CHAPTER 1
PROGRAM OVERVIEW

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 closeout. This GAM should be used in conjunction with the official CDBG 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:

1. Approve grants and loans under the Michigan Business Development Program and Michigan Community Revitalization Program.
2. Approve the use of Private Activity Revenue Bonds.
3. Approve grants under the Community Development Block Grant Program.
4. Recommend to the State Administrative Board Agricultural Processing, Renewable Energy and Forest Products Processing Renaissance Zone designations.
5. Approve Tool and Die Renaissance Recovery Zones.
6. Act as the fiduciary agent with respect to the 21st Century Jobs Fund investments.
7. 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 CORPORATION (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 (CGA) 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:

1. Coordinates with key players involved in the grant, i.e., engineers, contractors, property owners, employers.
2. Ensures compliance with Grant Agreement terms.
3. Reviews and submits compliance documentation including environmental review, procurement, acquisition/relocation, federal labor standards, civil rights, and National Objective.
4. Prepares required reports for UGLG’s submission.
5. Prepares payment requests for UGLG’s submission.
6. Prepares for monitoring and site visits and makes documents and other program information available for the monitors.
7. 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 (building owners, business owners, third parties to Grant Agreement)
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 – APPLICATION PROCESS

This section provides an overview of the responsibilities and documents required to be submitted by the UGLG to determine if the request for funding will be approved. It also provides guidance to UGLGs on getting started, compliance with other Federal regulations, and recordkeeping. Forms are provided at the end of each chapter.

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

The UGLG and/or CGA will work closely with the MEDC staff during the application process. The following paragraphs are an overview for the collaborative process; however, throughout this chapter, and subsequent chapters, particular topics are covered in more detail. The UGLG should familiarize themselves with all chapters of the GAM prior to initiating a project.

Upon review and approval of the completed Application and required attachments, the UGLG will receive a Letter of Interest from the MEDC outlining the terms of the proposed funding. The UGLG and/or CGA will move forward with guidance from the MEDC staff and will vary depending on the project initiative being funded. The following items will be completed for all projects:

1. Letter of Interest provided to UGLG from MEDC.
2. Letter of Interest signed by UGLG and returned to MEDC.
3. Request for Proposal for CGA, if applicable.
5. 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 these actions involve expenditures
6. The UGLG must ensure that the necessary Citizen Participation has occurred. See GAM Chapter 11.

SECTION 2 - 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 several 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.
SECTION 3 - PROJECT IMPLEMENTATION, REPORTING AND COMPLETION

CDBG PRE-DISBURSEMENT CHECKLIST

Upon execution of the Grant Agreement, the UGLG may proceed with the implementation of the 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. See GAM Chapter 8, Financial Management.

REGULAR REPORTING

The Grantee shall provide required documentations and reporting as set forth in applicable GAM Chapters.

COMPLETION

The Grant Agreement will indicate the period established for completion of all grant activities. Generally, UGLGs are expected to complete projects and closeout 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 consider 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 decide 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 1-C) should be sent to the Program Specialist.

SECTION 4 – CONFLICT OF INTEREST

The CDBG requirements pertaining to conflict of interest are summarized in the following paragraphs. In addition, see Conflict of Interest Regulation (Form 1-B).

1. **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.

2. **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.

3. **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. 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;
b. 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

c. 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.

4. **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:

   a. 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.

   b. Whether an opportunity was provided for open, competitive bidding, or negotiation.

   c. 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.

   d. Whether the interest or benefit was present before the affected person was in a position as previously described.

   e. 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.

   f. Any other relevant considerations.

**SECTION 5 - GRANT AMENDMENTS**

An **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 1-C) 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 1 FORMS**

1-A Progress Report (hard copy optional as this data is collected on Salesforce metric)

1-B Conflict of Interest

1-C Grant Amendment Request
CHAPTER 2
NATIONAL OBJECTIVES

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:

1. Benefiting Low and Moderate Income (LMI) persons.
2. Aiding in the prevention or elimination of slums or blight.
3. 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% 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 – BENEFITING LOW/MODERATE-INCOME (LMI) PERSONS

INTRODUCTION
The LMI National Objective is often referred to as the primary National Objective as the regulations require that States expend at least 70% 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:

- Area-benefit activities
- Limited Clientele
- 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.

If one unemployed spouse received a job through a CDBG-funded venture, that spouse would not be considered a low-income person if the other spouse happened to be well employed and earned a large amount of money. That is, the first spouse would not be considered a low-income person even though they themselves had little or no income. Rather, the person would be seen as a member of a family that was NOT low income – and therefore not a low-income person.

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% 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% of the Area Median Income but less than or equal to 80% of the Area Median income, as adjusted for family/household size. The two categories are referred to as Low and Moderate Income, or LMI.

HUD provides specific income figures (e.g., median income, 80% of median income, 50% 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.
A married couple living together is a two-person family; and a couple with one child is a three-person family/household, etc.

A single person household, for HUD income eligibility purposes is considered to be a one person “family” and likewise two unrelated persons living together are considered to be a two person “family” for income determination purposes.

The larger the family/household size, the higher the applicable median income and, consequently, the higher the threshold to be considered LMI.

**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% 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.

Public infrastructure initiative (such as improvements or expansions to the public water and sewer system) in an LMI community or a LMI area within a community could qualify as an LMA Activity if the benefits of this type of activity are available to all persons in the area, regardless of income.

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. The acceptable method for establishing low- and moderate-income population in a particular area is the census data provided by HUD.

**LOW MOD LIMITED CLIENTELE**

The limited clientele category is another way to qualify specific activities under the LMI benefit national objective. Under this category, 51 percent of the beneficiaries of an activity must be LMI persons.

In contrast to the area benefit category, it is not the LMI concentration of the service area of the activity that determines whether the activity will qualify or not, but rather the actual number of LMI persons that benefit from the activity.

Activities in this category provide benefits to a specific group of persons rather than everyone in an area. It may benefit persons without regard to their residence, or it may be an activity that provides a benefit to only particular persons within a specific area.
With respect to determining the beneficiaries of activities as LMI and qualifying under the limited clientele category, activities must benefit a clientele that is generally presumed to be principally LMI. This presumption covers abused children, battered spouses, elderly persons, severely disabled adults (see the below), homeless persons, illiterate adults, persons living with AIDS and migrant farm workers.

**DEFINITION OF SEVERELY DISABLED**

Persons are considered severely disabled if they:

- Use a wheelchair or another special aid for 6 months or longer;
- Are unable to perform one or more functional activities (seeing, hearing, having one’s speech understood, lifting and carrying, walking up a flight of stairs and walking);
- Need assistance with activities of daily living (getting around inside the home, getting in or out of bed or a chair, bathing, dressing, eating and toileting) or instrumental activities of daily living (going outside the home, keeping track of money or bills, preparing meals, doing light housework and using the telephone);
- Are prevented from working at a job or doing housework;
- Have a selected condition including autism, cerebral palsy, Alzheimer’s disease, senility or dementia; or
- Are under 65 years of age and are covered by Medicare or receive Supplemental Security Income (SSI).

**LMI JOB CREATION/RETENTION OVERVIEW**

An LMI Job Creation/Retention (LMJ) activity is one that creates or retains permanent jobs, with 51% 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% 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% 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.

Assume a firm added 20 new part-time employees, five of whom worked 30 hours, ten that worked 20 hours, and five that only worked ten hours each week.

The total amount of hours worked per week would be 400 hours (150+200+50), which divided by the factor of 40 hours per week yields the answer of ten FTE jobs.

**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:

1. 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.

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

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

4. 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% of the total jobs actually created when hiring is complete must have been taken by LMI persons.

A CDBG-funded business is committed to creating 100 jobs and to filling 51% with LMI persons. If the business actually creates 150 jobs, at least 76 must be filled by LMI persons.

5. 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% 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% 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% 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% 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:

1. Part-time jobs must be converted to FTE.
2. Only permanent jobs may be counted; temporary and contractual jobs are not allowed.
3. Transferred jobs may not be counted.
4. Seasonal jobs may be counted only if the season is long enough for the job to be considered the employee's principal occupation.
5. Jobs indirectly created by an assisted activity (i.e., “trickle-down” jobs) may not be counted.
6. 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% 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 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 rental rehabilitation 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% 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:

1. For each unit to be assisted, the size and income of the occupant household.
2. 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.
3. 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.

1. 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.
2. For rental housing, documentation that the units occupied by LMI households are affordable.
3. 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. Lead and Asbestos testing costs and abatement costs may be covered by CDBG funds.

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. Each of the affordable unit occupants must sign a one-year lease.

**Rental Rehabilitation Five Year Affordability Period**

HUD issues rent limits annually and vary by jurisdiction. Housing Rental Rehabilitation Projects are monitored annually throughout the affordability period. There are two affordability requirements: (1) One-year lease at initial occupancy (program rule) and (2) 5-year affordability period. The UGLG is responsible for informing building owner/manager of annual rent limit updates. Newly released CDBG rent limits include an effective date with the notice.

Rental affordability restrictions must be imposed on the property that run with the 5-year affordability period. If the property changes ownership during the affordability period, the new owner would be responsible for continuing the remaining years of the affordability period. Important to ensure that rental projects meet compliance requirements for affordability period include rents, property condition, and financial condition.

CDBG requires rental rehabilitation annual affordability report from owner to UGLG. The UGLG must verify occupancy and compliance with rental requirements each year – Owner Certification of property condition; might include pictures of property and rental inspections. An example of Non-Compliant Properties may include requiring specific repairs.

After completion of the rental rehabilitation project the MEDC/CDBG cannot pay for property repairs with CDBG funds during affordability period. If the property is not brought up to standard the UGLG must enforce their agreement with the owner or it may involve legal action.

**Link to Income Limit Data:** [https://www.huduser.gov/portal/datasets/il.html](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](https://www.huduser.gov/portal/datasets/fmr.html)

**Rental Utility Allowance Schedule**

The Michigan Economic Development Corporation (MEDC) will be using the Michigan State Housing Development Authority (MSHDA) utility schedule for the determination of total assistance provided to income eligible Tenants residing in units supported by MEDC. The State of Michigan is separated into four regions:

**Counties in Region A:** Alger, Baraga, Chippewa, Delta, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Luce, Mackinac, Marquette, Menominee, Ontonagon, Schoolcraft.

**Counties in Region B:** Alcona, Alpena, Antrim, Arenac, Benzie, Charlevoix, Cheboygan, Clare, Crawford, Emmet, Gladwin, Grand Traverse, Iosco, Kalkaska, Lake, Leelanau, Manistee, Mason, Missaukee, Montmorency, Ogemaw, Osceola, Oscoda, Otsego, Presque Isle, Roscommon, Wexford

**Counties in Region C:** Allegan, Barry, Bay, Berrien, Branch, Calhoun, Cass, Clinton, Eaton, Genesee, Gratiot, Hillsdale, Huron, Ingham, Ionia, Isabella, Jackson, Kalamazoo, Kent, Lapeer, Lenawee, Mecosta, Midland, Montcalm, Muskegon, Newaygo, Oceana, Ottawa, Saginaw, St. Joseph, Sanilac, Shiawassee, Tuscola, Van Buren

**Counties in Region D:** Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, Wayne
The utility allowance schedule is provided on an annual basis and the Landlord must check for the most current utility allowance schedule to ensure that compliance is met.

If the Landlord pays all the utilities for the rental unit, the Landlord may charge the Tenant the gross rent, as published by HUD’s Fair Market Rent.

If the Tenant is required to pay utilities for the unit, the Landlord must deduct a utility allowance from the gross rent listed on the applicable year Utility Allowance schedule located at MSHDA Utility Allowances webpage.

A utility allowance is for all eligible tenant-paid utilities and must be included as part of the gross rent. If the landlord requires to subscribe to certain excluded utilities, charges for those utilities are not included in the utility allowance calculation.

Landlords must fill in the appropriate amount on the chart for each utility/appliance that you are responsible to pay. Add the total from each category for your total utility allowance. If you have questions on filling out the utility schedule, please contact your Program Specialist.

**Example:**
The Landlord would get the HUD Fair Market Rent for the gross rent amount ($600 for a one-bedroom apartment). The Landlord would decide what utilities are included in the gross rent. The Landlord determines that he is not paying electrical for the Tenant.

The project was leased on 11/1/2021 and is located in Region C. Based on Utility Schedule effective 1/1/21, calculate the following utilities which are not included in the gross rent and are paid by the tenant.

- Heating (electric) $33
- Cooking (electric) $7
- Hot Water (electric) $19
- Other Electric $27
- Electric Service Charge $9
- **Utility Allowance Total $95**

The utility allowance for Tenant-paid electric utilities is $95 per month and is deducted from the gross rent of $600. The Tenant rent with utility allowance will be $505 per month.

**List of Eligible/Ineligible Utilities for Calculation**
The utilities that may be included or must be excluded from the utility allowance calculation are listed directly below:
Utilities Included: Electricity, Gas, Water, Sewer, and Trash Pick-Up
Utilities Excluded: Telephone, Cable, and Internet service. These are items tenants must pay in addition to rent that is not supplied by the landlord owner.

**Rent Increase**
If a utility allowance decrease results in the Tenant-paid portion of the rents to increase, then Tenants must receive at least 30-day notice of any rent increase. In addition, rent increases typically may only be implemented at a tenant’s lease renewal. All rent increases must be in accordance with the Michigan Landlord Tenant Law and the terms of the Tenant’s lease agreements.

**REHABILITATION STANDARDS**
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 at 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 chooses to use their application, it must capture the same information as the sample provided, Form 2-E and Form 2-F. Grantee must use the Rental Rehab Project Checklist, Form 2-G to ensure all required documents have been obtained. Forms 2-H through 2-L referenced within the Rental Rehab Project Checklist are listed below and posted on the website.

**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:

1. Public improvements are in a general state of deterioration throughout the designated area, OR

2. There are a substantial number of deteriorated or deteriorating buildings throughout the designated area. For example, at least 25% 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:
   
   a. Physical deterioration of buildings or improvements,
   
   b. Abandonment of properties, chronic high-occupancy turnover rates or chronic high-vacancy rates in commercial or industrial buildings,
   
   c. Significant declines in property values or abnormally low property values relative to other areas in the community, OR
   
   d. Known or suspected environmental contamination.

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.
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:

1. 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

2. 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% 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% 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% 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% 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 semiannual basis.

Job Creation. For an activity that creates jobs, the UGLG must document that at least 51% 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% 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 semiannual 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%, 50%, 80% 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 FORMS**

2-A Income Survey Application
2-B Ordinance Defining Slum and Blighted Area
2-C Job Creation Summary Report
2-D RR Income Eligibility Calculation SAMPLE
2-E RR Tenant Application
2-F RR Authorization to Release Information, non-LMI units SAMPLE
2-G RR Project Checklist
2-H RR Land Contract Subordination SAMPLE
2-I RR Renovate Right, EPA-740-K-10-001
2-J RR Equal Opportunity for All, HUD-1686-1-FHEO
2-K RR Occupant Protection Plan, DCH-1109 OBSOLETE
2-L RR Annual Affordability Report
CHAPTER 3
CDBG LOAN PROGRAM (CLP)

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.

SECTION 1 - 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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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.
### REGIONALIZED FUNDS
#### ROLES AND RESPONSIBILITIES

<table>
<thead>
<tr>
<th>RLFA RESPONSIBILITIES</th>
<th>UGLG RESPONSIBILITIES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outreach</td>
<td>Retain responsibility related to its Local RLF and for its sub-granted CDBG funds, program income and existing loans and grants</td>
</tr>
<tr>
<td>Completion of loan applications; underwriting assessment</td>
<td>Required to participate in the resolution of any problems that may develop in the course of a project’s implementation.</td>
</tr>
<tr>
<td>Obtain loan collateral</td>
<td>Collaborate with RFLA to complete or assist with UGLG specific compliance items.</td>
</tr>
</tbody>
</table>
| 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. REPAYED FUNDS (DEFEDERALIZED)

Per HCDA 105(a)15, certain qualified organizations, including designated RLFA, 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. See Eligible Use of Repaid Funds and Prohibition sections for allowable use of defederalized funds within the Repaid Funds Agreement.

SECTION 2 - 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.

SECTION 3 - 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-RLF's 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 RLFA 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>

An appraisal is not required to be submitted to MSF. Underwriting and risk mitigation and collateral decisions are made by the CLP/RLFs and Fund Managers/RLFAs who should have an underwriting policy which identifies when an appraisal is required.

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.
SECTION 4 - 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. See Form 3-F for a list of CLP Reports and due dates.

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. The Local may pay direct RLF costs from the RLF account. Upon MSF review of the administrative Disbursement Request, any ineligible costs must immediately be returned to the RLF account.

4. All funds generated by a Local Fund are considered PI.

5. 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 Disbursement 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.

The RLFA will pay administrative costs associated with the CLP loans from a general fund (not the CDBG loan account) and submit a Disbursement Request for reimbursement of eligible costs.

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 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. See Forms 3-H and 3-I.

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. See Forms 3-J and 3-K.

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. DISBURSEMENT REQUESTS
For Local and Regional fund managers, all Disbursement 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 Disbursement 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 Disbursement Request (DR) 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. PROGRAM REPORT
Pursuant to the Agreement between the UGLG and RLFA or MSF, Section I, Paragraph A.12) (b) reporting results of the Regional Fund program to the UGLG with a copy provided to the MSF. The Program Report (Form 3-G) provides a status of active, pipeline and prospective loans.

H. 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
3-A CLP Application
3-B CLP File Sections
3-C Submission Packets
3-D Financial Review Memo
3-E Request to Close Loan Memo
3-F CLP Reports
3-G CLP Program Report
3-H Accounting of Loan Funds, RLF Local
3-I Accounting of Loan Funds, RLF Regionalized
3-J Annual Program Report for Local Funds
3-K Annual Program Report for Regionalized Funds
3-L Final Accounting of Funds Expended
3-M Counting Job Types for Job Creation Projects Policy
3-N CLP Job Creation Summary Report
3-O CLP Job Retention Report
3-P CLP Job Retention Employee Report
3-Q Business Questionnaire
3-R Project Profile Template
3-S CLP Single Audit Guidance and Local Program Income
3-T Loan Extension Request

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 subject to federal procurement standards 2 CFR 200. This chapter applies to subrecipients and/or beneficiary of funds. 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 subrecipients and/or beneficiary of funds from any contractual responsibilities under its contracts. The subrecipients and/or beneficiary of funds are 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 subrecipients, 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 subrecipients and/or beneficiary of funds flow through it to any subrecipients it may engage to help operate the program and any subsequent subrecipients (i.e., sub-subcontractors) that are hired by the subrecipients themselves. Please read more on this in Chapter Three on MSF’s Revolving Loan Fund (RLF).

As in all financial dealings with CDBG funds, subrecipients and/or beneficiary of funds 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, subrecipients and/or beneficiary of funds 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.

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.

**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 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.

**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**

Subrecipients and/or beneficiary of funds 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 318-327. If a procurement policy is already in place, the subrecipients and/or beneficiary of funds must determine whether it includes all federal requirements. If the policy does not contain all federal requirements (and the subrecipients and/or beneficiary of funds 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 securing contract services (e.g., prior to having its Part 2 application approved).

The subrecipients and/or beneficiary of funds procurement policy must adhere to the following:

1. 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 subrecipients and/or beneficiary of funds officials, staff or agents, or by contractors or their agents must be identified 2 CFR 200.318(c).

2. 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)].

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

4. 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].

5. Procedures to handle and resolve disputes relating to procurement actions of the subrecipients and/or beneficiary of funds must be included [2 CFR 200.318].

6. 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:
   a. Placing unreasonable requirements on firms in order for them to qualify to do business.
   b. Requiring unnecessary experience and excessive bonding.
   c. Noncompetitive pricing practices between firms or between affiliated companies.
   d. Noncompetitive awards to consultants that are on retainer contracts.
   e. Organizational conflicts of interest.
   f. 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.
7. 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:

1. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured.
2. List all requirements that the offerors must fulfill.
3. 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:

1. 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 Minority and Women Owned Businesses that can be used by subrecipients and/or beneficiary of funds.
2. Divide total requirements into smaller tasks.
3. Establish delivery schedules that encourage participation.
4. Use Small Business Administration and Minority Business Development Agency services.
5. 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
For more information, see GAM Chapter 1.

SECTION 5 – CONTRACT ADMINISTRATION AND RECORDS
24 CFR 200.318 (i-k) requires that subrecipients and/or beneficiary of funds 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.

Subrecipients and/or beneficiary of funds 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 table below outlines the four procurement methods that the grantee must use to procure materials, supplies, construction and services based on the type of procurement.

