homes through soil, crawlspace, foundation cracks, floors and walls. Once inside, it can sometimes become trapped in your home. All homes have some radon gas. Breathing high levels of radon can put you at risk for lung cancer. To see if your house has dangerous levels of radon, you should test it. Radon is measured in picoCuries per liter of air (pCi/L). Radon levels inside houses below 4 pCi/L are considered acceptable.

The Environmental Protection Agency (EPA) recommends mitigation for residences with radon concentrations at or above 4.0 picocuries per liter of air (pCi/L) \(^2\). The best way to mitigate radon is to prevent it from entering a building in the first place. Radon generally poses the greatest risk to occupants living at or below ground level. Occupants on the lower levels of structures are at risk of excess exposure if radon levels are elevated and these structures are not appropriately mitigated, or if they occupy new construction in areas with high radon that is not built using radon resistant construction methods.
A radon assessment conducted by a certified Radon Professional must be included for all CDBG funded housing projects in EPA Radon Zone 1 counties (Branch, Calhoun, Cass, Hillsdale, Jackson, Kalamazoo, Lenawee, St. Joseph, and Washtenaw). Per American Association of Radon Scientists and Technologists, Inc. (AARST) and HUD multi-family radon testing and mitigation policy, all “ground level” units are to be tested, regardless of the foundation type.

For projects with test results exceeding the EPA action level of 4.0 picocuries/liter, plans and specifications approved by a Radon Professional for addressing these exceedances must be submitted prior to initial closing. New construction projects and any proposed mitigation plans must be consistent with the radon resistant code requirements as detailed in Appendix F of the Michigan Residential Code.

Further information on mitigation strategies and maps of radon zones around the country can be found at http://www.epa.gov/radon/index.html

Section 7 – Re-evaluation of Environmental Findings
The re-evaluation of a project is required by the RE when new activities are added, unexpected conditions arise, or substantial changes are made to the nature, location, magnitude or extent of the project. The purpose of the re-evaluation is to determine if the original environmental finding is still valid. Complete the Re-Evaluation of Environmental Assessment (Form 5-N) and contact your Program Specialist for assistance with this process.

If the original environmental finding is still valid but the data or conditions upon which it was based has changed, the UGLG as the RE must affirm the original finding and update the ERR. In these cases, if a FONSI has already been published, no further publication of a FONSI is required. A new environmental review must be prepared if the original finding is no longer valid.

When the ERR process is complete, the final ERR must be submitted to the Program Specialist.

Chapter 5 Form(s)

Exempt Project Packet
5-A Determination of Level of Environmental Review
5-B Finding of Exempt Activity
5-E Exemption Activities Determination Letter SAMPLE

CENST Project Packet
5-A Determination of Level of Environmental Review
5-C Finding of Categorical Exclusion NOT Subject to 58.5
5-E Exemption Activities Determination Letter SAMPLE

CEST Project Packet
Chapter 5 • Environmental Review

5-A  Determination of Level of Environmental Review
5-D  Finding of Categorical Exclusion Subject to 58.5

Section 106 State Historic Preservation Office (SHPO) review: www.michigan.gov/shposection106
5-F  Statutory Checklist
5-L  8 Step Process for Compliance with Floodplain Management
5-J  Early Notice and Public Review of Proposed Activity in a 100-Year Floodplain or Wetland
5-K  Final Notice and Public Explanation of Proposed Activity in a 100-Year Floodplain Wetland
5-M  Notice of Intent to Request Release of Funds
5-G  Request for Release of Funds and Certification

**EA Project Packet**

5-A  Determination of Level of Environmental Review
Section 105 State Historic Preservation Office (SHPO) review: www.michigan.gov/shposection106
5-H  Environmental Assessment
5-L  8 Step Process for Compliance with Floodplain Management
5-J  Early Notice and Public Review of Proposed Activity in a 100-Year Floodplain or Wetland
5-K  Final Notice and Public Explanation of Proposed Activity in a 100-Year Floodplain Wetland
5-I  Combined Notice
5-G  Request for Release of Funds and Certification

**Reference forms**

5-N  Re-Evaluation of Environmental Assessment
5-O  Environmental Review Checklist
5-P  Environmental Review Process Flowchart
5-Q  Protect Your Family from Lead in Your Home, EPA-747-K-12-001
5-R  Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards
5-S  Lead-Based Paint Applicability and Compliance Worksheet
5-T  Four Approaches to Implementing Lead Hazard Evaluation and Reduction
5-U  Summary of Required Activities to Address Lead-Based Paint

**Chapter 5 Reference links**


FEMA  http://msc.fema.gov/portal

HUD Environmental Review  https://www.hudexchange.info/programs/environmental-review/

HUD’s Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (2012 Edition)  

MDEQ  
http://www.michigan.gov/deq

National Wetlands  
https://www.fws.gov/wetlands/Data/Mapper.html

SHPO  
www.michigan.gov/shposection106

Tribal Directory Assessment Tool (TDAT)  
https://egis.hud.gov/tdat/
Chapter 6

Acquisition

Introduction

The Unit of General Local Government (UGLG) is required to comply with the acquisition and relocation policies and procedures as set forth in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act or URA). Under Section 104(d) of the Housing and Community Development Act of 1974, as amended [Section 104(d)], the UGLG also has the responsibility to minimize displacement that results from CDBG funded projects. For more details on Relocation Procedures under the URA and Anti displacement requirements under Section 104(d) of the Act, refer to Chapter 7 – Relocation.

The URA applies to any acquisition of real property for programs and projects where there is Federal Financial Assistance in any part of the project costs. There are a couple instances, one of which is a voluntary acquisition, when the URA does not apply. However, even with a voluntary acquisition, some type of paperwork will be required.

Once an Offer Letter has been issued by the Michigan Economic Development Corporation (MEDC), the UGLG must ensure that the Agency acquiring the Real Property complies with the URA, regardless of who purchases the property or who pays for the property. According to the U.S Department of Housing and Urban Development’s Handbook 1378, an Agency may be a State, a State Agency, or a person who has the authority to acquire property by eminent domain under State law. This definition includes UGLGs but does not include persons who do not have the power of eminent domain.

Real property includes:

- Permanent and temporary easements necessary for the project.
- Fee simple title/a parcel of land.
- Long-term leases of 50 years or more.
- Rights of way.

As explained in this chapter, there are certain notices that must be sent even if the acquisition is not subject to the URA. If Federal financial assistance is used in any part of the project, the Uniform Act governs the acquisition of real property for the project and any resulting displacement, even if local or private funds are used to pay the acquisition costs. Again, CDBG acquisition and relocation guidelines are applicable to a project once the MEDC issues an Offer Letter.

If acquisition and relocation are not involved, the MEDC may require notification in writing that the Uniform Act does not apply. (Form 6-A).

Section 1 – General Acquisition Requirements

The Agency (State, State Agency, UGLG or other person who has the power of eminent domain) acquiring the property should not begin the acquisition process until the environmental review has been completed. In certain instances, an option or purchase agreement, meeting the below
requirements and contingencies, may be executed prior to the completion of the environmental review, as long as an Offer Letter has been issued by the MEDC.

**Requirements:** An option or purchase agreement may be executed prior to the completion of the environmental review when the following requirements are met:

- Prior to signing the option or purchase agreement, the Agency informs the property owner of the property's market value (refer to “Determining the Value of Property for a Voluntary Acquisition” under Section 3 of this Chapter and “Determining the Value of Property for an Involuntary Acquisition” under Section 4 of this Chapter) and that the power of eminent domain will not be used. (Form 6-B).
- The cost of the option or purchase agreement must be a nominal portion of the purchase price.

The provision allows flexibility regarding the term “nominal” and any reasonable interpretation is acceptable, provided that it does not exceed five percent of the purchase price. For instance, it is reasonable to conclude that the nominal amount for option or purchase contracts will vary depending upon the local real estate market and the purchase price.

**Contingencies:** Prior to the completion of the environmental review, the following contingencies must be included in the option or purchase agreement:

- Notwithstanding anything to the contrary in this Agreement, Buyer's obligations under this Agreement are contingent upon the completion of an environmental review in accordance with 24 CFR Part 50 and 24 CFR Part 58.
- Notwithstanding anything to the contrary in this Agreement, Buyer's obligations under this Agreement are contingent upon obtaining CDBG funds through the Michigan Strategic Fund.

The Agency should not enter into any construction contract prior to completing the acquisition of all properties required for project completion. If a property is in the process of being condemned, the action must be filed in court prior to execution of a construction contract.

Again note: Once a MEDC Offer Letter has been issued, no project related acquisition may occur until after the Environmental Review process has been completed and the MEDC has provided written authorization to incur the costs. Option or purchase agreements, which meet certain requirements and include certain contingencies, may be used prior to the completion of the environmental review. Your CDBG Program Specialist must be contacted prior to signing an option or purchase agreement or incurring other project costs. See Chapter 5: Environmental Review and the [Funding Guide](#), with regard to the environmental review requirements and incurring project costs.

**Section 2 – Voluntary and Involuntary Acquisitions (under URA)**

In order to further understand the applicability of the URA requirements and proceed with an acquisition, the UGLG must understand the critical difference between acquisition of property when the sale is voluntary and when the sale is involuntary. While there are protections for property owners in both voluntary and involuntary sales, the key difference between the two types of acquisition depends on the use of eminent domain and project/property alternatives.

- **When a voluntary sale occurs, there can be no threat of eminent domain or condemnation and other project/site alternatives must be available.**
Properties acquired by Agencies with the power of eminent domain are only considered voluntary if the Agency notifies the property owner of the property's market value and notifies the property owner that the Agency will not use the power of eminent domain if negotiations do not result in an amicable agreement. The sales price may be negotiated. Other alternatives must be available (i.e. not proceeding with the project or proceeding with alternative sites).

Example: The City of Anywhere, Michigan would like to acquire a parcel of private property to expand public parking that benefits the entire lower income City. The City has determined that it will not proceed with the project if the City and the property owner cannot come to an amicable agreement. Prior to entering into an agreement for the property, the City must inform the property owner of the market value of the property and that the City will not use its power of eminent domain.

The use of eminent domain for economic development projects that benefit private entities is prohibited. Therefore, the acquisition must be voluntary.

Example: In order to expand, ABC Company needs public water to be extended through the adjacent privately owned property. In order to extend the water, the City needs an easement through the adjacent privately owned property for the water line. Since this is an economic development project (no public benefit), the power of eminent domain cannot be used.

When an involuntary sale occurs, the use of eminent domain or condemnation may be required. Typically, involuntary transactions occur when an Agency with the power of eminent domain MUST acquire property for a project involving a public benefit and there are no other alternatives (i.e. the project must happen and there is only one site where the project can happen).

Example: The City of Anywhere, Michigan would like to acquire a parcel of private property to expand public parking that benefits the entire lower income City. The City has determined that it will proceed with the project even if the City and the property owner cannot come to an amicable agreement.

Guidance pertaining to voluntary acquisitions is detailed in Section 3 of this Chapter. Guidance pertaining to involuntary acquisitions is detailed in Section 4 of this Chapter.

Section 3 – Voluntary Acquisition Procedures (under URA)

Steps for Meeting URA Voluntary Acquisition Requirements

Remember, these requirements apply to all Real Property voluntarily acquired by an Agency. According to the US Department of Housing and Urban Development's Handbook 1378, an Agency may be a State, a State Agency, or a person who has the authority to acquire property by eminent domain under State law. This definition includes UGLGs but does not include persons who do not have the power of eminent domain.

Real property includes:

- Permanent and temporary easements necessary for the project.
• Fee simple title/a parcel of land.
• Long-term leases of 50 years or more.
• Rights of way.

Certain steps regarding acquisition of property are necessary to meet Federal and State requirements. The steps for the voluntary purchase of property, and the order in which the steps should occur, are outlined below:

**Determine Ownership**
Ownership must be determined. The first step in the process is to obtain title evidence, that is, the deed and the legal description of the property. Review the county register of deeds’ records to determine the actual property owner and review the deed and legal description of the property to determine any existing easements or liens. A title search to determine ownership is often necessary. CDBG acquisition funds may not be used to remove liens or to perfect title ownership. Title defects must be cleared at the expense of the property owner(s).

**Determine the Value of the Property (Appraisal or waiver valuation)**
According to the URA, a voluntary acquisition does not require a formal appraisal to determine the property’s value. However, if CDBG will be funding the acquisition, an appraisal may be required to verify cost reasonableness. If an appraisal is not conducted, a waiver valuation must be prepared. A waiver valuation is a statement of the property’s value. The waiver valuation does not need to be complicated but must include: the property to be acquired, a description of the property, the method used to determine the property’s value, the estimated market value of the property, the name of the person making the valuation, and any other notes or conditions applicable to the analysis. The UGLG must ensure the person performing the waiver valuation has sufficient understanding of appraisal principles and the local real estate market. The waiver valuation (Form 6-D) or similar document should be signed and a copy kept in the UGLG’s files.

**Send the Voluntary Acquisition Notice**
A Voluntary Acquisition Notice must be sent to the property owner (Form 6-B). The Notice must include the market value of the property and include a statement that the buyer does not have, or will not use, the power of eminent domain. The Agency must send all notices, letters, and other documents by certified or registered mail, return receipt requested, or hand delivered with receipt documented. If the property owner does not read or understand English, the Agency must provide translations and assistance. Each notice must give the name and telephone number of a person who may be contacted for further information.

In addition, this letter should inform the property owner that he or she is not entitled to any relocation assistance. Note, however, that if the property is tenant-occupied and the tenant will be required to vacate, the tenant is eligible for relocation assistance.

For more details on Relocation Procedures under the URA and Anti displacement requirements under Section 104(d) of the Act, refer to Chapter 7 – Relocation.

**Negotiate, Prepare Documents, and Complete the Sale**
The sales price is negotiated. Following successful negotiations and receiving authorization to incur project costs from the MEDC, the sales contract is prepared; the Statement of Settlement Costs (HUD-Form 1) or an alternative Closing Statement (Form 6-L) or similar document is prepared; the closing is
completed; the deed (or other ownership interest) is transferred; and the deed (or other ownership interest) is recorded at the County. For the environmental review requirements and when project costs can be incurred, see Chapter 5: Environmental Review and the Funding Guide.

**Record Keeping**
A separate acquisition case file including the below documents must be established for each acquisition:

**Voluntary Acquisitions**
- Completed Voluntary Acquisition Checklist (Form 6-S)
- Title search/Clearance of Title
- Waiver Valuation (Form 6-D) or similar document or an Appraisal Report, if required
- Voluntary Acquisition Notice and documentation of receipt by property owner (Form 6-B)
- Contract of Sale
- Statement of Settlement Costs (HUD-Form 1), alternative Closing Statement (Form 6-L), or similar document
- Recorded document as evidence of payment and property ownership

**Section 4 – Involuntary Acquisition Procedures (Under URA)**

**Property Owner’s Basic Rights under URA**
When involuntary transactions are required as part of a CDBG project, the property owner must be informed of his/her rights under the Uniform Act. Those basic rights include:

*The right to receive a Notice of Uniform Act Requirements* provided by the Agency formally explaining the property owner's rights under the Uniform Act. This is usually accomplished by providing the property owner with a Preliminary Acquisition Notice and the applicable US Department of Housing and Urban Development (HUD) Uniform Act Booklet.

*The right to an Appraisal and a Review Appraisal* if the value of the property is greater than $10,000 or if certain conditions exist (see below - determining the value of the property). The right to accompany the appraiser during the appraisal of their property.

*The right to Just Compensation* based on an appraisal or a waiver valuation.

**Steps for Meeting URA Involuntary Acquisition Requirements**
Remember, these requirements apply to all Real Property involuntarily acquired by an Agency. According to the U.S Department of Housing and Urban Development’s Handbook 1378, an Agency may be a State, a State Agency, or a person who has the authority to acquire property by eminent domain under State law. This definition includes UGLGs but does not include persons who do not have the power of eminent domain.

Real property includes:
- Permanent and temporary easements necessary for the project.
- Fee simple title/a parcel of land.
- Long-term leases of 50 years or more.
Rights of way.

Certain steps regarding acquisition of property are necessary to meet federal and State requirements. The steps involved with an involuntary transaction are outlined in Attachment 6-E (Flowchart of URA Process) and described below.

**Determine Ownership**
Ownership must be determined. The first step in the process is to obtain title evidence, that is, the deed and the legal description of the property. Review the county register of deeds’ records to determine the actual property owner and review the deed and legal description of the property to determine any existing easements or liens. A title search to determine ownership is often necessary. CDBG acquisition funds may not be used to remove liens or to perfect title ownership. Title defects must be cleared at the expense of the property owner(s).

**Send the Involuntary Preliminary Acquisition Notice and Booklet**
An Involuntary Preliminary Acquisition Notice must be sent to the property owner (Form 6-F). The Agency must send all notices, letters, and other documents by certified or registered mail, return receipt requested, or hand delivered with receipt documented. If the property owner does not read or understand English, the Agency must provide translations and assistance. Each notice must give the name and telephone number of a person who may be contacted for further information.

The Preliminary Acquisition Notice:
- Explains the property owners’ rights under the URA, including the right to an appraisal;
- Explains that the notice is not a notice to vacate;
- Does not establish eligibility for relocation payments or assistance;
- Must be accompanied by the booklet, *When a Public Agency Acquires Your Property* (Form 6-G) or for permanent and temporary easements, *When a Public Agency is Interested in Acquiring an Easement* (Form 6-H);
- Must include the UGLG’s Acquisition Policy but ONLY if it affords the owner or occupant additional rights.

**Determine the value of the property by an Appraisal and Review Appraisal (if required) or Waiver Valuation**
An appraisal is not required if:
1. The property owner offers to donate the property; or
2. The property’s market value is less than $10,000 and it is an uncomplicated valuation.

When an appraisal is not required, a waiver valuation must be prepared. A waiver valuation is a statement of the property's value. The waiver does not need to be complicated but must include: the property to be acquired, a description of the property, the method used to determine the property's value, the estimated market value of the property, the name of the person making the valuation, and any other notes or conditions applicable to the analysis. The UGLG must ensure the person performing the waiver valuation has sufficient understanding of appraisal principles and the local real estate market. The waiver valuation (Form 6-D) or similar document should be signed and a copy kept in the UGLG’s files.
Note: If CDBG funds are used to pay for the acquisition, please check with your CDBG Program Specialist as the MEDC may require an appraisal (instead of a waiver valuation) to verify cost reasonableness. In this case, a review appraisal may not be required.

The following conditions will trigger an appraisal:

1. The value of the property is estimated to be more than $10,000;
2. The property owner wants an appraisal;
3. Possible damages exist to the remaining property;
4. Questions exist on the highest and best use;
5. The use of eminent domain is anticipated;
6. Hazardous material/waste may be present; or
7. For other reasons the Agency determines an appraisal is required.

See the appraisal requirements below for selecting an appraiser and the appraisal requirements. If an appraisal is required, the property owner must be invited to accompany the appraiser (Form 6-M). When an appraisal is required, a review appraisal will automatically be required. For more information on review appraisals, including what to do if the appraiser conducting the review does not agree with the methodology used by the original appraiser, please refer to the section later in this chapter entitled “The Review Appraisal”.

Establish Just Compensation
After valuation of the property, just compensation must be established. The amount determined to be just compensation cannot be less than the market value as determined by the Appraisal/Review Appraisal or waiver valuation. The establishment of an amount believed to be just compensation cannot be delegated to a private consultant. Establishment of the amount believed to be just compensation must be made by an appropriate official of the UGLG. Council or Board approval is suggested but not required. A sample Statement of Just Compensation is included as Form 6-I.

Send the Written Offer to Purchase
The Agency must send the property owner a written Offer to Purchase (Form 6-J) or similar document, along with the written Statement of Just Compensation (Form 6-I) or similar document. As with all notices, the written Offer to Purchase must be sent certified or registered mail, return receipt requested or hand delivered with evidence of receipt.

Remember, if the property is tenant-occupied and the tenant will be required to vacate, the tenant is eligible for relocation assistance. For more details on Relocation Procedures under the URA and Anti-displacement requirements under Section 104(d) of the Act, refer to Chapter 7 – Relocation.

Complete Acquisition, Condemn Property or Decide Not To Acquire
Depending upon whether the Agency and the property owner can reach an agreement on an acquisition price, the Agency will complete the acquisition process, initiate condemnation proceedings, or decide not to acquire the property.

- Negotiate, Prepare Documents, and Complete the Acquisition Process
  The sales price is negotiated. The property owner may accept the market value and enter into an agreement. However, the property owner must be provided an opportunity to discuss the offer,
propose a higher value and document that higher value. There may be occasions when a property owner proposes or insists on more than the market value. If this occasion arises, the Agency may request approval from the MEDC to proceed with a purchase price higher than the market value or may obtain a new valuation.

Following successful negotiations and receiving authorization to incur project costs from the MEDC, the sales contract and Statement of Settlement Costs (HUD-Form 1) or an alternative Closing Statement (Form 6-L) or similar document are prepared. The Statement of Settlement Costs or Closing Statement or similar document must identify all settlement costs regardless of whether they are paid at, before, or after closing. In the case of an easement, right-of-way, servitude or similar conveyance, the Agency must provide a similar statement of the closing costs detailing all of the attendant costs. If a title or escrow company is used, their standard form is acceptable. The Statement of Settlement Costs or the Closing Statement or similar document must be dated and certified as true and correct by the closing attorney or other person handling the transaction.

The Agency must reimburse the property owner to the extent deemed fair and reasonable for incidental costs associated with transfer of title (i.e., recording fees, transfer taxes, penalty cost or other charges for prepayment of any pre-existing recorded mortgages, etc.).

In all cases, the closing is completed; the deed (or other ownership interest) is transferred; and the deed (or other ownership interest) is recorded at the County. For the environmental review requirements and when project costs can be incurred, see Chapter 5: Environmental Review and the Funding Guide.

Documentation of negotiation proceedings should be placed in the project acquisition file.

**Condemnation Proceedings**

Condemnation is the legal process by which a fee simple title to property is acquired through the process of eminent domain. The initial steps in an involuntary acquisition are followed but the Agency must acquire the property by filing condemnation against the property owner because a mutually agreed upon price cannot be determined.

Once it has been determined that the power of eminent domain must be used, the following steps are required:

- Formally terminate negotiations in writing.
- File condemnation suit with appropriate court in accordance with State law.
- Deposit, as directed by the court, the amount of court-determined just compensation in an escrow account.
- Proceed with payment to the property owner in accordance with court instruction.

**Decide Not To Acquire**

If the Agency decides not to acquire the property at any time after informing the property owner of its interest, the Agency must notify the property owner and all tenants in residence in writing of its intention not to acquire the property (Form 6-K). Any person moving from the property thereafter will not be eligible for relocation payments and assistance. This notice should be sent within 10 days of the Agency’s determination not to acquire.
Record Keeping
Record of Personal Contacts (Form 6-Q) is used in maintaining personal contacts with the owner. A separate acquisition case file including the below documents must be established for each acquisition:

Involuntary Acquisitions
- Completed Involuntary Acquisition Checklist (Form 6-T)
- Record of Personal Contacts (Form 6-Q) or similar document
- Title Search/Clearance of Title
- Involuntary Preliminary Acquisition Notice (Form 6-F)
- HUD Brochure (Form 6-G or 6-H)
- Evidence of Invitation to Accompany Appraiser (Form 6-M)
- Waiver Valuation (6-D) or similar document/Appraisal Report & Review of Appraisal
- Written Statement of Just Compensation (Form 6-I or similar)
- Written Offer to Purchase and Evidence of Receipt (Form 6-J or similar)
- Contract of Sale
- Statement of Settlement Costs (HUD-Form 1) or an alternative Closing Statement (Form 6-L) or similar document
- If Donation, Waiver of Relocation Benefits (Form 6-O; cannot be used for tenants)
- If Acquisition Terminated, Notice of Intent Not to Acquire (Form 6-K)
- If Condemnation, Evidence of Court Deposit of Fair Market Value
- If Condemnation, Court Resolution
- Recorded document as evidence of payment and property ownership

A copy of each acquisition file, once complete, must be sent to the Program Specialist.

Appraisals under the Uniform Act
Typically, appraisals are considered a preliminary cost because they are paid for with non-CDBG costs during the application process in order to determine project costs. For preliminary costs, see the Funding Guide for additional guidance.

Selecting Appraisers
The Agency must select an independent appraiser. The appraiser should have no interest in the property or be related to, or in business with, anyone having any interest in the property to be acquired. The appraiser should be qualified, reputable and professional. Look for appraisers who have had experience doing the types of appraisals needed. An appraiser who usually establishes values for vacant, unimproved land may not be appropriate to establish accurate values of houses. State-certified or licensed real estate appraisers eligible to perform appraisals for federally related transactions are now listed on the Internet.
The National Registry of State-Certified or Licensed Appraisers’ Website is: [http://www.asc.gov](http://www.asc.gov).

**Procuring Appraisal Services**

Again, since appraisals are typically conducted prior to the Grant Agreement using non-CDBG funds, the Agency should follow its local procurement requirements but may want to request statements of qualifications from a number of local appraisers, review those qualifications, and employ only qualified appraisers. A minimum of one appraisal is required; however, if the project is potentially controversial (as with an unwilling property owner or a conflict of interest involving a public official) or where property values exceed $100,000, the UGLG may want to have two independent appraisals conducted. A review appraisal must be prepared for each appraisal conducted.

The Agency may use one of its own professional services contract or refer to the Uniform Appraisal Standards for Federal Land Acquisition, which sets forth standard requirements for appraisals involving federally funded acquisitions. Standard Federal Housing Administration (FHA) appraisal forms may also be used.

**Property Valued at $250,000 or More**

A contract (fee) appraiser making a "detailed appraisal" on property valued at $250,000 or more must be certified and licensed in accordance with State law implementing Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), P.L. 101-73 and must be currently active on the Appraisal list. The review appraiser must also be on the State’s general appraisal list.

**Property Valued at Less Than $250,000**

As of September 6, 2001, for property valued below $250,000, the Agency may use a General Appraiser or a Residential Appraiser. This is also applicable to the review appraisal.

**Owner Invitation**

Before the first appraisal is undertaken, the Agency must formally invite the property owner to accompany the appraiser during inspection of the property (Form 6-M). This notice should be in writing and a copy placed in their property acquisition file along with evidence of receipt by the owner. For the review appraisal, the requirement to invite the property owner to accompany the appraiser is optional.

**Servitude/Easement Appraisal Forms**

Form 6-N is an example of a short form that can be accepted for an appraisal establishing the value of servitude or an easement. This form summarizes complete documentation which the appraiser must have on file.

**The Review Appraisal**

A review appraisal must be obtained once an appraisal has been completed. The review must be done by a qualified staff appraiser or an independent fee appraiser. The review must be written, signed and dated. It should assess the adequacy of the appraiser’s supporting data, the appraisal procedures used, and the soundness of the appraiser’s opinion of fair market value. As needed, the review appraiser shall, prior to acceptance, seek necessary corrections or revisions to the initial appraisal.

If the review appraiser is unable to recommend an appraisal as an adequate basis for the establishment of the offer of just compensation, and it is determined by the acquiring Agency that it is not practical to obtain an additional appraisal, the review appraiser may, as part of the review, present and analyze market information in conformance with §24.103 to support a recommended value.
Acquiring Property without an Appraisal

(42 USC 4651 (2); 49 CFR 24.102 (c) (2)) states: If the UGLG can determine that the valuation of a parcel of land or servitude is uncomplicated and that fair market value of the property does not exceed $10,000, and if the owner does not desire an appraisal, then an offer can be made to the owner(s) of the property without a formal appraisal but a waiver valuation will be required (see the involuntary transaction step for valuing property).

Donations

No provision of the Uniform Act regulations prevent a person, after being fully informed of their right to just compensation based on a review of available data or an appraisal of their real property, from donating their property or easement to the Agency for a project. They must be informed of their right to accompany the appraiser during the appraisal.

Because a property owner is entitled to just compensation under the Uniform Act, a donation should never be assumed. The Waiver of Just Compensation form (Form 6-O) should be prepared by the Agency when the property owner agrees to donate their easement or parcel of land. It should clearly state that the property owner understands that they cannot be required to donate the property or to sell it to the Agency at less than the amount of the appraised value unless the property owner voluntarily agrees to donate. The waiver should clearly show the property owner's intent to voluntarily release the Agency of its Uniform Act obligation to determine just compensation based upon an appraisal after being fully informed of their rights under the Uniform Act. Because a property owner is entitled to an appraisal before making a decision to donate, it is incumbent on the Agency to document that the property owner was made aware of that right before obtaining the signed waiver. A waiver signed by each property owner must be kept in each property owner's acquisition file.

Keep in mind that a donation is the property owner's voluntary relinquishment of their land or easement for free to the Agency after being fully informed of their Uniform Act rights. The specific property is conveyed to the Agency by written consent of the property owner. Here the property owner agrees to transfer full title of a parcel of their land, or grant a permanent and/or temporary easement, or establish a lease of 50 years or less, or grant right-of-way interest without receiving just compensation. However, the Agency is responsible for paying all incidental costs and fees associated with the transfer and recording of the property.

In summary an Agency must provide the following to the MEDC for a property donation:

- Involuntary Preliminary Acquisition Notice (Form 6-F);
- HUD brochure titled When a Public Agency Acquires Your Property (Form6-G) or When a Public Agency is Interested in Acquiring an Easement (Form 6-H);
- Signed Waiver of Rights of Just Compensation, and Right to an Appraisal, from the property owner, if applicable (Form 6-O);
- Documentation to indicate how “market value” was determined if the market value of the property or the easement is determined to be $10,000 or less (Form 6-D);
- If right to an appraisal was not waived, the Agency must appraise property and use the sample waiver of Right of Just Compensation and provide the amount of the market value on that sample waiver form (Form 6-O);
- Recorded property deeds and easements and evidence of payment of recording fees.
Chapter 6 Form(s)

**URA Not Applicable**

6-A Property Acquisition and Relocation Will Not Occur Letter SAMPLE

**Voluntary Acquisitions**

6-B Voluntary Acquisition Notice for UGLGs with Eminent Domain SAMPLE
6-C Voluntary Acquisition Notice for UGLGs without Eminent Domain SAMPLE
6-D Waiver Valuation SAMPLE
6-S Voluntary Acquisition Review Checklist

**Involuntary Acquisitions**

6-E Acquisition Process Under URA Flowchart
6-F Involuntary Preliminary Acquisition Notice SAMPLE
6-G When a Public Agency Acquires Your Property, HUD-2041-CPD
6-H When a Public Agency is Interested Acquiring Easement, HUD-1041-CPD
6-D Waiver Valuation SAMPLE
6-I Statement of Just Compensation SAMPLE
6-J Written Offer to Purchase SAMPLE
6-K Notice of Intent Not to Acquire SAMPLE
6-L Statement of Settlement Costs
6-M Invitation to Accompany an Appraiser SAMPLE
6-N Easement Servitude Appraisal SAMPLE
6-O Waiver of Just Compensation and Appraisal SAMPLE
6-P Acquisition Case File Summary Report, 09.2013 DISCONTINUED AFTER AUG 2015
6-Q Record of Personal Contacts
6-R Waiver of Relocation Benefits *coming soon* (cannot be used for tenants)
6-T Involuntary Acquisition Review Checklist
Chapter 7
Relocation

Introduction

This chapter provides a detailed overview of the relocation of businesses under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act or URA) and the relocation of residents under both the URA and Section 104(d) of the Housing and Community Development Act of 1974 [Section 104(d)]. Also explained is the one-for-one housing replacement requirements under Section 104(d). This chapter outlines the procedures that the Unit of General Local Government (UGLG) must follow to ensure compliance with the above Acts. In addition, information is provided regarding recordkeeping, total tenant payment, and other relocation requirements that may be applicable to projects assisted by Community Development Block Grant (CDBG) funding.