<table>
<thead>
<tr>
<th>Procurement Type</th>
<th>Cost Methodology Reasonableness</th>
<th>Contract Type</th>
<th>Solicitation Method</th>
<th>Applications</th>
<th>Dollar Thresholds if applicable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small Purchase (see Section 7)</td>
<td>Price Analysis</td>
<td>Purchase Order</td>
<td>Quotations Submitted Bids</td>
<td>Produced Items</td>
<td>$250,000 or less for produced items</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Fixed-Price</td>
<td></td>
<td>Single-Task Service Supplies</td>
<td>$250,000 or less for non-construction services</td>
</tr>
<tr>
<td>Sealed Bid - Formal Advertising</td>
<td>Price Analysis</td>
<td>Fixed-Price</td>
<td>Submitted Bids</td>
<td>Construction Items</td>
<td>No threshold on construction</td>
</tr>
<tr>
<td>(see Section 8)</td>
<td>Cost Analysis</td>
<td></td>
<td></td>
<td>Produced or Designed Items</td>
<td>contracts being solicited for bids</td>
</tr>
<tr>
<td>Competitive Proposals (see Section 9)</td>
<td>Price Analysis</td>
<td>Cost Reimbursement Fixed-Price</td>
<td>Submitted Proposals</td>
<td>Professional Services</td>
<td>Professional Services and/or</td>
</tr>
<tr>
<td></td>
<td>Cost Analysis</td>
<td>Time &amp; Materials</td>
<td></td>
<td>Multi-Task Services Designed Items</td>
<td>Multi-Task Services over $250,000</td>
</tr>
<tr>
<td>Noncompetitive Proposals (see Section 10)</td>
<td>Cost Analysis</td>
<td>Cost Reimbursement Fixed-Price</td>
<td>Submitted Proposals</td>
<td>Produced Items</td>
<td>No threshold, but may only be used</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Time &amp; Materials</td>
<td></td>
<td>Single-Task Service Professional Services</td>
<td>when other methods are not feasible</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Professional Services Multi-Task Services Designed Item</td>
<td></td>
</tr>
</tbody>
</table>

In developing the appropriate procurement process to be used in conjunction with a CDBG-funded project, the subrecipients and/or beneficiary of funds must follow the accepted CDBG procurement structure as outlined in the above table. Before selecting the kind of procurement process and then executing the procurement itself, the subrecipients and/or beneficiary of funds must first obtain approval from the MSF. This approval will be a condition of disbursement of funds. Once subrecipients and/or beneficiary of funds have received approval of its process and the 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.

Subrecipients and/or beneficiary of funds must 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, subrecipients and/or beneficiary of funds 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.
COST REASONABLENESS
When determining the appropriate procurement method to use, the subrecipients and/or beneficiary of funds must either use price analysis (price competition) or perform a cost analysis to determine reasonableness of costs.

Price Analysis
Price analysis means that the subrecipients and/or beneficiary of funds requests several bids, proposals, or quotes for the materials, supplies, or service being procured. The grantee must make independent estimates before receiving bids or proposals. 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.

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.

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:

1. When evaluating competitive proposals.
2. When there is a sole source (or non-competitive) proposal.
3. When only one bid is received after soliciting bids, the subrecipients and/or beneficiary of funds does not have sufficient data on costs to establish price reasonableness (such as prior purchases of similar nature), and the subrecipients and/or beneficiary of funds is considering making an award to the sole bidder.
4. When negotiating modifications to contracts that impact the price or estimated cost.
5. When terminating a contract and the contractor is entitled to payment of reasonable costs incurred as a result of termination.
6. When awarding a cost-reimbursement contract.
The following lists the basic steps in conducting a cost analysis.

1. Verify cost and price information, including:
   a. The necessity for, and reasonableness of, the proposed cost.
   b. Technical evaluation or appraisal of the proposed direct cost elements.
   c. Application of audited or pre-negotiated indirect cost rates, direct labor rates, etc.

2. Evaluate the effect of the offeror's/contractor's current practices on future costs.

3. Compare costs proposed by the offeror/contractor with the following:
   a. Actual costs previously incurred by the same firm.
   b. Previous cost estimates from the same firm or other firms for the same or similar items.
   c. The methodology to be used to perform the work (are the costs consistent with the technical approach being proposed?).
   d. The independent cost estimate.

4. Verify that the offeror/contractor's cost proposal complies with the appropriate cost principles.

5. 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:

1. Complexity of the work to be performed.
2. Contractor's risk in performing the contract.
3. Contractor's investment in the contracted effort.
4. Amount of subcontracting.
5. Contractor's record of past performance.
6. 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 subrecipients and/or beneficiary of funds 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 subrecipients and/or beneficiary of funds 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 subrecipients and/or beneficiary of funds invitation for bids. See Section 8, below, for additional information regarding the bids package process.

Submitted Proposals
Submitted proposals are the responses to a subrecipients and/or beneficiary of funds 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 $250,000 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 subrecipients and/or beneficiary of funds can request quotes from qualified sources via telephone, fax, email, mail, or any other reasonable method. The subrecipients and/or beneficiary of funds 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 $250,000 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:

1. A complete, adequate, and realistic specification or purchase description is available.
2. Two or more responsible bidders are willing and able to compete effectively for the contract.
3. 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:

1. 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.
2. 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.
3. All bids will be publicly opened at the time and place prescribed in the invitation for bids.
4. 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.
5. 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:

1. Usually written by the subrecipients and/or beneficiary of funds architect or engineer on the basis of prepared plans or working drawings.
2. Provide a clear and accurate description of technical requirements for materials and products and/or services to be provided on the project.
3. Must be sealed by an architect or engineer registered in Michigan.
4. 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.
5. 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 subrecipients and/or beneficiary of funds official, filed in the contract documents file, and a copy sent to the State.
6. 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 subrecipients and/or beneficiary of funds has been given written permission to incur project costs).
If the subrecipients and/or beneficiary of funds construction project involves real property acquisition, the subrecipients and/or beneficiary of funds 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:

1. 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.

2. Develop cost and pricing formats.

3. Generally, the street, water, sewer, utility and landscaping projects will be unit price contracts, while building type contracts will be lump sum.

4. 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 subrecipients and/or beneficiary of funds 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 subrecipients and/or beneficiary of funds responsibility to assure compliance with the most recent and current regulations. The following steps must be taken prior to advertising for bids:

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

2. The subrecipients and/or beneficiary of funds will be notified by the MSF that they may advertise for bids.

3. 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.

4. 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.

5. 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.

6. If the subrecipients and/or beneficiary of funds amends the bid documents during the advertisement period, addenda must be sent to all prospective bidders who have received bid documents.

7. 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.

8. 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:

1. The bids should be read aloud during bid opening and the apparent low bidder should be determined during the bid opening.
2. Bids must be reviewed for both technical and legal responsiveness of bids.
3. The bidders must be evaluated as having the capacity to furnish products and/or services required.
4. 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 subrecipients and/or beneficiary of funds must take action within 45 days to either award a contract to the lowest responsible bidder or to reject bids. The subrecipients and/or beneficiary of funds 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 subrecipients and/or beneficiary of funds have 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 $250,000. The subrecipients and/or beneficiary of funds 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:

1. 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.
2. Proposals will be solicited from at least three qualified sources.
3. Subrecipients and/or beneficiary of funds and sub-grantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees.
4. Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.
5. Subrecipients and/or beneficiary of funds 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.
6. If only one bid or proposal is received, the subrecipients and/or beneficiary of funds 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:

1. Subrecipients and/or beneficiary of funds requirement;
2. Anticipated terms and conditions that will apply to the contract;
3. The solicitation may authorize offerors to propose alternative terms and conditions;
4. 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);
5. Information required to be in the offeror’s proposal; and,
6. 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 located at GAM Chapter 14, Form 14-D Certified Grant Administrator Request For Proposal SAMPLE.

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 subrecipients and/or beneficiary of funds 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. **SUBRECIPIENTS AND/OR BENEFICIARY OF FUNDS**
MICHIGAN ECONOMIC DEVELOPMENT CORPORATION  CDBG

CHAPTER 4 – PROCUREMENT AND CONTRACTING  08/21/23

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:

1. The item is available only from a single source.
2. The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.
3. The awarding agency authorizes noncompetitive proposals.
4. After solicitation of a number of sources, competition is determined inadequate.
5. 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:

1. Reject all bids received.
2. Rework the specifications within the bid package.
   a. Consult with the Program Specialist as to any proposed changes to the plans and/or specifications.
   b. Once authorized by the Program Specialist, re-advertise the project.
3. Make up the difference between the available funds and the amount of the lowest bid through the reallocation of funds.
4. Make up the difference between the available funds and the amount of the lowest bid with other sources of funding such as local funds.
5. 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: The subrecipients and/or beneficiary of funds must investigate 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

Subrecipients and/or beneficiary of funds 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 subrecipients and/or beneficiary of funds must obtain contractor clearance. To obtain clearance, the following steps should be taken:

The subrecipients and/or beneficiary of funds should search the following web site to determine whether the contractor is debarred at the federal level at www.sam.gov and at the LDP list at https://www5.hud.gov/Ecpcis/main/ECPCIS_List/main/ECPCIS_List.jsp. The subrecipients and/or beneficiary of funds 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 5 years must also follow the same clearance steps as the prime contractors, as outlined above, and will use the Verification of Professional Services Contractor Eligibility Form, (Form 4-I).

**SUBCONTRACTOR CLEARANCE**

The MSF does not clear subcontractors. The subrecipients and/or beneficiary of funds 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](http://www.sam.gov) and [https://www5.hud.gov/ecpcis/main/ECPCIS_List.jsp](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 subrecipients and/or beneficiary of funds 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 subrecipients and/or beneficiary of funds 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**

Subrecipients and/or beneficiary of funds and a sub grantee’s contracts must contain provisions in 2 CFR 200.326 of the federal regulations, as provided below:

1. 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.)

2. Termination for cause and for convenience by the subrecipients and/or beneficiary of funds or sub grantee, including the manner by which it will be affected and the basis for settlement. (All contracts in excess of $10,000.)

3. 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 subrecipients and/or beneficiary of funds and their contractors or sub grantees.)

4. 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.)

5. 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 subrecipients and/or beneficiary of funds and sub grantees when required by federal grant program legislation.)

6. 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 subrecipients...
and/or beneficiary of funds 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.)

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

8. 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.

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

10. Access by the subrecipients and/or beneficiary of funds, 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.

11. Retention of all required records for three years after subrecipients and/or beneficiary of funds or sub grantees make final payments and all other pending matters are closed.

12. 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).


14. Depending on the type of procurement used, the subrecipients and/or beneficiary of funds 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:
   a. 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.
   b. The method of contracting cannot be cost plus a percentage of cost or a percentage of construction cost. For example, the subrecipients and/or beneficiary of funds cannot add a 15% handling fee to process an invoice for geotechnical services.
   c. 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 subrecipients and/or beneficiary of funds 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.

ARCHITECTURAL/ENGINEERING CONTRACT REQUIREMENTS
The subrecipients and/or beneficiary of funds 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.

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 subrecipients and/or beneficiary of funds 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:

1. Large quantities of work such as grading, paving, building outside utilities, or site preparation are involved.
2. Quantities of work, such as excavation, cannot be estimated with sufficient confidence to permit a lump-sum offer without a substantial contingency.
3. Estimated quantities of work required may change significantly during construction.
4. Offerors would have to expend unusual effort to develop adequate estimates.

BONDING

For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold ($250,000), the awarding agency may accept the bonding policy and requirements of the subrecipients and/or beneficiary of funds 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:

1. A bid guarantee from each bidder equivalent to 5% 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.
2. A performance bond on the part of the contractor for 100% 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.
3. A payment bond on the part of the contractor for 100% 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 4-O.

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

REPORTING

The subrecipients and/or beneficiary of funds 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 subrecipients and/or beneficiary of funds, 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 subrecipients and/or beneficiary of funds and contractors must do to comply.

CHAPTER 4 FORMS

4-A  Procurement Policy SAMPLE
4-B  Bid and Contract Document SAMPLE
4-C  REMOVED
4-D  Format for Cost Analysis SAMPLE
4-E  Advertisement for RFP for Administrative Consulting Services SAMPLE
4-F  REMOVED
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  REMOVED
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 both private and other public funds.

The CDBG environmental review process described below requires UGLGs to evaluate and certify that they are following 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, compiling information from various sources including maps, graphs and aerial photographs, as well as managing the Section 106 process, arranging all public hearings and managing any public comments.
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 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
- Copies of all maps, graphs and studies pertaining to the project and/or project site
- Request for Release of Funds and Certification
- Copies of all correspondence pertaining to the project and/or project site

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, site preparation, lease agreements, 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, 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 the major elements of the project budget (including CDBG and non-CDBG funded activities) as well as a narrative of how the project will impact the environment, the neighborhood and the residents of the area directly. This relates to the Environmental Justice section of the Statutory Checklist.

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 if 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
4. Environmental assessment
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) if there are no circumstances which require compliance with any other Federal laws and authorities cited in §58.5.

Note: In this 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.”

Process for Exempt Activities
1. Complete Determination of Level of Environmental Review (Form 5-A).
2. Complete Finding of Exempt Activity (Form 5-B) and attach supporting documentation.
3. Complete Exemption Activities Determination Letter (Form 5-E).
4. Certifying Officer signs all forms.
5. If activity is determined to be Exempt, no further review is required (no checklist, publication or RROF).
6. Submit to CDBG Specialist for approval to proceed.

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 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.

**Process for CENST**

1. Complete Determination of Level of Environmental Review (Form 5-A).
2. Complete Finding of Categorical Exclusion NOT Subject to 58.5 (Form 5-C) and attach supporting documentation.
3. Certifying Officer signs both forms.
4. If activity is determined as CENST, no further review is required (no checklists, publications or RROF).
5. Submit to CDBG Specialist for approval to proceed.

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% (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 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%, the project does not involve changes in land use from residential to non-residential, and the estimated cost of rehabilitation is less than 75% 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%, 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. Information located at [https://www.miplace.org/historic-preservation/programs-and-services/cultural-resource-management-and-planning/](https://www.miplace.org/historic-preservation/programs-and-services/cultural-resource-management-and-planning/).

After receiving determination letter of no adverse effects 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.

**Process for CEST**

1. Complete Determination of Level of Environmental Review (Form 5-A).
2. Complete Finding of Categorical Exclusion Subject to 58.5 (Form 5-D) and attach supporting documentation.
3. Complete Statutory Checklist (Form 5-F) and attach supporting documentation.
4. Complete Request for Release of Funds and Certification (Form 5-G).
5. Certifying Officer signs applicable forms.
6. Publish or post notices, see Publication of Public Notices below in Section 4.
7. Submit to CDBG Specialist for approval to proceed.

**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.

In addition to completing the Environmental Assessment (Form 5-H), the Statutory Checklist (Form 5-F) must be completed which 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.
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.

**Process for an Environmental Assessment**

1. Complete Determination of Level of Environmental Review (Form 5-A).
2. Complete Environmental Assessment (Form 5-H) and attach supporting documentation for each authority.
3. Complete Statutory Checklist (Form 5-F).
4. Consult with SHPO.
5. For projects in floodplains or wetlands, conduct 8-Step Process (Form 5-L).
6. Complete DEQ Permit information checklist.
7. Certifying Officer signs applicable forms.
8. Publish or post notices, see Publication of Public Notices below in Section 4.
9. Consider and respond to comments.
10. Send Combined Notice to all interested parties including tribes. Document with copy of letter.
11. Submit to CDBG Specialist.
12. Allow for 15-day State Comment Period.
13. Wait for written Release of Funds prior to incurring costs (signed contracts).

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 project.
3. Description of the project.
4. Existing conditions and trends.
5. An environmental assessment checklist that evaluates the significance of the effects of the project 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. A full Environmental Impact Statement rarely occurs in the types of projects being funded. However, if during the review it appears that a project will convert to an EIS, the MEDC Specialist should be contacted immediately.

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.

<table>
<thead>
<tr>
<th>PUBLIC NOTICES</th>
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<tbody>
<tr>
<td><strong>PUBLICATION</strong> Notice published in newspaper of general circulation in the affected community.</td>
</tr>
</tbody>
</table>
| Notice of Intent (CEST) | 7 days  
Begins the day AFTER publication | 15 days  
Begins the day AFTER MEDC receives Request for Release of Funds |
| Combined Notice – No Significant Impact | 15 days  
Begins day AFTER publication | 15 days  
Begins day AFTER MEDC receives Request for Release of Funds |

| POSTING Notice prominently displayed in public buildings and at project site. | **LOCAL COMMENT PERIOD** | **STATE COMMENT PERIOD** |
| Notice of Intent (CEST) | 10 days  
Begins the day AFTER posting | 15 days  
Begins the day AFTER MEDC receives Request for Release of Funds |
| Combined Notice – No Significant Impact | 18 days  
Begins day AFTER posting | 15 days  
Begins day AFTER MEDC receives Request for Release of Funds |

**NOTE:** If last day of Comment Period falls on a weekend or holiday, comments will be accepted through following business day.
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
Determine if the project is 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:

<table>
<thead>
<tr>
<th>Subpart</th>
<th>Description</th>
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<tbody>
<tr>
<td>A</td>
<td>Disclosure</td>
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<td>B</td>
<td>General Requirements and Definitions</td>
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<tr>
<td>J</td>
<td>Rehabilitation</td>
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<tr>
<td>K</td>
<td>Acquisition, Leasing, Support Services, and Operations</td>
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<tr>
<td>R</td>
<td>Methods and Standards for Lead-Based Paint Hazard Evaluation and Reduction</td>
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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. Households need to sign an acknowledgement form stating 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-based paint 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 and/or 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. Documentation that workers have completed a lead-based paint training program must be in the project file.

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. **Lead safe work practices include the controlling of dust, the segregation of the work area, “working wet” and cleaning with a HEPA vacuum.**
   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.
   c. The file must be documented with on-site inspection reports showing that lead safe practices were followed.
   d. Documentation must be in the file showing that the project is free from lead-based paint after a clearance inspection.
   e. The firm/individual doing a lead hazard determination must be different from the firm/individual doing the lead clearance exam.
   f. A copy of the lead clearance exam showing compliance must be completed before a final payout can be made.
   g. The clearance report must be sent to the owner within 15 days from the inspection date. The owner must sign the report showing evidence of receipt.

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 **including bare soil.** 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. **Lead safe work practices include the controlling of dust, the segregation of the work area, “working wet” and cleaning with a HEPA vacuum. If the unit is occupied all furniture must be stored and covered following lead safe practices to avoid lead dust contamination.**
   b. Clearance, conducted by a qualified clearance examiner, is required when lead hazard reduction activities are complete.
   c. The file must be documented with on-site inspection reports showing that lead safe practices were followed.
   d. Documentation must be in the file showing that the project is free from lead-based paint after a clearance inspection.
e. The firm/individual doing a lead hazard determination must be different from the firm/individual doing the lead clearance exam.

f. A copy of the lead clearance exam showing compliance must be completed before a final payout can be made.

g. The clearance report must be sent to the owner within 15 days from the inspection date. The owner must sign the report showing evidence of receipt.

h. The file must be documented with remediation issues on exterior surfaces such as soil. Planting of grass or sod, replacement or the addition of new topsoil and the placement of mulch or stone must be documented where applicable.

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 including bare soil. 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. All work must be conducted using lead safe work practices. Workers must be trained in lead safe work practices and documentation that the workers have been trained must be in the file. Lead safe work practices include the controlling of dust, the segregation of the work area, “working wet” and cleaning with a HEPA Vacuum. If a unit is occupied, all furniture and household items must be stored and covered properly in order to avoid lead dust contamination. 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. The file must be documented with on-site inspection reports showing that lead safe practices were followed.

d. Documentation must be in file showing that the project is free from lead-based paint after a clearance inspection.

e. The firm/individual doing a lead hazard determination must be different from the firm/individual doing the lead clearance exam.

f. A copy of the lead clearance exam must be completed before a final payout can be made.

g. The clearance report must be sent to the owner within 15 days from the inspection date. The owner must sign the report showing evidence of receipt.

h. The file must be documented with remediation issues on exterior surfaces such as soil. Planting of grass or sod, replacement or the addition of new topsoil and the placement of mulch or stone must be documented where applicable.

i. Documentation of the disposal of the lead construction material must also be in the file.

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 be followed to be in compliance.

1. Lead Hazard Assessment. A visual assessment must be conducted during initial stages of the project and periodically 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. Documentation that workers have completed a lead-based paint training program must be in file.

b. Clearance. Clearance, by a qualified clearance examiner, is required when paint stabilization is complete.

c. The file must document that on-site inspections were made and lead safe practices were followed. Lead safe practices include the controlling of dust, the segregation of the work area, “working wet”, storing and covering all personal belongings and cleaning with a HEPA vacuum.

d. The file must be documented with on-site inspection reports showing that lead safe practices were followed.

e. Documentation must be in the file that the project has been cleared of lead-based paint hazards.

f. The firm/individual doing a lead hazard determination must be different from the firm/individual doing a lead clearance exam. It should be noted that everyone associated with doing testing or working on the project should be certified to work with lead paint.

g. A copy of the lead clearance exam showing compliance must be completed before a final payout can be made.

h. The clearance report must be sent to the owner and operator within 15 days from the inspection date. The owner and operator must sign the report showing evidence of receipt.

Files concerning lead-based paint testing and remediation and clearance must be kept by the UGLG and cannot follow the normal file destruction guidelines for CDBG projects.

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 Asbestos Applicability Worksheet (Form 5-V).

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, crawlspaces, 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). 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 multifamily 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.
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](http://www.epa.gov/radon)

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

- 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

- 5-F Statutory Checklist
- 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
5-V  Asbestos Applicability Worksheet

Chapter 5 Reference links
EGLE  Permit Information, EQP-3580, 04.08.20
https://www.michigan.gov/egle/0,9429,7-135-3307_29692--,00.html

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

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

HUD  Guidance on Tribal Consultation

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

MEGLE
https://www.michigan.gov/egle/0,9429,00.html

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

SHPO

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 statues in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act or URA). Section 104(d) of the Housing and Community Development Act of 1974, as amended [Section 104(d)], and 42 USC Sec. 3537c, Prohibition of Lump Sum Payments, 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.

At the time a Letter of Interest or Offer Letter is executed with MEDC, URA compliance is triggered, regardless of who is acquiring the property. An Agency is considered to be a State, State Agency, or a person who has the authority to acquire property by eminent domain under State law. The Agency is responsible for providing applicable notices, maintaining URA related documentation, and ensuring compliance with URA.

If acquisition and relocation are not involved, the MEDC may require notification in writing that the Uniform Act does not apply, Property Acquisition and Relocation Will Not Occur Letter SAMPLE (Form 6-A).

SECTION 1 – GENERAL ACQUISITION REQUIREMENTS
An option agreement, meeting the below requirements and contingencies, may be executed prior to the completion of the environmental review record, as long as a Letter of Interest or Offer Letter has been issued by the MEDC. However, acquisition of property cannot be completed or finalized until after the environmental review record is complete:

REQUIREMENTS:
- Prior to signing the option agreement, the Agency informs the property owner of the property’s fair market value and that the power of eminent domain will not be used. (Form 6-B).
- The cost of the option agreement must be a nominal portion of the purchase price, not to exceed 5%.

CONTINGENCIES:
- 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 URA established minimum standards for federally funded programs and projects that require the acquisition of real property (real estate) or displace persons from their homes, businesses, or farms. The URA’s protections and assistance apply to the acquisition, rehabilitation, or demolition of real property for federal or federally funded projects. 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

6/1/2020
The Agency cannot enter into any construction contracts prior to completing the acquisition of all properties required for 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.

Prior to executing an option agreement, contact the CDBG Program Specialist for guidance.

Unless a property is being donated, all acquisitions are required to document how compensation was determined. The appraiser will estimate the properties Fair Market Value, the appraisal will be evaluated and used as a basis for Estimate of Just Compensation, and the Agency will establish what will be offered to the property owner, which cannot be less than the approved fair market value. In order to initiate a transaction, the following must be included in any option agreements and subsequent purchase offers:

- The Just Compensation Amount
- Description and location
- The interest acquiring (fee simple, easement)
- List of buildings, improvements, and property (usually included in appraisal)

After a written offer is completed, negotiations can commence. The property owner must be provided reasonable opportunity to consider the offer, in addition to addressing any proposed modifications. All negotiations and settlements must be supportable and well documented to ensure compliance with statues and regulations. Administrative settlements can be approved if they are reasonable, prudent and in the interest of the public.

Project planning for property acquisition is critical. Key areas to plan for are whether temporary relocation of property occupants will be necessary, the cost of relocation activities by the acquiring party, what other organizations or services must be engaged in the acquisition process and determining any resources to support acquisition or temporary relocation activities. It will also be critical that documentation is keep for each property being acquired, and all notices and negotiation documents are included.

Note: If a proposed project involves acquisition, and occupants reside in the building, review Chapter 7 Relocation for concurrent compliance requirements.

SECTION 2 – VOLUNTARY AND INVOLUNTARY ACQUISITION DEFINITIONS (UNDER URA)

VOLUNTARY ACQUISITION - AGENCIES WITH EMINENT DOMAIN POWERS
When an “Agency” has the power of eminent domain, most commonly an UGLG will hold this power, this must be addressed in correspondence with the property owner. Properties acquired by Agencies who have the power of eminent domain are only considered voluntary if the Agency notifies the property owner in writing of the property’s fair market value and that the property will not be acquired if negotiations do not result in an amicable agreement. The sales price may be negotiated with the property owner, after the notice mentioned is provided. The property being acquired, in part of wholly, cannot be part of an intended, planned, or designated project area where the area surrounding is also being acquired.

Eminent domain powers are prohibited when the beneficiary of the project is a private entity. Acquisition of property to assist private entities must always be voluntary.

VOLUNTARY ACQUISITION – AGENCIES WITHOUT EMINENT DOMAIN POWERS
When an “Agency” does not have the power of eminent domain, most commonly a private entity and some UGLG’s, correspondence is much the same. Properties sought to be acquired, where eminent domain powers do not exist, requires the Agency notify the property owner in writing of the property’s fair market value and that the property will not be acquired in the event negotiations fail to result in an amicable agreement.
Voluntary acquisitions, regardless of whether eminent domain powers exist, it is the case that only tenant-occupants would be eligible for any relocation assistance under the URA. Owner-occupants who voluntarily engage in the acquisition are not eligible for assistance.

Eminent domain cannot be used for any acquisition not benefitting the public. This generally applies to housing and infrastructure projects related to public use.

**IN Voluntary Acquisition**

Properties acquired involuntarily must be done so under the threat or use of eminent domain. Properties sought to be acquired requires the Agency notify the property owner in writing of the property’s fair market value and an offer to purchase at the fair market value identified. The purchase is expected to be completed quickly. A reminder that eminent domain cannot be used for any acquisition not benefitting the public. This generally applies to housing and infrastructure projects related to public use.

Involuntary acquisitions result in relocation assistance eligibility to be extended to both tenant-occupants and owner-occupants, under the URA.

**SECTION 3 – VOLUNTARY ACQUISITION PROCEDURES (UNDER URA)**

The steps for the voluntary acquisition (with or without eminent domain) of property, and the order in which the steps should occur, are outlined below:

**DETERMINE OWNERSHIP**

Ownership must be submitted with the application and include title evidence and the legal description of the property. Submitted documents will be cross referenced with the county register of deeds’ records to verify the legal property owner and legal description of the property, and check for any existing easements or liens. CDBG 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), prior to receiving a grant agreement.

**DETERMINE THE VALUE OF THE PROPERTY (APPRAISAL OR WAIVER VALUATION)**

All appraisals must be conducted in accordance with 49 CFR 24.103, and reviewed in accordance with 49 CFR 24.104. The appraisal requirements outlined in Part 24.103 are intended to be consistent with the Uniform Standards of Professional Appraisal Practice (USPAP). An appraisal Scope of Work (Form 6-R) is not only required but is critical since it establishes an understanding between the appraiser and the acquiring Agency on the specific requirements of the appraisal. The property owner must be provided the opportunity to accompany the appraiser during the property inspection. When an appraisal is not required, a waiver valuation must be prepared. A waiver valuation is a statement of the property’s value. 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 fair market value of the property and include a statement that the buyer either 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, free of cost to the property owner. 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 under voluntary acquisition they are not entitled to any relocation assistance. If voluntary acquisition or subsequent construction results in the temporary relocation of tenant-occupants, those tenants are eligible for relocation assistance.
Note, temporary relocation that exceeds 12 months automatically triggers permanent displacement eligibility. Permanent displacement is not eligible for any CDBG assistance. It is strongly advised that projects with permanent displacement reconsider their project activities, see Chapter 7 Relocation for more information on relocation and displacement.

NEGOTIATE, PREPARE DOCUMENTS, AND COMPLETE THE SALE

After the property is valued, and notices to acquire are provided, a sale price is negotiated. Following successful negotiations and receiving authorization to incur project costs from MEDC, the sale contract is prepared; the Statement of Settlement Costs (Form 6-L) or an alternative Closing Statement or similar document. Once the sale is closed and the deed is transferred, copies must be provided to the CDBG Program Specialist. Incurring private or public costs prior to receiving CDBG Program Specialist authorization may jeopardize the grant.

RECORDKEEPING

A voluntary acquisition file must be maintained for each property acquired and for each tenant-occupant, and must include the following documents:

- 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 applicable
- Notice of URA Applicability (Form 6-A), if applicable
- Voluntary Acquisition Notice with Eminent Domain (Form 6-B), if applicable
- Voluntary Acquisition Notice without Eminent Domain (Form 6-C), if applicable
- Invitation to Accompany an Appraiser (Form 6-M), if applicable
- Statement of Just Compensation (Form 6-J) or Notice of Intent Not to Acquire (6-K), as applicable
- Statement of Settlement Costs (Form 6-L), or similar document, as applicable
- Easement Servitude Appraisal (Form 6-N), if applicable
- Waiver of Just Compensation and Appraisal (Form 6-O), if applicable
- Record of Personal Contacts (Form 6-Q), for acquisitions with tenants
- Appraisal Scope of Work (Form 6-R)
- Recorded evidence of acquisition payment and new property ownership

SECTION 4 – INVOLUNTARY ACQUISITION PROCEDURES (UNDER URA)

When involuntary acquisition is necessary for a public benefit, with no other identified alternatives, the property owner must be informed of their rights under the URA. The steps involved with involuntary acquisition, with the use of threat or eminent domain, are outlined in the Acquisition Process under URA Flowchart (Form 6-E) and described below:

DETERMINE OWNERSHIP

Ownership be must submitted with the application and include title evidence and the legal description of the property. Submitted documents will be cross references with the county register of deeds’ records to verify the actual property owner, legal description of the property, and check for any existing easements or liens. CDBG 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), prior to receiving a grant agreement.

DETERMINE THE VALUE OF THE PROPERTY BY AN APPRAISAL AND REVIEW APPRAISAL (IF REQUIRED) OR WAIVER VALUATION

All appraisals must be conducted in accordance with 49 CFR 24.103, and reviewed in accordance with 49 CFR 24.104. The appraisal requirements outlined in Part 24.103 are intended to be consistent with the Uniform Standards of Professional Appraisal Practice (USPAP). An appraisal Scope of Work is not only required but is critical since it establishes an understanding between the appraiser and the agency on the specific requirements of the appraisal. A sample scope of work is available as Appendix 19 of HUD Handbook 1378. The property owner must be provided the opportunity to accompany the appraiser during the property inspection. When an appraisal is not required, a
waiver valuation must be prepared. A waiver valuation is a statement of the property’s value. 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 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, free of cost to the property owner. Each notice must give the name and telephone number of a person who may be contacted for further information.

The Preliminary Acquisition Notice includes:

- The property owners’ rights under the URA, including the right to an appraisal;
- Explains the notice is not to vacate the property;
- Establishes whether 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.

Permanent displacement of occupants is not an eligible activity for CDBG funds and may jeopardize the grant.

**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 fair 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.

The statement must include:

- A statement of the full amount offered as just compensation;
- An accurate description and location identification of the property to be acquired;
- The interest the Agency wishes to acquire must also be included (fee simple easement); and
- A list of the buildings and other improvements covered by the offer. The list of the property to be acquired must be accurate to avoid situations where an item is included in the appraised value and written offer but subsequently relocated at the grantee’s expense.

Remember, if the property is tenant-occupied and the tenant will be required to temporarily vacate (not exceeding 12 months), the tenant is eligible for relocation assistance, refer to Chapter 7 – Relocation.
RECORDKEEPING
An involuntary acquisition file must be maintained for each property acquired and for each tenant-occupant, and
must include the following documents:

- Completed Involuntary Acquisition Checklist (Form 6-T)
- Title search/Clearance of Title
- Waiver Valuation (Form 6-D) or similar document or an Appraisal Report, if applicable
- Involuntary Acquisition Notice with Eminent Domain (Form 6-F), if applicable
- HUD Brochure (Form 6-G or 6-H)
- Invitation to Accompany an Appraiser (Form 6-M), if applicable
- Statement of Just Compensation (Form 6-J) or Notice of Intent Not to Acquire (6-K), as applicable
- Statement of Settlement Costs (Form 6-L), HUD-Form 1, or similar document, as applicable
- Easement Servitude Appraisal (Form 6-N), if applicable
- Waiver of Just Compensation and Appraisal (Form 6-O), if applicable
- Record of Personal Contacts (Form 6-Q), for acquisitions with tenants
- Appraisal Scope of Work (Form 6-R)
- Recorded evidence of acquisition payment and new property ownership

SECTION 5 – APPRAISALS UNDER URA

Appraisals are considered a preliminary cost paid for with non-CDBG costs during the application process in order to
determine project costs. In order to facilitate a property appraisal, the Agency must adhere to the following:

- Meet requirements outlined in 49 CFR 24.103;
- Agency must develop an appraisal scope of work;
- Identify and resolve personal property/realty issues for affected businesses;
- Appraisals must be consistent with Uniform Standards of Professional Appraisal Practice (USPAP)

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. State-certified or licensed
real estate appraisers eligible to perform appraisals for federally related transactions are now listed on the Internet,
View the National Registry of State-Certified or Licensed Appraisers’ website at http://www.asc.gov

The UGLG should follow its local procurement requirements in addition to requesting statements of qualifications
from a number of local appraisers. A minimum of one appraisal is required for cost reasonableness; however, if the
project is being acquired involuntarily or the property value exceeds $100,000, the UGLG will need 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 contracts or refer to the Uniform Appraisal Standards for
Federal Land Acquisition, which sets forth standard requirements for appraisals involving federally funded
acquisitions, Agreement for Appraisal Services SAMPLE (Form 6-U).

ESTABLISH JUST COMPENSATION

The grantee determines the just compensation amount to be offered to the property owner in a three-step process:

1. An appraiser prepares an appraisal of the property to be acquired. The appraisal provides the appraiser’s
   estimate of the property’s fair market value, then
2. A qualified review appraiser evaluates the appraisal which will then be the basis of the agency’s estimate
   of just compensation, then
3. The agency establishes the just compensation amount to be offered to the property owners. The offer may
   not be less than the approved fair market value of the property.
The amount determined to be just compensation cannot be less than the fair 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.

For some uncomplicated, low value acquisitions (i.e., less than $10,000), the grantee may determine an appraisal is not required and prepare a waiver valuation that will provide the basis of the Agency’s offer of just compensation.

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
The Grant Manual’s Easement Servitude Appraisal SAMPLE (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 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.

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 legal property owner must be kept in each property owner’s acquisition file.

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 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.

RECORDKEEPING
A separate acquisition case file including the below documents must be established for each donated acquisition:

- HUD brochure titled When a Public Agency Acquires Your Property (Form 6-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);
- Preparing Scope of Work (Form 6-R)
- Agreement for Appraisal Services SAMPLE (Form 6-U)
- Recorded evidence of acquisition payment and new property ownership.

SECTION 6 – COMPLETING ACQUISITION
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 property owner may accept the fair market value and enter into an option agreement, after receiving written authorization to do so by the CDBG Program Specialist. However, there may be occasions when a property owner proposes or insists on more than the fair market value. If this occasion arises, the Agency may request approval from MEDC to proceed with a purchase price higher than the fair market value or may obtain a new valuation.

Following successful negotiations and receiving authorization to incur project costs from the MEDC, the sale contract and Statement of Settlement Costs (HUD-Form 1) or an alternative Closing Statement (Form 6-L) or similar document is 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 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 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.).

Documentation of negotiation proceedings should be placed in the project acquisition file, voluntary or involuntary.
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.

Intention 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.

Chapter 6 Forms

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-Q Record of Personal Contacts
6-T Involuntary Acquisition Review Checklist

Reference
6-P General URA Acquisition
6-R Preparing an Appraisal Scope of Work
6-U Agreement for Appraisal Services SAMPLE
CHAPTER 7
RELOCATION

INTRODUCTION
This chapter provides an overview of the requirements regarding temporary relocation of residential and Non-Residential occupants under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act or URA), and Section 104(d) of the Housing and Community Development Act of 1974 [Section 104(d)].

Project activities that require occupants, Residential or Non-Residential, to be permanently displaced are not eligible for CDBG funding. Additionally, if a project triggers one-to-one housing replacement, the project will not be eligible for CDBG funds.

The CDBG Program does not consider occupants to be “displaced” if the project necessitates only temporary relocation and only if certain stringent protections are applied. Temporary relocation activities are considered when the following applies:

- Abatement of hazardous material, such as lead or asbestos, would require residential or non-residential occupants to vacate for no more than five (5) days; or
- Utility services for the building, such as water, gas, electricity, were to be shut off for no more than five (5) days.

As such, this chapter will discuss temporary relocation requirements. The costs associated with temporary location can vary greatly. Costs to temporarily relocate could be as minimal as covering the cost of hotel and food for a few days or as broad as covering the costs associated with moving personal property or loss of wages if relocation interrupts an occupant’s work schedule. The UGLG Grantee must take great care in documenting the procedure involved with relocation activities. The Uniform Relocation Act does not change or alter the steps required to ensure occupants’ rights under the Act. Occupants who must vacate a property resulting from the project, regardless of the number of days, must be provided notices, advisory services, and expedited reimbursement or advances for relocation expenses.

The cost of temporary relocation is required to be covered by the UGLG or private building owner and is not eligible to contribute as match nor reimbursed by CDBG funds.

SECTION 1 - APPLICABLE REGULATIONS

Four different regulations govern relocation activities:

2. 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).
3. 24 CFR Part 42 governing displacement in HUD-assisted housing.

An Agency is considered to be a State, State Agency, or a person who has the authority to acquire property by eminent domain under State law. For the purposes of temporary relocation, the term Agency will be used to refer to the responsible party for providing applicable notices, maintaining URA related documentation, and ensuring compliance with URA. The term Agency can also be used to reference the UGLG, a private building owner, or Developer, depending on the nature of the project. The Agency must take reasonable steps to minimize relocation on federally assisted projects. This includes, but is not limited to, considering feasibility in carrying out large projects in stages to allow for minimized relocation or potential displacement. Relocation assistance is costly and can seriously affect project viability and may cause timeline delays and financial burden to the parties implementing the project. Consider the following when determining whether relocation is a necessary activity:

- Income generated by occupants
- Family characteristics
- Impact on minority populations
- Impact on the elderly, large families, and persons with disabilities
• Relocations options for businesses
• On-going advisory assistance to those that could be permanently displaced
• Other stakeholders and entities to be involved during relocation, or potential displacement

After strong consideration of whether relocation is necessary, there are several requirements to documenting compliance and ensuring equitable and fair treatment of those to be relocated:

• Coordination among State, local, and neighborhood agencies will reduce duplicative efforts and reduce the time for both the project’s implementors and the persons displaced.
• Consultation with the persons relocated is required, as well as disclosing any relocation activities in public hearings relevant to the project.
• Identification of resources is required to assist the persons displaced.

The URA intends to ensure persons relocated as a result of federally assisted projects are treated fairly, consistently, and equitably so that relocated persons do not suffer disproportionate injuries as a result of the project’s benefit. Projects that are unable to avoid or mitigate relocation activities must ensure compliance with the regulations mentioned above and in a manner that is efficient and cost-effective. Demolition of occupied buildings is not eligible for CDBG assistance.

Note: Regardless of whether temporary relocation occurs or not, notices and advisory services must be provided to current and prospective tenants.

SECTION 2 – RESIDENTIAL TEMPORARY RELOCATION

The URA requires tenants who only need to be temporarily relocated to be treated equally as to those defined as “displaced” persons. Temporarily relocated tenants are provided the same services and resources, however, they are not considered to actually be displaced1. Regardless, the Agency will complete the following for each eligible tenant:

• Cover moving expenses to and from the temporary location,
• Provide payment of increased housing costs during the period of relocation,
• Provide a guarantee of returning to the same unit or another unit in the same building or complex.
• Limit rental increase at the unit offered in the completed project.
• Assure that relocation does not exceed 12 months from the time of notice to vacate date

The URA does not cover owner-occupants who voluntarily participate in federally funded housing rehab programs. Payments to owner-occupants for relocation are ineligible CDBG costs but can be covered under an Optional Relocation Policy (Form 7-C), adopted by the Grantee UGLG. The Agency has broad discretion regarding payments to owners during the period of temporary relocation, i.e., short-term storage and housing costs. CDBG funds cannot be sought to assist in relocation activities, nor can it be part of local or private match.