Relocation is an activity that is required as a result of any permanent and involuntary displacement of individuals, families, or businesses, (including non-profit organizations and farms) that was a direct result of the acquisition, demolition, or rehabilitation of property for CDBG-assisted projects carried out by public agencies, nonprofit organizations, private developers, or others.

Note: For purposes of the URA, “displacement” not only includes activities that require the individual, family, etc. to move, but also activities that require the individual, family etc., to permanently and involuntarily move their personal property from the real property as a direct result of the acquisition, demolition, or rehabilitation of property for CDBG-assisted projects carried out by public agencies, nonprofit organizations, private developers, or others. On the other hand, displaced persons do not include:

- A person who is evicted for cause based upon serious or repeated violations of material terms of the lease or occupancy agreement.
- A person that has no legal right to occupy the property under state or local law (e.g., squatters).
- A person that moved from the property prior to the owner having any intention of receiving federal assistance.
- A person who:
  - moved into the property after the date that the existing (in-place) tenants were notified of their rights, AND
  - received a written notice of the expected displacement before occupancy.

Keeping in mind the stipulations noted above, the URA protects all persons that are considered to be displaced by a federally-assisted project -- regardless of their income. As noted above, for purposes of the URA, the term “displaced persons” pertains to residences and businesses, including non-profit organizations and farms. Section 104(d) relocation requirements, on the other hand, focus on displaced low- and moderate-income (LMI) residential occupants and the “loss” of LMI housing units (both rental and owner occupied) within a community through demolition or conversion of residential housing or mixed use properties. Benefits through Section 104(d) are not afforded to businesses, regardless of whether they are a tenant or an owner of the property.
Property owners who willingly enter into an agreement to have the UGLG provide assistance to their property are not eligible for relocation assistance (voluntarily displaced property owners). However, property owners and tenants involuntarily displaced are eligible for relocation assistance.

Section 104(d) has two distinct components:

- **People**: Section 104(d) specifies relocation assistance for displaced LMI families, defined as families earning at or below 80 percent of the Area Median Income (AMI) as adjusted for household size. Section 104(d) does not provide protection or assistance for families with incomes above 80 percent of AMI level.

- **Units**: Section 104(d) requires one-for-one replacement of Low- and Moderate-Income dwelling units that are demolished or converted to a unit with market rents above the Fair Market Rent (FMR) or to a use that is no longer for permanent housing.

One-for-one replacement of housing occurs when CDBG funding is used in a project that reduces the supply of LMI dwelling units. One-for-one replacement is triggered if:

- The unit meets the definition of a LMI dwelling unit; AND
- The unit is occupied or is a vacant occupiable dwelling unit; AND
- The unit is to be demolished or converted to a unit with market rents above the FMR or to a use that is no longer for permanent housing.

It is important to note that for the purposes of the one-for-one housing replacement requirement, the provisions may be triggered by the loss of qualified owner-occupied housing as well as rental housing.

Finally, while most of the CDBG-funded programs that result in the temporary or permanent displacement of residents, and/or the loss of housing units are CDBG housing initiatives, it is important to note that several other kinds of programs (economic development, public facilities) may involve the demolition or conversion of housing units and consequently are covered by the above relocation provisions.

**Section 1 - Applicable Regulations**

Relocation activity in the CDBG Program is governed by four sets of regulations. They are:

- The final rule implementing changes to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (49 CFR Part 24). The final rule was published on January 4, 2005 and became effective on February 3, 2005.

- Section 104(d) and 105(a) (11) of Title I of the Housing and Community Development Act of 1974, as amended, and the implementing regulations at 24 CFR 570.496(a) (the Barney Frank Amendment).

- 24 CFR Part 42 governing displacement in HUD-assisted housing.


Consistent with the other goals and objectives of the CDBG program, the UGLG shall assure that it has taken all reasonable steps to minimize displacement as a result of activities completed under the
program. The UGLG must contact the Program Specialist prior to taking any action that may result in the involuntary and permanent displacement of any individual, family, or business.

Section 2 – Definitions

Displaced Person

The URA and Section 104(d) each define “displaced persons.” In addition, the CDBG regulations build upon these two definitions.

For relocation activities under the URA [49 CFR 24.2(a)(9)]:

The term "displaced person" means any person (residential and non-residential tenants and owner occupants) that moves from the real property or moves his or her personal property from the real property, permanently, as a direct result of:

- The acquisition or written notice of intent to acquire, or initiation of negotiations (ION) for such property, in whole or in part, for a project; OR
- The rehabilitation or demolition of such real property for a project; OR
- The acquisition, rehabilitation or demolition of (or written notice of intent to acquire, or initiation of negotiations for), in whole or in part, other real property on which the person conducts a business or farm operation, for a project. However, eligibility for a person applies only for purposes of obtaining relocation assistance advisory services and a payment for moving and related expenses.

If Section 104(d) is triggered:

The term "displaced person" means any lower income family or individual that moves from real property, or moves his or her personal property from real property, permanently and involuntarily, as a direct result of the conversion of an occupied or vacant, livable LMI dwelling unit or the demolition of any dwelling unit, in connection with an assisted activity.

The CDBG regulations of 24 CFR 570.606, state that the term "displaced person" includes (but may not be limited to):

A person that moves permanently from the real property after the property owner issues a vacate notice to the person or refuses to renew an expiring lease, if the move occurs on or after the date of the initial consideration of an application to the UGLG by the property owner (or person in control of the site) requesting assistance that is later approved for the project.

A person that moves permanently from the real property after notice by the UGLG requiring such move, if the move occurs on or after the date of the initial consideration of a CDBG application by the UGLG requesting assistance under 24 CFR 570.480 that is later granted for the project.

While an owner or the UGLG could argue that because the property had not yet received CDBG assistance at the time of the displacement, such displacement was not actually brought about by the CDBG assistance, it is clear that if the owner attempted to vacate his building in order to take advantage of a governmentally assisted program, then that program led to the displacement, regardless of when the application was approved and the funds actually flowed.

Persons Not Considered Displaced

Notwithstanding the provision of Subsection 570.606(b)(2)(i), a person does not qualify as a "displaced person" (and is not entitled to relocation assistance at URA levels), if:
Chapter 7 • Relocation

- The person has no legal right to occupy the property under state or local law (e.g., squatters); OR
- The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement; violation of applicable federal, state or local law; or other good cause; and the UGLG determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance; OR
- The person moves into the property after the date described in Subsection 570.606(b)(2)(i) and, before commencing occupancy, was provided written notice of the project, it's possible impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase) and the fact that he or she would not qualify as a "displaced person" as a result of the project.

Initiation of Negotiations
For purposes of providing the appropriate notice and determining whether a displaced person qualifies for relocation assistance, the term Initiation of Negotiations (ION) differs by type of activity. When the UGLG is providing funding to a private entity for rehabilitation, acquisition, or demolition, the ION is the later of the execution of the grant agreement between the MSF and the UGLG or the execution of the agreement covering the acquisition, rehabilitation, or demolition.

Low- and Moderate-Income Dwelling Unit
The term “Low- and Moderate-Income dwelling unit” means a dwelling unit with a market rent (including average utility costs) that does not exceed the applicable FMR for Section 8 existing housing established under 24 CFR Part 888. However, the term does not include any unit that is owned and occupied by the same person before and after the assisted rehabilitation.

Optional Relocation Assistance
Under Section 105(a)(11) of the Housing and Community Development Act of 1974, as amended, the MEDC may permit the UGLG to provide relocation payments and other relocation assistance to persons displaced by activities that are not subject to URA or Section 104(d) requirements.

The MEDC may also permit the UGLG to provide relocation assistance to displaced persons at levels in excess of those required by the URA or Section 104(d). Unless such assistance is provided under state or local law, the UGLG shall only provide such assistance after consultation with the MEDC.

The “Project”
The term project is defined as an activity or series of activities undertaken by a federal agency or with federal financial assistance received or anticipated in any phase of an undertaking.

Section 104(d) benefits are triggered if the activity is a CDBG- or HOME-funded activity and the HUD assisted activity is part of a larger, single undertaking. This last phrase is to prevent the UGLG from unreasonably splitting what is rightfully one project into two or more projects so that the buildings that don't involve displacement can be funded with CDBG dollars and the buildings that do involve displacement can be funded with non-CDBG dollars.

In order to determine whether a series of activities are a project, consider:

- **Timeframe**: Do activities take place within a reasonable timeframe of each other?
Objective: Is the single activity essential to the overall undertaking? If one piece is unfinished will the objective be incomplete?

Location: Do the activities take place on the same site?

Ownership: Are the activities carried out by, or on behalf of, a single entity?

Vacant Occupiable Dwelling Unit
The term "vacant occupiable dwelling unit" means:
- A vacant dwelling unit that is in a standard condition; OR
- A vacant dwelling unit that is in a substandard condition, but is suitable for rehabilitation; OR
- A dwelling unit in any condition that has been occupied (by a person with the legal right to occupy the property) at any time within the period beginning three months before the date of the execution of the agreement between the UGLG and the MEDC.

Section 3 - Relocation Policies and Procedures

Develop Written Policies and Procedures

Residential Anti-displacement and Relocation Assistance Plan (RARAP) Requirements
An UGLG receiving funds from the State must certify to the State that it has in effect, and is following, a RARAP and that the UGLG will minimize displacement of persons as a result of assisted activities (Form 7-A). The plan, which must be adopted and made public, must:

1) Indicate the steps the UGLG will take to minimize displacement; AND
2) Provide for relocation assistance in accordance with 24 CFR Part 42.350; AND
3) Provide for one-for-one replacement units to the extent required by 24 CFR Part 42.375.

The RARAP, along with the completed RARAP Checklist (Form 7-AL), must be submitted to the MEDC for review before moving forward.

Optional Temporary Relocation Policy Requirements for Voluntarily Displaced Residential Owner Occupants
If the UGLG chooses to provide optional temporary relocation assistance to owner-occupants, the UGLG must adopt an Optional Temporary Relocation Assistance Policy (Form 7-B). At a minimum, the policy must contain the following elements:

- Number of households expected to need temporary relocation services; AND
- Description of how much advance notice will be given for the move and return move and the estimated length of time the relocation will require per unit; AND
- Description of the types of anticipated temporary relocation costs to be incurred and reimbursed utilizing grant funds and the documentation that will be required for reimbursement; AND
- Description of how temporary relocation payments will be made; AND
- Description of how temporary units will be determined to be lead-free.

The determination of the amount of assistance to be provided must be reasonable. The adopted policy, along with the completed Adopted Optional Temporary Relocation Policy Checklist (Form 7-AM), must be submitted to your MEDC Program Specialist for review before moving forward.
Section 4 – URA and Section 104(d) Residential Relocation

The relocation assistance under the URA differs from the relocation assistance under Section 104(d). The term displaced person means any person that moves from the real property or moves his or her personal property from the real property, permanently, as a direct result of an assisted project.

To be eligible for Section 104(d) relocation assistance, a displaced person must be a lower income person who moves permanently, in connection with an assisted activity, as a direct result of the conversion of a Low- and Moderate-Income dwelling unit or the demolition of any dwelling unit.

The rules implementing the Section 104(d) relocation requirements for the State CDBG program are found at 24 CFR 570.496a(c)(2) and (3). Note LMI levels are set at 80 percent of the applicable AMI as adjusted by household size. HUD publishes the 80 percent of AMI figures for all Metropolitan Statistical Areas (MSA). If the UGLG is uncertain about which figures should apply to its project, the UGLG should contact the Program Specialist for clarification.

Persons eligible for assistance under Section 104(d) are by definition also eligible for URA assistance. As outlined below, the UGLG must assist the occupant in his or her decision making by informing the person of the amount of replacement housing assistance available under the URA and the amount of replacement housing assistance available under Section 104(d). In order to determine eligibility for relocation assistance under Section 104(d), the UGLG must obtain information on individual incomes (See Section 6, Step 7 on determining annual income and annual adjusted income).

Section 5 – Steps Required for both Residential and Non-Residential Persons the Agency Does Not Plan to Displace:

Step 1: Provide General Information Notice (GIN) to those that the Agency does not plan to displace and a Move-In Notice to those that may enter the unit after the decision has been made to use CDBG

GIN – Those Persons the Agency Does Not Plan to Displace

Some projects can involve both persons who are displaced and persons who are not displaced. If the occupant of a unit moves permanently from the property after the issuance of the MEDC Offer Letter, the occupant will be presumed to qualify as a displaced person (See Sections 6 for residential displacement requirements and Sections 7 and 8 for non-residential displacement requirements). To minimize such unintended displacements, HUD policy considers all occupants within a proposed CDBG-assisted project involving acquisition, rehabilitation, or demolition to be displaced for the purposes of issuing a GIN.

Immediately after the issuance of the MEDC Offer Letter, all occupants must be provided a GIN. For those persons the UGLG does not plan to displace, the GIN should be modified to explain that the project has been proposed, that the occupant will not be displaced, CAUTION the occupant not to move, and explain the consequences of moving on the occupant’s own (Hand deliver & obtain written acknowledgement of receipt or mail by certified or registered, first class mail, return receipt requested Form 7-H to residential occupants and Form 7-AD to non-residential occupants).
Residential Rent Burdened Occupants

If by staying in the project there is a possibility the occupant may become “rent burdened,” there are three options available to the UGLG:

- The UGLG can provide additional subsidies to make the unit affordable (e.g., tenant-based rental assistance); OR
- The owner can elect to limit rent increases for some units where the increase would result in a rent burden; OR
- If neither of the above options is feasible, the UGLG must consider the occupant a displaced person and issue a Notice of Eligibility for Relocation Assistance. If the occupant moves, the occupant is considered to be displaced by virtue of the activity that caused the rent to rise.

Note: Some rent-burdened tenants may elect to remain in the project and pay the higher rent. The tenant must be fully informed (via Notice of Eligibility for Relocation Assistance) of their rights to relocation assistance and sign an acknowledgement that they voluntarily relinquish any payments due under the URA.

Move-In Notice

In general, when projects involve relocation, it is not advisable for the property owner to take on new tenants after deciding to participate in a CDBG-assisted program, but if the property owner does take on new tenants, the property owner must provide such new tenants with a notice explaining that the new tenants will NOT have relocation rights and that the new tenants are agreeing to move-in knowing that they may have to be removed at a later date. This Notice is often referred to as the Move-in-Notice (Form 7-I for new residential and non-residential tenants).

Step 2: Provide Notice of Non-displacement

Immediately after the ION (discussed in Section 2 of this Chapter), a Notice of Non-displacement must be issued to those occupants that will not be displaced. The purpose of the notice is to advise persons not displaced of the UGLG’s determination and the occupants’ rights to appeal.

If tenants will be temporarily displaced and continued occupancy is possible upon completion of the project, the notice must explain the reasonable terms and conditions under which the occupant may continue to lease and/or occupy the property upon completion of the project and explain that the occupant will be reimbursed for all of the occupants’ reasonable extra expenses (Hand deliver & obtain written acknowledgement of receipt or mail by certified or registered, first class mail, return receipt requested Form 7-N for both residential and non-residential occupants). The updated regulations at 49 CFR 24.2(a)(9)(ii)(D) explicitly state that temporary relocation cannot exceed 12 months or the occupant must be offered permanent displacement assistance.

Optional Temporary Relocation Policy Requirements for Voluntarily Displaced Residential Owner-Occupants

An owner-occupant’s agreement to participate in the UGLG’s CDBG-funded program is considered a voluntary action under the State’s program guidelines and the URA guidelines, provided that code enforcement is not utilized to induce program participation of an owner-occupant. Title I of the Housing and Community Development Act of 1974, as amended, allows, but does not require that the UGLG provide optional temporary relocation assistance when URA requirements are not triggered.

When an owner occupant agrees to voluntarily participate in the UGLG’s CDBG-funded project and the UGLG decides to provide optional temporary relocation assistance, the MEDC requires that the UGLG:
Develop an Optional Temporary Relocation Assistance Policy (Form 7-B); AND

Provide a Notice of Non-displacement and a summary or copy of the Optional Temporary Relocation Assistance Policy to each affected household. Documentation of receipt must be retained in the UGLG’s files (Form 7-N); AND

Require the owner-occupant to complete the Claim for Optional Temporary Relocation Assistance (Form 7-O).

Lead-Based Paint Hazards Requirements for temporarily displaced residential occupants

The lead-based paint regulations (Title X of the 1992 Housing and Community Development Act) that went into effect on September 15, 2000, contain rules concerning the temporary relocation of residential occupants (renters and owners) before and during hazard reduction activities.

These regulations apply to both tenants and homeowners, though they involve different standards and procedures. Under the lead regulations, circumstances when temporary relocation is not required include:

- Treatment will not disturb lead-based paint, lead-contaminated dust, or soil lead hazards.
- Treatment of interior will be completed within one period in eight daytime hours, the site will be contained, and the work will not create other safety, health or environmental hazards.
- Only the building’s exterior is treated; the windows, doors, ventilation intakes, and other openings near the work site are sealed during hazard reduction activities and cleaned afterward;
- Treatment will be completed within five calendar days; the work area is sealed; at the end of each day, the area within 10 feet of the contaminant area is cleared of debris; at the end of each day, occupants have safe access to sleeping areas, bathroom, and kitchen facilities; and treatment does not create other safety, health or environmental hazards.

Under the state CDBG program, rehabilitation of owner-occupied units is considered voluntary. Therefore, the relocation requirements of the URA do not apply regardless of whether or not the unit is being treated for lead-based paint. Any payments made on an owner-occupants’ behalf would be addressed in an Optional Relocation Policy. To implement this policy, the UGLG must adopt the Optional Temporary Relocation Assistance Policy (Form 7-B). The rehabilitation of tenant-occupied units is not considered voluntary so the displacement requirements in Section 6 apply.

The lead rule further requires that temporary dwelling units not have lead-based paint hazards. Therefore, the UGLG is required to ensure that dwelling units used for temporary relocation are lead safe. This means ensuring that temporary dwelling units were built after 1978 or are visually inspected to ensure no lead hazards are present. If an owner-occupant chooses to move to a temporary dwelling unit that does not pass a visual inspection or cannot otherwise be determined to be lead safe, the owner occupant should be required to sign a Release of Liability (Form 7-U). Elderly residents residing in units undergoing lead reduction activities may waive their rights to temporary relocation assistance but only if the UGLG obtains a written and signed Elderly Waiver for Temporary Relocation form (Form 7-V).

Temporary Relocation of Businesses

Sometimes CDBG projects may require a business to shut down temporarily. For example, some infrastructure projects may require that a street be torn up and the business may shut down for the...
duration of the project. The UGLG may have to temporarily relocate the business for a period of time that it is unable to operate due to displacement.

UGLGs must exercise caution and plan accordingly if a proposed project requires a business to temporarily cease operations. The UGLG should notify MEDC prior to taking any action if the UGLG believes that the business will be temporarily relocated. In the event a business must be shut down for any length of time due to rehabilitation of a site or building, it may either be:

- Temporarily relocated and reimbursed for all reasonable out of pocket expenses; OR
- Determined to be permanently displaced at the UGLG’s option.

Record Keeping
UGLGs are required to keep thorough records on occupants that were displaced as well as occupants that were not displaced (Form 7-AA or 7-AI). The UGLG must be able to reconcile the available information based on the persons that remained in occupancy, the persons that were displaced and received relocation assistance, and the persons that elected to relocate permanently even though not displaced.

All notices must either be hand delivered or mailed via certified or registered, first-class mail, return receipt requested. The return receipt must be affixed to each individual case file. If hand-delivered, a written acknowledgment of receipt must be obtained from the addressee.

Records for Persons/Businesses Not Displaced
The UGLG must also maintain a separate case file on each person not displaced. The case file must contain the following:

- Evidence that each person received a timely GIN indicating that he/she would not be displaced by the project (Signed Form 7-H or Form 7-AD with return receipt or written acknowledgement).
- Evidence that each person received a timely Notice of Non-displacement, including an offer of: (1) a reasonable opportunity to lease and occupy a suitable, affordable, decent, safe and sanitary unit on the real property; and (2) reimbursement of any out-of-pocket expenses incurred in connection with any temporary relocation or move to another unit on the real property (Signed Form 7-N with return receipt or written acknowledgement).
  - To ensure that the person does not have a basis for filing a claim for relocation payments, this is especially important for persons not displaced who elected to move permanently from the real property.

All related documentation/communication, along with the completed Non-displacement Checklist (Form 7-AN) must be submitted to your Program Specialist for review.

Records for Optional Temporary Relocation Assistance Policy
Refer to Section 3 of this chapter and Checklist 7-AM.

Records for Optional Temporary Relocation Assistance to voluntarily displaced residential owner occupants
The UGLG must establish individual case files for assistance provided under the UGLG’s Optional Temporary Relocation Assistance Policy. At a minimum, each case file must contain the following:

- Name of homeowner being temporarily displaced.
- Address of unit being rehabilitated.
- Address of replacement dwelling unit.
- Copies of all financial records attributable to the relocatee during the temporary displacement.
- Date relocatee(s) occupied the temporary unit and returned to the rehabilitated dwelling.
- Inspections of the condition of the relocation dwelling upon evacuation and prior to occupying the temporary unit, and
- All invoices for temporary relocation costs including all utility charges during the relocation and any other charges directly attributable to the temporary displacement.

Section 6 – Steps required for Residential Persons the Agency Plans to Displace

**Step 1: Provide GIN to those that the Agency plans to displace and a Move-In Notice to those that may enter the unit after the decision has been made to use CDBG**

**GIN – Those Persons That May Be Displaced**

Some projects can involve both persons who are displaced and persons who are not displaced. According to the URA regulations, persons who are scheduled to be displaced must be provided with a GIN as soon as feasible. If an occupant of a dwelling moves permanently from the property after the issuance of the MEDC Offer Letter, the occupant will be presumed to qualify as a displaced person. To minimize such unintended displacements, HUD policy considers all occupants within a proposed CDBG-assisted project involving acquisition, rehabilitation, or demolition to be displaced for the purpose of issuing a GIN.

Immediately after the issuance of the MEDC Offer Letter, all occupants must be provided with a GIN (See Section 5 for those not being displaced). For those persons the UGLG plans to displace, the GIN should notify each household that the potential for displacement exists and provide the occupant with general information. The occupant must be informed not to move prematurely (unless in their own judgment such a move would be the most beneficial for them, e.g. they are moving to another city for employment, etc.) because doing so will jeopardize any relocation assistance they might otherwise receive (Hand deliver & obtain written acknowledgement of receipt or mail by certified or registered, first class mail, return receipt requested Form 7-C or 7-D, along with the appropriate HUD Information Booklet [Form 7-E, 7-F, or 7-G]).

**Move-In Notice**

In general, when projects involve relocation, it is not advisable for the property owner to take on new tenants after deciding to participate in a CDBG-assisted program, but if the property owner does take on new tenants, the property owner must provide such new tenants with a notice explaining that the new tenants will NOT have relocation rights and that the new tenants are agreeing to move-in knowing that they may have to be removed at a later date. This Notice is often referred to as the Move-in-Notice (Form 7-I).

**Step 2: Provide Advisory Services**
The next step in the process is to provide relocation advisory services. This process requires the UGLG to personally interview the occupants to be displaced (Forms 7-W and 7-X). The purpose of the interview is to explain the:

- Various payments and types of assistance available; AND
- Conditions of eligibility; AND
- Filing procedures; AND
- Basis for determining the maximum housing assistance payment available.

After the initial interview, the UGLG must work with the occupants that will be displaced throughout the relocation process to ensure the occupants are provided appropriate and required advisory services.

The UGLG must make referrals to replacement dwelling units (comparables); inspect the comparables prior to making referrals to determine if the units are in standard condition (including ensuring they are lead-based paint safe, if required by local law); provide counseling; provide technical assistance; and provide appropriate referrals to social service agencies. The final rule clarifies that the UGLG must also offer transportation to all displaced occupants to enable them to inspect replacement dwelling units.

When an occupant is either minority and/or LMI, every effort must be made to ensure that referrals are made to comparables located outside of areas of minority concentration and/or LMI concentration, if feasible.

The UGLG must provide current and continuing information on the availability, purchase price or rental cost, and location of comparable replacement dwelling units (see the section below for more information on comparable replacement dwelling units).

**Step 3: Identify Comparable Replacement Dwelling Units**

As noted above, the UGLG must work with occupants that are slated for permanent displacement to identify comparable replacement dwelling units for the occupants. The regulations at 49 CFR Part 24.204 stipulate that no person is to be displaced unless at least one, and preferably three, comparable replacement dwelling units are made available to the potential displacee (Forms 7-Y and 7-Z). A comparable replacement dwelling unit is:

- Decent, safe, and sanitary according to local housing and occupancy codes (including being lead-based paint safe, if required by local law). The dwelling shall be structurally sound, contain a safe wiring system, contain a heating system that can maintain a healthful temperature, be adequate in size, include a separate well-lighted bathroom, include unobstructed egress, and for persons with disability, be free of barriers; AND
- Functionally equivalent to the displacement dwelling unit; AND
- Adequate in size to accommodate the occupants; AND
- In a location generally not subject to unreasonable adverse environmental conditions.
- In a location not less desirable than the location of the person’s displacement dwelling unit with respect to public utilities, and commercial and public facilities, and reasonably accessible to the person’s place of employment; AND
On a site that is typical in size for residential development with normal site improvements; AND
Currently available to the displaced person on the private market; AND
Within the financial means of the displaced person.

If a person received government housing assistance before displacement, the comparable replacement dwelling unit may reflect similar government housing assistance. In these cases, the requirements of the government program related to the household’s unit size shall apply.

**Step 4: Provide Notice of Eligibility for Relocation or Notice of Non-Eligibility**

**Notice of Eligibility for Relocation**

As the UGLG counsels those occupants to be displaced of their options and identifies replacement dwelling units when appropriate, the UGLG must formally determine which occupants will be permanently displaced and have relocation rights.

Immediately after the ION (discussed in Section 2 of this Chapter), a Notice of Eligibility for Relocation Assistance must be issued to those occupants that will be permanently displaced. The notice must identify the cost and location of the comparable replacement dwelling units (Hand deliver & obtain written acknowledgement of receipt or mail by certified or registered, first class mail, return receipt requested Forms 7-J, 7-K, 7-L, or 7-M).

**Notice of Non-Eligibility**

Immediately after the ION (discussed in Section 2 of this Chapter), the UGLG must provide a notice to occupants that do not meet the requirements to receive relocation assistance, i.e., where the individual or family has no legal right to occupy the property (a squatter); or where the individual or family is subject to eviction for serious or repeated violation of the terms and conditions of the lease or occupancy agreement; violation of applicable federal, state or local law; or other good cause. The notice must explain that they do NOT qualify for relocation benefits and explain the occupants’ rights to appeal (Form 7-P). In these cases, the UGLG may pursue the necessary legal proceedings to remove the occupants from the property.

In those instances where assistance is flowing to a private property and it is the property owner that has reason to believe a tenant has no legal standing or is subject to a legal eviction, the property owner must inform the UGLG and receive direct approval before providing the occupant with official notice of ineligibility and proceeding with any eviction actions.

Note on ION: The ION differs by type of activity. When the UGLG is providing funding to a private entity for acquisition, rehabilitation, or demolition, the ION is the later of the date of the execution of the grant agreement between the MSF and the UGLG or the execution of the agreement covering the rehabilitation, demolition or acquisition.

**Step 5: Assist Displacees in Selecting Replacement Dwelling Units**

Before any displacement can take place, the displacee must be given the opportunity to select their replacement dwelling unit. As will be outlined in Step 7, an important part of this selection process is an evaluation by the displacee of the payment they are slated to receive and the impact that payment – and the new monthly housing payment they will be required to make - will have on their day-to-day finances.
Note: As outlined below, for individuals or families covered by both the URA and Section 104(d), this payment may differ depending on which process the displacee selects. Displacees will not be required to select one of the comparable dwelling units that have been identified for them, but their relocation assistance payment may be based on the costs of those comparable dwelling units. If the displacee selects a replacement dwelling unit that is not part of a list of comparable dwelling units, the displacee must work with the UGLG to have an inspection performed to ensure that the replacement dwelling unit meets the standards as decent, safe, and sanitary.

**Step 6: Issue Notice to Vacate**

Once the displacee has been shown the comparable dwelling units and has selected a replacement dwelling unit, the UGLG may initiate the eviction process. At the proper time, the first step is to issue what is known as a 90-Day Notice to Vacate. At a minimum, the 90-Day Notice must either state a specific date as the earliest date by which an occupant will be required to move, or state that the occupant will receive further notice, at least 30 days in advance, indicating the specific date by which to move. The URA regulations prohibit the UGLG from issuing the 90-Day Notice prior to identifying the necessary comparable dwelling units.

**Step 7: Pay Necessary Replacement Housing and Moving Expenses**

Displaced persons are entitled to assistance to help them move into and reside in replacement dwelling units. This assistance may include both Replacement Housing Payments (RHPs) and moving expenses. In order to receive a reimbursement or advance for any such expenses, the displaced persons must submit the applicable claim form to the UGLG (Forms 7-Q, 7-R, 7-S and 7-T).

There are substantive differences between the calculation of payments under the URA and Section 104(d). A summary of the payments for both the URA and Section 104(d) is provided below:

**Replacement Housing Payments (RHP) under URA**

In some instances, a comparable replacement dwelling unit may not be available within the established monetary limits for owners or tenants, as specified in 49 CFR Part 24.401 and 24.402. As appropriate, the UGLG must provide additional or alternative financial assistance as required by 49 CFR Part 24.404(a). The RHP is intended to provide affordable housing for a 42-month period.

NOTE: The following two changes to the URA become effective on October 1, 2014:

1. Length of occupancy requirement to receive a Replacement Housing Payment for homeowner-occupants is reduced from 180 days to 90 days.
2. The maximum Replacement Housing Payment for 90 day (formerly 180 day) homeowner-occupants is increased from $22,500 to $31,000.
3. The maximum Replacement Housing Payment for 90 day residential tenants is increased from $5,250 to $7,200.

**RHP for 180-Day (90 Day as of 10/1/14) Homeowners**

Only homeowner-occupants whose property is being involuntarily acquired and who have been in residency for 180 days (90 days as of 10/1/14) prior to an offer to purchase their home are eligible for a 180-day (90 day as of 10/1/14) homeowner replacement housing payment. If homeowners were in occupancy for less than 180 days (90 days as of 10/1/14) prior to an offer to purchase their home, the homeowners are protected by the URA but the RHP is calculated using the same method used for tenants (49 CFR 24.401).
Note: If a homeowner occupies a property being acquired using voluntary acquisition requirements, the property owner is NOT eligible for relocation benefits.