Section 104(d) Applicability
Due to the nature of eligibility under Section 104(d) of the HCDA, and the CDBG Program’s policy on permanent displacement, projects that are disclosed or determined to trigger Section 104(d) compliance are not eligible to receive CDBG funds.

Notice of Non-Eligibility
Immediately after the Offer Letter/Letter of Interest, or the Initiation of Negotiations (whichever comes first), the UGLG must provide a notice to tenants that are not eligible for relocation assistance (Form 7-I), meaning:

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1 URA definition of displaced person means any person who moves from the real property or moves his or her personal property from the real property. (This includes a person who occupies the real property prior to its acquisition, but who does not meet the 90-day or 180-day length of occupancy requirements), permanently, or as a result of temporary relocation exceeding 12 months.
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 tenant’s rights to appeal.
- In these cases, the UGLG may pursue the necessary legal proceedings to remove the tenants from the property.

In rare instances where a property owner 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.

SECTION 3 – RESIDENTIAL TEMPORARY RELOCATION PROCEDURE

An Agency is required to complete the following steps whenever residential tenants are present, in real property, seeking CDBG assistance for a project:

Provide Notice

All tenants must receive a General Information Notice (GIN) (Form 7-F) as soon as feasible to provide preliminary information on the proposed project and the tenants potential rights and protections. “As soon as feasible” is at the time the UGLG submits a CDBG application for review. A GIN is required to be sent via certified mail or hand delivered mail, requiring proof of receipt from the current tenants.

HUD considers all tenants within a proposed HUD-assisted project involving acquisition or rehabilitation to be displaced for the purposes of issuing a GIN. At the time of submitting a CDBG Application, the Agency is required to supply proof that tenants were notified the Agency is seeking federal funds for a project involving the building they reside in. The GIN must include at a minimum the following:

- Information on whether the residential occupant will or will not be temporarily displaced in connection with the proposed project;
- An explanation of what happens if temporary relocation lasts more than 12 months, and how the tenant would be offered all permanent displacement assistance as a displaced person under the URA;
- Advising the tenant to NOT MOVE to avoid jeopardizing relocation assistance if they must temporarily relocate;
- That the tenant will not be required to move without advance written notice;
- That the tenant has the right to appeal the Agency’s determination regarding eligibility for assistance.
- The GIN must be signed by an appropriate official of the displacing Agency.
- Along with the GIN, the Agency must provide the tenant:
  - Relocation Assistance Brochure (Form 7-J);
  - The UGLG’s adopted policy on relocation activities (Form 7-A).

The GIN must be in plain, understandable language, and must indicate the name and phone number of a person to be contacted for questions. The Agency will need to create and maintain a relocation file for each household/person that may residing in the property. Include copies of notices and all notes that sufficiently document the timeline of events, issues, and/or concerns. It may be appropriate and beneficial to personally contact the tenants in order to establish and maintain a good working relationship.

In the event a potential tenant is interested in moving into the unit or building, the Agency or building owner is required to provide a Move-In Notice (Form 7-G); a written notice provided to prospective occupants after a CDBG application is submitted. If the person is provided with a Move-in Notice before leasing and occupying the property and agrees to occupy under the terms of the notice, the person is not eligible for relocation assistance – even if project activities require relocation. Failure to issue a Move-in Notice may result in the Agency incurring liability for relocation costs.

The Agency may not provide any notice to vacate until after Decent, Safe and Sanitary (DSS) comparable dwelling is identified and agreed upon by the tenant. Agencies will provide a 90-Day Notice to Vacate, which will state either:
• The date as the earliest by which an occupant will be required to move, or
• That the occupant will receive further notice, at least 30 days’ in advance, indicating the specific date by which to move.

Shorter notice periods may be appropriate based on an urgent need due to danger, health or safety issues.

At the time that CDBG funds are approved or when a Grant Agreement is executed, the tenants will be provided a Notice of Non-Displacement SAMPLE (Form 7-H). The notice must explain the reasonable terms and conditions under which the tenant may continue to lease and/or occupy the property upon return and explain that the tenant will be reimbursed for all reasonable extra expenses (Hand deliver & obtain written acknowledgement of receipt or mail by certified or registered, first class mail, return receipt requested Form 7-H).

Provide Advisory Services
Advisory services are the single most important part of a successful relocation. Advisory services ensure that the Agency determines the needs of temporarily relocated persons, provides an explanation of available relocation assistance and explains the right to appeal if they are not satisfied with Agency decisions. Advisory services necessary to document include:

- Communicating to the tenants, and at public hearing meetings, that temporary relocation will be occurring,
- Conducting personal interviews with tenants to objectively assess the persons specific needs (unit size, location, accessibility, pets, etc.)
  - Obtain a copy of the current lease to ensure the same terms will be applied post-project completion, and that the occupant resides lawfully to be eligible for URA assistance.
- Provide referrals to community organizations or other sources of assistance (social services, housing counseling, etc.)
- Temporary unit/lodging inspections to ensure Decent, Safe and Sanitary dwelling arrangements,
- Provide the Relocation Plan schedule and budget to address questions around security and safety measures while construction is occurring on units, and
- Walkthrough claims and reimbursement policies and procedures that are timely and fair.

The Agency is required to conduct personal interviews as part of the advisory services. The goal of the interview is to determine the needs and preferences of the tenants to be temporarily relocated. Additional information necessary to collect includes basic household composition and income, the identification of potential barriers or challenges to the relocation, obtaining proof of lawful residency, and providing information about the project and assistance for which the occupant may be eligible to receive.

Advisory services will be on-going throughout a project’s life, until tenants are returned to their original unit, or to a previously agreed upon and decent, safe and sanitary dwelling that has been inspected, within the same building or complex. If translation services or materials are necessary, they are the responsibility of the Agency. Translated materials can also be found at the HUD Exchange, https://www.hudexchange.info/programs/relocation/forms/.

After identifying that project activities will result in the temporary relocation of tenants, and after Notices are sent and Advisory services have begun, the Agency will need to begin the process of finding tenants decent, safe, and sanitary (DSS) dwelling that meets local housing and occupancy codes. At a minimum, the dwelling must:

- Be structurally sound, weather-tight, and in good repair;
- Contain a safe electrical wiring system adequate for lighting and other devices;
- Contain a heating system capable of sustaining a healthful temperature of approximately 70 degrees;
- Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the “displaced”2 person;
- Have a separate, well lighted and ventilated bathroom;
- Contain unobstructed egress to safe, open space at ground level; and

2 “Displaced” in this instance also include persons or families temporarily relocated; HUD treats DDS criteria equally.
For a person with a disability, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

Additionally, the DSS will need to be, as feasible, functionally equivalent to the dwelling being relocated from. The term functionally equivalent means the same function and utility as the tenants permanent dwelling unit. While a dwelling need not possess every feature of the original dwelling, the principal features must be present. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used. However, in determining whether a replacement dwelling is functionally equivalent, the Agency may consider reasonable trade-offs for specific features when the replacement unit is equal to or better than the displacement dwelling.

- Adequate in size to accommodate the tenants;
- In an area not subject to unreasonable adverse environmental conditions;
- In a location generally not less desirable than the location of the displaced person’s dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person’s place of employment;
- On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses;
- Currently available to the displaced person on the private market (except as provided in URA Sec. 24.2 (a)(6)(ix)); and
- Within the financial means of the displaced person eligible for a replacement housing payment. This means that after receipt of all acquisition and relocation payments under this regulation (including any amount deducted because of rent owed the Agency), the price or rent (including utilities), as appropriate, of the replacement dwelling offered as a comparable does not exceed the price or rent (including utilities) of the dwelling from which relocating.
- For a person receiving government housing assistance before relocation, a dwelling that may reflect similar government housing assistance.

After interviewing tenants, and documenting dwelling preferences, the Agency is required to begin searching for a comparable, temporary dwelling that satisfies the DSS and functionally equivalent requirements. Record all available and comparable dwellings. At least one (1) comparable dwelling must be identified, however three (3) is preferred.

**Lead-Based Paint Hazards Requirements for temporarily displaced residential tenants**

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 tenants (renters and owners) before and during hazard reduction activities.

Under the lead regulations, circumstances when temporary relocation is not required include:

1. Treatment will not disturb lead-based paint, lead-contaminated dust, or soil lead hazards.
2. 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.
3. 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.
4. 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, tenants 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 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, adopted and managed locally. A sample is made available in form 7-C, Optional Temporary Relocation Assistance Policy.

The lead rule further requires that temporary dwelling units do 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 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 UGLG may provide a release of liability waiver for occupant signature and submit to the CDBG Program Specialist; waiver must be sent via certified mail or hand delivered mail, requiring proof of receipt from the tenants. 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 7-L).

Additional Residential Temporary Relocation Considerations
Although the Agency assists the residential tenant in finding comparable relocation units, the Agency cannot mandate where the tenants relocate. In the case that a tenant proposes to temporarily relocate with family/friend(s), the tenant must agree to a DSS inspection to claim assistance afforded under the URA.

If a person must be temporarily relocated from a unit with cooking facilities to a unit that lacks basic cooking facilities (e.g., a hotel), the Agency would reimburse the increased out-of-pocket costs for meals. Where a person will be temporarily relocated from a public housing unit to a non-public housing unit, increased rental and/or utility cost for the unit would be reimbursable and an eligible out-of-pocket cost for the period they occupy the temporary unit.

If rent is raised or a different unit will be offered when returning to the project, the tenant must be notified prior to moving back. If rent increase causes a rent burden to the tenant, the tenant is covered by the URA and would be eligible for permanent relocation assistance; an activity that the CDBG Program does not support. Rent increases that “economically displace” tenants, also considered permanently displaced, will jeopardize the project’s fundability.

Once a temporary unit is identified and approved by the tenant, the Agency will need to provide 30-days advanced notice to vacate. As with previous notices, the notice to vacate/move must be personally served or sent by certified or registered first-class mail, return receipt requested.

Last Resort Housing Measures (49 CFR 24.404) regulates that whenever comparable replacement dwellings are not available within the monetary limits for “displaced” owner-occupants and tenants, the Agency must provide additional alternative assistance under the provisions of this section. Other Last Resort Housing Measures, Section 206, also authorizes Agencies to use project funds to undertake special measures, such as the construction, rehabilitation, or relocation of housing; the purchase of land and/or housing and later sale or lease to, or exchange with, the person; the provision of a direct loan; and the removal of barriers for persons with disabilities. All of this to address inadequate access to comparable housing. Last Resort Housing Measures costs are the responsibility of the Grantee UGLG or Agency.

Provide Relocation Assistance and Payment
After providing notices, providing advisory services, and identifying decent, safe and sanitary housing that is functionally equivalent to the unit relocated from, and providing at least 30 days’ notice to vacate the property, the Agency must provide reimbursement for moving expenses. The Agency must ensure payment is prompt and expedited.

Tenants who are relocated temporarily must be reimbursed on a ‘per diem’ basis. Reimbursement is for all actual, necessary, and reasonable expenses due to the temporary relocation regardless of whether the tenant completes the move independently, or with the assistance of hired services. All expenses related to relocation are to be covered by the Agency, or by the UGLG if they have an adopted Optional Relocation Policy. Eligible expenses include, but are not limited to:

- Packing and unpacking to and from the temporary location;
- Payment of increased housing costs during the period of relocation;
- Moving and storage of the occupant’s property impacted by construction, not to exceed 12 months;
- Transportation for persons and personal property, not exceeding a distance of 50 miles, unless justified by the Agency;
- Costs for reasonable expenses due to the relocation including meals;
- Provide transportation to view comparable sites;
- Compensated for loss of work;
- Disconnecting/dismantling, removing, reinstalling/reassembling appliances and other personal property;
- Utility hookups (including cable and telephone);
- Insurance for replacement value of property;
- Credit checks;
- Guarantee on limitation on a rental increase for the rehabilitated unit to be returned to; and
A guarantee of return to the same unit, or to another unit in the same building or complex.

Example: A multifamily housing property is being rehabilitated, including adding a fire sprinkler system. This welcome investment in fire safety will require shutting down the water for short periods of time over multiple days. This work will include installing piping in the corridors and ceilings within each unit, thus requiring time-consuming, noisy, disruptive, dirty and dusty drywall demolition and replacement and painting in addition to the pipe installation and testing. As a result of the scope of this work, the residents (either in the entire building or by phases depending on the design of the installation schedule) will be required to vacate the building for up to five (5) days while the work is being performed in their units and adjacent corridors. In this case, temporary relocation is required. Although a five (5) day period is relatively short, temporary relocation requirements apply and must be documented for each tenant impacted. Consider also, that the tenant may not need to move all possessions to the temporary unit, particularly if the temporary dwelling is within the same building the project is occurring.

Processing Payment
It is required that residential tenants file for relocation reimbursement within 18 months of completed relocation activities, or project close-out.

Estimated funds for relocation activities will be required to be escrowed by the Agency prior to executing a grant agreement. This ensures the tenant’s efficient and expedited reimbursement, after verifying actual relocation expenses. Before releasing payment from the escrowed account, the Agency or a designated representative will conduct an internal and external inspection of the replacement unit to determine whether it meets the DSS threshold. A copy of the inspection report will be included with the occupant’s relocation file, along with the following:

- If the occupant chooses to relocate to a local community, a local official may be delegated to perform the dwelling inspection to ensure DSS.
- The Agency may choose to not authorize payment if a dwelling selected does not pass the DSS threshold. The occupant must be notified of the unit’s ineligibility.
- In the event of a disaster, imminent threat to public health or welfare, State of emergency declared by the President of Governor, the occupant standards for replacement dwellings may be waived.

URA Relocation payments are not considered income [49 CFR 209] but may affect the rent or eligibility for a person who seeks Section 8 or public housing assistance after a cash payment is made. These “gap” payments should be excluded from income as “temporary, nonrecurring, or sporadic income”. An Agency may not request or suggest that the occupant waive rights for reimbursement under the URA.

Manner of Disbursing Rental Assistance
Assistance payments for residential tenants who are temporarily relocated must be disbursed in installments, except for lump sum payments, which may be made to cover moving expenses, or incidental expenses related to moving, such as moving supplies, or lost wages if tenant loses hours due to moving requirements. Whenever the payment is made in installments, the full amount of the approved payment shall be disbursed in regular installments, whether or not there is any later change in the person’s income or rent, or in the condition or location of the person’s housing. The frequency of these disbursements may be determined by the Agency. However, if not paid monthly, HUD recommends that there be no less than three installment payments, except when the rental assistance payment is $500 or less. Where the rental assistance payment is $500 or less, it is recommended that payment may be made in two installments with no less than a four-month interval between payments.

Section 206 of the URA authorizes the use of project funds to provide such additional cash assistance whenever the payment ceiling, $7,200 for renters, is insufficient to provide comparable replacement housing, or DSS housing, additional or alternative assistance must be provided. Note, exceeding the payment ceilings at 49 CFR 24.401(b) and 24.402(b) is commonplace. To

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3 Lump sum payments also include down payment on the purchase of replacement housing, but only for instances in which voluntary or involuntary, permanent displacement occurs.

4 Payment ceiling also includes $ 31,000 for displaced owner- occupants, but only for instances in which permanent and involuntary displacement occurs.
ensure that a displaced or relocated person is not unduly burdened financially, the Agency is required to provide additional cash or alternative assistance (see 49 CFR 24.404(c)(1)(i)-(iv).

**Record Keeping**
A relocation file must be maintained for each occupant, and must include the following documents:

**Residential Notices**
- 7-F GIN Residential Tenants Not Displaced SAMPLE
- 7-G Move In Notice to Prospective Tenant SAMPLE
- 7-H Notice of Non-Displacement Non-Residential and Residential Tenants Not Displaced SAMPLE
- 7-I Notice of Non-Eligibility SAMPLE

**Residential Temporary Relocation**
- 7-J Relocation Assistance to Tenants Displaced from their Homes, HUD-1042-CPD
- 7-K Site Occupant Record Residential
- 7-L Elderly Waiver for Temporary Relocation SAMPLE
- 7-M Record of Advisory Assistance and Other Contacts
- 7-N Comparable Replacement Dwelling, HUD-40061
- 7-O Resident Survey SAMPLE
- 7-P Residential Relocation Management Report
- 7-Q Residential Claim for Moving and Related Expenses, HUD-40054
- 7-R Non-Displacement Checklist
- 7-S Claim for Rental Assistance or Down Payment Assistance, HUD-40058

**SECTION 4 – NON-RESIDENTIAL TEMPORARY RELOCATION**

The URA requires Non-Residential occupants who only need to be temporarily relocated to be treated equally as to those defined as displaced. Temporarily relocated Non-Residential occupants are provided the same services and resources, however they are not considered to actually be displaced\(^5\). Temporary relocation of a business or non-profit is expected to be rare. A business is defined as:

1. 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.
2. A non-profit organization, such as a church or social service agency.
3. A farm operation.

Non-Residential relocation eligibility extends to owner/occupants of a business, and occupants operating a business in rented space.

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 shut down for the duration of construction. The UGLG may have to temporarily relocate the business for a period if the business 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 and must notify MEDC prior to taking any action. 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:

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\(^5\) URA definition of displaced person means any person who moves from the real property or moves his or her personal property from the real property. (This includes a person who occupies the real property prior to its acquisition, but who does not meet the 90-day or 180-day length of occupancy requirements), permanently, or as a result of temporary relocation exceeding 12 months.
- Temporarily relocated and reimbursed for all reasonable out of pocket expenses; OR
- Determined to be permanently displaced at the UGLG’s option.

Payments to occupants for relocation are ineligible for CDBG assistance but can be covered under an adopted Optional Relocation Policy, adopted by the Grantee UGLG. The Agency has broad discretion regarding payments to owners during the period of temporary relocation, i.e., short-term storage and rent. CDBG funds cannot be sought to assist in relocation activities, nor can it be part of local or private match.

**Section 104(d) Applicability**
Section 104(d) protects persons or units, but does not protect businesses, nonprofits or other private entities.

**SECTION 5 – NON-RESIDENTIAL TEMPORARY RELOCATION PROCEDURE**

An Agency is required to complete the following steps whenever nonresident occupants, such as businesses and nonprofits, are present, in real property, seeking CDBG assistance for a project:

**Provide Notice**
All occupants must receive a General Information Notice (GIN) (Form 7-T) as soon as feasible to provide preliminary information on the proposed project and the occupants potential rights and protections. “As soon as feasible” is at the time the UGLG submits a CDBG application for review. A GIN is required to be sent via certified mail or hand delivered mail, requiring proof of receipt from the current occupants.

- Information on whether the Non-Residential occupant will or will not be temporarily displaced in connection with the proposed project;
- An explanation of what happens if temporary relocation lasts more than 12 months, and how the occupant will be offered all permanent displacement assistance as a displaced business under the URA;
- Advising the occupant to NOT MOVE to avoid jeopardizing relocation assistance if they must temporarily relocate;
- That the occupant will not be required to move without advance written notice;
- That the occupant has the right to appeal the Agency’s determination regarding eligibility for assistance.

The GIN must be signed by an appropriate official of the displacing Agency.

Along with the GIN, the Agency must provide the occupant:
- Relocation Assistance Brochure (Form 7-U);
- The UGLG’s adopted policy on relocation activities (Form 7-C).

Non-Residential occupants must also be notified of inspections for current and replacement sites, of changes in plans/schedules, dates and time moving will occur, and a list of property to be moved or sold.

The GIN must be in plain, understandable language, and must indicate the name and phone number of a person to be contacted for answers to questions. At this point the Agency will need to create and maintain a relocation file for each Non-Residential occupant that may be temporarily relocated. Include copies of notices and all notes that sufficiently document the timeline of events, issues, and/or concerns. It may be appropriate and beneficial to personally contact the occupants in order to establish and maintain a good working relationship.

In the event a potential occupant is interested in moving into the building the Agency or building owner is required to provide a Move-In Notice (Form 7-G); a written notice provided to prospective occupants after a CDBG application is submitted. If the prospective occupant is provided with a Move-in Notice before leasing and occupying the property and agrees to occupy the property under the terms of the notice, the occupant is not eligible for relocation assistance. Failure to issue a Move-in Notice may result in the Agency incurring liability for relocation costs if the occupants are required to be temporarily relocated or end up permanently displaced.