The 180-day (90 day as of 10/1/14) homeowner RHP is the sum of:

- The lesser of: the cost of the comparable or the cost of the actual replacement unit; AND
- Additional mortgage financing cost; AND
- Reasonable expenses incidental to the purchase of the replacement dwelling.

To calculate the replacement housing payment for a 180-day (90 day as of 10/1/14) homeowner, the UGLG must use the HUD claim form (Form 7-R). In order to qualify for a RHP as a displaced owner-occupant of 180 days (90 days as of 10/1/14), the displaced homeowner must purchase and occupy the replacement unit.

If an owner elects to become a renter, the RHP is based on rental assistance and the RHP cannot exceed the amount the occupant would otherwise have received as an owner.

Although the URA regulations mention a $22,500 ($31,000 as of 10/1/14) limitation on payments, the regulations also require that persons receive the full amount needed to enable them to afford their replacement dwelling unit. Therefore, occupants are entitled to the full 42 months of assistance even though the amount may exceed $22,500 ($31,000 as of 10/1/14).

RHP for Displaced Tenants

The RHP that displaced occupants receive varies depending upon whether the occupant was in occupancy more or fewer than 90 days prior to the date of execution of the purchase agreement (Forms 7-S or 7-T).

The payment to which the occupants are entitled is the difference between the household's current housing expense (known as the base monthly rent) and the cost of a replacement dwelling unit (rent-to-rent calculation). The price of the replacement dwelling unit is calculated using the lower of the cost of the occupants’ actual replacement unit (including estimated utilities) or a comparable replacement dwelling unit (see the previous discussion on comparable dwelling units).

If the UGLG fails to make a timely offer of a comparable replacement dwelling unit and a displaced household moves to a standard replacement dwelling unit, the RHP is based on the cost of that actual replacement dwelling unit and cannot be capped by the rent of the comparable dwelling unit.

Although the URA regulations mention a $5,250 ($7,200 as of 10/1/14) limitation on payments, the regulations also require that persons receive the full amount needed to enable them to afford their replacement dwelling unit. Therefore, occupants are entitled to the full 42 months of assistance even though the amount may exceed $5,250 ($7,200 as of 10/1/14).

**Purchase assistance:** Cash rental assistance must be provided in installments, unless the occupant wishes to purchase a home. If the displaced occupant wishes to purchase a home, the payment must be provided in a lump sum so that the funds can be used for a down payment. The amount of cash rental assistance to be provided is based on a one-time calculation. The payment is not adjusted to reflect subsequent changes in an occupant’s income, rent/utility costs, or family size.
Tenant-Based Rental Assistance (TBRA): If available, the UGLG may offer tenant-based rental assistance (TBRA) instead of the cash RHP. It is up to the occupant to determine whether he or she wishes to take the TBRA instead of the cash. If the occupant is provided a housing voucher and the rent/utility cost for a replacement dwelling unit (actual or comparable replacement dwelling unit, whichever is less costly) exceeds the payment standard, the tenant will qualify for cash rental assistance in addition to the Section 8 assistance to cover the gap.

Note: A displaced household will not be able to receive a RHP until the UGLG has inspected the replacement dwelling unit and found it to be decent, safe, and sanitary.

RHP under Section 104(d)
Under Section 104(d), the RHP is intended to provide affordable housing for a 60-month period. As noted above, occupants eligible for assistance under Section 104(d) are also by definition, eligible for URA assistance. In order for such occupants to make an informed decision, the UGLG must determine and inform the occupant of the amount of replacement housing assistance available under Section 104(d) and the amount of replacement housing assistance available under the URA.

RHP for Section 104(d) 180-Day (90 day as of 10/1/14) Homeowners
The RHP for a Section 104(d) 180 day (90 day as of 10/1/14) homeowner is the same as the URA RHP explained earlier in Step 7 (Form 7-R)

RHP for Section 104(d) Displaced Tenants
The Section 104(d) RHP differs from the URA RHP as follows:

- The 104(d) RHP is intended to provide affordable housing for a 60-month period. There is no cap on the 104(d) RHP.
- The 104(d) RHP makes up (for a 60-month period) the difference between:
  - The rent and utility costs for the replacement dwelling unit (or comparable); AND
  - The tenant's total tenant payment as explained below.

Under Section 104(d), the Total Tenant Payment (TTP) is used to establish the amount of replacement housing assistance necessary to reduce the monthly rent and estimated average monthly utility costs for a replacement dwelling unit to the TTP. The TTP is the highest of:

- 30 percent of the person's monthly adjusted income; OR
- 10 percent of the person's monthly gross income; AND
- The designated allowance for rent/utility costs, if the person is receiving welfare assistance from a public agency and a part of such assistance is specifically designated for the person's rent and utility costs.

Section 104(d) uses the methodology at 24 CFR 42.350(e) to calculate monthly tenant payments for replacement housing assistance. That Section references the definition of “total tenant payment” at 24 CFR part 813, which is now at 24 CFR 5.628, and is based on:

- Annual income (24 CFR 5.609). Annual Income is generally the total income of the person from all sources including net income derived from assets, anticipated to be received in the 12-month period following the effective date of the income certification.
Adjusted income (24 CFR 5.611). Adjusted Income means annual income after making deductions such as:

- $480 for each dependent;
- $400 for any elderly family or disabled family;
- Unreimbursed medical expenses that exceed 3% of annual income;
- Unreimbursed attendant care and auxiliary apparatus expenses for disabled family members to the extent necessary for the family member to be employed;
- Child care

Refer to HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition for the definition of income or the references cited above. When verifying income, the UGLG is responsible for determining if the documentation of income is adequate and credible.

**Purchase assistance:** If the displaced person under 104(d) purchases an interest in a housing cooperative or mutual housing association, and occupies a decent, safe, and sanitary dwelling in the cooperative or association, the person may elect to receive a lump sum payment. This lump sum payment shall be equal to the capitalized value of 60 monthly installments of the amount that is obtained by subtracting the total tenant payment from the monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling unit.

To compute the capitalized value, the installments shall be discounted at the rate of interest paid on passbook savings deposits by a federally insured bank or savings and loan institution conducting business in the jurisdiction.

To the extent necessary to minimize hardship to the person the UGLG shall, subject to appropriate safeguards, issue a payment in advance of the purchase of the interest in the housing cooperative or mutual housing association.

**TBRA:** Under 104(d), the UGLG has the option to offer all or a portion of the TBRA through a Section 8 certificate or housing voucher, if it is available under Section 8 preference requirements and the UGLG provides referrals to comparable replacement dwelling units where the owner is willing to participate in the Section 8 existing housing program.

If a person then refuses Section 8 assistance, the UGLG has satisfied the Section 104(d) replacement housing assistance requirements. In such case, the displaced person may seek URA replacement housing assistance.

**Moving Expenses Under the URA**
Displaced households may use three different ways to determine a payment for moving and related expenses (Form 7-Q) by:

- Using a professional commercial mover; OR
- Receiving reimbursement of actual expenses; OR
- Receiving a fixed moving expense and dislocation allowance based upon a schedule established by the Federal Highway Administration (FHA). The fixed rates can be found under the Publications tab on the FHA’s website: [Fixed Residential Move Cost Schedule](#).
Each Moving Expense Option is briefly explained below:

Commercial move: A displaced person may, at his or her discretion, choose to hire a professional commercial mover based on the lower of two bids or estimates prepared by two different commercial movers. At the UGLG’s discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate.

Actual Expenses: As an alternative to hiring a professional commercial mover, the displaced person may choose to be reimbursed for actual moving expenses. Based upon the UGLG’s determination that the expenses are reasonable and necessary, moving and related expense payments may include:

- Transportation of the displaced person and personal property; AND
  - Transportation costs for a distance beyond 50 miles are not eligible, unless the UGLG determines that relocation beyond 50 miles is justified
- Packing, crating, uncrating, and unpacking of the personal property; AND
- Storage of the personal property for a period not to exceed 12 months, unless the UGLG determines that a longer period is necessary; AND
- Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, and other personal property; AND
- Insurance for the replacement value of the property in connection with the move and necessary storage; AND
- The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft or damage is not reasonably available; AND
- Credit checks; AND
- Utility hook-ups, including reinstallation of telephone and cable service; AND
- Other costs as determined by the agency to be reasonable and necessary.

Ineligible expenses include:

- Interest on a loan to cover moving expenses; AND
- Personal injury; AND
- Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the agency; AND
- The cost of moving any structure or other real property improvement in which the displaced person reserved ownership; AND
- Refundable security or utility deposits; AND
- Costs for storage of personal property on real property owned or leased by the displaced person before the initiation of negotiations.

Fixed Moving Expense and Dislocation Allowance: An occupant displaced from a dwelling or a seasonal residence may, at his or her discretion, choose to receive a moving expense and dislocation allowance as an alternative to a payment for actual reasonable moving and related expenses. This allowance is determined according to the applicable schedule of allowances published
Moving Expenses under Section 104(d)
Under Section 104(d), each displaced person is entitled to the URA moving expenses listed above and the following additional moving expenses:

- **Security Deposits**: The reasonable and necessary cost of any security deposit required to rent the replacement dwelling unit; AND

- **Interim living costs**: The occupant shall be reimbursed for actual reasonable out-of-pocket costs incurred in connection with temporary relocation, including moving expenses and increased housing costs, if the occupant must relocate temporarily because continued occupancy of the dwelling unit constitutes a substantial danger to the health or safety of the occupant or the public.

Record Keeping
UGLGs are required to keep thorough records on occupants that were displaced as well as occupants that were not displaced (Form 7-AH and 7-AI). The UGLG must be able to reconcile the available information based on the persons that remained in occupancy, the persons that were displaced and received relocation assistance, and the persons that elected to relocate permanently even though not displaced.

All notices must either be hand delivered or mailed via certified or registered, first-class mail, return receipt requested. The return receipt must be affixed to each individual case file. If hand-delivered, a written acknowledgment of receipt must be obtained from the addressee.

Records for Displaced Persons
The UGLG must maintain a separate case file on each displaced person. The case file must contain the following:

- Identification of person, address, racial/ethnic group classification, age and sex of all members of the household, household income, monthly rent and utility costs (if the unit is a dwelling), type of enterprise (if non-residential), and person's relocation needs and preferences (Form 7-W).

- Evidence that the person received a timely GIN and a general description of the relocation payments and advisory services for which he/she may be eligible, basic eligibility conditions, and procedures for obtaining payments (Signed Form 7-C or 7-D and 7-E, 7-F, or 7-G with return receipt or written acknowledgement).

- Evidence that the person received a timely, written Notice of Eligibility for Relocation Assistance and, for those displaced from a dwelling, the specific comparable replacement and the related cost to be used to establish the upper limit of the RHP (Signed Form 7-J, 7-K, 7-L, or 7-M with return receipt or written acknowledgement).

- Evidence of dates of personal contacts and a description of the services offered and provided (Form 7-X).

- Identification of referrals to replacement properties, date of referrals, rents/utility costs (if rental dwelling), date of availability and reason(s) person declined referral (Form 7-Y).
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- Identification of actual replacement property, rent/utility cost (if rental dwelling) and date of relocation.
- Replacement dwelling inspection report and date of inspection.
- A copy of each approved claim form and related documentation, evidence that the person received payment and if applicable, the Section 8 Certificate or Housing Voucher (Form 7-Q, 7-R, 7-S, 7-T).
- A copy of any appeal or complaint filed and the UGLG response.

All related documentation/communication, along with the completed Displacement Checklist (Form 7-AO) must be submitted to your Program Specialist for review.

Section 7 – Non-Residential Relocation

Displaced businesses are entitled to receive notices, advisory services and financial benefits under the URA similar to those received by displaced residential persons.

Note: Section 104 of the Housing and Community Development Act does not apply to business relocation.

For the purposes of the URA, a business is defined as one of the following:

- A for-profit business, engaged in any lawful activity involving purchase, sale of goods or services, manufacturing, processing, marketing, rental of property, or outdoor advertising when the display must be moved.
- A non-profit organization, such as a church or social service agency.
- A farm operation.

To qualify for benefits, the business must meet the definition of a “displaced person” discussed earlier in this chapter. It must move permanently as a direct result of a CDBG-assisted project involving acquisition, rehabilitation, or demolition. The URA provides coverage for business owners (whether they are on-site or not), for owner/occupants of a business, and for tenants operating a business in rented space.

NOTE: The following changes to the URA became effective on October 1, 2014:

1. The maximum Reestablishment Expense Payment was increased from $10,000 to $25,000.
2. The maximum Fixed Moving Expense Payment was increased from $20,000 to $40,000.

Section 8 – Steps required for Non-Residential Persons the Agency plans to displace:

Step 1: Provide General Information Notice (GIN) to those that may be displaced and those that may enter the unit after the decision has been made to use CDBG

GIN – Those Persons the Agency plans to displace

According to the URA regulations, persons who are scheduled to be displaced must be provided with a GIN as soon as feasible. Some projects can involve both persons who are displaced and persons who
are not displaced. If the tenant of a unit moves permanently from the property after the issuance of the MEDC Offer Letter, the tenant will be presumed to qualify as a displaced person. To minimize such unintended displacements, HUD policy considers all occupants within a proposed CDBG-assisted project involving acquisition, rehabilitation, or demolition to be displaced for the purposes of issuing a GIN.

Immediately after the issuance of the MEDC Offer Letter, all occupants must be provided with a GIN (See Section 5 for non-displacement GIN requirements). For those persons the UGLG plans to displace, the GIN should be tailored to the situation. Each occupant must be notified of the potential for displacement and provide the occupant with general information. The occupant must be informed not to move prematurely (unless in their own judgment such a move would be the most beneficial for them) because doing so will jeopardize any relocation assistance they might otherwise receive (Hand deliver & obtain written acknowledgement of receipt or mail by certified or registered, first class mail, return receipt requested Form 7-AB, along with the appropriate HUD Information Booklet [Form 7-AC]).

The business must be told as soon as possible that they are required to:

- Allow inspections of both the current and replacement sites by the UGLG’s representatives, under reasonable terms and conditions.
- Keep the UGLG informed of their plans and schedules.
- Notify the UGLG of the date and time they plan to move (unless this requirement is waived).
- Provide the UGLG with a list of the property to be moved or sold.

The UGLG needs to be aware of when a property will be vacated. In many situations, the UGLG must be on-site during a business move to provide technical assistance and represent the UGLG’s interests. Any property not sold, traded, or moved by the business becomes the property of the agency in accordance with state law.

To be certain that the move takes place at a reasonable cost, an inventory containing a detailed itemization of personal property to be moved should be prepared. The UGLG should verify this inventory and use it as a basis of comparison with bids or estimates and eventual requests for payment.

**Move-In Notice**

In general, when projects involve relocation, it is not advisable for the property owner to take on new tenants after deciding to participate in a CDBG-assisted program, but if the property owner does take on new tenants, the property owner must provide such new tenants with a notice explaining that the new tenants will NOT have relocation rights and that the new tenants are agreeing to move-in knowing that they may have to be removed at a later date. This Notice is often referred to as the Move-in-Notice (Form 7-I).

**Step 2: Advisory Services, including the identification of replacement locations**

Non-residential moves are often complex. The UGLG is encouraged to begin early to work closely with business owners to determine their relocation needs and preferences (Forms 7-AH and 7-X). Displaced businesses are entitled to all of the following:

- Information about the upcoming project and the earliest date they will have to vacate the property; AND
A complete explanation of their eligibility for relocation benefits and assistance to understand their best alternatives. This shall include a personal interview with each business, which at a minimum, should include the following items:

- The business’s replacement site requirements, current lease terms and other contractual obligations, and the financial capacity of the business to accomplish the move.
- Determination of the need for outside specialists in accordance with 24.301(g)(12) that will be required to assist in planning the move, assistance in the actual move, and in the reinstallation of machinery and/or other personal property.
- An identification and resolution of personality/realty issues prior to or at the time of the appraisal of the property.
- An estimate of the time required for the business to vacate the site.
- An estimate of the anticipated difficulty in locating a replacement property.
- An identification of any advance relocation payments required for the move, and the UGLG’s legal capacity to provide the payments.
- Assistance in complying with the required procedures to receive payments.
- Current information on the availability and cost to purchase or to rent suitable replacement locations.
- Technical assistance, including referrals, to help the business obtain an alternative location and become reestablished.
- Referrals for assistance from state or federal programs, such as those provided by the Small Business Administration, that may help the business re-establish, and help in applying for funds.
- Assistance in completing relocation claim forms.

**Step 3: Provide Notice of Eligibility for Relocation or Notice of Non-Eligibility**

**Notice of Eligibility for Relocation**
As previously described in the Residential Section, the UGLG must counsel those occupants to be displaced of their options and formally determine which occupants will be permanently displaced and have relocation rights.

Immediately after the ION (discussed in Section 2 of this Chapter), a Notice of Eligibility for Relocation Assistance must be issued to these occupants. The notice must identify the cost and location of the comparable replacement locations (Form 7-AE).

**Notice of Non-Eligibility**
Immediately after the ION (discussed in Section 2 of this Chapter), the UGLG must provide a notice (Form 7-P) to occupants that do not meet the requirements to receive relocation assistance, i.e., where the business has no legal right to occupy the property (a squatter); or where the business is subject to eviction for serious or repeated violation of the terms and conditions of the lease or occupancy agreement; violation of applicable federal, state or local law; or other good cause. The notice must explain that they do NOT qualify for relocation benefits. In these cases, the UGLG may pursue the necessary legal proceedings to remove the occupants from the property.
In those instances where assistance is flowing to a private property and it is the property owner that has reason to believe a tenant has no legal standing or is subject to a legal eviction, the property owner must inform the UGLG and receive direct approval before providing the occupant with official notice of ineligibility and proceeding with any eviction actions.

Note on ION: When the UGLG is providing funding to a private entity for rehabilitation, acquisition, or demolition, the ION is the later of the execution of the grant agreement between the MSF and the UGLG or the execution of the agreement covering the rehabilitation, demolition or acquisition.

**Step 4: Pay Necessary Reestablishment and Moving Expenses**

Displaced persons are entitled to assistance to help them move into and occupy a replacement location. This assistance may include both moving expenses and reestablishment expenses. In order to receive a reimbursement or advance for any such expenses, the displaced business must submit the applicable claim form to the UGLG. (Form 7-AF or 7-AG).

**Business versus Residential Benefits**

URA coverage for moving expenses is similar for residential and non-residential displacees:

- Qualified businesses may choose between a fixed payment or an actual moving expense. Only certain businesses qualify for a fixed payment. The fixed payment is based on a formula, rather than a schedule.
- Actual moving expenses for businesses provide for a limited re-establishment payment, similar to a RHP.

There are differences between coverage for residential and non-residential displacees:

- Businesses may issue a 90-day Notice to move without a referral to a comparable site. Businesses are not entitled to temporary moving expenses, although an UGLG using CDBG or HOME funds for the project may provide these benefits through an Optional Relocation Policy, if it is appropriate. In the event a business must be shut down for any length of time due to rehabilitation of a site or building, it may either be temporarily relocated and be reimbursed for all reasonable out of pocket expenses or be determined to be permanently displaced at the UGLG’s option (See Section 3/Form 7-B).
- Displaced businesses do **not** trigger 104(d) requirements.
- Owners or tenants who have paid for improvements will be compensated for their real property under acquisition rules. A complete, thorough appraisal is essential to making these decisions.

**Reimbursement of Actual Moving Expenses**

Any displaced business is eligible for reimbursement of reasonable, necessary actual moving expenses (Form 7-AF). Only businesses that choose actual moving expenses versus a fixed payment are eligible for a reestablishment expense payment. The UGLG should not place additional hardships on businesses, but they can limit the amount of payment for actual moving expenses based on a least-cost approach.

The revised regulations at 49 CFR 24.301(e) state that a business’s personal property may be moved by one or a combination of the following methods:

**Commercial move:** Based on the lower of two bids or estimates prepared by a commercial mover. At the UGLG’s discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate.
Self-move: A self-move payment may be based on one or a combination of the following:

- The lower of two bids or estimates prepared by two different commercial movers. At the UGLG’s discretion, payment for a low cost or uncomplicated move may be based on a single bid or estimate.
- Supported by receipted bills for labor and equipment - Hourly labor rates should not exceed the rates paid by a commercial mover to employees performing the same activity, and equipment rental fees should be based on the actual rental cost of the equipment, not to exceed the cost paid by a commercial mover.

Eligible expenses include:

- Transportation of personal property; AND
- Packing, crating, uncrating, and unpacking of personal property; AND
- Disconnecting, dismantling, removing, reinstalling machinery, equipment, and personal property; AND
- Storage of personal property; AND
- Insurance for replacement value of personal property in connection with the move and/or storage; AND
- The replacement value of property lost, stolen or damaged in the process of moving where insurance is not reasonably available; AND
- Any license, permit, fees or certification required at the new location; AND
- Professional services to plan the move; move the personal property or install the personal property at the new location; AND
- Re-lettering signs and replacing existing stationery that is obsolete due to the displacement; AND
- Reasonable costs incurred while attempting to sell items that will not be relocated; AND
- A business is eligible for either a Direct Loss or Substitute Equipment payment if the displacee will leave or replace personal property. A business can accept either of these (but not both) for an item.
  - A Direct Loss payment can be made for the loss of personal property due to moving or discontinuing the business or nonprofit or farm. The business must make a good faith effort to sell the personal property (unless the UGLG determines it is unnecessary) in order to be eligible for a Direct Loss payment. A Direct Loss payment is based on the lesser of:
    - The market value of the item for continued use at the displacement site, minus its sales price; OR
    - The estimated cost to move the item without allowance for storage. If the business is discontinuing, the cost to move is based on a moving distance of 50 miles.
  - A Substitute Equipment payment can be made when an item used by the business, nonprofit, or farm is left in place, but is promptly replaced with a substitute item that performs a comparable function at the new site. A Substitute Equipment payment is based on the lesser of:
• The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; OR

• The estimated cost to move and reinstall the item, but with no allowance for storage. Please note: When the personal property to be moved is of low value and high bulk, and the cost of moving the property would be disproportionate to its value in the judgment of the displacing UGLG, the allowable moving cost payment shall not exceed the lesser of: (1) the amount which would be received if the property were sold at the site or (2) the replacement cost of a comparable quantity delivered to the new business location. Examples include, but are not limited to, stockpiled sand, gravel, minerals, metals and other similar items of personal property as determined by UGLG.

  ▪ Certain costs incurred while searching for a replacement location are also eligible. Businesses are entitled to reimbursement up to $2,500. The UGLG can pay more than this if the UGLG believes the amount is justified. Costs may include reasonable levels of items such as:
    – Transportation.
    – Meals and lodging away from home.
    – Time spent while searching for a site, based on a reasonable pay salary or earnings.
    – Fees paid to a real estate agent or broker while searching for the site (note that commissions related to the purchase are not eligible costs), and
    – Advertising signs.

The UGLG may pay other moving and related expenses that the UGLG determines are reasonable and necessary and are not listed as ineligible. Payment of other reasonable and necessary expenses may be limited by the UGLG to the amount determined to be least costly without causing the business undue hardship.

In addition to the eligible expenses for moving personal property listed above, the following items are also eligible moving expenses if the UGLG determines they are actual, reasonable, and necessary:

  ▪ Connection to available, nearby utilities from the right-of-way to improvements at the replacement site.

  ▪ Professional services (based on a reasonable agency pre-approved hourly rate) performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person’s business operation including but not limited to, soil testing, feasibility, and marketing studies (excluding any fees or commissions directly related to the purchase or lease of such site).

  ▪ Impact fees or one time assessments for anticipated heavy utility usage.

**Reestablishment Expenses**

Only certain small businesses are eligible for re-establishment expenses (Form 7-AF). Small businesses for this purpose are defined as those with at least one, and no more than 500 people, working at the project site. Businesses displaced from a site occupied only by outdoor advertising signs, displays, or devices are not eligible for a re-establishment expense payment. The maximum re-establishment expense payment allowed by the URA regulations is $10,000 ($25,000 as of 10/1/14). Eligible items included in this maximum figure are:
Repairs or improvements to the replacement site, as required by codes, or ordinances; AND

Modifications to the replacement property to accommodate the business; AND

Modifications to structures on the replacement property to make it suitable for conducting the business; AND

Construction and installation of exterior advertising signs; AND

Redecoration or replacement at the replacement site of soiled or worn surfaces, such as paint, paneling, or carpeting; AND

Advertisement of the replacement location; AND

Estimated increased costs of operation for the first two years at the replacement site for such items as lease or rental charges, utility charges, personal or property taxes, and insurance premiums; AND

Other re-establishment expenses as determined by the UGLG (or its Agent) to be essential to re-establishment.

Ineligible Expenses

The following are ineligible for payment as an actual moving expense, as a re-establishment expense, or as an “other reasonable and necessary expense:”

- Loss of goodwill; AND
- Loss of profits; AND
- Loss of trained employees; AND
- Personal injury; AND
- Interest on a loan to cover any costs of moving or reestablishment expense; AND
- Any legal fees or other costs for preparing a claim for a relocation payment or for representing the claimant before the UGLG; AND
- The cost of moving any structure or other real property improvement in which the business reserved ownership; AND
- Costs for storage of personal property on real property already owned or leased by the business before the initiation of negotiations; AND
- Costs of physical changes to the replacement site above and beyond that required to move and reestablish the business; AND
- Expenses for searching for a replacement location; AND
- The purchase of capital assets, manufactured materials, production supplies, or product inventory, except as permitted under “moving and related costs”; AND
- Interior and exterior finishes solely for aesthetic purposes, except for the redecoration or replacement of soiled or worn surfaces described in “reestablishment expenses”; AND
- Refundable security and utility deposits.
Fixed Payments

A displaced business may select a fixed payment (Form 7-AG) instead of actual moving expenses (which include re-establishment expenses) if the UGLG determines that the displacee meets the following eligibility criteria:

- The business discontinues operations or it will lose a substantial portion of its business due to the move.
- The business is not part of an operation with more than three other entities where:
  - No displacement will occur; AND
  - The ownership is the same as the displaced business; AND
  - The other locations are engaged in similar business activities.
- The business contributed materially to the income of the displaced business. The term “contributed materially” means that during the two taxable years prior to the taxable year in which the displacement occurred (or the UGLG may select a more equitable period) the business or farm operation:
  - Had average gross earnings of at least $5,000; OR
  - Had average net earnings of at least $1,000; OR
  - Contributed at least 33 1/3 percent (one-third) of the owner's or operator's average annual gross income from all sources;

If the UGLG determines that the application of these criteria would cause an inequity or hardship, it may waive these criteria.

The nature of the business cannot be solely the rental of property to others.

The amount of the fixed payment is based upon the average annual net earnings for a two-year period of a business or farm operation. Calculate net earnings before federal, state, and local income taxes for a two-year period. Divide this figure in half. The minimum payment is $1,000; the maximum payment is $20,000 ($40,000 as of 10/1/14). The two-year period should be the two tax years prior to the tax year in which the displacement is occurring, unless there is a more equitable period of time that should be used. If the business was not in operation for a full two-year period prior to the tax year in which it would be displaced, the net earnings should be based on the actual earnings to date and then projected to an annual rate. If a business has been in operation for a longer period of time, and a different two-year period of time is more equitable within reason, the fixed payment should be based on that time period. When income or profit has been adjusted on tax returns to reflect expenses or income not actually incurred in the base period, the amount should be adjusted accordingly.

Net earnings include any compensation obtained from the businesses that are paid to the owner, the owner’s spouse, and dependents. When two or more entities at the same location are actually one business, they are only entitled to one fixed payment. This determination should be based on:

- Shared equipment and premises,
- Substantially identical or inter-related business functions and financial affairs which are co-mingled,
- Identification of the entities as one entity to the public and customers,
Ownership, control or management of the entities by the same person or related persons. Businesses must furnish the UGLG with sufficient documentation of income to justify their claim for a Fixed Payment. This might include:

- Income tax returns.
- Certified or audited financial statements.
- W-2 forms.
- Other financial information accepted by the UGLG.

Optional form HUD-40056 - Claim for Fixed Payment in Lieu of Payment for Actual Reasonable Moving and Related Expenses (Form 7-AG) may be used to claim the fixed payment. If another form is used, it should provide the same information in at least the same level of detail.

Record Keeping
UGLGs are required to keep thorough records on occupants that were displaced as well as occupants that were not displaced (Form 7-AH and 7-AI). The UGLG must be able to reconcile the available information based on the businesses that remained in occupancy, the businesses that were displaced and received relocation assistance, and the businesses that elected to relocate permanently even though not displaced.

All notices must either be hand delivered or mailed via certified or registered, first-class mail, return receipt requested. The return receipt must be affixed to each individual case file. If hand-delivered, a written acknowledgment of receipt must be obtained from the addressee.

Records for displaced businesses
The UGLG must maintain a separate case file on each displaced business. The case file must contain the following:

- Identification of business, address, racial/ethnic group classification, monthly rent, type of enterprise, and business’ relocation needs and preferences (Form 7-AH).
- Evidence that the business received a timely GIN and a general description of the relocation payments and advisory services for which it may be eligible, basic eligibility conditions, and procedures for obtaining payments (Signed Form 7-AB with return receipt or written acknowledgement).
- Evidence that the person received a timely, written Notice of Eligibility for Relocation Assistance and, for those displaced from a dwelling, the specific comparable replacement and the related cost to be used to establish the upper limit of the RHP (Signed Form 7-AE with return receipt or written acknowledgement).
- Evidence of dates of personal contacts and a description of the services offered and provided (Form 7-X).
- Identification of referrals to replacement properties, date of referrals, rents, date of availability and reason(s) business declined referral.
- Identification of actual replacement property, rent and date of relocation (Form 7-AH).
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- Replacement dwelling inspection report and date of inspection.
- A copy of each approved claim form and related documentation, evidence that the business received payment (Form 7-AF or 7-AG).
- A copy of any appeal or complaint filed and the UGLG response.

All related documentation/communication, along with the completed Displacement Checklist (Form 7-AO) must be submitted to your Program Specialist for review.

Section 8 – Other Relocation Requirements

Appeals

If a person disagrees with the determination of the UGLG concerning the relocation payment(s) or other relocation assistance for which the person is eligible, the person may file a written appeal with the UGLG. See the grievance procedure outlined in Chapter 6: Acquisition. A person who is dissatisfied with the determination on the appeal may ask the MEDC to review that determination.

Responsibility of UGLG for Compliance

The UGLG is responsible for ensuring compliance with these requirements, regardless of any third party's contractual obligation to the UGLG to comply with applicable requirements.

Section 9 – One-for-One Replacement of Housing Requirements

Overview

The basic concept behind the Section 104(d) requirements is that CDBG funds may not be used to reduce a jurisdiction's stock of affordable housing. The CDBG regulations [24 CFR 570.606(c)(1)(i)] state that: "All occupied and vacant, occupiable low- and moderate-income dwelling units that are demolished or converted to a use other than as low- and moderate-income dwelling units in connection with an activity assisted under this part must be replaced with low- and moderate-income dwelling units." The rules implementing the Section 104(d) requirement for the replacement of housing in the state CDBG program are found at 24 CFR 570.496a(c).