The Agency and Grantee UGLG must coordinate notice efforts. A 90-day notice to vacate for non-residential occupants does not require a referral to a comparable site. It is required that temporarily relocated Non-Residential occupants are reimbursed
for all reasonable out of pocket expenses or are determined to be permanently displaced with the Agency’s power of eminent domain (See Chapter 6, Acquisition). Any notice to vacate will include:

- The date as the earliest 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.

Owners or occupants 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. Review Chapter 6, Acquisition for more information.

At the time that CDBG funds are approved or when a Grant Agreement is executed, the occupants of the building receiving CDBG assistance will receive a Notice of Non-Displacement SAMPLE (Form 7-H). If tenants will be temporarily relocated 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 and obtain written acknowledgement of receipt or mail by certified or registered, first class mail, return receipt requested Form 7-H).

Provide Advisory Services
Advisory services ensure that the Agency determines the needs of temporarily relocated businesses, non-profits, and farms, and provides an explanation of available relocation assistance and the right to appeal if not satisfied with Agency decisions. Specific advisory services include:

- Communicating to the occupants, and at public hearing meetings, that temporary relocation will be occurring,
- Conducting personal interviews with occupants to objectively assess the persons specific needs (size, location, accessibility, access to resources, etc.),
  - Obtain a copy of the current lease to ensure the same terms will be applied post-project completion, and that the occupant resides lawfully to be eligible for URA assistance.
- Replacement site requirements, current lease terms and other obligations, and financial capacity,
- Determine whether outside specialists are necessary to assist with moving,
- Resolution of personality/realty issues prior to time of appraisal of property,
- Estimated time required for business to vacate site,
- Estimates difficulty in locating a replacement property,
- Identify advance relocation payments necessary, and UGLG’s legal capacity to provide payments,
- Assistance in complying with required procedures to receive payment,
- Current information on availability and cost to purchase replacement locations,
- Provide referrals to assistance from state or federal programs, such as provided by the Small Business Administration, including help in applying for any assistance,
- Provide the Relocation Plan schedule and budget to address questions around security and safety measures while construction is occurring on units,
- Walkthrough claims and reimbursement policies and procedures that are timely and fair.

The Agency is required to conduct personal interviews as part of the advisory services. The goal of the interview is to determine the needs and preferences of the occupants to be temporarily relocated. Additional information necessary to collect includes the identification of potential barriers or challenges to the relocation, obtaining proof of lawful occupancy, and providing information about the project and assistance for which the occupant may be eligible to receive (Form 7-V).

Advisory services will be on-going throughout the project until occupants are returned to their original building, or to a previously agreed space within the same building or complex, or if eligible and necessary a new building. If translation services or materials are necessary, they are the responsibility of the Agency. Translated materials can also be found at the HUD Exchange, [https://www.hudexchange.info/programs/relocation/forms/](https://www.hudexchange.info/programs/relocation/forms/).
Provide Relocation Assistance and Payment
After providing notices, providing advisory services, and identifying temporary or permanent replacement sites, and providing at least 30 days’ notice to vacate the property, the Agency must provide reimbursement for moving expenses. The Agency must ensure payment is prompt and expedited.

Occupants who are relocated temporarily may be reimbursed in one of two ways:

1. Payment of actual, reasonable and necessary moving and related expenses, not to exceed $25,000, and can also be used for reestablishment costs if eligible. (Form 7-X)
2. A fixed payment, in lieu of payment of actual, reasonable and necessary moving costs and reestablishment expenses, in an amount no less than $1,000 and no more than $40,000. Reimbursement expenses due to the temporary relocation are eligible regardless of whether the occupant completes the move independently, or with the assistance of hired services. (Form 7-Y)

All expenses related to the relocation are to be covered by the Agency, either the building owner or by the UGLG if they have an adopted Optional Relocation Policy. Eligible expenses include, but are not limited to:

1. Transportation occupant and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.
2. Packing, crating, unpacking, and uncrating of the personal property.
3. Disconnecting, dismantling, removing, reassembling, and reinstalling relocated appliances and other personal property, such as machinery, equipment, substitute personal property, and connections to utilities, necessary modifications to the personal property, necessary adaptations to the replacement property, the replacement site, utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property.
4. Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary to accommodate the occupant moving back to their original location.
5. Insurance for the replacement value of the property in connection with the move and necessary storage.
6. 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.
7. Any license, permit, fees or certification required of the occupant at the replacement location. Payment may be based on the remaining useful life of the existing license, permit, fees or certification.
8. Professional services to determine a site’s suitability for operations.
9. Impact fees or a one-time assessment for heavy utility usage as determined necessary by the Agency.
10. Professional services as the Agency determines to be actual, reasonable and necessary for:
   a. Planning the move of the personal property;
   b. Moving the personal property; and
   c. Installing the relocated personal property at the replacement location.
11. Re-lettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move.
12. Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:
   a. The fair market value in place of the item, as is for continued use, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the Agency determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling prices.); or
   b. The estimated cost of moving the item as is, but not including any allowance for storage; or for reconnecting a piece of equipment if the equipment is in storage or not being used at the acquired site. (See appendix A, § 24.301(g)(14)(i) and (ii).) If the business or farm operation is discontinued, the estimated cost of moving the item shall be based on a moving distance of 50 miles.
13. The reasonable cost incurred in attempting to sell an item that is not to be relocated.
14. Purchase of substitute personal property. If an item of personal property, which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:
   a. The cost of the substitute item, including installation costs of the replacement site, minus any proceeds from 
      the sale or trade-in of the replaced item; or
   b. The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the 
      Agency's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid 
      or estimate.

15. Searching for a replacement location. A business or farm operation is entitled to reimbursement for actual expenses, 
   not to exceed $2,500, as the Agency determines to be reasonable, which are incurred in searching for a replacement 
   location, including:
   16. Transportation;
   17. Meals and lodging away from home;
   18. Time spent searching, based on reasonable salary or earnings;
   19. Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related 
      to the purchase of such sites;
   20. Time spent in obtaining permits and attending zoning hearings; and
   21. Time spent negotiating the purchase of a replacement site based on reasonable salary or earnings.

22. Low value/high bulk

In the event that there is an Actual Direct Loss of Tangible Personal Property, the Non-Residential occupant will be eligible for 
additional assistance:

- May be eligible for a payment for the actual direct loss of tangible personal property which is incurred as a result 
of a move or discontinuance of the operation. This payment provides a business with the option to receive an 
alternate payment for certain items of personal property it may not want or need to move to the replacement 
location. This payment is also a useful option for businesses which decide to go out of business as a result of 
displacement. Generally, this payment option is used in connection with outdated equipment, old merchandise 
or other items a displaced business no longer wants or needs for its business operation.

- This payment is generally based on the lesser of the value of the item for continued use “as is” at the displacement 
site minus the proceeds from its sale, or, the estimated cost of moving the item, but with no allowance for storage 
nor any costs to reconnect equipment not in use or in storage. It is also important to note the cost of reinstallation 
for equipment in use does not include code modifications that would be required at the replacement location.

If the project necessitates the Purchase of Substitute Personal Property, the Non-Residential occupant will be eligible for 
additional assistance:

- Displaced businesses, farms, and nonprofit organizations may be eligible for a payment for substitute personal 
property in connection with a move to the replacement location. This payment generally provides a displaced 
business with the ability to modernize or replace equipment rather than move outdated or obsolete items.

- This payment is generally based on the lesser of the cost of the substitute item, including installation cost, minus 
the proceeds from the sale or trade of the replaced item, or, the estimated cost of moving and reinstalling the 
replaced item, but with no allowance for storage. The cost of moving and reinstalling the replaced item includes 
code modifications that would be required at the replacement location.

If the Non-Residential occupant has Low Value/High Bulk stock (49 CFR 24.301(g)(18)), such as sand, gravel, minerals, metals, 
etc., and the moving costs exceed its, the Agency may consider offering this payment option. The allowable moving cost 
payment shall not exceed the lesser of the amount which would be received if the property were sold at the site, or, the 
replacement cost of a comparable quantity delivered to the new business location. If the Agency considers using this payment 
option, it is important for the agency to distinguish between items which may have been acquired as real estate and, therefore,
are not considered personal property eligible for moving. Additionally, since the business is not actually receiving a payment
to move the personal property, the business is not obligated to move the personal property. An Agency should therefore consider the consequences of leaving the personal property at the construction site.

If a Non-Residential occupant needs to be temporarily relocated, moving preparation may include an analysis of the market information by a qualified appraiser. At the discretion of the Agency, if temporary relocation appears to be too complex or costly, permanent displacement may be justified, examples including:

- Activities subject to special environmental emission or processing requirements.
- Large and/or specialized production equipment that must be disconnected, moved, and reconnected at a high cost.
- Extensive production inventory that must be moved.
- Rail or shipping access is not available.

Ineligible expenses include notification and inspection (49 CFR 24.301(i)) and personal property inventory (49 CFR 24.301(i)(1), 24.301(d), 24.103(a)(2)(i) & Appendix A, Section 24.103(a)(1)).

Reestablishment Expenses
Only certain small businesses are eligible for re-establishment expenses (Form 7-X). Small businesses for this purpose are defined as those with at least one, and no more than 500 people, working at the site. Businesses temporarily relocated 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 $25,000. Eligible items included in this maximum figure are:

- Repairs or improvements to the replacement site, as required by codes, or ordinances;
- Modifications to the replacement property to accommodate the business
- Modifications to structures on the replacement property to make it suitable for conducting the business;
- Construction and installation of exterior advertising signs;
- Redecoration or replacement at the replacement site of soiled or worn surfaces, such as paint, paneling, or carpeting;
- Advertisement of the replacement location;
- 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;
- Other re-establishment expenses as determined by the UGLG (or its Agent) to be essential to re-establishment.

Fixed Payments
A business whose nature is not solely the rental of property to others may select a fixed payment (Form 7-Y) instead of actual moving expenses (which includes re-establishment expenses) if the UGLG determines that the business meets the following eligibility criteria:

1. The business discontinues operations or it will lose a substantial portion of its business due to the move.
2. The business is not part of an operation with more than three other entities where:
   a. No displacement will occur; AND
   b. The ownership is the same as the business; AND
   c. The other locations are engaged in similar business activities.
3. The business contributed materially to the income of the impacted 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:
   a. Had average gross earnings of at least $5,000; OR
   b. Had average net earnings of at least $1,000; OR
   c. Contributed at least 33 1/3% (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 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 $40,000. 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 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:

1. Shared equipment and premises,
2. Substantially identical or inter-related business functions and financial affairs which are co-mingled,
3. Identification of the entities as one entity to the public and customers, and
4. 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:

1. Income tax returns.
2. Certified or audited financial statements.
3. W-2 forms.
4. Other financial information accepted by the UGLG.

Moving and Reimbursement

It is required that Non-Residential occupants file for relocation reimbursement within 18 months of completed relocation activities, or project close-out. 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.

Ineligible costs for actual moving expense, whether as a re-establishment expense, or as an “other reasonable and necessary expense” include:

1. Loss of goodwill;
2. Loss of profits;
3. Loss of trained employees;
4. Personal injury;
5. Interest on a loan to cover any costs of moving or reestablishment expense;
6. Any legal fees or other costs for preparing a claim for a relocation payment or for representing the claimant before the UGLG;
7. The cost of moving any structure or other real property improvement in which the business reserved ownership;
8. Costs for storage of personal property on real property already owned or leased by the business before the initiation of negotiations;
9. Costs of physical changes to the replacement site above and beyond that required to move and reestablish the business;
10. Expenses for searching for a replacement location;
11. The purchase of capital assets, manufactured materials, production supplies, or product inventory, except as permitted under “moving and related costs”;
12. Interior and exterior finishes solely for aesthetic purposes, except for the redecoration or replacement of soiled or worn surfaces described in “reestablishment expenses”;
13. Refundable security and utility deposits.

The Agency may choose to not authorize payment if a space selected is not up to local building code. The occupant must be notified of the unit’s ineligibility. In the event of a disaster, imminent threat to public health or welfare, State of emergency declared by the President or Governor, occupant standards for replacement dwellings may be waived.

URA Relocation payments are not considered income [49 CFR 209]. These “gap” payments should be excluded from income as “temporary, nonrecurring, or sporadic income”. An Agency may not request or suggest that the occupant waive rights for reimbursement under the URA.

Manner of Disbursing Rental Assistance

Assistance payments for residential occupants who are temporarily relocated must be disbursed in installments, except for lump sum payments\(^6\), which may be made to cover moving expenses, or incidental expenses related to moving, such as moving supplies, or lost wages if occupant loses hours due to moving requirements. Whenever the payment is made in installments, the full amount of the approved payment shall be disbursed in regular installments, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's housing. The frequency of these disbursements may be determined by the Agency. However, if not paid monthly, HUD recommends that there be no less than three installment payments, except when the rental assistance payment is $500 or less. Where the rental assistance payment is $500 or less, it is recommended that payment may be made in two installments with no less than a four-month interval between payments.

Whenever the payment ceiling\(^7\), $7,200 for renters, is insufficient to provide comparable replacement housing, or DSS housing, additional or alternative assistance must be provided. Generally, this is accomplished by providing additional cash assistance which exceeds the above ceiling limits. Section 206 of the URA authorizes the use of project funds to provide such additional cash assistance. Note, exceeding the payment ceilings at 49 CFR 24.401(b) and 24.402(b) is commonplace. To ensure that a displaced or relocated person is not unduly burdened financially, the Agency is required to provide additional cash or alternative assistance (see 49 CFR 24.404(c)(1)(i)-(iv).

Estimated funds for relocation activities will be required to be escrowed by the Agency prior to entering into agreement for the project. This ensures the occupant efficient and expedited reimbursement, after verifying actual relocation expenses. Before releasing payment from the escrowed account, the Agency or a designated representative will ensure the following on file:

1. The Non-Residential occupants’ reasonable advance notice of the date of the move or disposition of the personal property;
2. An inventory of items to be moved;
3. Permit that the Agency make inspections of the personal property. A copy of the inspection report will be included with the occupant’s relocation file;

\(^6\) Lump sum payments also include down payment on the purchase of replacement housing, but only for instances in which voluntary or involuntary, permanent displacement occurs.

\(^7\) Payment ceiling also includes $31,000 for displaced owner-occupants, but only for instances in which permanent and involuntary displacement occurs.
4. Documentation If the occupant chooses to relocate to a local community, a local official may be delegated to perform the building inspection.
5. Income tax returns.
6. Certified or audited financial statements.
7. W-2 forms.
8. Other financial information accepted by the UGLG.

**Record Keeping**

A relocation file must be maintained for each occupant, and must include the following documents:

1. Identification of business, address, racial/ethnic group classification, monthly rent, type of enterprise, and business’ relocation needs and preferences (Form 7-V).
2. 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-T with return receipt or written acknowledgement).
3. Evidence of dates of personal contacts and a description of the services offered and provided (Form 7-M).
4. Identification of referrals to replacement properties, date of referrals, rents, date of availability and reason(s) business declined referral.
5. Identification of actual replacement property, rent and date of relocation (Form 7-V).
6. Replacement dwelling inspection report and date of inspection.
7. A copy of each approved claim form and related documentation, evidence that the business received payment (Form 7-X or 7-Y).
8. A copy of any appeal or complaint filed and the UGLG response.

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

**Non-Residential Notices**

7-T General Information Notice (GIN) Non-Residential Tenant Not Displaced SAMPLE
7-G Move In Notice to Prospective Tenant SAMPLE
7-H Notice of Non-Displacement Non-Residential and Residential Tenants Not Displaced SAMPLE
7-I Notice of Non-Eligibility SAMPLE

**Non-Residential Temporary Relocation**

7-U Relocation Assistance to Displaced Businesses, Nonprofit Organizations and Farms, HUD-1043-CPD
7-V Site Occupant Record, Non-Residential
7-M Record of Advisory Assistance and Other Contacts
7-W Non-Residential Relocation Management Report
7-X Claim for Actual Reasonable Moving and Related Expenses, Non-Residential, HUD-40055
7-Y Claim for Fixed Payment in Lieu of Payment for Actual Expenses, Non-Residential, HUD-40056

**SECTION 6 – URA POLICY**

**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. One-for-One Replacements forms identified on last page.
The RARAP, along with the completed RARAP Checklist (Form 7-B), must be submitted to the MEDC for review before being approved for CDBG funds.

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-C). At a minimum, the policy must contain the following elements:

1. Number of households expected to need temporary relocation services; AND
2. 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
3. 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
4. Description of how temporary relocation payments will be made; AND
5. 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 Optional Temporary Relocation Policy Checklist (Form 7-D), must be submitted to your MEDC Program Specialist for review before moving forward.

SECTION 7 – DEFINITIONS, APPEAL PROCESS, EXCEPTIONS

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:

1. 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
2. The rehabilitation or demolition of such real property for a project; OR
3. 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.

Section 104(d) is triggered when the "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. Projects triggering Section 104(d) are not eligible for CDBG assistance.

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:

1. The person has no legal right to occupy the property under state or local law (e.g., squatters); OR
2. 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
3. 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, or seeking to secure CDBG funds, for a private entity to rehabilitate, acquire, or demolish, 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, acquisition, or demolition.

**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.

**Exception to One-For-One Replacement**

The only exception to Section 104(d)’s one-for-one replacement of housing is 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 proof necessary to show low-to-moderate persons will not lose out on housing choice is extensive.

The one-for-one replacement requirement may not apply if objective data shows 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:

1. **Vacancy rate** - The housing vacancy rate in the jurisdiction.
2. **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).
3. **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.
4. **Consolidated Plan** – The needs analysis contained in the State’s Consolidated Plan and relevant past predicted demographic changes.
5. **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.

The UGLG must submit a request for determination for an exception directly to the CDBG Director. 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.
CHAPTER 7 FORMS

Plans
7-A Residential Anti-Displacement and Relocation Plan SAMPLE
7-B RARAP Checklist
7-C Optional Temporary Relocation Assistance Policy SAMPLE
7-D Optional Temporary Relocation Assistance Policy Checklist
7-E Optional Temporary Relocation Assistance Application SAMPLE

Residential Notices
7-F GIN Residential Tenants Not Displaced SAMPLE
7-G Move In Notice to Prospective Tenant SAMPLE
7-H Notice of Non-Displacement Non-Residential and Residential Tenants Not Displaced SAMPLE
7-I Notice of Non-Eligibility SAMPLE

Residential Temporary Relocation
7-J Relocation Assistance to Tenants Displaced from their Homes, HUD-1042-CPD
7-K Site Occupant Record Residential
7-L Elderly Waiver for Temporary Relocation SAMPLE
7-M Record of Advisory Assistance and Other Contacts
7-N Comparable Replacement Dwelling, HUD-40061
7-O Resident Survey SAMPLE
7-P Residential Relocation Management Report
7-Q1 Residential Claim for Moving and Related Expenses, HUD-40054
7-Q2 Claim for Temporary Relocation Expenses (Residential Moves), HUD-40030
7-R Non-Displacement Checklist
7-S Claim for Rental Assistance or Down Payment Assistance, HUD-40058

Non-Residential Notices
7-T General Information Notice (GIN) Non-Residential Tenant Not Displaced SAMPLE
7-G Move In Notice to Prospective Tenant SAMPLE
7-H Notice of Non-Displacement Non-Residential and Residential Tenants Not Displaced SAMPLE
7-I Notice of Non-Eligibility SAMPLE

Non-Residential Temporary Relocation
7-U Relocation Assistance to Displaced Businesses, Nonprofit Organizations and Farms, HUD-1043-CPD
7-V Site Occupant Record, Non-Residential
7-M Record of Advisory Assistance and Other Contacts
7-W Non-Residential Relocation Management Report
7-X Claim for Actual Reasonable Moving and Related Expenses, Non-Residential, HUD-40055
7-Y Claim for Fixed Payment in Lieu of Payment for Actual Expenses, Non-Residential, HUD-40056

One-for-One Replacement
7-Z Determining Lower Income Dwelling Units Checklist
7-AA Lower Income Residential Dwelling Units Rehab Suitability Checklist
7-AB Determination to Demolish SAMPLE
7-AC Actions That Trigger Section 104d One-for-One Unit Replacement Requirements Flowchart
7-AD 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.

SECTION 1 - FINANCIAL MANAGEMENT

The Grantee’s financial management system, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Grant, must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations, and the terms and conditions of the Grant.

The financial management system of the Grantee must provide for the following (see also Recordkeeping Requirements):

1. Identification, in its accounts, all Federal awards received and expended and the Federal programs under which they were received. Federal program and Federal award identification must include, as applicable, the CFDA title and number, Federal award identification number and year, name of the Federal agency, and name of the pass-through entity, if any.

2. Accurate, current, and complete disclosure of the financial results of each Federal award or program that are sufficient to facilitate reviews and audits of the Grantee under Audit Requirements.