There are four key issues in understanding the one-for-one replacement requirement:
- Which dwelling units must be replaced (and which need not be replaced)?
- What counts as a replacement dwelling unit?
- What must be made public and submitted to the State before execution of contracts?
- What is the exception to one-for-one replacement rules?

 Dwelling Units That Must Be Replaced

The UGLG must replace a residential dwelling unit if the unit meets all three conditions listed below (Form 7-AK):

**Condition 1: It meets the definition of a LMI dwelling unit.** A LMI dwelling unit is defined as a dwelling unit with a market rent less than the Fair Market Rent (FMR). HUD publishes the FMR schedules for each metropolitan area which can be viewed at FMR. These schedules include utility allowances to adjust for units where utilities are paid by the owner versus those that must be paid by the tenant.
Please note: A reduced rent charged to a family relative or on-site manager is not considered an open-market rent. For owner-occupied units, the market rent is the rent the unit could command if it were rented on the open market. If the UGLG’s project involves the potential loss of owner-occupied units or the potential loss of units rented at below-market level but the UGLG believes the units could command higher rent, the UGLG must obtain documentation (either an appraisal or other appropriate rental market analysis) to show an open market rental value greater than the FMR. The UGLG must submit this documentation in order for that unit NOT to be considered a LMI unit;

AND

**Condition 2: It is occupied or is a vacant occupiable dwelling unit.** A vacant occupiable dwelling unit is defined as:

- A dwelling unit in standard condition (regardless of how long it has been vacant), or
- A vacant unit in substandard condition that is suitable for rehabilitation (regardless of how long it has been vacant), or
- A dilapidated unit, not suitable for rehabilitation, which has nonetheless been occupied (except by squatters) within three months from before the date of agreement.

AND

**Condition 3: It is to be demolished or converted to a unit with a market rent (including utilities) that is above the FMR or to a use that is no longer for permanent housing (including conversion to a homeless shelter).**

Here are some examples of units that would NOT have to be replaced under Section 104(d):

- An occupied standard unit renting for less than the FMR that would continue to rent for less than the FMR after the project is complete.
- An owner-occupied unit that was scheduled to be converted to commercial use under the CDBG project but was determined by an independent appraiser to have a rental market value of more than the FMR.
- A vacant dilapidated (non-standard) unit in a low income area that had been vacant for the entire year before the UGLG received its grant was scheduled for demolition under the CDBG project.

Here are some examples of units that WOULD have to be replaced under Section 104(d):

- An occupied standard unit renting for less than the FMR that was scheduled for conversion to commercial use under the CDBG assisted program.
- A vacant standard unit that was determined by an appraiser to rent for less than the FMR that was scheduled for demolition under the CDBG assisted program.
- A unit that did not meet the definition of standard, but nonetheless, had been steadily occupied and rented for less than the FMR for the three months prior to the UGLG receiving its CDBG award and was now slated for demolition under the CDBG assisted program.
A vacant substandard unit that could have been rehabilitated to standard condition for less than half of the cost of its post rehabilitation value and would have rented (in the opinion of an independent appraiser) for less than the FMR is scheduled for demolition.

**Unsuitable for Rehabilitation Determination**

Prior to making a determination to demolish any housing unit, the UGLG must make a determination as to whether the unit is “unsuitable for rehabilitation.” To make this determination the UGLG must:

- **Step 1:** Take photographs of the exterior and interior of each unit to be demolished.
- **Step 2:** Prepare an itemized work write-up listing each item necessary for the particular unit to meet code standards.
- **Step 3:** Establish a public body estimate for the proposed work.
- **Step 4:** Determine the estimated after-rehabilitation value of the structure. This information may be obtained from a qualified appraiser or tax assessor or licensed realtor.
- **Step 5:** Determine if the estimated cost to rehabilitate the property will exceed 50 percent of after-rehabilitation value. If so, the unit may be demolished and it will not trigger the replacement requirements. If the after-rehabilitation value is more than the public body estimate for the rehabilitation plus rehabilitation personnel costs, then the unit is considered suitable for rehabilitation and cannot be demolished without replacement. Any demolition is subject to environmental review requirements, particularly historical clearance by the Michigan SHPO.
- **Step 6:** Document the above information. See Form 7-AJ.

Individual case files on each unit targeted for demolition must be maintained in the UGLG record keeping system and submitted to the MEDC for review. Failure to comply with the procedures as outlined above may result in the UGLG being required to replace the demolished unit, regardless of whether or not the dwelling unit could have been considered a low-and moderate-income dwelling unit, at the UGLG’s expense. Demolition activity is authorized only for those units that were identified in an approved CDBG application.

It is important to note that the income of the particular owner-occupant or renter is irrelevant in one-for-one replacement. It is also important to note that local funds used to match a CDBG grant (including those in excess of the required match amount) are defined as any monies expended to support CDBG activities, which means that the use of the matching funds for the demolition or conversion of a unit that meets the criteria listed above would also trigger the Section 104(d) replacement requirements.

**Criteria for Replacement Units**

Replacement low- and moderate-income dwelling units may be provided by any public agency or private department. Replacement units must meet all of the following criteria:

**Within the UGLG’s jurisdiction and within the same neighborhood.** Replacement units must be located within the UGLG’s jurisdiction and, to the extent feasible and consistent with other statutory priorities, the replacement units shall be located within the same neighborhood as the converted and/or demolished units. Applicable statutory priorities include those promoting housing choice, avoiding undue concentrations of assisted housing, and prohibiting development in areas affected by hazardous waste, flooding, and airport noise.
**Number of replacement bedrooms must at least equal the number removed.** Replacement units must be sufficient in number and size to house no fewer than the number of occupants who could have been housed in the units that are demolished or converted. The number of occupants who could have been housed in units shall be determined in accordance with applicable local housing occupancy codes. The UGLG may not replace those units with smaller units (e.g., a two-bedroom unit with two, one-bedroom units), unless the UGLG, before committing funds, has provided information to citizens and the MEDC demonstrating that the proposed replacement is consistent with the housing needs of lower-income households in the jurisdiction.

**Provided in standard condition, rehabilitation of occupied units toward replacement does not count.** Replacement low- and moderate-income dwelling units may include units that have been raised to standard from substandard condition if no person was displaced from the unit as a direct result of an assisted activity and the unit was vacant for at least three months before execution of the agreement between the UGLG and the property owner.

To count as a replacement unit under the rule, two criteria must be met:

- The unit must have been vacant for at least three months before execution of the agreement covering the rehabilitation (e.g., the agreement between the UGLG and the property owner).
- No person may have been displaced from the unit as a direct result of the assisted activity.

**Provided within a four-year timeframe.** Replacement units must be initially made available for occupancy at any time during the period beginning one year before the UGLG’s submission of the information required under 24 CFR 570.606(c)(1)(iii) and ending three years after the commencement of the demolition or rehabilitation related to the conversion. This period will slightly exceed four years. An UGLG that fails to make the required submission, such as where it estimates an post-rehabilitation rent at, or below, the FMR and, after rehabilitation, discovers that the post-rehabilitation rent is above the FMR, will lose the year before submission for counting replacement units.

**Affordable for ten years.** Replacement units must be designed to remain low- and moderate-income dwelling units for at least 10 years from the date of initial occupancy. A key factor in projecting affordability is the character of the neighborhood in which the replacement units are located (i.e., neighborhoods where current market rents are moderate and projected future rents are expected to remain with future FMRs). Replacement low- and moderate-income dwelling units may include, but not be limited to, public housing; existing housing receiving Section 8 project-based assistance under the United States Housing Act of 1937; or HOME or CDBG-funded units that have a 10-year affordability period.

**UGLG Submission Requirements**

Before an UGLG executes a contract committing to provide CDBG funds for any activity that will directly result in either the demolition of low- and moderate-income dwellings units or the conversion of low- and moderate-income dwelling units to another use, the UGLG must notify the public (e.g., by publication in a newspaper of general circulation) and submit the following information in writing to the MEDC for monitoring purposes:

- Description - A description of the proposed assisted activity.
- Location and number of units to be removed - The location on a map, and the number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than as a low- and moderate-income dwelling units, as a direct result of the assisted activity.
- Schedule - A schedule for the commencement and completion of the demolition or conversion.

- Location and number of replacement units - The location on a map and the number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units.

- If such data is not available at the time of the general submission, the submission shall identify the general location on an area map and the approximate number of dwelling units by size. Information identifying the specific location and number of dwelling units by size shall be submitted and disclosed to the public as soon as it available.

- The source of funding and a schedule for the provision of replacement dwelling units.

- Ten-year affordability - The basis for concluding that each replacement dwelling unit will remain a low- and moderate-income dwelling unit for at least 10 years from the date of initial occupancy.

- Reducing unit size (if proposed) is consistent with the State's Consolidated Plan - Information demonstrating that any proposed replacement of dwelling units with smaller dwelling units (e.g., a two-bedroom unit with two, one-bedroom units) is consistent with the needs analysis contained in the Consolidated Plan or that the proposed replacement is consistent with the housing needs of LMI income households in the jurisdiction.

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**Exception to One-for-One Replacement**

Replacement is not required if the MEDC determines that enough standard, vacant, affordable housing stock serving the jurisdiction is available. The UGLG may not execute a contract for demolition or rehabilitation of dwelling units for which an exception is sought until the exception is authorized in writing by the MEDC.

The one-for-one replacement requirement does not apply to the extent the MEDC determines, based upon objective data, that there is an adequate supply of vacant lower income dwelling units in standard condition available on a non-discriminatory basis within the UGLG’s jurisdiction.

In determining the adequacy of supply, the MEDC will consider whether the demolition or conversion of the low- and moderate-income dwelling units will have a material impact on the ability of lower income households to find suitable housing. The MEDC will consider relevant evidence of housing supply and demand including, but not limited to, the following factors:

- **Vacancy rate** - The housing vacancy rate in the jurisdiction.

- **Number of vacancies** - The number of vacant low- and moderate-income income dwelling units in the jurisdiction (excluding units that will be demolished or converted).

- **Waiting list for assisted housing** - The number of eligible families on waiting lists for housing assisted under the United States Housing Act of 1937 in the jurisdiction. However, the MSF recognizes that a community that has a substantial number of vacant, standard dwelling units with market rents at or below the FMR may also have a waiting list for assisted housing. The existence of a waiting list does not disqualify a community from consideration for an exception.

- **Consolidated Plan** – The needs analysis contained in the State's Consolidated Plan and relevant past predicted demographic changes.
- **Housing outside the jurisdiction** - The MSF may consider the supply of vacant low- and moderate-income dwelling units in a standard condition available on a non-discriminatory basis in an area that is larger than the UGLG’s jurisdiction.

Such additional dwelling units shall be considered if the MEDC determines that the units would be suitable to serve the needs of lower-income households that could be served by the low- and moderate-income dwelling units that are to be demolished or converted to another use. The MEDC will base this determination on geographic and demographic factors, such as location and access to places of employment and to other facilities.

**Procedure for Seeking an Exception**

The UGLG must submit a request for determination for an exception directly to the MEDC. Simultaneously with the submission of the request, the UGLG must make the submission public, and inform interested persons that they have 30 days from the date of submission to provide to the MEDC with additional information supporting or opposing the request. If the MEDC, after considering the submission and the additional data, agrees with the request, the MEDC must provide its recommendation with supporting information to HUD.
### Summary of the Major Differences between Section 104 (d) and URA Relocation Assistance Eligibility Requirements

<table>
<thead>
<tr>
<th>Topic/Issue</th>
<th>Section 104(d)</th>
<th>URA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income requirements</td>
<td>Only lower income persons are assisted</td>
<td>Displaced persons of all incomes are eligible</td>
</tr>
<tr>
<td>Economic Displacement Criteria</td>
<td>Displaced persons are eligible if not offered a suitable unit at or below the greater of: Total Tenant Payment; or old rent/utility costs</td>
<td>Displaced persons are eligible if not offered an appropriate unit at or 30% of gross income, or old rent/utility costs Note: 30% of gross income is the general policy; rules vary by program</td>
</tr>
<tr>
<td>Persons displaced by rehabilitation activities (including economic displacement)</td>
<td>Displaced persons are eligible only if market rent (including utilities) of the unit before rehab did not exceed Section 8 Existing Housing FMR and the market rent after rehab was above FMR</td>
<td>Displaced persons are eligible for assistance regardless of pre and post rehabilitation rents. (URA does not cover economic displacement, but HUD program regulations require assistance equivalent to URA)</td>
</tr>
<tr>
<td>Persons displaced by conversion of unit to a nonresidential use</td>
<td>Displaced persons are eligible only if market rent (including utilities) of the displacement unit did not exceed FMR before conversion</td>
<td>Displaced persons are eligible for assistance by any conversion to a nonresidential use</td>
</tr>
<tr>
<td>Persons displaced by demolition</td>
<td>Displaced persons are eligible regardless of the pre-demolition market rent</td>
<td>Displaced persons are eligible regardless of the pre-demolition market rent</td>
</tr>
<tr>
<td>Persons displaced by acquisition only (no conversion)</td>
<td>Displaced persons are not eligible</td>
<td>Displaced persons are eligible</td>
</tr>
</tbody>
</table>
### Summary of the Major Differences between Section 104(d) and URA Relocation Assistance regarding the Amount of Assistance Provided

<table>
<thead>
<tr>
<th>Topic/Issue</th>
<th>Section 104(d)</th>
<th>URA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rental Assistance Term</td>
<td>60 months</td>
<td>42 months</td>
</tr>
<tr>
<td>Monthly Rental Assistance Payment</td>
<td>For lower-income tenants, amount needed to reduce new rent/utility costs to Total Tenant Payment, which is usually the greater of: 30% of adjusted monthly income and 10% of gross monthly income</td>
<td>For lower-income tenants, amount needed to reduce new rent/utility costs to lower of: old rent and utility costs or 30% of the person’s monthly income For non-lower-income tenants, amount needed to reduce new rent/utility costs or the costs of a comparable unit with utilities to old rent/utility costs.</td>
</tr>
<tr>
<td>use of Section 8 Rental Assistance</td>
<td>If Section 8 assistance and suitable referrals are offered, displaced person cannot insist on cash RHP (But tenant may request cash RHP under URA)</td>
<td>Displaced person has right to cash RHP but may accept Section 8 assistance if it is offered</td>
</tr>
<tr>
<td>Other Housing Assistance</td>
<td>Assistance includes security deposit at replacement</td>
<td>Assistance does not include dwelling security deposit</td>
</tr>
<tr>
<td>Home-ownership assistance as an alternative to rental assistance payments</td>
<td>Limited to purchase of a cooperative or mutual housing and based on present (discounted) value of 60 monthly payments</td>
<td>Not limited to cooperative or mutual housing. Payment rental equals 42 times monthly rental payment (i.e., not discounted)</td>
</tr>
<tr>
<td>Moving and Related Expenses</td>
<td>Same as URA</td>
<td>Person may choose either: Commercial mover with bid or Payment for actual moving. Alternative Allowance based on Dept. of Trans. schedule</td>
</tr>
<tr>
<td>Advisory Services</td>
<td>Same as URA</td>
<td>Comprehensive services provided</td>
</tr>
<tr>
<td>Business Relocation Assistance</td>
<td>Not applicable</td>
<td>Required</td>
</tr>
</tbody>
</table>

### Chapter 7 Form(s)

#### Plans

- **7-A** Residential Anti-Displacement and Relocation Plan
- **7-AL** RARAP Checklist
- **7-B** Optional Temporary Relocation Assistance Policy SAMPLE
- **7-AM** Optional Temp Relocation Assistance Policy Checklist

#### Residential Tenants not Displaced

- **7-H** GIN Residential Tenants Not Displaced SAMPLE
- **7-I** Move In Notice to Prospective Tenant SAMPLE
- **7-N** Notice of Non-Displacement Nonresidential and Residential Tenants Not Displaced SAMPLE
- **7-O** Optional Temporary Relocation Assistance Application
- **7-V** Elderly Waiver for Temporary Relocation SAMPLE
Residential Tenants to be Displaced

- 7-C GIN URA Residential Tenant to be Displaced SAMPLE
- 7-D GIN Section 104d Residential Tenant to be Displaced SAMPLE
- 7-E Relocation Assistance to Displaced Homeowner Occupants, HUD-1044-CPD
- 7-F Relocation Assistance to Tenants Displaced from Their Homes, HUD-1042-CPD
- 7-G Relocation Assistance to Tenants Displaced from Their Homes, Section 104d, HUD-1365-CDP
- 7-I Move In Notice to Prospective Tenant SAMPLE
- 7-J Notice of Eligibility for Relocation Assistance 180-Day Homeowner Occupant SAMPLE
- 7-K Notice of Eligibility for URA Relocation Assistance, Residential Tenant SAMPLE
- 7-L Notice of Eligibility for 104d Relocation Assistance, Residential Tenant, Voucher Available SAMPLE
- 7-M Notice of Eligibility for 104d Relocation Assistance, Residential Tenant, Voucher NOT Available SAMPLE
- 7-Q Residential Claim for Moving and Related Expenses, HUD-40054
- 7-R Claim for Replacement Housing, Pmt for 90-Day Homeowner, HUD-40057
- 7-S Claim for Rental or Purchase Assistance, HUD-40072
- 7-T Claim for Rental Assistance or Down Payment Assistance, HUD-40058
- 7-T1 Claim for Rental Assistance or Down Payment Assistance, SPANISH, HUD-40058-S

Other Residential Relocation Forms

- 7-P Notice of Non-Eligibility SAMPLE
- 7-U Release of Liability *COMING SOON*
- 7-W Site Occupant Record Residential
- 7-X Record of Advisory Assistance and Other Contacts
- 7-Y Comparable Replacement Dwelling, HUD-40061
- 7-Z Resident Survey SAMPLE
- 7-AA Residential Relocation Management Report

Business Tenants not Displaced

- 7-AD GIN Nonresidential Tenant Not Displaced SAMPLE
- 7-I Move In Notice to Prospective Tenant SAMPLE
- 7-N Notice of Non-Displacement Nonresidential and Residential Tenants Not Displaced SAMPLE
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7-AN  Nondisplacement Checklist

**Business Tenants to be Displaced**

7-AB  GIN Nonresidential Tenant to Be Displaced SAMPLE

7-AC  Relocation Assistance to Displaced Businesses, Nonprofit Organizations and Farms, HUD-1043-CPD

7-I  Move In Notice to Prospective Tenant SAMPLE

7-AE  Notice of Eligibility for URA Relocation Assistance, Nonresidential SAMPLE

7-AF  Claim for Actual Reasonable Moving and Related Expenses, Nonresidential, HUD-40055

7-AG  Claim for Fixed Payment in Lieu of Payment for Actual Expenses, Nonresidential, HUD-40056

7-AO  Displacement Checklist

**Other Non-Residential Relocation Forms**

7-P  Notice of Non-Eligibility SAMPLE

7-AH  Site Occupant Record, Nonresidential

7-AI  Nonresidential Relocation Management Report

**One-for One Replacement**

7-AP  Determining Lower Income Dwelling Units Checklist

7-AQ  Lower Income Residential Dwelling Units Rehab Suitability Checklist

7-AJ  Determination to Demolish SAMPLE

7-AK  Actions That Trigger Section 104d One-for-One Unit Replacement Requirements Flowchart

7-AR  Replacing Lower Income Residential Dwelling Units Checklist
Chapter 8
Financial Management

Introduction
Effective financial management is the heart of successful Community Development Block Grant (CDBG) administration. Grantees, or the Unit of General Local Government (UGLG), are held accountable for all funds, property, and assets of the CDBG program. The UGLG must maintain a financial accounting system for the grant that meets federal and state requirements.

This chapter provides guidance on financial management requirements, including applicable regulations, financial accountability records, authorized signatures for payments and checks, requests for payments, bank accounts, chart of accounts, escrow accounts, administrative costs, property management, and audit requirements.

Section 1 – Applicable Regulations and Requirements
The Michigan Economic Development Corporation (MEDC) is responsible for monitoring the UGLG’s compliance with applicable financial management standards, for processing CDBG Payment Requests (PRs) for CDBG funds, and for audit review. There are two types of federal financial standards; HUD CDBG specific guidelines and general federal grant guidelines.

HUD Guidelines
The following is a list of the key federal regulations governing financial management.

- 24 CFR Part 570, Community Development Block Grant Program.
- Subpart I governs the State CDBG program.
- Section 570.489 details program administration requirements.

24 CFR Part 570.511 refers to the administration of escrow accounts. (The CDBG Entitlement Program regulations on this topic are considered a safe harbor for use in the State CDBG Program.)

24 CFR Part 85, Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments (also called the Common Rule). This regulation, which applies to government agencies, sets forth uniform requirements for financial management systems, reports and records, and grant close-outs for UGLGs receiving federal grant funding. Listed below is the location of specific applicable rules by category in the Common Rule.

- Section 85.20 Standards for financial management systems.
- Section 85.21 Payment.
- Section 85.22 Allowable Costs.
- Section 85.23 Period of availability of funds.
- Section 85.24 Matching or cost sharing.
- Section 85.25 Program income.
- Section 85.26 Non-federal audit.
- Section 85.34 Copyrights.
- Section 85.35 Sub awards to debarred and suspended parties.
- Section 85.36 Procurement.
- Section 85.37 Sub grants.
- Section 85.40 Monitoring and reporting program performance
- Section 85.41 financial reporting.
- Section 85.42 Retention and access requirement for records.
- Section 85.43 Enforcement.

**Federal Guidelines (general)**

In December 2013 new uniform federal grant guidance, 2 CFR Chapter I, and Chapter II, Parts 200, 2015, 220, 225 and 230 “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards” came into effect. This guidance is commonly called the Omni Circular, Super Circular or Uniform Guidance. This new guidance replaces A-87 Cost Principals – State and Local Governments, A-122 Cost Principals - Nonprofit organizations, A-89 Catalog of Domestic Assistance, A-102 Administrative Rules State and Local Governments, A-133 & A-50 Audit Rules. It is important to note that for grant recipients the change from the previous federal standards (like A-87 & A-133) to the OMNI circular did not all occur in December 2013 but instead will apply based on the funding year of the grant award. Unless otherwise noted in the grant agreement any grant funds awarded prior to 7/1/2015 will fall under the previous guidance. After that date details regarding which federal guidance should be followed will be spelled out in the grant agreements.

Key federal guidance for awards funded prior to 7/1/15 (or later as spelled out in the grant agreement):

- OMB Circular A-87 “Cost Principles for State, Local and Indian Tribal Governments” – This applies to governmental entities and establishes principles and standards for determining allowable costs under federal grants.
- OMB Circular A-110 “Cost Principles for Non-Profit Organizations.” - This establishes principles for determining allowable costs for nonprofit organizations.
- OMB Circular A-133 (Revised June 1997) “Audits of Institutions of States, Local Governments and Nonprofit Institutions.” These regulations refer to audit procedures and requirements for States, Local Units of Government and Non-Profit Organizations.

Key sections of the Omni Circular¹:

- 200.305 – Payment
- 200.317 Procurement

• 200.321 Contracting with small and minority businesses, women’s business enterprises, etc.
• Subpart E – Cost Principles
• 200.403 Allowability of costs
• 200.404 Reasonable costs
• 200.405 Allocable costs
• 200.430 Compensation – personal services
• Subpart F – Audit requirements (200.500-200.521)
• Appendix II to Part 200 – Contracts

Section 2- Cost Reasonableness

The UGLG must ensure that CDBG funds are spent only on reasonable and necessary costs associated with approved grant or loan activities. Some questions to help guide decisions on cost reasonableness and necessity are:

1. Where the costs incurred using the established practices of the UGLG (procurement policy)?
2. Are the goods or services provided at a fair market cost?
3. How would you defend this costs to an auditor or a community member?
4. Are the costs determined in accordance with Generally Accepted Accounting Principles (GAAP)?
5. Where the costs incurred in a transparent and consistent manner?
6. Is this cost permitted under the term of the grant award and under federal, state and local laws and regulations?
7. Did this transaction avoid any conflict of interest or the appearance of conflict of interest?

Cost Allocation Plan

In addition to being reasonable and necessary all costs charged to a federal grant must be allocable, meaning that any expenses which are incurred that benefit the CDBG grant and any other project/activity/funding source the costs can only be charged to the CDBG grant if a proper Cost Allocation Plan exists and is used. Allocated costs are not commonly included in the project budget for CDBG grant awards, however if they are a cost allocation plan is required. Regional Loan Fund Administrators will be required to have a cost allocation plan that at a minimum covers the method they will use to allocate general administrative costs across the funds they manage. A detailed sample cost allocation plan can be found in the attachments to this chapter (Form 8-E).
Section 3 – Financial Accountability and Records

Internal Controls
Internal controls are policies and procedures in place that ensure effectiveness and efficiency of operations and compliance with applicable laws and regulations. Some of the main goals of internal controls are to:

- Safeguard assets – from theft, accidental loss, fraud, etc.
- Ensure that accounting information is accurate and reliable
- Ensure compliance – with GAAP, laws, regulations and the terms of agreements
- Assist the organization in accomplishing its goals

There are many elements the good internal controls but they should always include:

- Defined roles and clear segregation of duties – including appropriate managerial oversight
- Documented processes, policies and procedures
- Restricting access to systems and records – passwords, locked files
- Proper record retention
- Record reconciliations
- Audits/Internal reviews/Monitoring

Financial Management Systems Requirements and Certifications
UGLGs must:

- Provide financial status of each CDBG grant separated from other funding sources and other grants
- All records needed for a state monitoring or Single Audit should be maintained and made available to independent auditors and state CDBG staff as necessary for them to complete the monitoring or audit.
- Have financial records that are accurate, current and complete
- Show both receipt and expenditure of CDBG funds
- Have sound internal control procedures and
- Have cash management procedures and be able to provide documentation in the form of a cash transaction ledger.
  - This should include the date of each receipt of federal funds from the state and the date of each expenditure on the grant, separating funds to be reimbursed from federal grant dollars, required matching funds and other funds.
- Document both CDBG and CDBG matching financial transactions in line with the approved grant budget
- Have a budget control system to compare actual costs with budgeted costs throughout the life of the grant project
- Keep segregated accounting records for CDBG funds (this could be done through the use of fund accounting, the creation of separate chart of account for CDBG activities)
- Required Certifications
Financial Management System
- Authorized signatures for payments and checks
- Conflict of Interest Policy

**Record Retention**
The required period for retaining all required documentation at the local level for CDBG grants is at least 3 years after the close of the grant award between HUD and the State of Michigan from which the project was funded. It is important to note that this period can be much more than 3 years from the date the project is completed. The MEDC will notify grant recipients when the 3 year period begins, and UGLGs are encouraged to contact the MEDC before disposing of any records to confirm that the 3 year retention period has lapsed. It is also important to note the many records required for CDBG grant projects should be retained indefinitely or for longer than required by the terms of the CDBG grant in order to meet other record retention requirements, like those of the IRS.

**Section 4 – Payment Requests**

**Receiving Payments from the State of Michigan**
Before a payment request is submitted the UGLG must be registered as a vendor for the state of Michigan.

Directions for registering:
- Go to the Vendor/Payee webpage, [www.michigan.gov/cpexpress](http://www.michigan.gov/cpexpress)
- Click on the green C&PE arrow
  - Register as a state vendor
  - Register to receive payments via EFT (per State of Michigan Public Act 533 of 2004)

PLEASE NOTE: Do not log out of the registration system until you enter all three of the following:
- Complete address, contact person and telephone information
- W9 information
- Financial institution and account information (For required EFT payments)

The same website can be used to edit or add vendor information like changing the address or setting up a new bank accounts. If your community has more than one vendor mail code, or if you wish to have CDBG funds deposited to a specific account please inform your program specialist which mail code to use on payments.

**Payment Request Process**

There are two methods the UGLG is allowed to use to request payment of CDBG funds from the MEDC;

1. Cash Advance
2. Cost Reimbursement

The cost reimbursement method of payment consists of the payment of CDBG funds to the UGLG based on actual expenditures that the UGLG has paid. Most payment requests will fall into this category.
The cash advance method allows the MEDC to pay the UGLG CDBG funds in advance of the UGLG incurring the expenditure. Note, this method is only allowed if the UGLG provides the MEDC with the necessary assurances listed below, and maintains procedures to minimize the time elapsing between the transfer of funds and their disbursement. CDBG funds should be expended within 3 days of receipt by the UGLG.

**Requirements for Submittal of a Payment Request (PR)**
The UGLG requesting CDBG funds from the MEDC must use the CDBG Payment Request (PR) form. The blank form and instructions may be found as Form 8-A1 to this chapter.

The UGLG should determine their cash requirements prior to requesting CDBG funds. The funds requested should be for amounts necessary to meet current disbursement needs. Current disbursement needs are funds that will be expended as soon as administratively feasible, since it is required that funds in excess of $5,000 be expended within three days of receipt.

The following requirements must be met before the MEDC can process the first PR:

- The Grant Agreement must have been signed and returned to the MEDC.
- All required documentation in the Pre-Disbursement List must be submitted to the MEDC.
- Funds must be drawn on a pro rata basis and documentation of the match must accompany the PR. Depending on the type of match being provided, supporting documentation may include invoices, copies of checks, time sheets, etc.

The following requirements are necessary for the submittal of any PR:

- The UGLG must request funds by activity or budget line item. The only exception is that up to $5,000 may be requested on the initial PR without specifying a budget item. Also, any time the UGLG is required to return cash, the UGLG must submit a PR specifying which activity or budget line item to credit. Additionally, if funds are being drawn down at the same time as the refund is being submitted, the refund and draw down must be done on separate PR forms.
- Total funds requested cannot exceed the approved total budget for any activity without prior approval from the MEDC. An analysis of the budget should be conducted whenever there are potential line item budget revisions to ensure that the total costs are within the total project budget.
- When using the cash advance method, the UGLG must project future expenses and determine their cash requirements prior to requesting CDBG funds. Cash advances shall be limited to the minimum amount required for three days.
- The approved grant application, along with the most recently approved budget, should be used as the basis for the development of the PR. The amount requested for each activity must conform to the activities and costs approved in the grant application budget.
- When using the cost reimbursement method, the UGLG simply requests reimbursement for expenses incurred and paid in connection with the grant.

**PR Submittal and Processing**
Once the above listed requirements have been met, the UGLG may draw down CDBG funds. There are 2 mechanisms for submitting a payment request one is to complete the form attached at the end of this chapter and the other is through the use of the Salesforces Portal.
Salesforce Portal

The Salesforce Portal is a new tool that the CDBG program has that allows UGLGs to log in and fill out the required information and upload the necessary supporting documentation right into our payment request system. The benefits to use of the portal include faster processing time for the payment. If you are interested in using the Portal please contact your grant specialist to get more information.

Use of the Payment Request Form

The second option for how to submit a payment request is to complete the PR and Invoice Summary (Form 8-A2) and submit it to your project specialist via mail, email or fax.

PRs must be submitted at least quarterly. The UGLG should allow 10 to 15 working days after required corresponding documentation has been submitted. Any PR that is not completed properly may be returned to the UGLG without being processed. Some of the reasons a PR may be returned include:

- Contract not approved by the MEDC (if applicable).
- Adjustments to amounts previously drawn not reported correctly or in a timely fashion.
- Administrative funds not requested proportionately to progress.
- Budget amounts, amounts previously drawn, and/or total expenditures to date do not agree with the MEDC's records.
- Required match not documented prior to draw down of final CDBG funds, or a pro rata draw is not requested, if required.
- Unauthorized signature on PR.
- There is a reason to stop payment on the grant (see below).

The MEDC will stop payment of CDBG funds for the following reasons:

- Semiannual and/or annual reports are not received.
- Audit reports not received.
- Response to monitoring or other requests not received.
- Noncompliance with other grant agreement terms.

The grantee must submit a Final Closeout PR. This Final PR will reflect any final adjustments and/or refunds draw down. The Final PR must be indicated as such on the item #8 on the PR to begin the grant close-out process. Refer to Chapter 13: Grant Close-out Process for detailed information on the close-out process.

Section 5 – Detailed Information in Specific Types of Costs

Acquisition Costs

Estimated costs of real property must be budgeted under the Acquisition line item. Appraisal and review appraisal fees, legal, and title search costs should also be listed under the Acquisition budget item.
Water/Sewer Tap and Connection Costs
Generally, the costs associated with connecting a residential unit to a water or sewer line are considered housing rehabilitation, which is a program administered by MSHDA. However, the MEDC may, in some situations, enable the UGLG to assist privately owned businesses to connect a business to a water or sewer line as part of an approved economic development initiative. These are activities that occur on private property and are generally contracted separately from the main water/sewer line construction. These costs may include service lines and appurtenances on private property.

CDBG funds may only be used for hard construction and installation costs for hook-ups/connections to public water and sewer, and not to pay for any water or sewer connection, impact, or capacity fees. Any associated fees that directly impact Low and Moderate Income households must be waived or paid with non-CDBG funds, and may be considered part of the local match requirement.

Administrative Costs
Community Development Block Grant (CDBG) funds may be available to assist the Unit of General Local Government (UGLG) with the management of its CDBG Grant Agreement. The CDBG program includes federal and state statutes, regulations, and policies. UGLGs must use a Certified Grant Administrator (CGA) to utilize MEDC funding. Typically, there are two types of CGAs:

**CGA on the UGLG’s Staff**
Administrative dollars are not available for employees of the UGLG. Federal regulations do not allow CDBG funds to be used to supplant available local funds. Typically, when a CGA on the UGLG’s staff administers its' own grant, the administration is provided as in-kind leveraging (above the required local match) and is not included in the budget.

However under specific circumstances, an UGLG can charge time for a CGA on its own staff, if the UGLG first submits and the MEDC approves, a certification that the CDBG funds used to pay the employee’s salary will not supplant available local funds. A contract must be executed between the UGLG and the employee outlining the employee’s specific duties.

**CGA Consultant**

The UGLG must follow appropriate procurement requirements when selecting a CGA consultant. Please refer to Chapter 14, Form 14-A for information on the procurement process.

**Additional Guidance and Pre-disbursement requirements for both a CGA Consultant and a CGA on the UGLG’s Staff**

Payment to the CGA is based on negotiated terms between the UGLG and the selected CGA. Payment could be based on:

1. Reimbursement from the UGLG; or
2. The UGLG’s drawdowns from the Michigan Economic Development Corporation (MEDC).

Typically, administrative draws should be proportionate to project completion. For example, a project which is only 60% drawn down should only have 60% of its' administrative costs drawn down. This ensures that the State Program as a whole does not exceed HUD limits on administration costs.
CDBG Disbursement for CGA administrative expenses will not happen until:

1. The environmental review has been completed;
2. The grant agreement has been executed;
3. The pre-disbursement requirements in the Grant Agreement and any items requested by the MEDC have been submitted and approved by the MEDC;
4. The executed administrative contract has been forwarded to the MEDC.

Reimbursement for both a CGA Consultant and a CGA on the UGLG's Staff

Regardless of whether the CGA is a consultant or on the UGLG's staff, the process for requesting reimbursement for administrative costs is the same. The UGLG is required to submit the following documents:

1. Form 8-A (CDBG Grant Payment Request and Instructions);
2. Form 8-D (Administrative Activity Report) which identifies the CGA's daily activities/hours; and
3. The appropriate documentation (i.e. invoices, travel costs, etc.) for any other costs charged.

NOTE: Federal regulations do not allow CDBG funds to be used to complete CDBG applications or to be used to administer other federal or state grant programs that may be conducted in conjunction with a CDBG project.

In addition to the above documentation, the UGLG's files should include time sheets supporting the Administrative Activity Report. The documentation must be kept on file and will be reviewed at financial monitoring.

If the UGLG separately procures for both a CGA and an engineering or architectural contract and the UGLG determines it is most advantageous to select the same firm, this would be considered a general conflict. In this case, the UGLG may select the same firm but the CGA may not oversee and approve its firm's own work.

For guidance related to Administrative Costs associated with the CDBG Loan Program, refer to Chapter 3 of this manual.

Personnel Costs

Federal regulations do not allow CDBG funds to be used to supplant available local funds. However under specific circumstances, local governments that wish to charge costs or an employee's time for administration of the CDBG project to the CDBG budget must first submit a certification that the use of federal grant funds for a portion of the employee's salary will not supplant available local funds. Any costs and time charged must be documented through the appropriate means (i.e., invoices from local newspapers for advertisements placed for hearings, travel costs, time sheets indicating work performed for the particular project, etc.). The documentation must be kept on file, and will be reviewed at financial monitoring.

All local government employees and non-profit administrators, who charge administrative time to a CDBG grant for which reimbursements will be requested, are required to fully document how the time was spent. (This requirement does not apply to private consultants who contract on a fixed fee basis for
CDBG administrative services. These arrangements are subject to procurement requirements outlined in Chapter 4.)

Funds budgeted for staff contributing to development of a plan under a Local Planning grant must be budgeted as Salaries and Fringe under Planning. The staff must keep time sheets and be prepared to show that the grant is not supplanting local funds budgeted for the salary of the employee involved. These are activity delivery costs and do not include costs for general administration of the grant, but are documented the same as administrative local personnel costs.

Time and attendance records must be kept to document actual hours worked and costs charged to the administrative budgets of CDBG projects. Reimbursements will be allowed based only on actual costs.

Required documentation, an Administrative Activity Report (Form 8-D), is essentially a time sheet that should be maintained daily, tracking actual hours worked and provides hours that are billable to the CDBG account (Billable Hours).

An Administration Activity Report may be completed for each grant, or you may include more than one grant on each sheet. For each grant, you must show a grant total and a billable total. This form was designed for a biweekly payroll period, but may be modified for a weekly or monthly pay period.

Documentation of CDBG administrative costs is mandatory. At a minimum, the Administrative Activity Report must contain the following information:

- Employee name.
- Pay period.
- Hours worked by day.
- Actual hours charged to the grant.
- Employee signature.
- Supervisor signature.
- Hours billable to the payroll account.

The Administration Activity Report will be subject to review during regular monitoring visits of CDBG projects.

**Section 6 – Property Management**

Each item of non-expendable property to be acquired with CDBG funds at a cost of $5,000 or more must be approved by the MEDC prior to purchase. If the item has a useful life of one or more years, the Grantee must maintain adequate property inventory controls and comply with the property management, use, and disposition requirements outlined in 24 CFR Part 85. In addition, a Personal Property Management Report, Form 8-B1 and/or Real Property Management Report, Form 8-B2, must be completed showing pertinent information regarding the equipment, including the description of item, serial number, location, disposition, etc. This form, which is provided as an attachment to this chapter, must be completed and returned with the grant close-out package. A copy must also be maintained by the UGLG and updated as necessary until disposition.
Disposition
When original or replacement equipment acquired with CDBG funds is no longer needed for the original project or program or for other activities currently or previously assisted with federal funds, the following rules of disposition will apply to governmental grantees.

- Equipment with a current per-unit fair market value of less than $5,000 may be retained, sold, or otherwise disposed of by the grantee after notice to the MEDC, subject to the conditions in 3 below.

- Equipment with a current per-unit fair market value of $5,000 or more may after notice to the MEDC be retained or sold by the grantee with the MEDC having the right to compensation in an amount equal to multiplying the current fair market value or the proceeds from sale by the federal share (percentage) in the original acquisition price of the equipment. For example, if the equipment was purchased for $100,000, utilizing $50,000 in CDBG (50 percent) and $50,000 (50 percent) in private funds and the company sold the equipment for $60,000 (depreciated value is $50,000). The MSF would be repaid $30,000 (the greater of 50 percent of $60,000 or 50 percent of $50,000).

- The MEDC may reserve the right to transfer title of the equipment to the federal government or a third party (24 CFR 85.32(g)).

In addition, per 24 CFR 570.502(a) (8), in all cases when equipment purchased with CDBG funds is sold, the net proceeds are considered program income.

The use of real property is governed by 24 CFR 570.505. For real property acquired or improved in whole or in part with CDBG funds in excess of $25,000, the grantee cannot change the use or planned use of the property (including the beneficiaries of such use) without first providing affected citizens notice and opportunity to comment, and determining that either:

- The contemplated new use meets one of the National Objectives and is not a building for the general conduct of government.

- The contemplated new use is deemed appropriate (after consultation with affected citizens) but will not meet a National Objective. In this latter case, the grantee must reimburse the MEDC CDBG program in the amount of the current fair market value of the property, less the value attributable to the non-CDBG portion of the acquisition or improvements.

At monitoring, MEDC staff will ensure that proper inventory controls and records are being maintained. Contact the MEDC for disposition instructions prior to transfer, trade, or sale of equipment.

Section 7 – Audit Requirements
One of the primary financial management requirements implicit with the use of federal funds pertains to audits. OMB Circular A-133 provides requirements for audits of governmental entities and nonprofit organizations. As an agency administering federal funds, the State is responsible for ensuring the UGLGs comply with OMB Circular A-133 requirements.

Determination of Single Audit Applicability
As a result of the new Omni Circular guidance there are two sets of audit thresholds, one for awards funded from 2014 and earlier and another from 2015 and later.
If your grant award was funded from 2014 or earlier and the UGLG expends more than $500,000 during its fiscal year, then an A-133, or single audit is required.

If your grant award was funded from 2015 or later and the UGLG expends more than $750,000 during its fiscal year than a single audit under the Omni Circular guidelines is required.

To document the applicability of a single audit under either set of federal guidance, every UGLG must complete and submit an Audit Requirements Certification Form (Attachment 8-C) to the MEDC within 60 days of the end of the UGLG’s fiscal year. This form is attached at the end of the chapter. The MEDC does not permit program audits (a more limited type of federal funds audit) for any grantee over the applicable threshold ($500,000 or $750,000).

**Type of Audit Required**

All audits conducted in accordance with OMB A-133 or the Omni Circular must be performed in accordance with Generally Accepted Government Auditing Standards, described in GAO’s Government Auditing Standards, commonly referred to as the Yellow Book. According to these standards, a financial audit should determine whether:

- Financial information is presented in accordance with established or stated criteria.
- The entity has adhered to specific financial compliance requirements.
- The entity's internal control structure over financial reporting and/or safeguarding assets is suitably designed and implemented to achieve control objectives.

Even though an audit is required because of the use and receipt of specific federal program funds, the audit will also serve as the local government’s agency-wide audit. Therefore, local funds should be used to pay for audit costs.

**Auditor Procurement and Selection**

There are guidelines specific to the selection of an auditor to conduct the single audit. The following guidelines apply to auditor selection under A-133 or the Omni Circular guidance (citation: A-133 Subpart C – Auditees .305; Omni 200.509):

- Procurement – Auditors must be procured under the general applicable procurement standards that apply to their award.
- Factors to consider is selection include responsiveness to RFP, experience, staff availability and capacity, peer reviews/quality reviews by third parties and price.
- Positive efforts should be taken to utilize small businesses, minority-owned firms, and women’s business enterprises.
- Prior to issuing a RFP for an auditor the grantee should carefully review either the A-133 or the Omni Circular 200.501-521 whichever is applicable.

**Requirements for the Audit Report**

OMB Circular A-133 requires that audit reports issued upon completion of an audit include the following components:
• An opinion (or disclaimer of opinion) as to whether the financial statements are presented fairly in all material respects and in conformity with generally accepted accounting principles.

An opinion (or disclaimer of opinion) as to whether the schedule of expenditures of federal awards is presented fairly in all material respects in relation to the financial statements taken as a whole.

• A report on internal control related to the financial statements and major programs describing the scope of testing of internal controls and the results of the tests and, where applicable, refer to the separate schedule of findings and questioned costs described below.

• A report on compliance with laws, regulations, and the provisions of contracts or grant agreements; noncompliance with which could have a material effect on the financial statements.

• An opinion (or disclaimer of opinion) as to whether the auditee organization has complied with laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on each major program and where applicable, refer to the separate schedule of findings and questioned costs described next.

• A schedule of findings and questioned costs that includes a summary of the auditor’s results as described below, and all audit findings. The summary of audit results must include:
  o The type of report the auditor issued on the financial statements.
  o Where applicable, a statement that reportable conditions in internal control were disclosed by the audit of the financial statements and whether any such conditions were material weaknesses.
  o A statement as to whether the audit disclosed any noncompliance that is material to the financial statements of the auditee.
  o Where applicable, a statement that reportable conditions in internal control over major programs were disclosed by the audit, and whether any such conditions were material weaknesses.
  o The type of report the auditor issued on compliance for major programs.
  o A statement as to whether the audit disclosed any audit findings.
  o An identification of major programs.
  o A statement as to whether the auditee qualified as a low-risk organization.

The auditor’s report(s) may be in the form of either combined or separate reports, and may be organized differently from the manner presented in this section.

Audit Submission
Generally, the due date for submission of the audit report is the lesser of 30 days of the completion of the audit or 9 months from the end of the UGLG’s fiscal year end date.

Please note that if the UGLG indicates on their Audit Requirements Certification Form (form 8-C) that an Single Audit is not required, exempt, for a particular fiscal year, a copy of the annual audit or other financial report review must be maintained to document the assertion of exemption.
If a Single Audit is required, it is requested for all UGLGs and required for those receiving funds from grant year 2015 and later that the Audit Reports be submitted to the Federal Audit Clearinghouse (FAC). If submission to the FAC is not required and the UGLG prefers not to submit to the FAC a copy of the audit report must be submitted to:

Michigan Economic Development Corporation  
Attn: CDBG, 300 N. Washington Square, Lansing, MI 48913

In all cases, the grantee must maintain appropriate records and make them available for review or audit by appropriate federal, or state personnel as necessary to verify information provided on the form.

Audit Review and Resolution
The UGLG must establish a system to ensure a timely and appropriate resolution to audit findings and recommendations. A first step in the resolution of an audit is the preparation of Management’s Response to the findings and recommendations contained in the audit report. In its response, the UGLG should provide:

- For findings/recommendations with which the UGLG agrees, information on the actions it has taken (or plans to take) to correct the specified noncompliance or financial system deficiencies.
- For findings/recommendations with which the UGLG does not agree, the basis (including relevant documentation) for the subrecipient’s belief that an audit finding or recommendation is inaccurate or inappropriate.
- If in its formal audit response the UGLG has disagreed with any of the audit findings or recommendations, the entities issuing and reviewing the audit report will re-examine the points in question to determine whether any revisions to the report’s findings/recommendations are warranted. For those audit findings and recommendations with which the UGLG agrees, and for any disputed findings or recommendations in which the challenge is not upheld, the next step in the resolution process is the implementation of procedures to prevent the deficient conditions from re-occurring. In general, corrective action to correct findings or to implement recommendations must be completed within one year of the issuance of the audit report.

A repeat finding (a deficiency or area of noncompliance that appears in more than one successive audit) will be viewed very seriously, and can often result in special conditions being attached to future federal funding, or other sanctions. Occasionally, the findings from an audit will result in questioned costs. Costs associated with federal funding may be questioned for the following reasons:

There is inadequate documentation to support the expenditure or the amount of cost charged to the grant.

- The expenditure does not appear to be related to the grant project.
- The cost was incurred outside the effective period of the grant agreement, or was a program expense incurred before environmental review clearance was achieved.
- The expense is unallowable under the program regulations and applicable cost principles.
- The cost required the prior approval of the UGLG, and no prior approval was obtained.

To resolve a questioned cost, the UGLG must:

- Provide the missing documentation to support the expenditure and amount
• Offer detailed explanations of how the cost relates to the grant program and/or
• Seek retroactive approval (which the State may or may not grant) for an expense that required prior approval.

If the UGLG is not able to resolve a questioned cost to the satisfaction of the auditor and/or the MEDC, the expense will be disallowed. A disallowed expense for which federal funds were originally used must be reimbursed from non-federal funds. On occasion, such reimbursements can be repaid on a payment schedule negotiated with the MEDC.

Criteria to Qualify as a Low Risk Auditee

Any UGLG that qualifies as a low risk auditee is eligible under the OMNI circular guidance to have reduced audit coverage. The full details of what qualifies a grantee for low risk status can be found in the OMNI circular Subpart F 200.520. Some of the criteria for determining status as a low-risk auditee are as follows:

• Unmodified Auditor opinion on the proper use of GAAP for financial statements
• Unmodified Auditor opinion on the SEFA
• No deficiencies in internal controls
• No modified opinions on any major programs for preceding two audit periods

If an UGLG believes that they may qualify as a low-risk auditee after carefully reviewing the OMNI criteria they should contact their project manager.

Chapter 8 Form(s)

8-A1 Payment Request and Instructions
8-A2 Invoice Summary
8-B1 Personal Property Management Report
8-B2 Real Property Management Report
8-C Audit Requirements Certification
8-D Administrative Activity Report
8-E Cost Allocation Plan SAMPLE
8-F Program Income Policy for CDBG Grantees
8-G UGLG Program Income Decision Tree
8-H Program Income Certification
8-I Time and Effort Tracking Log – simple
8-J CDBG Local Program Income Quarterly Report
Chapter 9
Fair Housing and Equal Opportunity

Introduction

Localities receiving Community Development Block Grants (CDBG) through the Michigan Strategic Fund (the MSF) are required to comply with various state and federal laws that provide for equal opportunity and non-discrimination in all aspects of the projects they undertake with those grants. Applicable state and federal laws were established to ensure that protected groups are not subjected to discrimination under any program supported in whole or in part with CDBG funds. The laws discussed in this chapter include provisions for extending opportunities to minority- and women-owned businesses (MBE/WBE), residents of project areas, training, and providing fair and equal access to housing.

Briefly, the various laws, regulations, and executive orders apply to four general areas:

- Project beneficiaries
- Employment opportunities
- Contracting opportunities
- Fair Housing

These laws are applicable to private businesses and contractors involved in the covered projects, as well as the Unit of General Local Government (UGLG) themselves. This chapter will describe the implementation procedures, compliance requirements, reporting, and recordkeeping responsibilities of the UGLG. A listing of applicable laws is provided in this chapter.

Section 1 – Project Beneficiaries

The UGLGs are responsible for ensuring that laws regarding civil rights and equal opportunity are adhered to throughout implementation of a CDBG project. Specifically, UGLGs are responsible for ensuring and monitoring their performance in meeting statutory requirements provided in related laws.

Project Beneficiaries

The applicable state and federal laws provide that no person in the United States shall, on the grounds of race, color, national origin, religion, sex, familial status, and/or physical handicap, be excluded, denied benefits, or subjected to discrimination under any program funded in whole or in part by CDBG funds. In CDBG funded projects, recipients are prohibited from practicing discrimination on the grounds of race, color, national origin, religion, sex, handicap, or familial status. This prohibition applies directly to the UGLG and to all project contractors or subcontractors. Beneficiaries should be determined and demographic data compiled, with this information made available in the project file for public review.

For purposes of the CDBG program, the term direct beneficiary is defined as a person or family receiving a direct service (benefit) for which they are required to either complete a personal income verification form, or submit an application for the purpose of demonstrating eligibility under a
particular criteria (such as income limit). The term **indirect (area) beneficiary** is defined as a person or family who receives a service (benefit) that is equally provided to the whole community or a targeted portion of the community.

As an example, a new job created as a result of a CDBG economic development project would be considered a direct benefit to the persons hired in the newly created jobs. Replacing a water line that serves the entire community or target area would fall under the definition of an indirect (area) benefit; however, providing hookup into a municipal water or sewer system is considered a direct benefit and eligibility must be demonstrated as described in the previous paragraph. Street paving would ordinarily be considered an indirect (area) benefit, as would a new water tower or wastewater treatment system improvement.

This prohibition applies directly to the UGLG and to all project contractors or subcontractors involved in the project. For the purpose of documenting compliance at the development stage of the project, project beneficiaries must be identified by assessing demographic data, and the information must be available for public review at the UGLG’s office(s). Beneficiaries will be identified at the Part I Application stage, as discussed in the State of Michigan CDBG Program's Funding Guide, either through income information from the census or another US Department of Housing and Urban Development (HUD) acceptable survey methodology, or by determining which families are likely to benefit directly from the project.

Documentation of beneficiaries served will be reported on a semi-annual basis for projects that involve job creation/retention. Beneficiary information provided for other types of projects is reported at the time of close-out under a project close-out report found in Chapter 13. The UGLGs are required to maintain beneficiary information by race, ethnicity, and gender and submit this information at the time of close-out. This information is used by the State to complete the HUD performance evaluation report that is submitted to HUD annually.

**Section 2 – Employment and Contracting Opportunities**

**UGLG Operations**

The UGLGs or their agents must not deny the opportunity for employment in any CDBG program or activity on the basis of race, color, religion, sex, or national origin, familial status, and/or physical handicap. For internal operations, the UGLGs must maintain statistical data on the number and percentage by race and gender of the personnel in any department, office, or agency of the unit of local government that is receiving funding under the project.

Public or private entities performing professional services under contract to a UGLG, such as a regional planning organization or private consulting firm, are exempt from the requirement to track and maintain this data. However, they are prohibited from discriminating against any of the groups mentioned above in their hiring process. Businesses receiving assistance through an UGLG in order to develop or retain jobs must also maintain data on the number (and percentage) of employees by race and gender as provided by the UGLG in the CDBG Job Creation Summary Report (Form 13-F). Compliance with employment provisions related to Section 3 is discussed later in this Chapter.

The UGLGs must also make available a personnel policy manual during monitoring visits. The manual must contain language related to its hiring practices and the applicable civil rights and equal opportunity language. The UGLGs must also provide a sample hiring announcement in its equal
opportunity file that documents equal opportunity advertising statements. The files should also contain any complaints filed and the associated resolutions.

**Construction Bidding**

The UGLGs must ensure that discrimination does not occur in the solicitation and award of contracts through the development of nondiscriminatory advertising, distribution of solicitations, bid solicitations, bid specifications, and evaluation criteria. The UGLGs and its contractors that participate in the project are required to make affirmative efforts to employ minorities and women, and to maximize opportunities for minority- and women-owned businesses to participate in the CDBG project. Contractors are also prohibited from employment and other discrimination activities defined in the applicable civil rights and equal employment opportunity laws, including EO 11246. These provisions are covered in Chapter 4: Procurement and Contracting.

For the MEDC projects, the UGLGs are required to submit their contracts with developers and any bid documents with contractors to the CDBG Program Specialist for review and approval before executing these documents.

**Section 3 - Compliance**

To the maximum extent feasible, UGLGs must also ensure that lower income residents that reside in affected project areas receive employment, training, and contracting opportunities. Section 3 of the Housing and Urban Development Act of 1968, as amended, provides that to the greatest extent feasible, preference for economic opportunities, such as job training and employment that arise through HUD-assisted projects, shall be directed toward Section 3 residents and to business concerns which provide economic opportunities to these residents. Section 3 reporting and performance requirements apply to the UGLGs if the CDBG award amount is more than $200,000, and to all contractors and subcontractors receiving more than $100,000 if the $200,000 threshold is met.

Section 3 persons are defined as low- and very low-income residents of public assisted housing, or other persons meeting the program criteria LMI who reside in the project area. Such preference shall be given first to residents inside the specific area covered by the project, followed by residents in the non-metropolitan county in which the project is located.

For purposes of Section 3, Low Income Persons are defined as follows:

- A low-income person is defined as a person whose family income does not exceed 80 percent of the median family income for the area.
- A very low-income person is defined as a person whose family income does not exceed 50 percent of the median family income for the area.
- The person seeking training and employment under Section 3 provisions is responsible for providing evidence of eligibility for the preference. See Form 9-A Section 3 Resident Eligibility Certification.

Businesses covered by Section 3 (See Form 9-A1 Section 3 Business Concern Certification) are defined as follows:

- Businesses with an ownership that represents at least 51 percent Section 3 residents.
- Businesses which permanent, full-time employees include at least 30 percent of persons whom are currently Section 3 residents or, within three years of first employment with the business concern, were Section 3 residents.

- Businesses that provide evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all subcontracts to be awarded to business concerns that provide economic opportunity to Section 3 residents.

A Section 3 covered contract is a contract or subcontract (including a professional services contract) awarded by the UGLGs or contractor for work generated by the expenditure of Section 3 covered assistance, or for work arising in connection with a Section 3 covered project. Section 3 covered contracts do not include contracts for the purchase of supplies and materials. However, if the materials contract includes installation, then the contract constitutes a Section 3 covered contract. Section 3 requirements are triggered when a covered project creates the need for a new employment, contracting or training opportunities. Recipients are not required to hire Section 3 residents or award contracts to Section 3 businesses other than what is needed to complete covered projects/activities. If the expenditure of covered funding does not result in new employment, training or contracting, Section 3 requirements are not triggered, but the recipient must still submit reports indicating that the requirements were not triggered.

**Section 3 Numerical Goals**

The Section 3 regulations establish numerical goals that the UGLGs and covered contractors may strive to achieve to the greatest extent feasible:

- A total of 30 percent of the aggregate number of new hires.

- At least 10 percent of the total dollar amount of all Section 3 covered contracts for building trades work arising in connection with housing rehabilitation, housing construction, and other public construction going to Section 3 business concerns.

- At least three percent of the total dollar amount of all other covered Section 3 contracts going to Section 3 business concerns.

In addition, UGLGs are required to complete and maintain a Contract Solicitation & Section 3 Reporting Record (Form 9-D) for covered projects, including an internal record of efforts to involve Section 3 businesses in the funded project. This tool will allow the UGLG to verify solicitation of bids, price quotations, and proposals from all participating contractors and professional services providers. This report must be maintained in the project files for monitoring purposes.

For more information, please refer to the Section 3 Packet (Form 9-C1). The Section 3 Packet includes a Section 3 Overview; Section 3 Flow Chart; and Section 3 Compliance Certification.

**Section 3 Responsibilities**

The UGLGs are responsible for the following to encourage the use of Section 3 businesses and compliance requirements:

- Developing a Section 3 Policy for the UGLGs. Please refer to Form 9-B - Sample Policy.

- Incorporating the purpose, policy, responsibilities, and a complaint process in the Section 3 Policy.
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- Developing a Section 3 Plan (Form 9-B1) for the UGLG and contractor(s).
- Developing a Section 3 Plan for Subcontractors (Form 9-B2) for the UGLG and subcontractor(s) with contracts of more than $100,000.
- Implementing Procurement procedures that provide preference to Section 3 Business Concerns.
- Developing a list of Section 3 businesses to be notified of opportunities for participation in project contracts. A registry of Section 3 Certified Businesses may be found on HUD's website (http://www.hud.gov/Sec3Biz). Please note the following disclaimer: “HUD has not verified the information submitted by businesses listed in this registry and does not endorse the services that they provide. Users of this database are strongly encouraged to perform due diligence by verifying Section 3 eligibility before providing preference or awarding contracts to firms that have self-certified their Section 3 status with the Department”.
- Notifying eligible Section 3 firms of contract opportunities. This can be accomplished by distributing public notices, including newspaper advertising, and/or sending information to disadvantaged businesses that could reasonably be expected to submit a bid. The UGLGs must ensure that all bid notices be distributed in a timely manner. Please refer to Chapter 4 – Procurement and Contracting for additional requirements regarding the advertising and direct solicitation of bids.
- Ensuring contractors and subcontractors awareness of Section 3 goals and responsibilities, including Section 3 provisions in the construction contract.
- A Section 3 Clause (Form 4-Q) is required to be included in all construction contracts. Refer to Chapter 4, Section 3 Procurement Procedures. Recordkeeping and reporting, to include submitting a Section 3 Summary Report (Form 9-C) and maintaining a Contract Solicitation & Section 3 Reporting Record (Form 9-D).
- Monitor contractor and subcontractor compliance with applicable Section 3 provisions.
- Obtain information from prime contractors on Section 3 accomplishments.

The UGLG should provide their Section 3 Policy to the MEDC during the monitoring visit. Section 3 Plans with participating contractors, and subcontractors if applicable, should be provided during the monitoring visit as well.

Section 4 – Minority & Women Business Enterprises (MBE)/(WBE) MBE/WBE Participation

The UGLGs and their agents are encouraged to utilize MBE/WBE in the CDBG projects. Although HUD does not specify a numerical goal for MBE and WBE participation in the CDBG projects, UGLGs are encouraged to undertake steps to encourage participation by these types of businesses.

In addition, UGLGs are required to complete and maintain a Contract Solicitation & Section 3 Reporting Record (Form 9-D) for covered projects, including an internal record of efforts to involve MBE/WBE businesses in the funded project. This tool will allow the UGLG to verify solicitation of bids, price quotations, and proposals from all participating contractors and professional services providers. This report must be maintained in the project files for monitoring purposes.
The UGLGs are required to maintain the Contract and Subcontract Activity Report (Form 4-P), formerly known as the Minority Business Participation Report, and submit each report to MEDC. The State must submit a consolidated Contract and Subcontract Activity Report to HUD annually. The Contract and Subcontract Activity Report is further discussed in Chapter 4.

**MBE/WBE Responsibilities**
The UGLGs are responsible for the following to encourage the use of MBE/WBE businesses and compliance requirements:

- Develop a list of minority-owned and women-owned businesses to be notified of opportunities for participation in project contracts. The local Chamber of Commerce or similar business association can often provide a listing of companies. Regional planning organizations may also serve as a source of information.

- Notify eligible MBE/WBE firms of contract opportunities. This can be accomplished by distributing public notices, including newspaper advertising, and/or sending information to disadvantaged businesses that could reasonably be expected to submit a bid. The UGLGs must ensure that all bid notices, including Affirmative Action efforts, be distributed in a timely manner. Please refer to Chapter 4 – Procurement and Contracting for additional requirements regarding the advertising and direct solicitation of bids.

- Monitor contractor and subcontractor compliance with applicable MBE/WBE provisions.

**Section 5 – Fair Housing**

**Efforts to Address Impediments to Fair Housing Choices**
Fair housing choice means that all persons have the same access to housing choices regardless of race, color, national origin, religion, sex, disability, familial status, or income level. An impediment to Fair Housing Choice is a barrier or an action that prevents a person from exercising that right. Some of those barriers may include a shortage of affordable housing, income variables, discrimination based on historical prejudices, and a lack of knowledge/education about fair housing choices. In some cases, ordinances, regulations, and policies may cause disparate impacts.