3. Records that identify adequately the source and application of funds for federally funded activities. These records must contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation.

4. Effective control over, and accountability for, all funds, property, and other assets. The Grantee must adequately safeguard all assets and assure that they are used solely for authorized purposes. (See also Internal controls).

5. Comparison of expenditures with budget amounts for each Grant.

6. Written procedures to implement the requirements the Grant Disbursement Requirements.

7. Written procedures for determining the allowability of costs in accordance with Subpart E - Cost Principles and the terms and conditions of the Grant Agreement.

§ 200.302 financial management

INTERNAL CONTROL

The Grantee must:

1. Establish and maintain effective internal control over the Grant Funds and provide reasonable assurance that the Grantee is managing the Grant in compliance with Federal statutes, regulations, and the terms and conditions of the Grant Agreement. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States or the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
2. Comply with Federal statutes, regulations, and the terms and conditions of the Grant Agreement.

3. Evaluate and monitor the Grantee’s compliance with statutes, regulations and the terms and conditions of Federal awards.

4. Take prompt action when instances of noncompliance are identified by the State and noncompliance identified in audit findings.

5. Take reasonable measures to safeguard protected personally identifiable information and other information the State designates as sensitive or the Grantee considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

§ 200.303 internal controls

SECTION 2 - RISK ASSESSMENT

The State, when evaluating an Applicant must review the risk that is associated to the Applicant and the proposed project. A Risk Assessment is performed to ensure that potential failures to carry out the project, achieve the objectives of the program, and safeguard federal funds, are identified. With the risks identified, the terms of the Grant Agreement may then be tailored to mitigate said risk to help ensure success of the project.

STATE REVIEW OF APPLICANT RISK

When determining the conditions of a Grant Agreement with a potential Grantee, the State must evaluate each applicant’s risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the Grant for purposes of determining the appropriate monitoring to take place throughout the term of the Grant.

The State considers the following factors when assessing risk:

1. The Applicant’s prior experience with CDBG Grants; and
2. The results of previous audits, including whether the Applicant receives a Single Audit in accordance with the Audit Requirements, and the extent to which the same or similar Grant has been audited as a major program.

The State may consider the following factors when assessing risk:

1. Whether the Applicant has new personnel or new or substantially changed systems;
2. The extent and results of prior monitoring or audits performed by HUD, DOL, or other federal agencies related to CDBG;
3. The Applicant’s Financial stability; and
4. The quality of Financial Management systems and ability to meet the Financial Management standards as prescribed in this chapter.

When the above factors have been considered the State may consider imposing specific conditions in the Grant Agreement if appropriate as described under Specific Conditions.

Pending the determination of the level of risk posed by the Applicant as defined in the risk assessment, the State may implement additional monitoring tools to ensure proper accountability and compliance with program requirements and achievement of performance goals:

1. Providing Applicants with training and technical assistance on program-related matters;
2. Performing on-site reviews of the Applicant’s grant operations, including construction, financial and personnel; and
3. Arrange for additional procedures when conducting a Single Audit.
§ 200.331 Requirements for pass-through entities.
§ 200.205 Federal awarding agency review of risk posed by applicants.

SPECIFIC CONDITIONS
The State may impose additional specific Grant Agreement conditions as needed, in accordance with the result of the Risk Assessment and other conditions, under the following circumstances:

1. Based on the criteria of the Risk Assessment of the Applicant.
2. When an applicant or Applicant has a history of failure to comply with the general or specific terms and conditions of State CDBG Grant Agreements;
3. When an applicant or Applicant fails to meet expected performance goals as described in the current Grant Agreement; or
4. When an applicant or Applicant is not otherwise responsible as determined by the State.

These additional Grant Agreement conditions may include items such as the following:

1. Requiring payments as reimbursements rather than advance payments;
2. Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;
3. Requiring additional, more detailed financial reports;
4. Requiring additional project monitoring;
5. Requiring the Applicant entity to obtain technical or management assistance;
6. Establishing additional prior approvals;
7. Additional items as identified in the State’s Risk Mitigation Strategies Guidance; or
8. Other items as deemed necessary by the State.

If specific conditions are imposed, the State must notify the applicant or Applicant as to:

1. The nature of the additional requirements;
2. The reason why the additional requirements are being imposed;
3. The nature of the action needed to remove the additional requirement, if applicable;
4. The time allowed for completing the actions if applicable, and
5. The method for requesting reconsideration of the additional requirements imposed.

Any specific conditions must be promptly removed once the conditions that prompted them have been corrected.

§ 200.207 Specific conditions

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 but 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 - COST PRINCIPLES

The Costs principles, as defined in 2 CFR 200 Subpart E, are the fundamental Principles used to judge and qualify all costs incurred covered by the State CDBG program. All costs that are intended to be charged to any CDBG Grant must be Allowable,
Reasonable, and Allocable to be considered in compliance. Note other regulations, namely 24 CFR Part 58 – Environmental Review, 24 CFR Part 570 Subpart I – State CDBG Program, and others as identified by this chapter, by State CDBG program, and the Grant Agreement will impose additional considerations for the eligibility of each cost.

**FACTORS AFFECTING ALLOWABILITY OF COSTS**

Except where otherwise authorized, costs must meet the following general criteria to be allowable under a Grant Agreement:

1. Be necessary and reasonable for the performance of the Grant Agreement and be allocable to the Grant (see Allocable Costs).
2. Conform to any limitations or exclusions in the Cost Principles or in the Grant Agreement as to types or amount of costs.
3. Be consistent with policies and procedures that apply uniformly to both federally financed and other activities of the Grantee.
4. Be accorded consistent treatment. A cost may not be assigned to a Grant as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Grant as an indirect cost.
5. Costs incurred by state and local governments and Indian tribes must be determined in accordance with generally accepted accounting principles (GAAP).
6. Not be included as a cost or used to meet cost sharing or matching requirements of any other federally financed program in either the current or a prior period.
7. Be adequately documented. See the Disbursements section of this chapter and the Pre-Disbursement Checklist.

§ 200.403 Factors affecting allowability of costs

**REASONABLE COSTS**

A cost is reasonable if, in its nature and amount, it does not exceed what would be incurred by a prudent person under the circumstances at the time the decision was made to incur the cost.

In determining reasonableness of a given cost, consideration must be given to:

1. Whether the cost is generally recognized as ordinary and necessary for the operation of the Grantee for proper and efficient performance of the grant.
2. The restraints or requirements imposed by such factors as: sound business practices; arm's-length bargaining; Federal, state, local, tribal, and other laws and regulations; and terms and conditions of the Grant.
3. Market prices for comparable goods or services for the geographic area.
4. Whether the individual (contractor, administrator, consultant, local official or employee) acted with prudence in the circumstances considering their responsibilities to the UGLG, its employees, the public at large, and the Federal Government.
5. Whether the Grantee significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the Federal award’s cost.
6. Some questions to help guide decisions on cost reasonableness and necessity are:
   a. Where the costs incurred using the established practices of the UGLG (procurement policy)?
   b. Are the goods or services provided at a fair market cost?
c. How would you defend this cost to an auditor or a community member?
d. Are the costs determined in accordance with Generally Accepted Accounting Principles (GAAP)?
e. Where the costs incurred in a transparent and consistent manner?
f. Is this cost permitted under the term of the grant award and under federal, state and local laws and regulations?
g. Did this transaction avoid any conflict of interest or the appearance of conflict of interest?

§ 200.404 Reasonable costs.

ALLOCABLE COSTS

A cost is allocable to the Grant if the goods or services are chargeable or assignable to the Grant, based on the relative benefits received. This standard is met if the cost:

1. is incurred specifically for the Grant;
2. benefits both the Grant and the Grantee the cost can be distributed proportionally using reasonable methods; and
3. is necessary to the overall operation of the Grantee and is assignable in part to the Grant in accordance with the other costs principles and other Part 200 regulations.

Any cost allocable to a Grant under the principles provided may not be charged to other Federal Awards to overcome fund deficiencies, to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the Federal awards, or for other reasons. However, this prohibition would not preclude the Grantee from shifting costs that are allowable under two or more Federal awards in accordance with existing Federal statutes, regulations, or the terms and conditions of the Federal awards.

DIRECT COST ALLOCATION PRINCIPLES

If a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost must be allocated to the projects based on the proportional benefit. If a cost benefits two or more projects or activities in proportions that cannot be determined because of the interrelationship of the work involved, then the costs may be allocated or transferred to benefitted projects on any reasonable documented basis.

Where the purchase of equipment or other capital asset is specifically authorized under the Grant, the costs are assignable to the Grant, regardless of the use that may be made of the equipment or other capital asset involved when no longer needed for the purpose for which it was originally required. (See also Property Standards).

Any expenses which are incurred that benefit both 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).

If a contract is subject to CAS, costs must be allocated to the contract pursuant to the Cost Accounting Standards. To the extent that CAS is applicable, the allocation of costs in accordance with CAS takes precedence over the allocation provisions provided in the Costs Principles.

§ 200.405 Allocable costs

SECTION 4 - SELECTED ITEMS OF COST
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.

ADMINISTRATIVE COSTS
Grantees must procure a Certified Grant Administrator (CGA) to assist in administering the conditions and terms of the Grant Agreement.

To be reimbursed for such costs the following must occur:

1. The pre-disbursement requirements in the Grant Agreement and any items requested by the State have been submitted and approved.

2. The executed administrative contract has been approved.

3. The required supporting documentation has been submitted and approved. These requirements are further outlined in the Grant Disbursements section of this chapter.

4. 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.

5. Specific instructions and other requirements are can be found in Form 8-D Administrative Activity Report.

6. For guidance related to Administrative Costs associated with the CDBG Loan Program, refer to Chapter 3 of this manual.

CONTINGENCY PROVISIONS
Contingency is that part of a budget estimate of future costs (typically of large construction projects) which is associated with possible events or conditions arising from causes the precise outcome of which is indeterminable at the time of estimate, and that experience shows will likely result, in aggregate, in additional costs for the approved activity or project. Amounts for major project scope changes, unforeseen risks, or extraordinary events may not be included.

It is permissible for contingency amounts other than those excluded, to be explicitly included in budget estimates, to the extent they are necessary to improve the precision of those estimates. Amounts must be estimated using broadly accepted cost estimating methodologies, specified in the budget documentation of the Federal award, and accepted by the Federal awarding agency. As such, contingency amounts are to be included in the Federal award. For actual costs incurred to be allowable, they must comply with the cost principles and other requirements and national policy requirements; be necessary and reasonable for proper and efficient accomplishment of project or program objectives and be verifiable from the Grantee’s records.

Payments made by the State the Grantee’s “contingency reserve” or any similar payment made for events the occurrence of which cannot be foretold with certainty as to the time or intensity, or with an assurance of their happening, are unallowable.

§ 200.433 Contingency provisions

FINES, PENALTIES, DAMAGES AND OTHER SETTLEMENTS
Costs resulting from non-Federal entity violations of, alleged violations of, or failure to comply with, Federal, state, tribal, local or foreign laws and regulations are unallowable.

§ 200.441 Fines, penalties, damages and other settlements

MATERIALS AND SUPPLIES COSTS
Costs incurred for materials, supplies, and fabricated parts necessary to carry out a Federal award are allowable. Purchased materials and supplies must be charged at their actual prices, net of applicable credits. Incoming transportation charges are a proper part of materials and supplies costs.

§ 200.453 Materials and supplies costs

PROFESSIONAL SERVICE COSTS

Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the non-Federal entity, are allowable, when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government.

In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant:

1. The nature and scope of the service rendered in relation to the service required.
2. The necessity of contracting for the service, considering the non-Federal entity's capability in the particular area.
3. The past pattern of such costs, particularly in the years prior to Federal awards.
4. The impact of Federal awards on the non-Federal entity's business (i.e., what new problems have arisen).
5. Whether the proportion of Federal work to the non-Federal entity's total business is such as to influence the non-Federal entity in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Federal awards.
6. Whether the service can be performed more economically by direct employment rather than contracting.
7. The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-federally funded activities.
8. Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, and termination provisions).

Retainer fees must be supported by evidence of bona fide services available or rendered.

§ 200.459 Professional service costs

PRE-AGREEMENT COSTS

The State may permit a unit of general local government to incur costs for CDBG activities, after the execution of a Letter of Intent but before the execution of a grant agreement between the State and the unit of general local government.

Costs that are considered eligible Pre-Agreement Costs are:

- Certified Grant Administration
- Architectural & Engineering
- Carrying out the Environmental Review
- Lead and Asbestos Assessments

Before these costs can be incurred, the Certifying Officer must request from the State for authorization to incur the costs in writing. This request must explain how the costs are necessary for efficient and timely performance of the scope of work and be approved by the State CDBG Program before costs can be incurred.

Once incurred, these costs will then be eligible for reimbursement, provided that the activities are eligible and meet the following requirements:

- Costs are incurred in compliance with Federal Environmental Review rules in 24 CFR Part 58
- The costs are incurred specifically for the CDBG Grant
- Costs are attributable to a budget line item in the unit of local government’s application.
Any public or private expenses incurred, or any work done on the project, before execution of the Letter of Interest and before the approval of the request to incur pre-agreement costs are at the risk of the unit of general local government. Additionally, approval of the pre-agreement costs does not imply approval of the project, which will be reviewed according to the published program requirements.

§ 200.458 Pre-award costs

SECTION 5 - GRANT DISBURSEMENT

STATE OF MICHIGAN VENDOR
All CDBG Grantees must be able to receive payment via EFT and to do so must be registered with the State as a Vendor. This registration or update of existing account must be made by the time the Grant Agreement is signed to ensure prompt reimbursement.

The State of Michigan uses SIGMA which handles all payments to vendors and Grantees of the State.

SIGMA uses a Vendor Self Service (VSS) to allow payees/vendors/grantees to manage their information, view financial transactions, and monitor their account.

To register or to update your current account go to: Michigan.gov/VSSLogin. When registering or updating one’s account, the following must be completed:

- Complete address, contact, and telephone information
- W9 information
- Financial institution and account information for EFT

Once registered, each Grantee must submit a SIGMA Vendor Confirmation Form. This form includes information used to create the Vendor Account such as the Vendor Customer # and Contact Names but also the Address ID. An Address ID contains both the physical and mailing address but also the bank account information associated to that address. The Address ID provided to the CDBG Program will dictate what bank account all payments for the grant will be sent to.

For additional assistance with Vendor Registration please contact the State of Michigan VSS Support Center Office at SIGMA-Vendor@michigan.gov or 1-888-734-9749.

DISBURSEMENT METHOD

To ensure that costs incurred under the Federal Award are allowable, reasonable and allocable, the CDBG program operates on a cost reimbursement basis. The cost reimbursement method of payment consists of the payment of CDBG funds to the Grantee based on actual expenditures that the UGLG has paid.

If the State identifies that the grantee has insufficient cashflows to cover the costs of the expenses incurred, the State may pay for costs that have been incurred but not paid.

Under limited circumstances payments may be made on an advance basis. The advance method allows the State to pay the Grantee CDBG funds in advance of the Grantee incurring a cost. This method is only allowed if the Grantee provides the State with necessary assurances of need and maintains procedures to minimize the time elapsing between the transfer of funds and their disbursement. The method may be used in cases of issues in cash flow or qualifying circumstances related to purchasing. Under this method CDBG funds must expended within 3 days of receipt by the Grantee.

PRE-DISBURSEMENT REQUIREMENTS

In order to ensure that federal funds are expended in line with the Cost Principles (see Section 2 Cost Principles), Procurement, Davis Bacon, and other Federal and State requirements the Grantee must submit the following documents to the State to minimize the Grantees risk of expending federal funds outside of what is allowed by the State CDBG Program prior to Disbursement of funds:
1. All requirements as identified in the Grant Agreement.

2. Procurement (Chapter 4)

   Procurement documents for all Professional and Construction Contracts:
   a. Architectural/Engineering Contract Procurement Documents:
      - Request for Qualification (RFQ)
      - All Responses to RFQ
      - Evaluation and Selection Materials
   b. Construction Contract Procurement Documents:
      - Bid Advertisement
      - Bid Tabulation
      - Evaluation/Selection
   c. SAM/HUD Limited Denial of participation for all Contracts including Subcontractors

3. Contracts (Chapter 4)
   a. Signed Architectural/Engineering Contract
   b. Signed Construction Contracts including Subcontractors, each contract includes:
      - HUD 4010 (see Form 4-R)
      - Executive Order 11246 (see Form 4-R)
      - Section 3 Clause (see Form 4-R)
      - Wage Decision
   c. Contractor and Subcontractor Activity Report, HUD 2515 (Form 4-P)

4. Insurance Bonding (Chapter 4)
   a. Insurance for Prime Contractor and Independent Contractors/Sole Proprietors
      - Insurance is in contractor’s NAME
   b. Bonding for Prime Contractor and Independent Contractors/Sole Proprietors
      - For construction contracts or subcontracts under $150,000 the bonding policy and requirements of the Grantee may be accepted.
   c. The following bonds may be accepted as applicable:
      - Bid Bond
      - Performance Bond (Form 4-N)
      - Payment Bond (Form 4-0)

5. Labor Standards (Chapter 10)
   a. Payroll Review Worksheet (Form 10-L) for each contractor’s payroll.
   b. Certified Payrolls (For 10-K or similar) for each contractor/subcontractor.
   c. Employee Interviews (Form 10-O)

SUPPORTING DOCUMENTATION
Supporting documents provide necessary information to determine expenditures eligibility with the Grant Agreement, Costs Principles, and the Standards for Financial Management. There are three categories of Supporting documentation, Proof of Service, Proof of Payment, and Proof of Match.

PROOF OF SERVICE
Proof of service can be supported by the following documents, as applicable:
- Detailed Invoice,
- Purchase Order,
- Receipt,
- Voucher,
- AIA Form, or
- Payroll/Timesheet
PROOF OF PAYMENT
Proof of payment can be supported by the following documents:
- Proof of Service and Cancelled Check
- Sworn Statement, or
- Lien Waiver

PROOF OF MATCH
Proof of match can be supported by one of the following:
- Proof of Service and Cancelled Check
- Paid Itemized Receipt
- Lien Waiver

SUPPORTING DOCUMENTS MUST INCLUDE:
- Vendor Name, Address, and Phone Number
- Document Number
- Date
- Amount Due
- Service Performed
- Dates of Services

DISBURSEMENT REQUEST REQUIREMENTS
1. All required documentation outlined in the Pre-Disbursement Checklist must be submitted to the State.
2. Funds must be drawn on a pro rata basis and documentation of the match must accompany the Disbursement Request.
3. Total funds requested cannot exceed the approved total budget for any activity without prior approval from the State. A review of the budget should be conducted whenever there are potential budget line item revisions to ensure that the total costs are within the total project budget.
4. The amount requested for each activity must conform to the activities and costs approved in the grant application budget.
5. A separate Disbursement Request must be made for each Project Budget and Administration Budget as identified in the Grant Agreement Budget.

DISBURSEMENT REQUEST PROCESS
Disbursement Requests (DRs) must be submitted at least quarterly and no more than monthly. After required corresponding documentation has been submitted and approved by the Program Specialist, the Disbursement Request will be processed within 10 Business Days. Any DR that is not completed properly may be returned to the UGLG without being processed. Some of the reasons a DR may be returned include:

1. Contract not approved by the State (if applicable).
2. Adjustments to amounts previously drawn not reported correctly or in a timely fashion.
3. Administrative funds not requested proportionately to progress.
4. Budget amounts, amounts previously drawn, and/or total expenditures to date do not agree with the State’s records.
5. Required match is not documented prior to draw down of final CDBG funds, or a pro rata draw is not requested, if required.
6. Unauthorized signature on DR.
7. There is a reason to stop payment on the grant (see below).
8. The State will stop payment of CDBG funds for the following reasons:
9. Semiannual and/or annual reports are not received.
10. Audit reports not received.
11. Response to monitoring or other requests not received.
12. Noncompliance with other grant agreement terms.

PAYABLES
For each State Fiscal Year (10/1-9/30), all active Grantees must submit to the State any amount of CDBG eligible expenditures that have been incurred in the State Fiscal Year but will not be requested for reimbursement through the above process until the next State Fiscal Year. The State will then setup an accounts payable for the Grantee to request reimbursement from in the coming fiscal year. The Grantee must use the Accounts Payable Information Sheet to report the anticipated dollar amount, if the amount is zero dollars, the Grantee is certifying that all CDBG Eligible expenses have been reimbursed for that State Fiscal Year.

**FINAL DISBURSEMENT REQUEST**
The grantee must submit a Final Closeout Disbursement Request. This Final DR will reflect any final adjustments and/or refunds drawn down. The Final DR must be indicated as such on the DR to begin the grant close-out process. Refer to Chapter 13: Grant Close-out Process for detailed information on the close-out process.