**Efforts to Affirmatively Further Fair Housing**
Title 1 of the Housing and Community Development Act of 1974, as amended, requires that the UGLGs receiving HUD funding (including states and their UGLGs) affirmatively further fair housing. This effort generally takes form in promoting and publicizing Fair Housing and Civil Rights laws. The UGLG must develop a method for documenting efforts to promote and monitor fair housing activities. This chapter provides examples of actions that can be taken to accomplish this requirement. Local conditions and needs should determine the type of activities undertaken. UGLGs must certify via resolution or ordinance that they will affirmatively further fair housing. For a sample fair housing ordinance, refer to Form 9-E – Fair Housing Ordinance. In addition to the fair housing certification, the UGLGs must undertake at least one additional activity to further fair housing which should be identified in a Fair Housing Plan. This information must be made available at the monitoring visit.

**Suggested Fair Housing Activities to Further Fair Housing**
- Schedule fair housing activities during April, which is National Fair Housing Month. Many UGLGs adopt and publish a Fair Housing Month proclamation.
Post and publish any revisions to local fair housing policies that bring the UGLGs into compliance with current state and federal laws.

Encourage active participation in community efforts to enact strong fair housing policies.

Develop and display informational materials to promote local awareness of fair housing laws and guidelines (e.g. fair housing pamphlets, fair housing logo on official stationery, fair housing policy statements).

Display state and federal fair housing posters in places of public accommodation throughout the community.

Participate in the New Horizons Housing Opportunity Program.

Provide funding for local fair housing organizations and assist in their development.

Offer outreach, counseling, and referral services to aid LMI persons residing in areas of minority concentration to find assisted housing outside those areas.

Obtain housing units outside areas of minority concentration for use as assisted housing.

Acquire sites outside areas of minority concentration for the development of assisted housing.

Assemble a comprehensive inventory of available land suitable for the development of assisted housing.

Conduct educational programs focused on prospective homebuyers or renters, businesses, local government employees, and members of housing-related industries (e.g. real estate agents, mortgage lenders, builders, homeowners’ insurance companies) regarding fair housing rights and responsibilities.

Develop public information and educational programs to provide fair housing and information to the community. Methods that can be used to inform and involve the public in fair housing awareness efforts may include, but are not limited to the following: canvassing the community through a mail campaign, such as inserting a flyer in local utility bills or tax statements; placing a public service announcement on local radio and or community cable television access channel, or sponsoring a fair housing poster contest in local schools the UGLGs can focus these programs on the following types of groups:

- Citizen groups concerned with housing issues (fair housing groups, tenant associations).
- Organizations representing specific population groups (minorities, women, senior citizens, families with children, single-parent families, etc.) known to have suffered from discriminatory practices in the past.
- Other local organizations (advocacy groups, unions, voters’ leagues). Use local resources to assess public opinion about the status of fair housing in the community. Suggested contacts for this effort could include:
  - Fair housing organizations.
  - Public/private community centers and social service facilities.
  - Civil rights advocacy groups.
- Organizations representing minorities, women, senior citizens, persons with disabilities, and other protected groups.

- Document actions taken at the local level to address fair housing impediments identified in a local study. Public notice of this activity, and/or other forms of public participation in the process, can be considered as a qualified furtherance action.

- Encourage local lending institutions, realtors, insurers, and other housing-related service providers to include the fair housing logo and policy statements in all advertising done through the internet or related means, such as community information networks, local cable access channels, etc.

- Facilitate development of a local Habitat for Humanity chapter in your jurisdiction, or support activities of local chapters already in existence.

Invite a representative from a federal or state agency concerned with fair housing issues to a local advocacy group meeting or informational program. While the MSHDA awards the State of Michigan’s CDBG housing grants (which naturally involve fair housing compliance), it is important to note that CDBG grants awarded by the MEDC are also covered by the Federal Fair Housing requirements and the UGLGs must comply with the provisions above notwithstanding the nature/purpose of their specific CDBG award.

**Complaint Processing**

If a complaint arises, a full report should be sent to the CDBG Program Specialist and made available during the monitoring visit. The MEDC will then forward the complaint to HUD and corrective action will be decided upon. The UGLGs must maintain a local fair housing complaint process. A sample complaint process is provided in Form 9-F – Housing Discrimination Complaints.

**Section 6 – Other Compliance Requirements**

**Section 504 Compliance**

The UGLGs are required to certify that they will comply with provisions of Section 504 of the Rehabilitation Act of 1973, as amended. Section 504 of the Rehabilitation Act of 1973, as amended, provides that no otherwise qualified individual shall, solely by reason of his or her handicap, be excluded from participation (including employment), denied program benefits, or subjected to discrimination under any program or activity receiving federal funds.

Section 504 regulations define an individual with a disability as any person who has a physical or mental disability that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment. Major life activities include walking, talking, hearing, seeing, breathing, learning, performing manual tasks, and caring for oneself. The law also applies to individuals who have a history of such impairments, as well as those who are perceived as having such an impairment. A person who meets the above definition, and who is otherwise qualified for the program, service, or activity, is covered under Section 504.

To comply with the provisions of the Act, all UGLGs are required to conduct a self-evaluation of accessibility to determine if their current programs, services, policies, and practices meet the requirements of Section 504 of the Rehabilitation Act of 1973. Including persons with disabilities in completing the self-evaluation process is important to completing a meaningful product. For a sample of how to conduct and document a self-evaluation, please see Form 9-G Section 504 ADA Self-Evaluation. Evidence of performing the self-evaluation must be made available at the monitoring visit.
The UGLGs should take the following steps, as recommended by HUD, in completing the self-evaluation:

- Evaluate current policies and practices and analyze them to determine if they adversely affect the full participation of individuals with disabilities in its programs, activities, and services.
- Modify any policies and practices that are not or may not be in compliance with Section 504 regulations.
- Take appropriate corrective steps to remedy those policies and practices which either are discriminatory or have a discriminatory effect.

All UGLGs are required to conduct and document a self-evaluation. For a sample, refer to Form 9-G, Section 504 ADA Self-Evaluation. For UGLGs that have 15 or more employees, the following additional Section 504 requirements apply; UGLGs with less than 15 employees are excluded from these additional Section 504 requirements.

- The UGLGs that employ 15 or more employees must designate at least one person to be responsible for 504 activities and adopt a grievance procedure to address 504 complaints. A grievance procedure must be made available at monitoring. Please see Form 9-I Grievance Procedure under Section 504 - Sample.
- If the UGLG employs 15 or more employees, the UGLG must also notify all parties associated with the project that they may not discriminate on the basis of handicap. Please see Form 9-J Non-Discrimination on Basis of Handicap for a sample notice. If applicable, this must be made available at monitoring.

The UGLG is required to publish a notice in the newspaper stating compliance with the provisions of Section 504. The notice must identify the individual designated to coordinate Section 504 compliance. The notice or full-page advertisement must be placed in the file and must be available during monitoring visits. Other notification processes may also be used, including distributing fliers, posting notices, and providing other written materials.

The UGLG will need to demonstrate to the MEDC that they are in compliance with these rules by providing the self-evaluation form, designation form, and published notice during the monitoring visit.

The UGLG should be aware of the need to provide appropriate communication devices that may be necessary to provide for access to programs and services. Further, the UGLG should be aware of needs for employee accommodations in their own operations. The UGLG should also be familiar and comply with the provisions of the Americans with Disabilities Act (ADA) in administering its project.

The UGLGs providing assistance to businesses to construct new facilities must comply with Section 504 and the ADA as it pertains to accessibility.

Alterations to existing non-housing facilities shall, to the maximum extent feasible, be made readily accessible to and usable by individuals with handicaps. For the purpose of this paragraph, the phrase to the maximum extent feasible shall not be interpreted as requiring that the UGLGs make a non-housing facility, or element thereof, accessible if doing so would impose undue financial and administrative burdens on the operation of the UGLG’s program or activity.
Programs that involve non-housing facilities shall be operated so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This does not:

- Necessarily require the UGLGs to make each of its existing non-housing facilities accessible to and usable by individuals with handicaps.
- In the case of historic preservation programs or activities, require the UGLG to take any action that would result in a substantial impairment of significant historic features of an historic property.
- Require the UGLGs to take any action that it can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. If an action would result in such an alteration or such burdens, the UGLGs shall take any action that would not result in such an alteration or such burdens, but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

The UGLGs that are assisting the construction of housing developments must also ensure that those developments comply with the Section 504 provisions regarding set asides of apartments for groups with specific disabilities. These rules are not likely to apply to MEDC UGLGs since the program does not support the rehabilitation or construction of housing facilities. However, if a UGLG believes that their project does trigger these requirements they should contact their CDBG Program Specialist.

**Excessive Force Policy**

All UGLGs must certify compliance with the regulations under CFR 91.225 (b)(5), (also known as the Armstrong Walker Amendment) which prohibits the use of excessive force by law enforcement agencies within their jurisdiction against any individuals engaged in non-violent civil rights demonstrations. Further, and in case where a jurisdiction has no police department, the UGLG must also certify that it has adopted and is enforcing a policy against physically barring entrance to or exit from, a facility or location that is the subject of such non-violent civil rights demonstrations within its jurisdiction. The Excessive Force policy must be made available during the monitoring visit. For a sample of such a policy, please see Form 9-K Excessive Force Policy – Sample.

**Section 7 – Recordkeeping**

**Civil Rights, Section 3, and Contracting**

The MEDC staff will monitor for program compliance through a review of reports and site visits to project sites. The following records should be maintained in the UGLG program files:

- Equal opportunity advertising statements and policies.
- Statements on hiring policies.
- Personnel manuals.
- Employment data summaries.
- Section 3 employment efforts and business utilization reports from contractors.
- Data on distribution of direct and indirect benefits.
- Contract records documenting civil rights compliance in contract procurement, and proof of inclusion of all applicable civil rights certifications in project contracts.
Complaints, if any, and their resolution.

Actions taken to reduce impediments to fair housing.

Policies adopted and enforced regarding fair housing and use of excessive force.

The internal Contract Solicitation & Section 3 Reporting Record (Form 9-D), along with the copies of Contract and Subcontract Activity Report (Form 4-P), when submitted to the MEDC staff.

Section 8 – Applicable Laws

**Title VI of the Civil Rights Act of 1964, as Amended (42 U.S.C. 2000d)**
This Act states that no person may be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving federal financial assistance on the basis of race, color, or national origin. Regulation citation: 24 CFR Part 1.

**Title VIII of The Civil Rights Act of 1968, as amended**
This Act prohibits discrimination in the sale or rental of units in the private housing market against any person on the basis of race, color, religion, sex, national origin, familial status, or handicap. Regulation citation: 24 CFR Parts: 105, 108, 109, 110, and 115; Part 200 subpart M.

**Section 109 of the Housing and Urban Development Act of 1974, as amended**
This Act requires that no person be excluded from participation in, denied the benefits of, or be subjected to discrimination under any program or activity funded under the Community Development Block Grant Program (CDBG) on the basis of race, color, age, disability, religion, national origin, or sex. Regulation citation: 24 CFR 570.602.

**Age Discrimination Act of 1975, as amended**
This Act states that programs receiving federal assistance may not discriminate on the basis of age, unless an age distinction is necessary to accomplish the objective of the program. Regulation citation: 45 CFR Part 91.

**Section 504 of the Rehabilitation Act of 1973, as amended**
This Act states that no otherwise qualified individual may be excluded solely because of his/her handicap from participation in, the benefits of, or subject to discrimination under any program or activity receiving federal financial assistance. Regulation citation: 24 CFR Part 8.

This Act requires that certain federally-funded buildings or facilities be designed, constructed, or altered to ensure accessibility to, and use by, physically handicapped persons. Buildings or facilities allocated or reallocated CDBG funds after December 11, 1995, that meet the definition of “residential structure” (as defined in 24 CFR 40.2) or the definition of “building” (as defined in 41 CFR 101-19.602(a)) are subject to the Architectural Barriers Act and must comply with the Uniform Federal Accessibility Standards. Regulation citation: Appendix A to 24 CFR Part 40 for “residential structures” and Appendix A to 41 CFR Part 101-19 for “general buildings”.

Americans with Disabilities Act (ADA)
This Act provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications. The ADA also states that discrimination includes the failure to design and construct facilities (built for first occupancy after January 26, 1993) that are accessible to, and usable by, persons with disabilities. The ADA also requires the removal of architectural and communication barriers that are structural in nature in existing facilities. Removal must be readily achievable, easily accomplishable, and able to be carried out without much difficulty or expense. Regulation citation: 42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225.

Chapter 9 Form(s)

9-A  Section 3 Resident Eligibility Certification
9-A1  Section 3 Business Concern Certification
9-B  Section 3 Policy SAMPLE
9-B1  Section 3 Plan for General Contractor
9-B2  Section 3 Plan for Subcontractors
9-C  Section 3 Summary Report, HUD-60002
9-C1  Section 3 Packet
        Section 3 Overview; Section 3 Flow Chart; and Section 3 Compliance Certification
9-D  Contract Solicitation and Section 3 Reporting Record
9-E  Fair Housing Ordinance SAMPLE
9-F  Housing Discrimination Complaints SAMPLE
9-G  Section 504 ADA Self-Evaluation
9-I  Grievance Procedure SAMPLE
9-J  Non-Discrimination on Basis of Handicap SAMPLE
9-K  Excessive Force Policy SAMPLE
Chapter 10

Construction Management and Labor Standards

Introduction

This chapter describes the policies and procedures that must be followed when undertaking construction projects with Community Development Block Grant (CDBG) funds, which include federal labor standards, payroll requirements, pre-construction conferences, and other requirements. Compliance with federal labor standards requires recipients, contractors, and subcontractors to meet and document compliance with the federal requirements associated with the employment of workers on construction projects. The Grantee (UGLG) must appoint a Labor Compliance Officer for oversight and to ensure compliance with the Davis-Bacon Act and other labor related laws. The UGLG should notify the Michigan Economic Development Corporation (MEDC) prior to the bidding of any project.

The chapter also discusses some of the State of Michigan's Labor Standards and their applicability to the MEDC funded CDBG projects. In particular, the chapter outlines those instances where the State of Michigan standards are substantially the same as the federal standards but separate or duplicate reporting is required, those instances where the State standards may actually exceed the federal requirements, and those instances where projects may be exempt from the Davis-Bacon Act but nonetheless covered by the State requirements.

A good resource for Labor Compliance Officers and contractors is Making Davis-Bacon Work, A Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects. This publication was recently updated in January 2012. A copy can be obtained from US Department of Housing and Urban Development's (HUD) Customer Service Center at 1-800-767-7468.

Section 1 – Davis-Bacon Act Requirements

The Davis-Bacon Act (DBA), enacted by the United States Congress, covers contracts that are directly federally funded. After the DBA was enacted, Congress extended the reach of its provisions by passing Davis-Bacon Related Acts (DBRA), which cover contracts that are indirectly federally financed (or assisted) in whole or in part. The CDBG program is funded through HUD. Thus, most of the CDBG program's construction contracts are indirectly federally funded and subject to DBRA. DBA and DBRA are basically the same in substance and purpose. This chapter and its attachments will use the term DBRA to refer to the Davis-Bacon Act, Davis-Bacon requirements, prevailing wage requirements, DBA, and DBRA.

DBRA requires the payment of locally prevailing wages to laborers and mechanics for on-site construction, alteration, or repair on federally financed projects having contracts in excess of $2,000. Locally prevailing wages are determined for specific employee classifications by the U.S. Department of Labor (DOL) and made available to the public as “wage decisions.” A contractor(s) on a CDBG project covered by DBRA must meet, at a minimum, the wage requirements set forth in the wage decision(s) applicable to the project.

Exceptions:

- Contracts solely for demolition, when no federally-funded construction (which would require prevailing wage rates) is anticipated on the site.
• Rehabilitation of a residential structure or residential properties, under one ownership, that will contain less than eight units when completed.
• Construction work done by employees of the UGLGs (i.e. the local government agency).
• Machinery and equipment purchases, including installation, where the cost of installation is less than 20 percent of the total cost of the machinery and equipment.
• Employees of utilities are exempt providing they are only extending service to the property.
• UGLGs in Michigan must obtain approval from the MEDC before making a final determination that the contracts they intend to let are, in fact, not covered by DBRA. This approval should come as a part of the approval process after the UGLG has had their Part 2 application submitted. It is important that this determination be made relatively early on in the process to ensure that any construction cost estimates reflect the full costs of the labor force to be engaged.
• Construction work that is not funded with CDBG funds (i.e. private funds) is not subject to the DBRA requirements if the CDBG funded construction activity is not on the same site of work as the privately funded construction. Example: If privately funded interior construction is done on the same building where CDBG funded façade work is being done, then the DBRA requirements are applicable to the privately funded interior work as well. If the CDBG funded activity does not involve construction, then the privately funded construction activity is not subject to the DBRA requirements. Contact your Program Specialist if there is clarification needed on this.

The following describe the makeup of the DBRA requirements:

• **Source of Wage Decisions:** The responsibility of determining prevailing wages is delegated to the DOL. To meet this responsibility, DOL surveys contractors on construction projects to determine the prevailing wages for each locality. DOL then issues wage decisions for each locality. The terms wage decision and wage determination have the same meaning and are used interchangeably.

• **Obtaining a Wage Decision:** A wage decision is a document listing a minimum wage rate and fringe benefits for each classification of laborers or mechanics which DOL has determined to be prevailing in a given area for a particular type of construction. A Wage Decision example is provided as Attachment 10-B. The minimum pay requirements are referred to as prevailing wages. Recipients must obtain wage rate decisions from DOL prior to bid advertisement, and these determinations must be included in bid documents and the construction contract. There are two ways recipients can obtain wage rate determinations:
  • Recipients with Internet access can obtain their own wage rate determinations directly from the Wage Determinations Online website at [www.wdol.gov](http://www.wdol.gov). Recipients must obtain the correct wage rate determination for each labor category based on project location, construction type, and date. The correct wage rate determination should be printed and included in the bid document.
  • Should there be no general wage decision for the project area, the request for a wage rate determination should be submitted to MEDC at least 10 days in advance of the bid advertising date. MEDC will request the project decision and forward the decision to the UGLG. The project decision will be forwarded to the UGLG for inclusion in the bid document. UGLGs may
also obtain wage rate determinations by submitting a request to the Program Specialist using a Request for Wage Determination Form (Form 10-C).

- If a General Wage Decision is available, the UGLGs may request an approval of the wage decision from the Program Specialist within MEDC. It may take approximately seven days to receive the requested approval. The wage decision must be included in the bid document.

**Wage Decision (s) as Part of the Construction Contract:** DBRA requires that each prime contract over $2,000 that is assisted by federal funds for construction, alteration, or repair of public buildings or public works, contain the applicable DOL wage decision(s). Most CDBG projects, except for smaller housing projects, are covered. Subcontracts are also subject to DBRA by a required contractual agreement containing prevailing wage provisions between the prime contractor and subcontractor(s). If any portion of a contract is subject to DBRA, then all work under that contract, including the work of subcontractors, is subject to DBRA. This is a critical requirement that could be overlooked.

**Choosing and Downloading the Proper Wage Decision:** To obtain the appropriate type of wage decision, the UGLG should be familiar with the four types of decisions. Factors to consider when choosing a wage decision include: (a) decision type—whether building, highway, heavy, or residential; (b) project location; and (c) special characteristics of the project (such as elevated or ground storage tank).

<table>
<thead>
<tr>
<th>Building</th>
<th>Highway</th>
<th>Heavy</th>
<th>Residential</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alteration or addition to buildings</td>
<td>Curbs</td>
<td>Drainage projects</td>
<td>Apartment buildings (four stories or less)</td>
</tr>
<tr>
<td>Fire stations</td>
<td>Concrete pavement including sidewalks</td>
<td>Pumping stations (prefabricated drop-in units—not buildings)</td>
<td>Married student housing</td>
</tr>
<tr>
<td>Hotels and motels</td>
<td>Parking lots</td>
<td>Sewers (sanitary, storm, etc.)</td>
<td>Multi-family houses (eight or more)</td>
</tr>
<tr>
<td>Power plants</td>
<td>Street reconstruction</td>
<td>Sewer collection and disposal lines</td>
<td>Town or row houses</td>
</tr>
<tr>
<td>Prefabricated buildings</td>
<td>Roadbeds</td>
<td>Water storage tanks</td>
<td>Single family houses (eight or more under one contract)</td>
</tr>
<tr>
<td>Remodeling, repairing, renovating buildings</td>
<td>Shoulders</td>
<td>Water and sewage treatment plants (other than buildings)</td>
<td></td>
</tr>
<tr>
<td>Warehouses</td>
<td>Street paving</td>
<td>Water mains</td>
<td></td>
</tr>
<tr>
<td>Water and sewage treatment plants (buildings only)</td>
<td></td>
<td>Water wells</td>
<td></td>
</tr>
</tbody>
</table>

- **Building:** The construction of sheltered enclosures with walk-in access for the purpose of housing persons, machinery, equipment, or supplies. This type includes the construction of such structures, the installation of utilities, and the installation of equipment above and below the grade level, as well as incidental grading and paving. Structures need not be habitable to be considered as building construction.
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• **Highway**: The construction, alteration, or repair of roads, streets, highways, runways, taxiways, alleys, trails, paths, parking areas, and other similar projects that are not incidental to building or heavy construction.

• **Heavy**: The construction of projects that cannot be classified as building, residential, or highway.

• **Residential**: The construction, alteration, or repair of single-family houses or apartment buildings of no more than four stories in height. This includes incidental items such as site work, parking areas, utilities, streets, and sidewalks.

**Multiple Wage Schedules**: Most CDBG assisted projects fit in a single construction category and multiple schedules are generally not allowed, except where the activities are substantial construction elements and not incidental. Substantial is generally defined by DOL as more than 20 percent of total project cost.

**Ten Day Responsibility**: It is the UGLG’s responsibility to ensure that the wage decision that is in effect 10 days before the bid opening date was part of the original bid package or becomes part of the original bid package by addendum and sent to all who obtained a bid package. The bidders are thus given the opportunity to change their bids, prior to bid opening, based on the updated wage decision.

**Ten Day Options**: The “10 Day Call” (see Attachment 10-D) is one option that the UGLGs may use to determine whether a wage decision has been updated since the bid package was prepared. The 10 Day Call is simply a telephone call made by the UGLG to MEDC 10 days before the bid opening date. If the day on which the call should be made falls on a weekend, then the call should be made on Friday or Monday. MEDC will then examine the [www.wdol.gov](http://www.wdol.gov) website to determine if there have been any updates. If there has been an update, the UGLG must obtain (normally download) the updated wage decision and send a copy by addendum to all who obtained a bid package. MEDC will enter the optional 10 day call into grant records. It is important to remember that any addendums to a bid package be received at least 72 hours prior to the bid opening.

The “10 day search” is another option that the UGLGs may use to determine whether a wage decision has been updated since the bid package was prepared. The UGLG may search the DOL website at [www.wdol.gov](http://www.wdol.gov) to determine if there have been any updates. The website should be examined no more than 10 days before the bid opening date. If there has been an update, the local government must obtain (download) the updated wage decision and send a copy by addendum to all who obtained a bid package as well as notifying the Program Specialist via e-mail that a website search was done and whether or not an update was found. If an update was found, the UGLG should convey to the Program Specialist the wage determination number and modification number.

Determining which wage decision applies to the bid and a contract document takes knowledge of DBRA and skill in the use of the DOL website. To prevent an incorrect wage decision from becoming part of a construction contract, MEDC will review and verify the wage decision choice when the local government requests verification of contractor eligibility.

**Failure to Include or Use of Incorrect Wage Decision**: Failure to include the effective wage decision in bid documents or contracts will not relieve local governments from potential
liabilities or enforcement actions resulting from the payment of wages below the prevailing wage rates. In cases of an incorrect decision or failure to include a decision, the local government must either terminate and re-solicit the contract with the valid decision or ensure that all parties sign a supplemental agreement to the contract that makes the effective wage decision retroactive to the beginning of construction.

- **Retroactive:** If the recipient fails to include the wage decision, or for any reason the wrong wage decision is included in the contract, the applicable wage decision reflecting the proper rates must be incorporated into 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.

- **Contract Award Delays:** If a wage decision has been issued, and if a contract has not been awarded within 90 days of bid opening, or if construction has not begun within 90 days of contract award, the recipient should check the Wage Decisions Online web site or contact MEDC to determine if the wage decision is still prevailing and if there have been any modifications issued.

- **Noncompliance:** Noncompliance with the labor standards contract provisions may result in withheld funds, sanctions, or contract termination.

## Section 2 – The Copeland "Anti-Kickback" Act

The Copeland Anti-Kickback Act (18 U.S.C. §874 as implemented in 29 CFR Part 3) makes it a criminal offense for any person to induce, by any manner whatsoever, any person employed in the construction, reconstruction, completion, or repair of any public building, public work, or building, or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he/she is entitled under his/her contract of employment. The Act also provides for the submission of weekly certified payroll reports (CPRs) by all contractors and subcontractors. All contracts for construction, reconstruction, or repair over $2,000 on federally assisted projects must include the following prohibition:

"No contractor or subcontractor shall induce, by any means, any person employed in such publicly-funded construction, reconstruction or repair to give up any part of the compensation to which he is otherwise entitled except for authorized payroll deductions."

UGLGs should conduct confidential interviews with employees to assure compliance with the terms of this law, and the contractor is required to maintain payroll records, and to submit weekly certified payrolls documenting compliance. The Copeland Anti-Kickback Act requires that payment to employees must be made at least once a week without subsequent deductions or rebate on any account except "permissible" payroll deductions. The recipient must obtain payrolls and a Statement of Compliance from contractors and subcontractors weekly. The UGLG must check these payrolls for accuracy. Each employer and the UGLG must maintain the basic records supporting the payrolls until notified by the MEDC.
Section 3 – Contract Work Hours & Safety Standards Act (CWHSSA)

The Contract Work Hours and Safety Standards Act (CWHSSA), (pronounced kwas-sa) (40 U.S.C. §327 et seq.), applies to federally financed (in whole or in part) contracts over $100,000, and provides that workers be paid at least one and one-half times their basic rate of pay for any time worked in excess of 40 hours weekly. In the event of violations, the contractor or subcontractor shall be liable to any affected employee for his unpaid wages as well as 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.

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. A written appeal must state the reason for liquidated damages and should be addressed to the Program Specialist.

Safety Standards

Safety Standards provisions require contractors on covered projects to comply with the following:

- Safety standards provisions of applicable laws, building, and construction codes, the Manual of Accident Prevention in Construction published by the Associated General Contractors of America, the requirements of the Occupational Safety and Health Act of 1970, and the requirements of Title 29, Section 1518.
- Exercise every precaution at all times for the prevention of accidents and the protection of persons (including employees) and property.
- Maintain at the construction office or other well-known place on the job site, all articles necessary for giving first aid to the injured, and make standing arrangements for the immediate removal to a hospital or to a doctor’s care those persons (including employees), who may be injured on the job site. In no case shall employees be permitted to work at a job site before the employer has made a standing arrangement for removal of injured persons to a hospital or doctor’s care.

Section 4 – The Fair Labor Standards Act (FLSA)

The Fair Labor Standards Act (FLSA) contains federal minimum wage rates, overtime (O/T) requirements, and child labor requirements. These requirements generally apply to any labor performed (i.e. with or without federal assistance) and are generally pre-empted (or superseded) by other federal standards, such as the DBRA and related prevailing wage requirements and Contract Work Hours and Safety Standards Act O/T provisions. Only the DOL has the authority to administer and enforce FLSA. HUD will refer to the DOL any possible FLSA violations found on HUD projects.

Section 5 – General Labor Requirements

DOL guidelines include additional requirements as listed below. UGLGs should note that they are responsible for ensuring compliance by contractors and subcontractors. Inclusion of appropriate clauses in contracts, as well as monitoring by the recipient, is therefore very important.

Compliance Responsibility – The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with all labor provisions and other federal or State requirements. Subcontractors communicate through the prime contractor. The UGLGs will consider the prime contractor to be the sole point of contact with regard to contractual matters.
Records Availability – The contractor must make pertinent records available for review and permit on-the-job interviews of employees.

Monitoring – The UGLG must monitor the construction and conduct on-the-job wage interviews with a representative number of workers on the job site, and from a representative sample of trades. The results should be compared to the applicable payrolls for the date the interview was conducted to determine if there are any discrepancies. Depending on the length of the contract period, whether subcontractors are used, or whether different workers are utilized over the life of the contract, it may be appropriate to conduct interviews on multiple occasions to ensure the samples are representative. A suggested Record of Employee Interview Form (HUD-11) is included as Form 10-O at the end of this chapter. The recipient may use this form or a facsimile to gather the required information. The MEDC, in its oversight capacity, may visit the work site or the UGLG’s offices, and may review the UGLGs’ files to determine if the project is fulfilling its responsibilities under the federal labor standards. In such instances, the MEDC will provide the UGLGs and its agents at least 10 days’ notice of its intentions.

Noncompliance – Contractors and subcontractors may be terminated for noncompliance and will be liable for any excess cost involved in completing the work.

Contractor Eligibility – Prior to awarding any prime contract, UGLGs must verify the eligibility of the prime contractor and document in the file. Subcontractor eligibility is the responsibility of the prime contractor and should be addressed at the pre-construction conference. Contractor eligibility may be checked on-line at www.sam.gov and the Limited Denial of Participation (LDP) list at https://www5.hud.gov/ecpcis/main/ECPCIS_List.jsp.

Apprentices – The contractor must furnish a certification from the DOL Bureau of Apprenticeship and Training or a Bureau of Apprenticeship and Training recognized state apprenticeship agency for each apprentice employed on the project. All apprentices and trainees 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.

Volunteers – Exceptions to the labor requirements are made for volunteer services on a case-by-case basis. UGLGs should contact MEDC for approval.

Helpers – Federal labor standards do not recognize the "helper" classification. A contractor must reclassify any employee listed as a helper on weekly payrolls with a classification listed on the appropriate wage decision.

Required Postings – The wage decision and any additional wage classifications labor posters must be displayed in a prominent place on the job site. The posters may be downloaded from the following DOL website and include:


Section 6 – Contract Award and Pre-Construction Conference

Bid Tabulation - The UGLGs must send a Certified and Itemized Bid Tabulation, which is a listing of bidders and bid amounts for the project to the MEDC.

Pre-construction Conference – Following contract award, the recipient must hold a pre-construction conference with the prime contractor and any subcontractors. The purpose of the pre-construction conference is to apprise the contractor and subcontractors of labor standards, equal opportunity, and other contract obligations and responsibilities. The conference allows an opportunity to obtain any outstanding contract documents and provide the contractor with posters for the construction site. It also provides an opportunity for the engineer to discuss construction related issues.

Section 7 – Weekly Payroll Requirements

Payroll Terminology, Requirements, and Review Procedures – DOL provides a sample payroll form along with instructions at http://www.dol.gov/whd/forms/wh347instr.htm. A Payroll Review Flowchart is provided as Attachment 10-I at the end of this chapter.

Responsibility of Prime Contractor Regarding Subcontractors – The prime contractor on a project is responsible for proper payment to all laborers and mechanics employed by the prime, employed under a subcontract to the prime, or employed under any lower tier subcontract. The construction contract between the local government and the prime contractor must require all subcontracts to contain clauses imposing the Federal Labor Standards Provisions (Attachment 10-J). If the required provisions are not included in a subcontract, the prime contractor is responsible for underpayments and liquidated damages of subcontractors.

When labor standards violations occur, whether at the contract or subcontract level, the UGLGs will require corrections via the prime contractor. It is the prime contractor’s responsibility to ensure corrective action by the applicable subcontractor.

Weekly Payroll Submission Requirements and Payroll Numbering – It is the weekly responsibility of each contractor to submit to the local government numbered weekly payrolls from the time work begins on the project until the work is completed. If no work is performed on the project during a given workweek, payrolls do not have to be submitted; however, the UGLGs should be informed by phone or e-mail that no work was performed. Once work resumes, contractors should use the next consecutive number.

Payrolls of subcontractors are to be submitted via the prime contractor. The prime contractor will review the subcontractor’s payrolls and may require corrections. The prime contractor forwards the subcontractor’s payroll(s) to the UGLGs. Payrolls may be collected by the project engineer for
submission to the UGLGs; however, this does not relieve the prime contractor of responsibility for review of payrolls.

**Payroll Forms** – Contractors may use the payroll form, DOL publication WH-347, which is designated as Form 10-K. This form is available on DOL’s website at [www.wdol.gov](http://www.wdol.gov) and typing “WH-347” in the search box. However, the results of the search do not provide a “form-fill” version of the document. The DOL instructions for WH-347 are also available on the website but are outdated regarding the overtime requirement after eight hours. The current DOL (and CDBG) requirements call for overtime after 40 hours in a given workweek. The signature page of WH 347, where a contractor certifies wages and fringes, if any, is commonly called the Statement of Compliance. The Statement of Compliance must be a component of each weekly payroll and must be signed by the contractor. A contractor may use his own payroll form or other computer-generated form if all required items of Form 10-K are included, but the wording of the Statement of Compliance must be verbatim.

**Addresses and Social Security Numbers** – Effective January 18, 2009, payrolls shall not report employee addresses or full social security numbers (SSNs). Instead, the first payroll on which each employee appears shall include the employee’s name and an individually identifying number, usually the last four digits of the employee’s SSN. Afterward, the identifying number does not need to be reported unless it is necessary to distinguish between employees, e.g., if two employees have the same name.

Employers (prime contractors and subcontractors) must maintain the current address and full SSN for each employee and must provide this information upon request to the contracting agency or other authorized representative responsible for federal labor standards compliance monitoring. Prime contractors may require a subcontractor(s) to provide this information for the prime contractor’s records. DOL has modified Form WH-347, Payroll, to accommodate these reporting requirements.

**Signature on The Statement of Compliance** – The Statement of Compliance must be signed by an owner, officer, or designated employee of the contractor for each weekly payroll. In cases where a designated employee signs, the contractor must submit written authorization signed by an officer of the company.

**Prompt Submission of Payrolls** – The UGLGs should require that all payrolls, from the prime contractor and any lower tier subcontractor, be submitted by the prime contractor to the local government within seven working days after the payroll ending date. Payrolls must be examined promptly by the UGLGs so that any problems discovered can be corrected early, while contractors are still on the job. Particular attention should be given to payroll review during early stages of construction to ensure that the prime contractor understands and is fulfilling his/her responsibilities concerning payrolls. All reviewed payrolls along with a Payroll Review Worksheet (Form 10-L) should be submitted to the MSF throughout the grant. If acceptable payrolls are not submitted in a timely manner, the local government may withhold contractor payment until acceptable payrolls are submitted.
**Subcontractor Communication** – The UGLG’s contractual relationship is between the local government and the prime construction contractor. Furthermore, a contract with a subcontractor is between the prime contractor and the subcontractor. Therefore, a direct relationship between the local government and subcontractor does not exist. Even though a direct contractual relationship does not exist, the MEDC recognizes the following conditions under which the local government may communicate directly with a lower tier subcontractor regarding labor standards deficiencies: (a) the prime contractor agrees; (b) the subcontractor is cooperative; (c) the issues are not complex; and (d) the prime contractor receives a copy of important documentation or is informed of conclusions that result from the communication.

**Concurrent Jobs** – The payrolls must show only the regular and overtime hours worked on the CDBG project. If an employee performs work at job sites other than the project for which the payroll is prepared, those hours should not be reported on the payroll. However, the gross pay from all job sites must be shown on the payroll.

**Wage Rates and Proper Classification** – Payrolls must be checked against the applicable wage decision(s), engineer’s inspection reports (if available), employee interview forms (if available), and actual work done or in progress to determine if prevailing wage requirements regarding rates and proper worker classifications were met. The proper calculation of straight time rates and time-and-a-half rates for overtime hours must be checked as well as mathematical accuracy of calculations pertaining to wages and deductions. The UGLG must review all payroll documentation and complete a Payroll Review Worksheet, form 10-L, before submitting the payroll documentation to the MEDC.

**Employees Performing Work in More Than One Classification** – A person employed as a laborer or mechanic and performing work in more than one job classification must be paid at least the required rate for the actual hours spent in each classification. Payrolls may be kept according to the hours spent in each classification. Such payrolls, called split payrolls may be used to apportion hours worked at more than one classification in a workday according to the hours worked in each classification.

An alternate measure to avoid extra work involved in split payroll reporting, is to pay the worker the rate for the highest paid of the multiple classifications for which work was performed in a given workday.

**Working Foreman Requirements** – A working foreman who devotes at least 20 percent of his time to laborer or mechanic duties is covered under DBRA and must be classified according to work performed. Such a classification, for example, an electrician, must come from the applicable wage decision. The working foreman, if paid a flat salary with salary designated on the payroll, must be making at least the minimum rate and fringe for his classification. The amount of the salary must be stated on each payroll. If there is a considerable amount of overtime being worked on a particular project having a salaried working foreman, additional research may be necessary to determine that amounts paid meet DBRA and CWHSSA requirements.

**Classifications** – Only the exact classifications appearing on the federal wage decision or additional classifications requested are to be used on payrolls. Generic classifications are not specific enough to
allow the reviewer to determine if DBRA were met. For example, operator is a generic classification; however, backhoe operator is on the wage decision and would be a proper classification.

If, after obtaining the wage decision, it is found that a class of laborer or mechanic not listed in the wage determination is to be employed on the project, the UGLG must notify their Program Specialist in writing so that an effort can be made to conform the laborer or mechanic to a classification already existing on the decision. If a trade classification does not appear on the wage decision and the laborer or mechanic cannot be conformed, the UGLG must complete and submit to their Program Specialist a Report of Additional Classification and Rate (Attachment 10-M). This report should identify the classification needed, recommend a wage rate, and include supporting documentation, such as a copy of the Notice to Proceed issued to the contractor and statements from both the contractor and the employee agreeing to the proposed wage rate. Instructions for completing the Report of Additional Classification Rate can be found as Attachment 10-M.

In general, additional classifications and wage rates can be approved if:

- The requested classification is used by construction industry in the area of the project. (The area is usually defined as the county where the project is located.) Classifications requested must identify the specific trade and should not involve generic titles such as operator, mechanic or installer. The work that will be performed by the requested classification is not performed by another classification already on the applicable wage decision.
- The proposed wage rate and any fringe benefits bear a reasonable resemblance to the rates on the wage decision.
- The workers that will be employed in the added classification or the worker's representatives, if applicable, must agree with the proposed wage rate.

**Fringe Benefits** – If the wage decision calls for fringe benefits to be paid on behalf of any employee who worked on the project, such payment does not normally have to be verified by contact with the receiving institution. However, if problems are suspected, verification of the payment of fringe benefits should be pursued by the local government.

Fringe benefits do not appear on the worker's checks, but are amounts paid to a receiving institution on behalf of the worker. Sometimes fringe benefits are confused with deductions. For instance, health insurance provided entirely by the employer would be a fringe benefit, whereas health insurance chosen by the employee and paid for by amounts subtracted from the employee's gross wages would be a deduction.

Fringe benefits that are common to the construction industry may be credited toward meeting DBRA if they are paid to the employee in cash or into an approved fund, plan, or program on the employee’s behalf.
If a wage decision contains fringe benefits for a classification used on the construction project, box 4a or 4b of the Payroll Form must be marked to indicate the method of fringe benefit payment, such as in cash or to an approved plan. If there were no classifications used on the project that required fringe benefits, the boxes should be left blank. Box 4c is used to denote exceptions to box 4a or 4b. For example, if all of the employees are paid fringe benefits in cash except one, who gets payment of fringes into an approved plan, box 4b would have been marked for payment of fringes in cash with box 4c also marked indicating and explaining the exception.

Fringe benefit pay requirements are always calculated at a per-hour-worked rate and are not calculated at a time-and-a-half rate.

Flexibility is allowed in the allocation of how fringe benefits are paid. Using the above example, the contractor has flexible payment options such as (a) pay all of the $632 in cash; (b) pay $580 in cash and $52 in fringes; or (c) pay more or less than $580 in cash and more or less than $52 in fringes with the total paid to be $632.

On payrolls, it is helpful to list the regular pay rate separately but next to the fringe rate as follows: Regular rate/Fringe rate, $10.00/$1.00.

Verifying Fringe Benefits – Fringe benefits may be paid in cash and such payment(s) can be determined by examining the face of the payroll. When fringe benefits are paid in cash, box 4-b of the Statement of Compliance must be checked. Fringe benefits that are paid to an approved plan are not usually posted on the face of the payroll. When fringe benefits are paid to an approved plan, box 4-a of the Statement of Compliance must be checked. The fact that box 4-a is marked on the Statement of Compliance is acceptable to indicate that fringe benefits equal to the amount stated on the wage decision were paid. Most of the time, additional verification will not be necessary. Additionally, if the basic hourly rate is less than required on the wage decision with the obvious claim that fringes are making up the balance due in order to meet the total DBRA, verification of the payment of fringe benefits may be considered. In some cases, where problems are suspected, verification of the payment of fringe benefits may be necessary.

Fringe Benefit Verification – An approved plan will have an institution(s) that receives fringe payments on a regular basis. Fringe benefit payments into an approved plan may be made on a weekly, monthly, or quarterly basis, but not semi-annually or annually. The applicable contractor will be the source of contact information for the receiving institution. Verification should include the following: (a) institution’s name(s); (b) phone number(s); (c) date(s) contacted; (e) results of the inquiry; (f) person(s) contacted at the institution; and (g) the name of the person who made verification for the local government. Verification may be made by phone, written correspondence, computer printout, or fax from a receiving institution, computer printout or fax from a union, or a copy of cancelled check(s) from the contractor written to a receiving institution.

A computer printout from the contractor is also acceptable as supporting evidence of payment of fringe benefits, but does not relieve the UGLG of its responsibility to ensure that the proper payments are being made if there is any reason to suspect that they are not.

Deductions – A deduction is an amount subtracted from a worker’s gross wages. Deductions must be reviewed to determine if they are permissible. Permissible deductions by law include court ordered deductions, Federal Insurance Contributions Act (FICA), and federal or state income taxes. Deductions
not required by law, such as union dues or uniforms, may be made only with the permission of the employee. The employee must sign a statement that authorizes deductions. The Payroll Deduction Authorization Form, provided as Form 10-N, should be used.

**Payroll Certification of the Self-Employed Contractor Who Works Alone** – A self-employed laborer or mechanic (or group of working partners) who has no other employees working on the job is not authorized to sign his/her own payroll and Statement of Compliance. Instead, such a person, often called a working subcontractor, must be listed on the prime contractor's (responsible employer's) payroll. For instance, Joe's Backhoe Service has one backhoe and no other workers other than the owner. Joe cannot sign his own payroll while on a CDBG project. In contrast, if Joe hires at least one employee to help on that project, he could certify his own wages as well as the employee's wages.

The minimum information needed on the responsible employer's payroll regarding the working subcontractor are name, address, classification(s), hours worked, estimated hourly pay, and estimated gross pay. Deduction amounts for social security and federal taxes of the working subcontractor are not the responsibility of the prime contractor and such amounts may be unknown to the prime contractor; therefore, deduction listings are not required. The Statement of Compliance should indicate box 4c for the working subcontractor as an exception to the way fringe benefits may have been paid for regular employees. The explanation for box 4c may read something like, "Working sub, lump sum contract, fringes and deductions not applicable."

Sometimes it may be confusing for a prime contractor to list a working subcontractor on his payroll in addition to his regular employees. In such case, the prime contractor may prepare a separate weekly payroll listing only one person, the working subcontractor, using the payroll form in Attachment 10-K.

Whatever method of compensation is utilized, such as piece work or a weekly contract draw for performance, the amount of estimated weekly compensation divided by the actual hours of work performed for that week must result in an “effective” hourly wage rate that is not less than the prevailing hourly rate for the type of work involved.

A special exception for truck owner-operators is available. Truck owner-operators must be reported on the prime contractor's (responsible employer's) weekly payrolls but, unlike other classifications, do not need to show the hours worked or rates—only the notation owner-operator.

**Liquidated Damages** – Liquidated damages is a predetermined amount that is paid as a penalty for failure to meet a specified requirement. Liquidated Damages, relative to the review of payrolls in the CDBG Program, is the penalty amount calculated for overtime violations under the CWHSSA. The predetermined penalty is $10 per worker, per day for overtime violation(s). Please note that penalty amounts paid for overtime violations to a specified government entity as liquidated damages are separate and distinct from wage restitution paid to workers. Liquidated damages are paid in addition to any restitution.
Section 8 – Job Site Visits and Employee Interviews

The UGLG is required to conduct visits to the construction site to see if applicable DOL posters and the wage decision are posted. In addition, the labor standards requirements include periodic job site interviews with workers. The purpose of the interviews is to capture observations of the work being performed and to get direct information from the laborers and mechanics on the job regarding the hours they work, the type of work they perform, and the wage they receive.

Interviews should occur throughout the course of construction and include a sufficient sample of job classifications represented on the job, as well as workers from various companies to allow for a reasonable judgment as to compliance. Information gathered during an interview is recorded on the Record of Employee Interview (HUD-11), Form 10-O.

The interview should be conducted on the job site and privately as a one-on-one process. The interviewer should observe the duties of workers before initiating interviews. Employees of both the prime contractor and subcontractors should be interviewed. To initiate the interview, the authorized person shall:

- Properly identify himself/herself.
- Clearly state the purpose of interview.
- Advise the worker that information given is confidential, and his/her identity will be disclosed to the employer only with the employee's written permission.

When conducting employee interviews, the interviewer should pay particular attention to:

- The employee's full name.
- The employee's permanent mailing address.
- The last date the employee worked on that project and number of hours worked on that day. The interviewer should make it clear that these questions relate solely to work on the project and not to other work.
- The employee's hourly rate of pay. The aim is to determine if the worker is being paid at least the minimum amount required by the wage decision.
- The interviewer should be sure the worker is not quoting their net hourly rate or take-home pay.

If it appears the individual may be underpaid, the interviewer should closely question the worker by:

- Asking for any records.
- Arranging to re-interview the employee.
- Enter the worker's statement of his/her classification.
- Observed duties and tools used.

If worker's statements and observations made by the interviewer indicate the individual is performing duties conforming to his classification, indicate the following on the Record of Employee Interview Form.

- If there are discrepancies, detailed statements are necessary.
- Enter any comments necessary.
Enter date interview took place.

The HUD-11s must be compared to the corresponding contractor and subcontractor payroll information.

If no discrepancies appear, "None" should be written in the comment space of the Record of Employee Interview Form and it should be signed by the appropriate person.

If discrepancies do appear, appropriate action should be initiated. When necessary action has been completed, the results must be noted on the interview form.

If there are wage complaints, the interviewer should complete the Federal Labor Standards Complaint Intake Form (HUD Form 4731, Form 10-P). The complaint must be investigated and resolved. Contact MEDC, which may engage HUD or DOL if necessary.

Section 9 – Restitution for Underpayment of Wages

Payrolls that are incomplete, such as those which lack classifications or rates of pay, will trigger the need for the contractor to provide a corrected payroll and Statement of Compliance that lists the required information.

Handwritten Corrections of Payroll By Reviewer Not Allowable – The local government, in reviewing a payroll, is not allowed to make corrections on the face of a payroll or on the Statement of Compliance. Such documents are designed to be sufficient as evidence in a legal proceeding, and corrections by multiple sources often do not allow the reader certainty as to who made the corrections. If the local government wishes to provide written clarification of a minor payroll item, a note with the reviewer's initials and date may be attached.

Three Scenarios of Payroll Review – Three scenarios regarding payroll review and corrective actions are identified in form 10-I, the payroll review flowchart. Each scenario triggers a unique set of events. Review the Payroll Review Flowchart for an overview of the processes involved. The three scenarios are as follows:

- Scenario One: Error that involves restitution.
- Scenario Two: Error that does not involve restitution.
- Scenario Three: Error not detected.

Notice to Contractor when Restitution is Involved – Scenario One deals with payroll errors that involve restitution due to underpayment of wages. Underpayment may result from either DBRA violation(s), CWHSSA overtime violation(s), or both. The local government must promptly notify the prime contractor in writing that payment of back wages is required. This notice should identify the name of the prime contractor and the applicable subcontractor, the underpaid workers, the correct job classification and wage rate, dates of underpayment, and the amount of underpayment owed. The contractor must be notified of the need to make restitution by using a Certified Correction Payroll, as discussed below.

If overtime violations under CWHSSA exist, the notice to the contractor should also identify a calculation of Liquidated Damages and inform the contractor of two choices regarding Liquidated Damages—pay or request a waiver.
Certified Correction Payroll – Under Scenario One, a payroll that reflects restitution paid under DBRA or CWHSSA is called a Certified Correction Payroll. Such a payroll will always be prepared by the employer and the Statement of Compliance will be signed by the employer. The signature on the Statement of Compliance designates the payroll a Certified Correction Payroll. A Certified Correction Payroll will only list those workers to whom restitution is paid. A Certified Correction Payroll may cover multiple weeks and must specify the weeks covered. The monetary amounts listed, wages, and deductions reflect restitution amounts paid, and should not indicate amounts paid and listed on past payrolls. Optionally, a Certified Correction Payroll may also cover one week at a time.

Payroll problems that require the employer to prepare a Certified Correction Payroll may include the following:

- Wage rates on the payrolls do not meet DBRA.
- Wage rates on the payrolls do not meet CWHSSA requirements.
- Worker classifications are wrong, incomplete, or not in accordance with the applicable wage decision resulting in restitution due.
- Calculations are in error and result in underpayment of wages.

A Certified Correction Payroll will record the difference between amount paid and the required amount which should have been paid. The deficiency would be multiplied by the applicable number of hours worked at the lower-than-allowable rate.

The contractor may submit a Certified Correction Payroll for each applicable workweek or for multiple workweeks. A Certified Correction Payroll, if prepared for multiple weeks, should indicate the weeks for which it pertains, such as Weeks Two through Eight, and 11. A Certified Correction Payroll, if prepared for one week at a time, must be numbered the same as the original payroll for that workweek, but must indicate the appropriate revision number, such as Payroll Eight, Revision One.

In most cases, the Statement of Compliance, as part of the Certified Correction Payroll, will be sufficient to demonstrate that restitution was made. Cancelled checks, employee initials, or an employee statement are no longer routinely required as additional proof of payment of restitution. If problems are suspected, additional proof may be required by the MEDC or other reviewing agency.

For example: If a worker was paid $10.00 per hour and should have been paid $11.00 per hour for 100 hours during three different non-overtime weeks, the amount of restitution payment as recorded on the Certified Correction Payroll would be $1 x 100 = $100.
The Use of Corrected Payrolls to Demonstrate Restitution – Some contractors may wish to provide corrected payrolls with a newly signed Statement of Compliance. A corrected payroll differs from a Certified Correction Payroll in the following ways:

- A corrected payroll is for one weekly period whereas a Certified Correction Payroll may cover multiple weekly periods.
- A corrected payroll lists all workers who worked on a project during a weekly period, whereas a Certified Correction Payroll lists only workers to whom restitution was paid.
- A corrected payroll lists the total hourly rate received from original pay rate plus the restitution rate, whereas the Certified Correction Payroll will list only the restitution pay rate.

If a contractor wishes to provide a corrected payroll to demonstrate restitution rather than a Certified Correction Payroll, such a provision is acceptable; however, a Statement of Compliance having a later signature date must accompany the corrected payroll. The corrected payrolls should be numbered the same as the original incorrect payrolls such as Payroll Two, Revision One.

Calculation of Liquidated Damages – Under Scenario One, assuming that there was restitution due that involved not only DBRA, but also overtime violation(s) under CWHSSA, overtime rates must be paid at 150 percent of the basic hourly rate. This is commonly referred to as time-and-a-half. Under CWHSSA, liquidated damages are computed at the rate of $10 per worker for each calendar day the worker was required or permitted to work in excess of 40 hours in a week without payment of overtime rates.

MEDC must be informed immediately upon the occurrence of any of the above infractions.

Steps in Calculation, Assessment, Payment, or Appeal of Liquidated Damages – The local government calculates restitution and liquidated damages due, and notifies the contractor by traceable correspondence (e-mail, fax, or letter). The contractor, having received notification, must make restitution via a Certified Correction Payroll (or corrected payroll with certification), and agree to either pay or request a waiver for liquidated damages. The contractor is to notify the local government of the choice by traceable correspondence.

If payment is the contractor's choice, the contractor must use a wire transfer to make payment. Please contact the Program Specialist at the MEDC for instructions regarding a wire transfer. Such procedures involve filling out certain forms, some of which are sent to HUD to enable a receiving account to be established. The contractor will be notified when the wire transfer can be received by an active account at HUD. The contractor will use a financial institution to conduct the wire transfer using a form prescribed by HUD. After the wire transfer and proper notification/documentation of such payment to all parties concerned, the contractor’s responsibility for payment of liquidated damages will have been met. The financial institution may charge the contractor a fee for making the wire transfer.

For instance, if workers worked six days a week for twelve hours per day and were paid straight time for 72 hours, there would be three days of violations. Overtime pay should have started on day four and continued on day five and day six. The liquidated damages calculation would be $30 per worker. Liquidated damages would be calculated in addition to the payment of wage restitution.
If the contractor chooses to request a waiver (or reduction in penalty amount), the contractor is to send the local government written communication explaining the reasons why a waiver is requested. There are two reasons for HUD to grant a waiver:

- The error was unintentional although due care was exercised.
- A mathematical mistake was made.

The local government will forward the letter to the MEDC, who will send the letter to HUD. Following HUD’s response, the MEDC will communicate HUD’s response to the local government by traceable correspondence. The local government is to communicate the response to the contractor(s) by traceable correspondence.

If HUD approves the request for the waiver of the payment of liquidated damages, labor standards requirements regarding liquidated damages will have been met. If HUD does not approve the request for the waiver, call the Program Specialist at MEDC for further instructions. The contractor will have 60 days to appeal the notice from HUD.

The Use of Corrected Payrolls Where Restitution Is Not Due – Under Scenario Two, as shown in Form 10-I, restitution will not be due but still some correction (not involving restitution) to the payroll is necessary. A corrected payroll may be used to reclassify workers, correct math errors, clarify monetary amounts, revise improper dating, etc. Each corrected payroll is for one week only. The weekly numbering of the corrected payroll should be for the same weekly number as the original incorrect payroll, such as Payroll Four, Revision One. The contractor may cross a line through the mistakes and provide the corrections in handwriting or use software or other means to produce a corrected payroll. A new signature on a Statement of Compliance must be provided. One way to provide a new signature is by attaching a copy of the original Statement of Compliance with a new signature and date above the original signature. Optionally, the contractor may wish to prepare a new Statement of Compliance, signed and dated, for any week with a corrected payroll.

Supplementary Statements – A supplementary statement from the contractor may be obtained to clarify minor issues. Situations where a supplemental statement would be acceptable include an incorrect employee name. The supplementary statement should be dated, signed by the authorized payroll signatory, and also identify the relevant payroll number(s). A Statement of Compliance does not accompany a supplementary statement.

No Error Detected – Scenario Three is identified as the scenario under which no error is detected.

Reporting Requirements – See the Payroll Review Flowchart in Form 10-I, for a visual diagram illustrating the three scenarios of payroll review and the reporting requirements triggered by each scenario.
A Labor Standards Enforcement Report, Form 10-Q, is required when restitution, cumulatively for any contractor or subcontractor, reaches $1,000 or more. Instructions for completing the form are included in Form 10-Q. It is possible that one CDBG project could trigger multiple Labor Standards Enforcement Reports.

The Labor Standards Enforcement Report is to be completed and sent to MEDC when most or all of the corrective action has been completed. For instance, if a contractor made restitution and chose to pay liquidated damages, the local government can wait until receipt of evidence of restitution, contractor's letter agreeing to pay liquidated damages, and payment of the liquidated damages before sending MEDC the enforcement report. In such a case, the letter from the contractor agreeing to pay liquidated damages, evidence of the wire transfer, and the Labor Standards Enforcement Report would be sent together, to MEDC.

The Labor Standards Enforcement Report should be sent before closeout documents are submitted, especially if a waiver of payment of liquidated damages is requested, as HUD may take up to a month to respond.

As indicated under all three scenarios in the flow chart, the Final Wage Compliance Report (Form 10-S) must be sent to MEDC as the last item regarding labor standards. The Labor Standards Enforcement Report may be necessary during the life of a project, whereas the Final Wage Compliance Report is always a necessary component of the close-out documents.

**Reporting Restitution under DBRA and CWHSSA** – In reporting restitution on the Labor Standards Enforcement Report or the Final Wage Compliance Report, it is important to correctly classify restitution. The DBRA component of restitution will involve an underpayment rate for each hour worked at the deficient rate. The CWHSSA component of restitution will involve the payment of one-half of the hourly deficiency for each overtime hour worked.

When reporting components of restitution, the proper method is indicated in the previous paragraph.

**Withholding Funds Based on Noncompliance with Labor Standards** – If violations regarding restitution have not been corrected within thirty calendar days from the date of the first notice of underpayment, the local government may withhold funds due the prime contractor. MEDC must be notified immediately of any violations requiring restitution. Only an amount considered necessary to ensure payment of underpaid wages (and Liquidated Damages, if applicable) may be withheld. If it is necessary to estimate the withholding amount, prompt action must be taken to determine an exact amount and disburse any applicable excess to the prime contractor according to invoices presented for payment. The local government must notify the prime contractor of the withholding and provide the second notice of underpayment. The local government must, again, specify the identity of underpaid workers, correct job classifications and wage rates, dates when underpayments occurred, and the amounts of underpayments owed. If restitution is not made within 30 days of the second notice of underpayment or if there is disagreement regarding the finding of wages owed, MEDC must be notified immediately.

If MEDC determines it appropriate, the local government will be notified to disburse wages owed from the withheld funds to the respective workers to whom they are due. Should such an occasion arise MEDC must be contacted for information on the proper procedure for disbursement of funds.
Withholding Funds Based on Noncompliance with CDBG Requirements – If a Labor Standards violation(s) does occur that results in the local government not being in compliance with the approved CDBG program, the MEDC may suspend payment on the next Request for Payment. For example, if the local government fails to ensure the timely submission of contractor payrolls by the prime contractor (and any lower-tier subcontractor), then the local government may be considered as being in noncompliance with CDBG program requirements.

Unfound Workers – If all affected workers cannot be located and restitution made, either by the contractor directly or through use of withheld funds, enough funds must be reserved in the special account to pay those workers the wages owed. Efforts should continue to be made to locate workers; however, if they have not been located by the time of grant close-out, the local government must return the withheld funds to MEDC. A check, made payable to the State of Michigan, and a Labor Standards Enforcement Report (Form 10-Q) covering the remaining withheld funds must be submitted to MEDC before the grant will be closed.

Falsification – If intentional falsification by a contractor is suspected, the local government’s Labor Compliance Officer must not return the payroll to the contractor for correction and resubmittal. MEDC must be informed of the suspected falsification.

Payroll Retention – Payroll records must be retained by the local government for a period of four years from the date of the letter indicating “Final Close” of the CDBG program relative to the construction project. The payroll records must be available at all times during the retention period for inspection by representatives of MEDC, HUD, and DOL.

Finalizing Labor Compliance – The Final Wage Compliance Report, Form 10-R, must be approved by the Program Specialist before the grant can be closed out. If there are unresolved labor compliance problems at that time, the MEDC Labor Compliance Officer will assist the local government in determining how to correct such problems.

Section 10 – Progress Inspections, Change Orders, Final Inspection

Change Orders
It is not uncommon for circumstances to require modifications to various construction contracts. The architect/engineer or project inspector usually prepares change orders; however, the UGLG must approve and authorize change orders before they are given to the contractor and executed. The proposed change should also be verified and/or recommended for approval by the project engineer, Program Specialist, architect, or other technical support personnel. The recipient should compare such change orders to the CDBG construction budget prior to approval.

NOTE: If the change order would cause any change in a budget line item, scope of project, or change in beneficiaries, the UGLG must request a contract modification from MEDC. The UGLG may approve such a change order only after MEDC approves a contract modification. This requirement is enacted to ensure that the project does not risk becoming ineligible or result in the UGLG not achieving its required overall income targeting.

All change orders must contain a unit price and total for each of the following items:

- All materials with cost per item.
- Itemization of all labor with number of hours per operation and cost per hour.
- Itemization of insurance cost, bond cost, social security, taxes, workers’ compensation, employee fringe benefits, and overhead costs.
- Profit for the construction contractor.
- Inspections.

The architect/engineer must conduct periodic inspections of the contractor’s work for compliance with specifications, drawings, and conditions of the contract. These inspections must be documented in writing and kept in the CDBG project files. Comparing inspection reports to payrolls is also a good way to monitor labor standards. Prior to approval of progress payments to contractors, the UGLG must make sure all work is completed as stated; that all payrolls have been submitted and are accurate and complete; wage violations are corrected and any restitution paid; and that all charges are allowable.

UGLGs may withhold at least 10 percent of each progress payment until the end of the project to ensure funds are available to address any unanticipated issues (e.g., payroll issues, insufficient progress, etc.). When construction work has been completed, the contractor must certify completion of work to the recipient and submit a final request for payment. Before work is accepted and final payment is made to the contractor, the recipient should verify that:
- All payrolls have been received and checked, and any necessary restitution has been made.
- All other required Equal Opportunity and Labor Standards provisions have been satisfied.
- All contract submissions have been received.
- All claims and disputes involving the contractor have been resolved.
- Files are complete.
- As-built plans have been filed with the recipient, if applicable.

**Recordkeeping**
- Designation of a local Labor Standards Compliance Officer
- Request for Wage Determination
- Wage determinations, modifications, and additional classifications
- Evidence of the 10-Day Call
- Verification of contractor eligibility
- Evidence of Bid Opening (tabulation and minutes)
- Notice of Contract Award
- Contractor’s License Forms
- Notice to Proceed
- Notice of Pre-construction Conference (minutes)
• Contractor’s and subcontractor’s weekly payrolls and Statements of Compliance signed by an officer of the company
• Evidence of apprenticeship/trainee registration and certification that apprentice or trainee rates were paid
• Payroll deduction authorizations
• Employee interviews
• Evidence indicating that the federal wage determination and the Labor, Equal Opportunity, and Safety posters were posted
• Evidence of restitution, if any
• Complaints from workers, if any, and actions taken
• Labor Standards Compliance Report(s), if any
• Final Wage Compliance Report

Chapter 10 Form(s)
10-A Appointment of Labor Compliance Officer
10-B Wage Decision SAMPLE
10-C Request for Wage Decision
10-D Ten Day Call Form
10-E Notice of Contract Award
10-F Pre-Construction Checklist
10-G Handout of Frequently Asked Questions on Equal Opportunity
10-H Notice to Proceed
10-I Payroll Review Flowchart
10-K Payroll, WH 347
10-L Payroll Review Worksheet
10-M Report of Additional Classification and Rate, HUD-4230A
10-N Payroll Deduction Authorization
10-O Record of Employee Interview, HUD-11
10-P Federal Labor Standards Complaint Intake Form, HUD-4731
10-Q Labor Standards Enforcement Report
10-R Final Wage Compliance Report
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:

- Provide for and encourages citizen participation, with particular 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.
- 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.
- 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.
- 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.)
- Provide for a formal written procedure that will accommodate a timely written response to written complaints and grievances, within 15 days where practicable.
- 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.