**SECTION 6 - PROPERTY MANAGEMENT**

**CHANGE OF USE OF REAL PROPERTY**
The change of use policy applies to UGLG owned, real property, acquired or improved in whole or in part using CDBG funds more than the threshold for Simplified acquisition threshold, currently $150,000. The policy applies from the date CDBG funds are first expended for the property until five years after closeout date of the grant between the State and the UGLG as found in the Final Closeout letter.

An UGLG may not change the use, or planned use of any such property, including changing to Public or Private use, from which the acquisition or improvement was originally made, unless the UGLG provides affected citizens with reasonable notice of and opportunity to comment on any proposed change.

Additionally, the UGLG must either:

1. Determine, with approval from the State, that the new use of the property meets a national objective and is not a building for the general conduct of government; or
2. Determine, after consultation with affected citizens, that it is appropriate to change the use of the property to a use, which does not qualify under a CDBG Program National Objective, it may retain or dispose of the property for the changed use and reimburse the State.

If required, the reimbursement shall 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.

Following the reimbursement of the CDBG program, the property no longer will be subject to any CDBG requirements. The State CDBG Program may waive the requirement of reimbursement.

24 CFR 570.489(j) Change of use of real property
2 CFR 200.88 Simplified acquisition threshold

**SECTION 7 - RECORD RETENTION**

Records of the Grantee’s, including supporting documentation, must be retained for at least 3 years after the closeout the HUD grant with that State from which the Federal award was made. The MEDC will notify the Grantee 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.

Financial records, supporting documents, statistical records, and all other Grantee records pertinent to a Federal award must be retained for a period of three years from the date of closeout letter from the MEDC. The following exceptions apply:
1. If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

2. When the Grantee is notified in writing by HUD, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or the State, to extend the retention period.

3. Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition. (See Property Management)

4. Records for individual activities for which there are outstanding loan balances, other receivables, or contingent liabilities must be retained until such receivables or liabilities have been satisfied.

5. When records are transferred to or maintained by HUD or the State, the 3-year retention requirement is not applicable to the Grantee.

6. Records for program income transactions after the period of performance. In some cases Grantees must report program income after the period of performance. Where there is such a requirement, the 3 year retention period for the records pertaining to the earning of the program income starts from the end of the Grantee’s fiscal year in which the program income is earned.

ACCESS TO RECORDS
Representatives of HUD, the Inspector General, and the General Accounting Office shall have access to all books, accounts, records, reports, files, and other papers, or property pertaining to the administration, receipt and use of CDBG funds and necessary to facilitate reviews and audits. The right of access is not limited to the required retention period but lasts as long as the records are retained.

The Grantee must provide citizens with reasonable access to records regarding the past use of CDBG funds consistent with State or local requirements concerning the privacy of personal records.

24 CFR 570.490 - Recordkeeping requirements

SECTION 8 - AUDIT REQUIREMENTS

A Grantee that expends $750,000 or more during their fiscal year in Federal awards must have a Single Audit conducted for that year. When a Grantee’s Federal awards expended are less than $750,000. The Grantee is exempt from Federal audit requirements for that year.

2 CFR 200.501 - Audit requirements

BASIS FOR DETERMINING FEDERAL AWARDS EXPENDED
The determination of when a Federal award is expended must be based on when the activity related to the Federal award occurs.

LOAN AND LOAN GUARANTEES
The following guidelines must be used to calculate the value of Federal awards expended under loan programs:

1. Value of new loans made or received during the audit period; plus
2. Beginning of the audit period balance of loans from previous years for which the Federal Government imposes continuing compliance requirements; plus
3. Any interest subsidy, cash, or administrative cost allowance received.
4. The proceeds from loans which were received and expended in prior years, are not considered Federal awards expended unless the national objective, was not successful.
2 CFR 200.502 - Basis for determining Federal awards expended

SINGLE AUDIT CERTIFICATION (FORM 8-C)
The Grantee is responsible for tracking Federal expenditures and are required to submit an Audit Certification, stating the amount of CDBG and Total Federal expenditures for each of the Grantee’s fiscal years covered, in whole or in part, by the Grant Term. The Audit Certification must be completed and returned to the State within 60 days after the Grantee’s fiscal year end.

Grantees must complete the Audit Certification completely and provide information related to the following:
- The grantee’s fiscal year end date;
- All grants (and grant numbers) received from the MEDC;
- Information on whether or not the grantee must complete a single audit;
- Contact information of the primary person responsible for arranging the audit; and
- Ensuring the form has been certified by a grantee official.

GRANTEE RESPONSIBILITIES
Audits of Federal expenditures the Grantee must:
- Arrange for Audits to be performed as required by 2 CFR Part 200, Subpart F;
- Procure or otherwise arrange for the audit and ensure it is properly performed and submitted when due;
- Prepare appropriate financial statements, including the Schedule of Expenditures of Federal Awards (SEFA);
- Promptly follow up and take corrective action on audit findings, including preparation of a summary schedule of prior audit findings and a corrective action plan;
- Provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by this part.

2 CFR 200.508 - Auditee responsibilities

AUDITOR SELECTION
In procuring audit services, the Grantee must follow the procurement standards prescribed by the Procurement Standards in Chapter 4 Procurement of the GAM. When procuring audit services, the objective is to obtain high-quality audits. In requesting proposals for audit services, the objectives, and scope of the audit must be made clear and the Grantee must request a copy of the audit organization’s peer review report which the auditor is required to provide under GAGAS.

Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of peer and external quality control reviews, and price.

Whenever possible, the Grantee must make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, in procuring audit services.

2 CFR 200.509 - Auditor selection

REQUIREMENTS FOR THE AUDIT REPORT
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 but must include:

1. 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.

2. 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.

3. 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.
4. 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.

5. 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.

6. 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:
   a. The type of report the auditor issued on the financial statements.
   b. 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.
   c. A statement as to whether the audit disclosed any noncompliance that is material to the financial statements of the auditee.
   d. 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.
   e. The type of report the auditor issued on compliance for major programs.
   f. A statement as to whether the audit disclosed any audit findings.
   g. An identification of major programs.
   h. A statement as to whether the auditee qualified as a low-risk organization.

2 CFR 200.515 - Audit reporting

SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS
For CDBG grants received, the MEDC’s name and Grant Number assigned by MEDC must be included.

2 CFR 200.510 - Financial statements

AUDIT FINDINGS FOLLOW-UP
The Grantee is responsible for follow-up and corrective action on all audit findings. As part of this responsibility, the Grantee must prepare a summary schedule of prior audit findings. The Grantee must also prepare a corrective action plan for current year audit findings. The summary schedule of prior audit findings and the corrective action plan must include the reference numbers the auditor assigns to audit findings. Since the summary schedule may include audit findings from multiple years, it must include the fiscal year in which the finding initially occurred. The corrective action plan and summary schedule of prior audit findings must include findings relating to the financial statements which are required to be reported in accordance with GAGAS.

SUMMARY SCHEDULE OF PRIOR AUDIT FINDINGS
The summary schedule of prior audit findings must report the status of all audit findings included in the prior audit’s schedule of findings and questioned costs. The summary schedule must also include audit findings reported in the prior audit’s summary schedule of prior audit findings except audit findings listed as corrected, or no longer valid or not warranting further action.

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

When audit findings were not corrected or were only partially corrected, the summary schedule must describe the reasons for the finding’s recurrence and planned corrective action, and any partial corrective action taken. When corrective action taken is significantly different from corrective action previously reported in a corrective action plan or in the State’s management decision, the summary schedule must provide an explanation.

When the Grantee believes the audit findings are no longer valid or do not warrant further action, the reasons for this position must be described in the summary schedule. A valid reason for considering an audit finding as not warranting further action is that all of the following have occurred:
1. Two years have passed since the audit report in which the finding occurred was submitted to the FAC;
2. HUD or the State is not currently following up with the Grantee on the audit finding; and
3. A management decision was not issued by the State.

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

2 CFR 200.511 - Audit findings follow-up

REPORT SUBMISSION
The audit must be completed and the data collection form described in the next section and reporting package described must be submitted within the earlier of 30 calendar days after receipt of the auditor’s report(s), or nine months after the end of the audit period.

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

DATA COLLECTION
The Grantee must submit audit information to the Federal Audit Clearinghouse (FAC), using the FAC Data Collection Form SF-SAC, is available on the FAC Web site. This form and reporting package must be submitted within the earlier of 30 calendar days after receipt of the auditor’s report(s), or nine months after the end of the audit period.

The submission will state whether the audit was completed in accordance 2 CFR 200 Subpart F and provides information about the Grantee, its Federal programs, and the results of the audit. The data must include information available from the audit required by this part that is necessary for Federal agencies to use the audit to ensure integrity for Federal programs. A senior level representative of the Grantee (e.g., state controller, director of finance, chief executive officer, or chief financial officer) must sign a statement to be included as part of the data collection that says that the Grantee complied with the requirements of this part, the data were prepared in accordance with this part (and the instructions accompanying the form), the reporting package does not include protected personally identifiable information, the information included in its entirety is accurate and complete, and that the FAC is authorized to make the reporting package and the form publicly available on a website.

Using the information included in the reporting package, the auditor must complete the data collection form. The auditor must sign a statement to be included as part of the data collection form that indicates, at a minimum, the source of the information included in the form, the auditor’s responsibility for the information, that the form is not a substitute for the reporting package, and that the content of the form is limited to the collection of information prescribed by OMB.

The reporting package must include the:
- Financial statements and schedule of expenditures of Federal awards
- Summary schedule of prior audit findings
- Auditor’s report(s)
- Corrective action plan

The Grantee must electronically submit to the FAC the data collection form and the reporting package.

In response to requests by a Federal agency or the State, the Grantee must submit a copy of any management letters issued by the auditor.

2 CFR 200.512 - Report submission
SECTION 10 - AUDIT DOCUMENTATION

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

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

2 CFR 200.517 - Audit documentation

CHAPTER 8 FORMS
8-A Disbursement Request and Invoice Summary
8-B1 Personal Property Management Report
8-B2 Real Property Management Report
8-C Single Audit Certification
8-D Administrative Activity Report
8-E Cost Allocation Plan SAMPLE
8-I Time and Effort Tracking Log – simple
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 criterion (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 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 based on 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 2-C). 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 – ECONOMIC OPPORTUNITIES

24 CFR § 75.5 SECTION 3 DEFINITIONS

The terms HUD, Public housing, and Public Housing Agency (PHA) are defined in 24 CFR part 5. The following definitions also apply to this part:

1937 Act means the United States Housing Act of 1937, 42 U.S.C. 1437 et seq. Contractor means any entity entering into a contract with:
(1) A recipient to perform work in connection with the expenditure of public housing financial assistance or for work in connection with a Section 3 project; or
(2) A subrecipient for work in connection with a Section 3 project.

*Labor hours* means the number of paid hours worked by persons on a Section 3 project or by persons employed with funds that include public housing financial assistance.

*Low-income person* means a person as defined in Section 3(b)(2) of the 1937 Act.

*Material supply contracts* means contracts for the purchase of products and materials, including, but not limited to, lumber, drywall, wiring, concrete, pipes, toilets, sinks, carpets, and office supplies.

*Professional services* means non-construction services that require an advanced degree or professional licensing, including, but not limited to, contracts for legal services, financial consulting, accounting services, environmental assessment, architectural services, and civil engineering services.

*Public housing financial assistance* means assistance as defined in § 75.3(a)(1).

*Public housing project* is defined in 24 CFR 905.108.

*Recipient* means any entity that receives directly from HUD public housing financial assistance or housing and community development assistance that funds Section 3 projects, including, but not limited to, any State, local government, instrumentality, PHA, or other public agency, public or private nonprofit organization.


*Section 3 business concern* means:

(1) A business concern meeting at least one of the following criteria, documented within the last six-month period:
   (i) It is at least 51 percent owned and controlled by low- or very low-income persons;
   (ii) Over 75 percent of the labor hours performed for the business over the prior three-month period are performed by Section 3 workers; or
   (iii) It is a business at least 51 percent owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

(2) The status of a Section 3 business concern shall not be negatively affected by a prior arrest or conviction of its owner(s) or employees.

(3) Nothing in this part shall be construed to require the contracting or subcontracting of a Section 3 business concern. Section 3 business concerns are not exempt from meeting the specifications of the contract.

*Section 3 project* means a project defined in § 75.3(a)(2).

*Section 3 worker* means:

(1) Any worker who currently fits or when hired within the past five years fit at least one of the following categories, as documented:
   (i) The worker’s income for the previous or annualized calendar year is below the income limit established by HUD.
   (ii) The worker is employed by a Section 3 business concern.
   (iii) The worker is a YouthBuild participant.

(2) The status of a Section 3 worker shall not be negatively affected by a prior arrest or conviction.
Nothing in this part shall be construed to require the employment of someone who meets this definition of a Section 3 worker. Section 3 workers are not exempt from meeting the qualifications of the position to be filled.

Section 8-assisted housing refers to housing receiving project-based rental assistance or tenant-based assistance under Section 8 of the 1937 Act.

Service area or the neighborhood of the project means an area within one mile of the Section 3 project or, if fewer than 5,000 people live within one mile of a Section 3 project, within a circle centered on the Section 3 project that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census.

Small PHA means a public housing authority that manages or operates fewer than 250 public housing units.

Subcontractor means any entity that has a contract with a contractor to undertake a portion of the contractor’s obligation to perform work in connection with the expenditure of public housing financial assistance or for a Section 3 project.

Subrecipient has the meaning provided in the applicable program regulations or in 2 CFR 200.93.

Targeted Section 3 worker has the meanings provided in §§ 75.11, 75.21, or 75.29, and does not exclude an individual that has a prior arrest or conviction.

Very low-income person means the definition for this term set forth in section 3(b)(2) of the 1937 Act.

YouthBuild programs refers to YouthBuild programs receiving assistance under the Workforce Innovation and Opportunity Act (29 U.S.C. 3226).

HUD SECTION 3

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.

A Section 3 worker currently fits or when hired with the past five years fit at least (and can document) one of the following:

1. A worker whose income for the previous year is below the income limit established by HUD.*
2. A worker who is employed by a Section 3 business concern.
3. The worker is a YouthBuild participant.

*PLEASE NOTE: the income limit for Section 3 is based on one individual, rather than a family or household income.

The person seeking training and employment under Section 3 provisions is responsible for providing evidence of eligibility. See Section 3 Targeted Worker Certification (Form 9-L). This form is new and replaces Form 9-A Section 3 Resident Eligibility Certification, which is obsolete for construction contracts signed November 30, 2020 or later.

A Targeted Section 3 Worker

1. A worker employed by a Section 3 Business concern.
2. A worker who currently or within the last five years:
   a. lives within the service area of the project
   b. resides in public housing or Section 8-assisted housing
   c. is a YouthBuild participant
Businesses covered by Section 3 are defined as follows:

1. Businesses at least 51% owned and controlled by low- to very low-income persons:
2. Businesses which more than 75% of the labor hours are performed by Section 3 workers
3. Businesses that are at least 51% owned and controlled by current public housing residents or residents who currently live in Section 8-assisted housing.

Section 3 businesses are responsible for providing evidence of eligibility. See Section 3 Business Concern Certification (Form 9-A1).

A Section 3 covered contract is a contract or subcontract 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 REPORTING & NUMERICAL GOALS**

For Section 3 projects, recipients are required to report on labor hours:

1. The total number of labor hours worked;
2. The total number of labor hours worked by Section 3 workers; and
3. The total number of labor hours worked by Targeted Section 3 workers.

The Section 3 regulations establish numerical goals that the UGLGs and covered contractors may strive to achieve to the greatest extent feasible:

1. 25% or more of the total number of labor hours worked by all workers on a Section 3 project are Section 3 workers;
   Section 3 Worker Labor Hours divided by Total Labor Hours = 25%
   
   **AND**

2. 5% or more of the total number of labor hours worked by all workers on a Section 3 project are Targeted Section 3 workers;
   Targeted Section 3 Labor Hours divided by Total Labor = 5%
3. Additional Reporting if Section 3 Benchmarks are NOT met:
   If the Recipients’ reporting indicates the Section 3 benchmarks have not been met, the Recipient must report on the nature of activities pursued in the absence of not meeting Section 3 benchmarks.

Contractors will complete Section 3 Total Labor Hours Tracking (Form 9-N). UGLGs will use the contractor’s tracking to complete the Section 3 Total Labor Hours Final Report (Form 9-O). The reports are due at project closeout. NOTE: Section 3 Summary Report (formerly Form 9-C) is obsolete and no longer required for projects with construction contracts signed November 30, 2020 and after. Section 3 Reporting has been replaced with Section 3 Total Labor Hours Final Report.

In addition, UGLGs may complete and maintain a Section 3 Contract & Worker Solicitation (Form 9-D, formerly named Contract Solicitation & Section 3 Reporting Record) for covered projects, as 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. The forms may accompany Form 9-N Section 3 Contractor Labor Hours Tracking when submitted at project closeout.

For more information, please refer to the updated Section 3 Packet (Form 9-C1). The Section 3 Packet includes a CDBG Advisory, Section 3 Overview, and Section 3 Flow Chart. NOTE: the Section 3 Compliance Certification, previously in the Section 3 Packet is obsolete and no longer required.

SECTION 3 RESPONSIBILITIES
The UGLGs are responsible for the following to encourage the use of Section 3 businesses and compliance requirements:

1. Implement Section 3 Policy (Form 9-B). The policy has been updated based on new Section 3 requirements in 24 CFR 75 and must, at a minimum, include the language found in Form 9-B. The updated policy includes UGLG and contractor responsibilities, resources, and reporting requirements and is to be signed by the UGLG and adopted.

2. Develop a Contractor’s Section 3 Plan (Form 9-B3 (new) - replaced former forms 9-B1 Section 3 Plan for General Contractor and 9-B2 Section 3 Plan for Subcontractor) for the UGLG and contractor(s).

3. Implement Procurement procedures that provide preference to Section 3 Business Concerns.

4. Develop 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”.

5. Notify Section 3 businesses 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.

6. Ensure contractors and subcontractors awareness of Section 3 goals and responsibilities, including Section 3 provisions in the construction contract.

7. Ensure a Section 3 Clause and Section 3 Contractor Packet (Form 4-T) is required to be included in all construction contracts (prime/general and subcontractors). Refer to Chapter 4, Section 3 Procurement Procedures.

8. Procurement action taken to meet HUD benchmarks. Recordkeeping and reporting, to include submitting a Section 3 Total Labor Hours Final Report (Form 9-O) and maintaining outreach efforts (a Section 3 Contractor & Worker Solicitation (Form 9-D) may be used to demonstrate outreach efforts).
9. Monitor contractor and subcontractor compliance with applicable Section 3 provisions.

10. Obtain information from prime contractors on Section 3 accomplishments.

**Outreach Best Practices**

Best practices demonstrating outreach to Section 3 Workers and Businesses within the municipality include:

1. Publication of opportunities in newsletters or other local newspapers, including those targeted to Limited English Proficient populations.
2. Use of signage at the project site and flyers posted in the project area.
3. Notification of potential training or employment opportunities to neighborhood and non-profit groups, including Public Housing Authorities, servicing low- and very low-income persons.
4. Communication of opportunities to employment agencies and career centers. A copy of a “Notice to Citizens Opportunity for Work” (Form 9-P), may be used for development of Section 3 employment opportunities. Send completed form to the local Michigan Works! service center (https://www.michiganworks.org/).

**Section 3 Business and Resident Resources**

The following are potential resources where UGLGs/contractors might find Section 3 businesses and/or residents:

1. HUD Section 3 Registry/Portal (Businesses)
2. MSHDA MBE/WBE list (Businesses)
3. MDOT DBE list (Businesses)
4. MDOT Michigan Unified Certification Program (MUCP) (Businesses)
5. Michigan Works! (Businesses & Workers)
6. PHAs (Workers)

**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.

UGLGs may complete and maintain an optional Section 3 Contract & Worker Solicitation (Form 9-D) to record efforts to involve MBE/WBE businesses in the funded project. This optional tool will allow the UGLG to verify solicitation of bids, price quotations, and proposals from all participating contractors and professional services providers. This report, or something similar, 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) 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:

1. 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.

2. 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
3. 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 Fair Housing Ordinance SAMPLE (Form 9-E). In addition to the fair housing certification, the UGLGs must have fair housing posters displayed and must undertake at least one additional activity to further fair housing which should be identified in their Fair Housing Plan. This information must be made available at the monitoring visit. Refer to Fair Housing Awareness (Form 9-Q) as a resource document summarizing fair housing requirements, materials, videos, and other fair housing resources.