These items are addressed in the Part 2 Application section, Certification by the Applicant UGLG. 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. 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:

- The amount of funds available for proposed community development.
- The range of activities that may be undertaken, including the estimated amount proposed to be used for activities that will benefit LMI persons.
- 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.
- 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 can 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, 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 aforementioned 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/recipient, 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:
  
  - 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;
  
  - 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
  
  - 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:
  
  - 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.
  
  - Whether an opportunity was provided for open, competitive bidding, or negotiation.
  
  - 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.
  
  - Whether the interest or benefit was present before the affected person was in a position as previously described.
  
  - 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.
• 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 successful in receiving CDBG funds must submit updated disclosure reports. Updated disclosure reports must be submitted to the Program Specialist when the following circumstances occur:

- Any information that should have been disclosed in connection with the application, but that was omitted.
- Any information that would have been subject to disclosure in connection with the application, but that arose at a later time, including information concerning an interested party that now meets the applicable disclosure threshold.
- Changes to other previously disclosed government assistance where the revised amount of assistance exceeds the amount previously disclosed.
- 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 percent of such interests, whichever is lower.
- Changes in previously disclosed sources or uses of funds, where:
  - The change in a source of funds exceeds the amount of all previously disclosed sources of funds by $250,000 or by 10 percent of those sources, whichever is lower.
  - The change in a use of funds exceeds the amount of all previously disclosed uses of funds by $250,000 or by 10 percent 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 (whether it is a Part 1 or Part 2 application), 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:

  - 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.
• 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.

• 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 on the basis of 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 Form(s)

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
Chapter 12
Monitoring and Grant Amendments

Introduction

CDBG is required by statute to monitor its UGLGs. This requirement is outlined in Title I of the Housing and Community Development Act of 1974, as amended and 24 CFR Part 570.492 of the State CDBG Regulations. Section 104 (e) of Title I outlines the review responsibilities of the State.

During the course of a CDBG project, the Program Specialist will monitor each UGLG through periodic on-site visits and written semi-annual reports, so that any problems that might occur may be resolved as soon as possible. It is the goal of MEDC to assist and support UGLGs in complying with applicable State and Federal requirements and in implementing their project activities in a timely manner.

As discussed throughout this Manual, UGLGs are required to maintain complete financial and program files and to comply with program reporting requirements. These files should be maintained on-site. IF A CGA IS USED, PROGRAM FILES MUST BE MAINTAINED AT THE UGLGs OFFICE. UGLGs must also provide citizens with reasonable access to these records pertaining to the past use of CDBG funds. UGLGs must retain all CDBG records until notified by the Program Specialist.

Section 1 – Monitoring Objectives

Federal regulations require the State to oversee and document all expenditures of CDBG dollars. The review responsibility requires that the State ensure three key areas are in compliance:

1. Approved activities are carried out in a **timely manner**.

2. Activities and certifications are conducted in accordance with the requirements and the primary objectives of **Title I and with other applicable laws**.

3. UGLGs show a continuing **capacity** to carry out approved activities in a timely manner.

The MEDC staff may schedule a monitoring visit with the UGLG at any time to review the program performance on-site. A visit may be a comprehensive program evaluation or it may be oriented toward assessing performance in specific areas. All records and files pertaining to the program, as well as any other information requested should be made available to Program Specialist.

The purpose of the monitoring visit is to determine if the grant is being conducted in compliance with applicable Federal and State laws and requirements which have been discussed in this Manual. The review will also determine the UGLG’s ability to implement the program in a timely manner. The monitoring visit consists of a review of project files, records and documentation as well as a visit to the project site.

Together, the UGLG and MEDC will decide on a suitable date and time for the monitoring visit. The UGLG will be notified, via email, approximately two weeks prior to the visit. The email will provide instructions with regard to documents and staff required to be present at the onsite monitoring. The UGLG must have all records, files and documentation available for review at the monitoring visit. Failure to have records readily accessible will result in a program "finding."
Findings of Deficiency are program elements which do not comply with a Federal statute, regulation, or other applicable laws, guidelines and program policies.

Areas of Concern are potential findings or program weaknesses that should be improved upon to avoid future problems.

Even though the monitoring visit is a formal review of the grant, the MEDC staff, to the extent possible, will work with the UGLG on-site to correct any problems. Any problems that cannot be corrected will be discussed in the monitoring letter. Technical assistance may be provided, as necessary, during the monitoring visit.

Section 2 - Protocols for Monitoring Visits

The monitoring visit begins with an entrance conference with the project administrator and others the UGLG feels should attend. It is expected that the chief elected official or chief administrator will attend this initial meeting, if possible. The Program Specialist will briefly outline the purpose of the monitoring visit and the areas to be monitored. The monitoring visit will be conducted in accordance with the State’s monitoring procedures and will last approximately one day. It should be pointed out that complex programs, i.e., those containing loan funds or involving a large number of acquisitions or relocation, may require additional time.

The following is a listing of the program areas to be reviewed as applicable:

1. National Objectives
2. Environmental Review
3. Financial Management
4. Citizen Participation
5. Procurement and Contracting
6. Construction Management and Labor Standards
7. Section 3
8. Fair Housing and Equal Opportunity
9. Acquisition and Relocation
10. Program Requirements – Rental

This listing may not include all areas that may be reviewed during an on-site monitoring visit.

After the monitoring visit, the Program Specialist will have an exit conference to discuss any findings or areas of concern. The Program Specialist, to the extent possible, will work with you on-site to correct any problems. Any problems that cannot be corrected will be discussed in the monitoring letter.

In approximately 30 days following the monitoring visit, the Program Specialist will send a letter which identifies both the positive and negative findings of the monitoring review. Each program area monitored will be summarized and any findings/identified problems or concerns will be outlined along
with suggested corrective actions. A "finding or identified problem" is an action or lack of action(s) in direct violation of a statutory requirement or regulation. A finding/identified problem usually requires a corrective action or actions that are outlined by the Program Specialist. A concern is a non-statutory issue that involves program improvement or management. Actions or recommendations may be provided to address the identified concern.

A written response will be required from the UGLG if there are findings/identified problems or concerns within 30 days of receipt of the monitoring letter. Failure to respond within the 30 day period will be considered non-compliance with the grant’s terms and conditions. This situation may result in a hold on payments being placed on the grant until a suitable response is received by the MEDC.

**Section 3 - Sanctions**

If the UGLG does not comply with the provisions of the CDBG grant agreement, MEDC may take one or more of the following actions to prevent a continuation of the deficiency; mitigate, to the extent possible, the adverse effects or consequence of the deficiency; or prevent a recurrence of the deficiency. The following actions may be pursued, as well as any other actions deemed appropriate:

1. Issue a letter of warning that advises the UGLG of the deficiency and notifies the UGLG that additional action will be taken if the deficiency is not corrected or is repeated.
2. Advise the UGLG that additional information or assurances will be required before acceptance of one or more of the certifications required for future CDBG projects.
3. Advise the UGLG to suspend or terminate expenditure of funds for a deficient activity or grant.
4. Advise the UGLG to reimburse the grant in any amount improperly expended.
5. Refrain from extending any further assistance to the UGLG until such time as the UGLG is in full compliance.

**Section 4 - Technical Assistance**

When deficiencies are identified as a result of monitoring, technical assistance may be required to assist in the resolution of the deficiency. The objective of technical assistance is to aid the UGLG in their day-to-day compliance with program and regulatory requirements as they administer their individual programs. The nature and extent of technical assistance should be determined at the discretion of the Program Specialist. Examples of technical assistance may include:

1. Verbal or written advice
2. Formal training
3. Documentation and guidance
Section 5 – Grant Amendments

A **Grant Amendment** is defined as any change in the grant that involves some or all of the following (1) introduce a new activity to the project, (2) *significantly* alter existing activities or beneficiaries, (3) extend the term of work, or (4) changes to the award budget.

To request a grant amendment the UGLG must submit:

1. A completed Grant Amendment Request form (Form 12-B) from the authorized official to the Program Specialist outlining the proposed changes. Revised Application Budget form, if applicable.
2. Public Notice 15-day notice if applicable.
3. Local resolution from the UGLG’s governing board in support of the amendment, if applicable. The local resolution must be passed after the public hearing or appropriate/approved action plan requirements.
4. Environmental review, if applicable (see 24 CFR Sec. 58.47).
5. A map of the project area, showing the original project area, the new project area and distinguishing what is being added and deleted.

Chapter 12 Form(s)

12-A Monitoring Checklist
12-B Grant Amendment Request
12-C Implementation Schedule – OBSOLETE AS OF 04.01.17
Chapter 13
Grant Closeout Process

Introduction
Upon completion of the Community Development Block Grant (CDBG) approved activities and/or the expenditure of all CDBG funds with respect to a specific CDBG grant, the Unit of General Local Government (UGLG) – enters the final phase in the grant management process, known as grant closeout.

The closeout process encompasses a series of activities to verify CDBG funds have been properly spent and the UGLG complied with all applicable rules and requirements in the implementation of its program.

The timeliness in which the UGLG completes the closeout process, and the content of the information presented, is a factor in the evaluation of future applications for CDBG funds. It is possible, however, for an UGLG to receive an additional CDBG grant the closeout of current award(s).

UGLGs will be expected to carry out each project as proposed in the grant application and grant agreement. The proposed activities should be completed and proposed beneficiaries should be served/assisted prior to project closeout.

UGLGs may be expected to provide additional funds to meet the proposed accomplishments if actual accomplishments are significantly less than proposed. If there is a change in scope or project cost that would affect the proposed accomplishments or beneficiaries, the Program Specialist should be contacted and a Grant Amendment may be necessary. Failure to carry out the project as proposed will be considered a performance concern in future application requests.

The procedure outlined in this chapter must be followed to closeout CDBG grants from the Michigan Strategic Fund (MSF).

Section 1 – Closeout Procedures
Upon completion of the approved activities, the UGLG will submit a Final Payment Request and the closeout process may begin. The UGLG must complete and submit a closeout package containing the following items:

1. **Final Progress Report.** This report serves as a final description of the project completion and final certification of CDBG and all other matching funds.

2. **Final Job Creation Summary Report** (Form 2-C), if applicable. This report serves as the final reporting for all jobs created.

3. **Building Inspector** letter, if applicable. This letter certifies all blight has been eliminated.

4. **Actions to Affirmatively Further Fair Housing** (Form 13-A). This form requires the UGLG to list actions taken and results achieved to affirmatively further fair housing, including an estimate of the costs (time and material costs combined) involved in carrying out the actions listed, regardless of the funding source.
5. **Closeout Public Hearing** documentation. The UGLG must document it has conducted a closeout public hearing to discuss the project's accomplishments. The UGLG must submit an affidavit or tear sheet to evidence notice of this public hearing and a brief description of the public hearing.

   - If proposed performance accomplishments were not met, or if there was a significant change in the accomplishments, a special public hearing and/or a Grant Amendment may still be required at the direction of the Program Specialist.

6. **Monitoring Findings Resolved**, if applicable. The UGLG must clear all findings from monitoring reports before closure of the grant can be completed.

7. **Grant Award Decrease for Closeout** (Form 13-C). If all funds are not expended (total project costs are less than the amount specified in the grant award), a Grant Award Decrease for Grant Closeout Form is initiated by the Program Specialist and sent as part of the closeout package to reduce the grant award to reflect actual costs. When the UGLG and/or other entities are funding an activity along with CDBG funds, to the extent allowable, the cost savings should be prorated among all funding sources. The Grant Award Decrease for Closeout Form must be completed, signed by the appropriate officials, and returned with the computer report to the Program Specialist. Upon receipt, the CDBG Program Specialist will sign the form and return a copy to the UGLG for their records with the closeout letter.

8. **Return Unexpended Funds**. If funds were drawn and not expended, a check for the funds unexpended, with the grant number denoted on the check, must be mailed to the MEDC office and made payable to the State of Michigan.

9. **Personal Property Management Report** (Form 8-B1). This form must be completed if any non-expendable property was purchased with CDBG funds.

10. **Real Property Management Report** (Form 8-B2). This form must be submitted if real property is purchased with CDBG funds.

11. **Return Interest Earned**. All interest earned on the CDBG main bank account, minus $100 per year for administrative expenses, must be returned to the MSF in the form of a check payable to the State of Michigan, with the grant number denoted on the check.

### Submittal, Review, and Approval of the Closeout Package

The UGLG has 120 days from end of the term of work to provide a Final Progress Report and all required closeout documents to the Program Specialist.

After the packet has been reviewed and approved, a closeout letter is sent to the UGLG.

- **Final Closeout** – Grant activities are complete, award was expended or returned, National Objective was met and all audits have been received, reviewed and approved.

- **Conditional Closeout** - Grant activities are complete, award was expended or returned, National Objective was met. However, MEDC is awaiting receipt and approval of audit(s) – see GAM Chapter 8. After all audits have been approved, a Final Closeout letter will be sent.

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The purpose of a conditional close-out is to have the UGLG acknowledge, by the signature of its authorized local official, that the grant is being closed out pending the submission of a 2 CFR 200 audit, if required, and that it will comply with all audit requirements associated with receiving CDBG funds from the State. Instead of a 2 CFR 200 audit, an UGLG must submit the Audit Requirements Certification (Form 8-C) to the Program Specialist indicating the UGLG expended less than $750,000 of federal funds over a fiscal year and was exempt from a 2 CFR 200 audit.
Section 2 - Conditional Closeout Requirements
If the UGLG receives a Conditional closeout letter pending submittal of an audit, the UGLG must have an audit conducted in accordance with 2 CFR 200 or an Audit Requirements Certification (Form 8-C). The UGLG must submit an audit within nine (9) months of the end of the UGLG’s fiscal year. Once the audit has been reviewed and approved, and the closeout has been achieved, a Final Closeout letter will be sent to the UGLG.

Section 3 – File Maintenance
The Grantee shall maintain records which will allow assessment of the extent of Grantee performance of the Scope of Work and which allow for the comparison of actual outlays with budgeted amounts. The Grantee’s overall financial management system must ensure effective control over, and accountability for, all funds received. Accounting records must be supported by source documentation such as time sheets and invoices.

Section 4 – File Retention
The Grantee shall retain all financial records, supporting documents, statistical records, and all other pertinent records until notified by the MSF.

MSF reserves the right to reopen this grant (ie, in the event of future monitoring by HUD or instances of noncompliance by the UGLG).

The UGLG must retain, at its office, all program records and project files and obtain documents from contracted parties (ie, architects, engineers, administrators) until notified by the MEDC.

Chapter 13 Form(s)

1-A Progress Report
2-C Job Creation Summary Report and Income Certification Calculator
8-B1 Personal Property Management Report
8-B2 Real Property Management Report
13-A Actions to Affirmatively Further Fair Housing
13-B Certificate of Completion OBSOLETE AS OF 04.01.17
13-C Grant Award Decrease for Closeout Form
Chapter 14
Certified Grant Administrator (CGA) Program and Certification Policy

Introduction

Community Development Block Grant (CDBG) funds may be available to assist the Unit of General Local Government (UGLG) with the management of its CDBG Grant Agreement. The CDBG program includes federal and state statues, regulations, and policies. UGLG's must have a Certified Grant Administrator (CGA) on staff or procure a CGA consultant to utilize MEDC funding. Administrative dollars are not available for UGLG employees unless there is a contract outlining specific duties. Federal regulations do not allow CDBG funds to be used to supplant local funds.

Section 1 – Definitions

As used in this policy:
(a) “CDBG” means the State of Michigan's Community Development Block Grant program administered through the Michigan Economic Development Corporation, hereinafter referred to as “MEDC”
(b) “Certified Grant Administrator” means any individual who holds an active MEDC administrator’s certificate.
(c) “Debarment” or “debarred” is a process by which an administrator's certificate is revoked or non-renewed.
(d) “Director” means the Director of the Community Development Block Grant of the MEDC.
(e) “Division” means the Community Development Block Grant Division of the MEDC.
(f) “HUD” is identified as the U.S. Department of Housing and Urban Development.
(g) “MEDC” means Michigan Economic Development Corporation.
(h) “MSF” means Michigan Strategic Fund.
(i) “Program Specialist” means MEDC Community Development Block Grant staff.

Section 2 – Policy

The efficient administration of grants is important for the growth and vitality of community and business initiatives in Michigan. Well-trained administrators are critical to the proper functioning of the Community Development Block Grant (CDBG) program. This policy of certifying and decertifying grant administrators insures the best possible stewardship of federal Community Development Block grant funds used in the CDBG program administered by the Michigan Economic Development Corporation (MEDC) on behalf of the Michigan Strategic Fund (MSF), and that CDBG related projects will be administered by competent individuals adhering to generally uniform work habits and guidelines. We reserve the right to revise and update this policy at any time and will notify the Certified Grant Administrators as revisions and updates occur.
Section 3 – Certified Grant Administrator Certification, Training and Recertification

All individuals, not employed by the State, who administer MSF CDBG fund awards in Michigan, must receive a Certified Grant Administrator (CGA) certification. This may be accomplished by attending training and successfully completing a written examination offered by the MEDC. Individuals who do not successfully complete the training and the exam will not be certified. Certification is valid for 3 years.

The exam for certification shall consist of questions that cover and examine each individual’s:

- Knowledge of the Federal CDBG Program, as it relates to the State’s CDBG program
- Ability to understand, interpret and apply applicable federal regulations
- Fundamental knowledge of community based and economic development programs
- Leadership ability and organization and management skills
- Knowledge of Administrative Requirements
- Knowledge of Environmental Review Process
- Knowledge of Contract Procurement Process
- Knowledge of Financial Management Process
- Knowledge of Labor Standards Process
- Knowledge of Section 3 and Fair Housing Process
- Knowledge of Housing Rental Rehabilitation
- Knowledge of Citizen Participation
- Knowledge of Acquisition/Relocation requirements

Individuals who do not successfully complete the exam will not be certified or recertified.

<table>
<thead>
<tr>
<th>TYPE</th>
<th>CLASS LENGTH</th>
<th>VALID FOR</th>
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<tbody>
<tr>
<td>Certification Training</td>
<td>Up to 4 Days</td>
<td>3 years</td>
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CGA Classes will be taught by multiple trainers and the test may be created by the same trainers. The length of the training may be up to four days for general certification training. At a minimum one certification class will be offered every other year.

The goal of the MEDC program is to assure grantees are hiring certified grant administrators that are trained and knowledgeable in the administration of CDBG funds. The certification class will include some basic training on grant preparation, focusing on requirements for grant administration. The passing score will be 80 percent and retesting at 85 percent with only one retest allowed. The testing will be given on the final half day of the training and will be open book. The retest exam date will be determined.

The MEDC may provide up to two trainings on a yearly basis to CGA’s. These trainings could be one (1) day workshops that will include specific topics, including new rules, policies, or guidelines being implemented.

- The CGA’s must attend 2 mandatory trainings a year to maintain their certification.
• If a CGA does not attend a mandatory training, the CGA must complete an open book take home exam. The passing score will be 80 percent and retesting at 85 percent with only one retest allowed.

• If CGA does not take the test or fails the test the CGA will be put on probation.

To be recertified, the CGA must be in good standing, which means no more than 2 grant general findings at time of recertification, and has administered at least 1 completed project in the previous 3 years. CGAs that want to continue in the CGA program who meet the “Good Standing” requirements must request recertification from the MEDC prior to the expiration of their current certification without taking the certification exam.

If the CGA does not qualify for recertification, their status as a CGA will expire and must complete the CGA certification class and pass the exam.

Section 4 – Certified Grant Administrator in Good Standing

To avoid probation or decertification, a CGA shall remain in good standing. A CGA is considered in good standing by achieving the following objectives:

1) Assist UGLG in meeting any conditions and assure execution of the grant agreement.
2) Assist in completion environmental review and achieve clearance for the UGLG. If special circumstances arise within the environmental process, it is the CGA’s responsibility to communicate it back to the MEDC grant specialist.
3) No more than two general findings either by the UGLG or MEDC.
4) Ensure that the UGLG, provides timely submissions of all documents and forms required by the CDBG program.
5) Ensure all deficiencies noted in the monitoring letter are resolved in 30 days.
6) Ensure that the same CGA deficiencies do not occur in multiple UGLG monitoring letters.
7) CGA’s must attend mandatory continuing education classes.

Please note: That grant writing or grant packaging will not be part of probation or decertification. The list is not all-inclusive and is subject to change with notice as we all work to ensure that the highest quality administrators are working for MEDC CDBG UGLG’s.

Section 5 – Certified Grant Administrator Probation

The CDBG Director may place a CGA on administrative probationary status for a period of up to one year if the CGA has accumulated three “Good Standing” violations. The “Good Standing” objectives outlined in Section 8 are considered violations. The CDBG program specialist shall document reasons for the probationary status. The CGA may continue to administer current CDBG contracts to which they are a party but may not enter into new contracts during the probationary period. No appeal shall be allowed of probationary status. After one-year of probationary period the CGA holder may be fully reinstated if there are no further documented “Good Standing” violations within that period. If other “Good Standing” violations are documented, the probationary period ends and decertification
process will proceed. Should the CGA’s certification expire during the one year probationary period, the individual shall be allowed to participate in the recertification process and receive recertification, if other requirements are met. This does not nullify the probationary status.

Section 6 – Certified Grant Administrator Leaving the Certification Program, either by Choice, Failure or Decertification

Should a CGA leave the certification program for any reason, it is a mutual decision by them and the UGLG to complete any grant administration on which they are the CGA under contract and that is more than 50 percent complete based on monies spent on the date of the CGA leaving the program. If either side wishes to terminate the contract, it may do so based on the circumstances of the certification requirement. If the project is not complete, the contract must be terminated and services of a currently certified CGA must be obtained.

If an UGLG plans to terminate any contract due to loss of a CGA certification, the termination must be subject to a monitoring by the MEDC of activities to date and/or the resolution of all monitoring findings made during the time that CGA was under contract. A CGA consultant agency under contract with a UGLG may not be subject to this requirement if the project can be assigned to another CGA on staff at the time of loss of the certification by the first individual CGA.

Section 7 – Certified Grant Administrator Decertification

A CGA may be decertified because of actions that include but are not limited to:

- Consistently bypassing federal or state policies and regulations.
- Inappropriate measures resulting in de-obligation or refund of grant awards.
- Two or more substantiated written complaints filed by the UGLG, agent, an elected official, or other individual involved in the implementation of federal grants.
- Poor performance by the UGLG as documented through consistent grant extensions, modifications, project delays, and unresolved monitoring issues.
- Undisclosed blatant conflict of interest, which results in the loss of a contract.
- Additional violations while on probation.
- Failure to complete or submit to a recertification examination.
- Engaging in, or the conviction of, any crime defined in the state penal code which involves moral turpitude, including but not limited to crimes of violence, sexual offenses, breach of trust, indifference to a legal obligation, or a serious interference with the administration of justice. This subsection shall not apply unless such crime shall have been committed after certification.
- Engaging in conduct involving significant dishonesty, fraud, deceit, or misrepresentation whether or not such activity is a crime.
- Engaging in any conduct significantly prejudicial to the administration of CDBG programs or grants.

The MEDC reserves the right, with cause, to add to this list any actions MEDC feels are detrimental to the efficient conduct and timely execution of the grant award attributable to the performance of a CGA. Decertification will not take place without due process. An appeal procedure has been established to address the decertification process. However, MEDC will enforce the policies set forth
in the Grant Administration Manual to ensure the appropriate administration of grants and the preservation of Michigan’s communities’ use of CDBG funds.

**Section 8 – Decertification Process; Notice; Director’s Opinion**

The decertification process shall begin with written notice by the Director or Director’s designee mailed to the CGA that the MEDC is seeking decertification. Such decertification shall include: (1) a statement of the reasons for the proposed decertification, and (2) a statement that the CGA is entitled to a Director’s Opinion on the matter.

Upon receipt of the Notice, the CGA may request a Director’s Opinion on the proposed decertification by a written statement that will answer specifically the allegations. Such filing shall occur with the Director within 15 calendar working days from the date decertification notice was received and in no event more than 20 calendar working days from the date of the Notice.

The Director or Director’s designee shall notify the CGA what information is required at what time to receive a Director’s Opinion.

Failure to respond to written decertification notices from the Director will result in Decertification.

**Section 9 – Director’s Opinion**

(a) The Director shall insure there is adequate time for the CGA to provide documents requested by the Director or Director’s designee that support the CGA’s position. At least 20 calendar days before the deadline date, the parties shall exchange each with the other: (1) a summary of such party’s position regarding the complaint in the notice of decertification, (2) a list of documents and affidavits the party intends to use for the Director’s Opinion, and (3) copies of such documents.

(b) To render the Director’s Opinion, the CGA shall present evidence to the Director in a written statement of their positions in the matter and may present evidence directly or through documents.

(c) The Director’s Opinion shall not be bound by any rules of evidence; however, the burden of proof shall rest upon the MEDC. All relevant information and evidence is admissible, except that the Director may exclude any offered evidence if they believe that the probative value of the evidence is substantially outweighed by the fact that presentation of the evidence will necessitate an undue consumption of time, is unduly repetitive of other testimony or is intended to embarrass the other party rather than provide probative evidence of the allegations in the complaint.

**Section 10 – Director’s Opinion, Findings of Fact, Recommendations**

(a) Unless otherwise agreed to by the parties, the Director shall render written findings of fact and provide a conclusion of such facts in a Director's Opinion. Such opinion shall constitute the decision of the Director.
(b) The Director will insure that the review of information and execution of Director’s Opinion is orderly, and render a fair and impartial decision based on evidence presented whether to recommend the Department decertify such CGA based on the allegation in the Notice and the information and evidence presented.

(c) A decision by the Director in favor of the CGA shall not prohibit the Director or Director’s designee from alleging violations sufficient to cause another Notice in the future. However, if the Director decides in favor of the CGA, evidence presented at the previous decertification’s shall not be offered or used by either party.

Section 11 – Monitoring and Performance Evaluation

The goal is to ensure that the CGA knows exactly what their CDBG Program Specialist will review at a monitoring visit. The timely submittal of documents and forms will be emphasized. Examples of these documents will include, but are not limited to: Quarterly Reports, Progress Reports, Job Summary Reports (if applicable), Section 3 Reports (if applicable), and Contractor Verification of Eligibility. The monitoring letters may identify three different areas: UGLG Findings, General Findings and Concerns.

UGLG Findings are those requirements that are the primary responsibility of the City or County. A UGLG finding will not be counted against the CGA. An example is the City did not issue payment within three working days; however, payment was made on the sixth day. This does not mean the CGA can ignore this requirement. If the CGA has not overseen this issue and payment was not made for 30 days, it would be a UGLG Finding as well as a General Finding. UGLG Findings will not appear on the CGA’s record.

General Findings are those requirements that are the primary responsibility of the CGA that cannot be corrected. An example is a Quarterly Report that was not submitted by the deadline.

Concerns are something that can be corrected. Most issues found during monitoring visits will fall under this area. The CGA will have 30 days from the date of the monitoring letter to resolve a concern. If the concern is not resolved within 30 days, it becomes a General Finding.

A General Finding will remain on the CGA’s record for a three-year period. A General Finding will only be removed from the tracking after a three-year period.

Three documented General Findings may result in probationary status. (See Section 8) The CGA will be notified in writing of their potential probationary status. The tracking of these deficiencies are public record.

If a CGA is on probation and wishes to recertify, the CGA must seek authorization to attend class by written request to the CDBG Director. Depending on the nature of the findings, authorization to attend the recertification class may or may not be granted.
Section 12 – Certified Grant Administrator Management Plan

The UGLG and CGA must complete CGA Management Plan (CGA management plan document) before the grant agreement.

The search for an effective CGA in the very early stages of project design when UGLG’s explore the ramifications of grant management on staff time and available resources. To assist our UGLG’s in their self-assessment and possible decision to begin the search for a CGA, MEDC encourages consideration of the following to ensure due diligence in the procurement of certified grant administrators.

1. Know your own program; as the UGLG, you are still responsible for compliance with the terms of the grant agreement and regulations governing allowable expenditures.

2. Use proper procurement standards in the hiring of outside consultants (Refer to the procurement process explained below and in the GAM Chapter 4).

3. Present a comprehensive list of tasks/skills in your written request for proposals.

4. Ask for evidence/documentation of: experience administering CDGB housing projects, program knowledge, financial stability, staff capacity, training, etc. Documentation must include contact names and phone numbers.

5. Verify the information presented in responding proposals.

6. Use clear and succinct written agreements. Be sure that your selected contractor understands the responsibilities required under the agreement (Refer to the procurement process explained in the GAM Chapter 4).

7. Take stock of your internal staff capacity to perform CGA activities that are required of the UGLG; assign a staff person for being liaison to your CGA (this person should understand grant administration manual, federal requirements, etc.).

8. The UGLG must actively participate in the project so that the CGA can accurately understand your project.

9. Establish and enforce active, ongoing, progress and financial reporting responsibilities for your project.

10. Make sure you have current manuals, forms, CDBG grant administration manual, etc.

11. Plan with your CGA for the completion of milestones and desired results.

12. Document everything. (This is Murphy’s Law: The item HUD or MEDC wants as evidence of compliance is the exact document you thought you could get away with not completing.)
Section 13 – Certified Grant Administrator Payment

Payment to the CGA is based on negotiated terms between the UGLG and the selected certified grant administrator, which could be based on:

1. Reimbursement from the UGLG; or
2. The UGLG’s drawdowns from the Michigan Economic Development Corporation (MEDC).

CDBG Disbursement for CGA administrative expenses will not happen until:

3. The environmental review has been completed;  
4. The grant agreement has been executed;  
5. The pre-disbursement requirements in the Grant Agreement and any items requested by the CDBG Director have been submitted and approved by the MEDC;  
6. The executed administrative contract has been forwarded to the MEDC;  
7. The grant payment request/supporting documentation has been submitted and approved by the MEDC.  
8. CGAs must provide an administrative activity report when requesting payment for their services which must contain the following information: employee name, pay period, hours worked each day, employee signature, supervisor signature, description of CDBG activities worked on.

Chapter 14 Form(s)

5-A Determination of Level of Environmental Review  
5-B Finding of Exempt Activity  
5-E Exemption Activities Determination Memo SAMPLE  
8-D Administrative Activity Report  
14-A Procurement Process for Selection a Certified Grant Administrator  
14-B Certified Grant Administrator Management Plan  
14-C Certified Grant Administrators List