SUGGESTED FAIR HOUSING ACTIVITIES TO FURTHER FAIR HOUSING
1. Schedule fair housing activities during April, which is National Fair Housing Month. Many UGLGs adopt and publish a Fair Housing Month proclamation.
2. Post and publish any revisions to local fair housing policies that bring the UGLGs into compliance with current state and federal laws.
3. Encourage active participation in community efforts to enact strong fair housing policies.
4. Develop and display informational materials to promote local awareness of fair housing laws and guidelines (e.g. fair housing pamphlets and brochures, fair housing logo on official stationery, fair housing policy statements).
5. Display state and federal fair housing posters in places of public accommodation throughout the community.
6. Maintain a log of all fair housing activities performed.
7. Provide funding for local fair housing organizations and assist in their development.
8. Offer outreach, counseling, and referral services to aid LMI persons residing in areas of minority concentration to find assisted housing outside those areas.
9. Obtain housing units outside areas of minority concentration for use as assisted housing.
10. Acquire sites outside areas of minority concentration for the development of assisted housing.
11. Assemble a comprehensive inventory of available land suitable for the development of assisted housing.
12. 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.

13. 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:
   a. Citizen groups concerned with housing issues (fair housing groups, tenant associations).
   b. 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.
   c. 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.

14. 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.

15. 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.

16. Facilitate development of a local Habitat for Humanity chapter in your jurisdiction, or support activities of local chapters already in existence.

17. 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 Housing Discrimination Complaints SAMPLE (Form 9-F).
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 Section 504 ADA Self-Evaluation (Form 9-G). 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:

1. 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.
2. Modify any policies and practices that are not or may not be in compliance with Section 504 regulations.
3. Take appropriate corrective steps to remedy those policies and practices which either are discriminatory or have a discriminatory effect.

All UGLGs are required to evaluate their accessibility and provide a Section 504 ADA Self-Evaluation (See Form 9-G for a fillable sample). 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 Grievance Procedure SAMPLE (Form 9-I).
- If the UGLG employs 15 or more employees, the UGLG must also notify all parties associated with the project that they may not discriminate based on handicap. Please see Non-Discrimination on Basis of Handicap SAMPLE (Form 9-J) 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 following 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 aiding 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:

1. necessarily require the UGLGs to make each of its existing non-housing facilities accessible to and usable by individuals with handicaps.
2. 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.
3. 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 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 Excessive Force Policy SAMPLE (Form 9-K).

**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 Equal Opportunity
- Associated Section 3 reports, and may include the optional Contract & Worker Solicitation (Form 9-D), as well as copies of Contract and Subcontract Activity (Form 4-P).

SECTION 8 – APPLICABLE LAWS

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 based on 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.

ARCHITECTURAL BARRIERS ACT OF 1968, AS AMENDED (42U.S.C. 4151-41-57)
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 structure” 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 FORMS
FHEO Plans and Policies
9-E Fair Housing Ordinance SAMPLE
9-F Housing Discrimination Complaints SAMPLE
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Section 3 Forms for Projects with Construction
Contracts signed on or before 11/29/2020, 24 CFR 135
9-A Section 3 Resident Eligibility Certification
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9-A1 Section 3 Business Concern Certification
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Section 3 Resources
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9-P Section 3 Notice to Citizens Opportunity for Work
9-Q Fair Housing Awareness
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 may be obtained from the 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

1. Contracts solely for demolition, when no federally funded construction (which would require prevailing wage rates) is anticipated on the site.

2. Rehabilitation of a residential structure or residential properties, under one ownership, that will contain less than eight (8) units when completed.

3. Construction work done by employees of the UGLGs (i.e. the local government agency).

4. Machinery and equipment purchases, including installation, where the cost of installation is less than 20% of the total cost of the machinery and equipment.
5. Employees of utilities are exempt providing they are only extending service to the property.

6. 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.

7. 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.

**DBRA REQUIREMENTS**

1. **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.

2. **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:

   a. Recipients with Internet access can obtain their own wage rate determinations directly from the Wage Determinations Online website at https://sam.gov/content/wage-determinations. 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.

   b. 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).

   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.

3. **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.

4. **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).

a. 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.

b. 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.

c. Heavy. The construction of projects that cannot be classified as building, residential, or highway.

d. 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.

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<th>THE FOUR DECISION TYPES BASED ON NATURE OF CONSTRUCTION</th>
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<tr>
<td>Building</td>
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<td>Alteration or addition to buildings</td>
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<td>Fire stations</td>
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<td>Hotels and motels</td>
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<td>Power plants</td>
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<td>Prefabricated buildings</td>
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<tr>
<td>Remodeling, repairing, renovating buildings</td>
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<tr>
<td>Warehouses</td>
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<tr>
<td>Water and sewage treatment plants (buildings only)</td>
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5. **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% of total project cost.

6. **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.

7. **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 website at
https://sam.gov/content/wage-determinations 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.
a. 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 https://beta.sam.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.

b. 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.

8. 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.

9. 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.

10. 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 website or contact MEDC to determine if the wage decision is still prevailing and if there have been any modifications issued.

11. 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. Contractors must maintain all job-related files and documents for three years after completion of project.

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 re-classify 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. For example: If work was performed during weeks one, two, three, and seven, the payroll number for week number seven would be Payroll #4.

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 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.

Example. Sid, a backhoe operator, gets off his backhoe to locate a buried sewer line. He uses a shovel most of the morning to locate the line. Later, Sid mounts the backhoe and digs a trench for a new sewer line. The employer may list Sid as a backhoe operator if Sid is paid the backhoe rate, which is the higher of the two possible rates.

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% 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:

1. 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.

2. The proposed wage rate and any fringe benefits bear a reasonable resemblance to the rates on the wage decision.

3. 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.

Example.
Pay requirement on wage decision: $10 per hour
Fringe benefits requirement on wage decision: $1 per hour fringe benefits
Workweek: 52 hours
Regular Pay + Overtime Pay + Fringe Benefits = Gross Pay
(40 x 10) + (12 x 10 x 1.5) + (52 x 1) = $632

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.

Example. 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; 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—one 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 pre-determined 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 not be disclosed to the employer without 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.

Example. If a worker was paid $10 per hour and should have been paid $11 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 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.
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 there was restitution due that involved not only DBRA, but also overtime violation(s) under CWHSSA, overtime rates must be paid at 150% 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.

Example. 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.

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.

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.

Example. A laborer worked 48 hours in one work-week. He was paid $10 per hour for 48 hours and time and one-half for overtime. The wage decision calls for $11 per hour with no fringe benefits. Most payroll clerks would immediately know that $52 or restitution is due; however, some may not realize the proper classification of each of the components of restitution. The proper classification would be $48 under Davis-Bacon and $4 under CWHSSA.

\[ 48 \times 1 + 8 \times 0.50 = 52. \]

Some payroll clerks may incorrectly classify $40 under Davis-Bacon and $12 under CWHSSA. When reporting components of restitution, the proper method is indicated in the previous paragraph.

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.

RETAINAGE
UGLGs may withhold at least 10% 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.).

FINAL PAYMENT REVIEW
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 FORMS**

10-A  Chapter 10 PowerPoint Presentation
10-B  Wage Decision SAMPLE
10-C  Request for Wage Decision
10-D  Ten Day Call Form
10-E  Notice of Contract Award
10-G  Handout of Frequently Asked Questions on Equal Opportunity
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
10-S  Semi-Annual Labor Standards Enforcement Report, HUD-4710
CHAPTER 11
CITIZEN PARTICIPATION AND OTHER REQUIREMENTS

SECTION 1 – CITIZEN PARTICIPATION GENERAL

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

1. Provide for and encourages citizen participation, with emphasis on participation by persons of Low and Moderate Income (LMI) who are residents of slum or blighted areas and of areas in which funds are proposed to be used.

2. Provide citizens with reasonable and timely access to local meetings, information, and records relating to the UGLG’s proposed method of distribution and relating to the actual use of funds under Title I of the Housing and Community Development Act of 1974, as amended.

3. Provide for technical assistance to groups representative of persons of LMI that request such assistance in developing proposals with the level and type of assistance to be determined by the UGLGs.

4. Provide for public hearings to obtain citizen views and to respond to proposals and questions at all stages of the community development program, including the development of needs, review of proposed activities, and review of program performance; which hearings shall be held after adequate notice, at times and locations convenient to potential or actual beneficiaries, and with accommodations for the handicapped. (At a minimum, two hearings are required: one at the time of application, and one at the end of the grant.)

5. Provide for a formal written procedure that will accommodate a timely written response to written complaints and grievances, within 15 days where practicable.

6. Identify how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of non-English speaking residents can be expected to participate.

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

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

SCHEDULING AND PROVIDING NOTICES OF PUBLIC HEARINGS

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

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

2. The range of activities that may be undertaken, including the estimated amount proposed to be used for activities that will benefit LMI persons.

3. The plans of the applicant for minimizing displacement of persons as a result of activities assisted with such funds and the benefits to be provided by persons actually displaced as a result of such activities.

4. If applicable, the applicant must provide citizens with information regarding the applicant's performance in prior CDBG programs funded by the State.

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

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

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

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

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

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

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

Persons wishing to object to the MSF’s approval of an application may make such objection known to the MEDC. The MSF will consider objections made only on the following grounds:
- The UGLG’s description of needs and objectives is plainly inconsistent with available facts and data.
- The activities to be undertaken are plainly inappropriate to meeting the needs and objectives identified by the UGLG.
- The application does not comply with the requirements set forth in the final statement (consolidated plan) or other applicable laws.

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

**PERFORMANCE HEARINGS**

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

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

**SECTION 2 – CONFLICTS OF INTEREST**

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

**CONFLICTS PROHIBITED**

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

**PERSONS COVERED**

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

**EXCEPTIONS**

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

1. A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made;
2. A certification the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted activity in question; and
3. An opinion of the local government’s attorney that the interest for which the exception is sought would not violate State or local law. In addition, grants administration may also require an opinion from the State Ethics Board that the conflict does not violate State law.
FACTORS TO BE CONSIDERED FOR EXCEPTIONS
In determining whether to grant a requested exception after the local government has satisfactorily met the above requirements, the MSF shall consider the cumulative effect of the following factors, where applicable:

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

2. Whether an opportunity was provided for open, competitive bidding, or negotiation.

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

4. Whether the interest or benefit was present before the affected person was in a position as previously described.

5. Whether undue hardship will result either to the State or local government or the person affected when weighed against the public interest served by avoiding the prohibited conflicts.

6. Any other relevant considerations.

SECTION 3 – DISCLOSURES
In accordance with the Section 102 of the HUD Reform Act of 1989, all applicants for and recipients of CDBG funding must prepare disclosure reports if the aggregate amount of funding from covered programs exceeds $200,000 in a federal fiscal year (October 1 through September 30). The primary purpose of the Disclosure Reports is to identify the sources and uses of all funds that will be used in conjunction with the CDBG funds for the project funded.

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

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

1. Any information that should have been disclosed in connection with the application, but that was omitted.

2. Any information that would have been subject to disclosure in connection with the application, but that arose later, including information concerning an interested party that now meets the applicable disclosure threshold.

3. Changes to other previously disclosed government assistance where the revised amount of assistance exceeds the amount previously disclosed.

4. Changes in previously disclosed financial interest, where the revised amount of the financial interest of a person exceeds the amount of the previously disclosed interest by $50,000 or by 10% of such interests, whichever is lower.

5. Changes in previously disclosed sources or uses of funds, where:
   a. The change in a source of funds exceeds the amount of all previously disclosed sources of funds by $250,000 or by 10% of those sources, whichever is lower.
b. The change in a use of funds exceeds the amount of all previously disclosed uses of funds by $250,000 or by 10% of those uses, whichever is lower.

SECTION 4 – RULES FOR CHANGE OF USE OF REAL PROPERTY

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

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

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

SECTION 5 – CERTIFICATIONS

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

RESIDENTIAL ANTI-DISPLACEMENT AND RELOCATION ASSISTANCE PLAN

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

MINIMIZE DISPLACEMENT

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

PUBLIC ACCESS TO RECORDS

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

SPECIAL ASSESSMENTS

Where CDBG funds are used to pay all or part of the cost of public improvements, special assessments may only be used to recover capital costs as follows:
1. Special assessments to recover CDBG funds may be made only against properties not owned and not occupied by LMI persons. Such assessments are considered program income (for additional information regarding program income, refer to Chapter 8: Financial Management).

2. Special assessments to recover the non-CDBG portion of a project may be made, but CDBG funds must be used to pay the special assessment on behalf of all properties owned and occupied by LMI persons. CDBG funds need not be used to pay the special assessments on behalf of properties owned and occupied by LMI persons if the grant recipient certifies that it does not have sufficient CDBG funds to pay the assessments in their behalf. Non-CDBG funds collected through such special assessments are not program income.

3. The payment of special assessments with CDBG funds constitutes CDBG assistance to the public improvement. Therefore, CDBG funds may be used to pay special assessments only if installation of the public improvements was carried out in compliance with requirements applicable to activities assisted with CDBG funds including environmental, citizen participation and Davis-Bacon requirements; and installation of the public improvement meets a criterion for one of the National Objectives.

COMPLIANCE WITH TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 AND THE FAIR HOUSING ACT
UGLGs are required to take a proactive role in affirmatively furthering fair housing in the community. Actions to promote fair housing are required to be taken and documented prior to close-out of a CDBG project. UGLGs also agree that no person will be excluded from participation, denied program benefits, or subjected to discrimination based on race, color, disability, familial status or national origin. (See Chapter 9: Fair Housing and Equal Opportunity).

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

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

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

CHAPTER 11 FORMS
11-A Notice of Public Hearing SAMPLE
11-A1 Notice of Closeout Public Hearing SAMPLE
11-B Disclosure and Update Report, HUD-2880
11-C Disclosure of Lobbying Activities
CHAPTER 12
MONITORING

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 a CDBG project, the Program Specialist will monitor each UGL 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, with any concerns identified during the initial risk assessment being re-evaluated.

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. 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:

- National Objectives
- Environmental Review
- Financial Management
- Citizen Participation
- Procurement and Contracting
- Construction Management and Labor Standards
- Section 3
- Fair Housing and Equal Opportunity
- Acquisition and Relocation
- 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

CHAPTER 12 FORMS
12-A Monitoring Checklist
CHAPTER 13
GRANT CLOSEOUT

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 Disbursement Request and the closeout process may begin. The UGLG must complete and submit a closeout package containing the following the 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/Retention Summary Report (Form 2-C), if applicable. This report serves as the final reporting for all jobs created/retained.

3. Final Section 3 Report. This report serves as the final reporting for Section 3 activities.

4. Building Inspector letter, if applicable. This letter certifies all blight has been eliminated.

5. 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.

6. Closeout Public Hearing documentation. The UGLG must document it has conducted a closeout public hearing (From 11-A1) to discuss the project’s accomplishments. The UGLG must submit an affidavit or tear sheet to evidence notice of this public hearing and the approved minutes from the closeout 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.
7. **Monitoring letter(s.)** If applicable, the UGLG must satisfy all findings from monitoring reports before closure of the grant can be completed.

8. **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.

9. **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*.

10. **Personal Property Management Report** (Form 8-B1). This form must be completed if any non-expendable property was purchased with CDBG funds.

11. **Real Property Management Report** (Form 8-B2). This form must be submitted if real property is purchased with CDBG funds.

12. **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.

The purpose of a conditional closeout 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 (i.e., 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 (i.e., architects, engineers, administrators) until notified by the MEDC.

CHAPTER 13 FORMS

13-A Actions to Affirmatively Further Fair Housing
13-C Grant Award Decrease for Closeout
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. A Certified Grant Administrator (CGA) is an individual who undergoes MEDC training and holds an active administrator’s certificate to assist the UGLG with meeting CDBG compliance requirements including federal and state statutes regulations, and policies. UGLG’s must have a Certified Grant Administrator on staff or procure a CGA consultant to utilize MEDC funding. The UGLG’s may request with approval of the Program Specialist and Director to opt out of using CGA for CDBG grant projects. The UGLG and Program Specialist will identify compliance on CDBG projects to determine the need of a CGA for areas of compliance. UGLG’s grant administrators cannot be counted as match for the project. 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:

“CDBG” means the State of Michigan’s Community Development Block Grant program administered through the Michigan Economic Development Corporation, hereinafter referred to as “MEDC”

“Certified Grant Administrator” means any individual who holds an active MEDC administrator’s certificate.

“Debarment” or “debarred” is a process by which an administrator’s certificate is revoked or non-renewed.

“Director” means the Director of the Community Development Block Grant of the MEDC.

“Division” means the Community Development Block Grant Division of the MEDC.

“HUD” is identified as the U.S. Department of Housing and Urban Development.

“MEDC” means Michigan Economic Development Corporation

“MSF” means Michigan Strategic Fund

“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 Certified Grant Administrators are critical to the proper functioning of the Community Development Block Grant (CDBG) program. 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. The process and policy of certifying and decertifying grant administrators insures the best possible stewardship of federal Community Development Block grant funds administered by the Michigan Economic Development Corporation (MEDC) on behalf of the Michigan Strategic Fund (MSF). CDBG related projects will be administered by Certified Grant Administrator individuals adhering to generally uniform work habits and guidelines. The MEDC reserves the
right to revise and update this policy at any time and will notify the Certified Grant Administrators as revisions and updates occur.

**CGA RESPONSIBILITIES**

Certified Grant Administrators are responsible for assisting the City, Village, County and MEDC with the grant administration of the CDBG project. The MEDC provides the administrative funding for the CGA to assist the local unit of government and MEDC with administration of a CDBG project. CGA’s are not the advocate for the building owner or contractors on CDBG projects.

CGA’s responsibilities are limited to the following compliance:

**Environmental Review**
A. If the Determination Level for Environmental Review is *Exempt or Categorically Excluded Not Subject To 58.5*, the Certified Grant Administrator can assist the UGLG in the preparation of necessary Environmental Review documentation. If the Environmental Review level is determined to be Categorical Excluded Subject to 58.5, consultation with the CDBG Project Specialist is required.
B. If the Environmental Review level is determined to be an *Environmental Assessment* or an *Environmental Impact Statement*, all Environmental Review documentation will be created by qualified Consulting Agency(ies) and SHPO and collected by the UGLG and Certified Grant Administrator.
C. Assist UGLG in providing documentation to CDBG Program Specialist for environmental release of funds for the awarded project.
D. If the Scope changes for a project, assist the UGLG in creating Environmental Review Amendment materials for review by the CDBG Specialist.

**Procurement/Contracts.** Labor Standard Insert, Wage Determinations (General Contractors, Sub-Contractors)
A. Provide required procurement reports and assist the UGLG in obtaining approvals from MEDC as appropriate.
B. Collect and File procurement records including selection process, advertisements, reasons for selections, minutes of bid openings, etc.
C. Collect and file contract agreements between UGLG and the Selected Contractor. Collect and file insurance documentation related to the selected contractor.
D. Provide SAM and HUD Limited Deniability Checks related to selected contractor.
E. Collect and File Section 3 documentation.

**Labor Standards.** Payroll Review: Davis Bacon Wages and Fringe, Employee Interviews

*Non-Davis Bacon Projects:*
A. Assist project architect or engineer in bid document preparation to ensure bid specification documentation is consistent with state and federal regulations.
B. Check payroll documentation.
C. Review Contractor Payment Application materials and ensure that Supplies and Labor Amounts are present on all categories for reimbursement.
D. File contractor clearances, specific to applicable Lead and Asbestos Abatement
E. Monitor administrative paperwork to ensure compliance with equal opportunity, labor provisions, and Section 3 requirements.
F. File any inspection reports related to the project.

*Davis-Bacon Projects:*
A. Assist project architect or engineer in bid document preparation consistent with state and federal regulations.
B. Secure the Department of Labor’s federal wage decision and include it in the bid documents.
C. Review construction contracts to ensure they comply with state and federal regulations. Examples of regulations include the following: Conflict of Interest, Access to Records, Copeland Anti-Kickback Act, Safety Standards, Architectural Barriers, Flood Insurance, Clean Air and Water Act (for contracts over $100,000), HUD Handbook (6500.3), 24 CFR 85.36, Section 3, Section 109, Title VI, Civil Rights Act, EO 11246 (for contracts over $10,000), Section 504, etc.
D. File contractor clearance(s), specific to applicable Lead and Asbestos Abatement.
E. Check weekly payrolls and complete Payroll Review Worksheet to ensure compliance with federal wage decision(s) with wage and fringe benefit information. Review payroll documents to ensure the following supplemental documents are provided, if applicable: Apprentice Compliance, Independent Contractors, Payroll Restitution.

F. Conduct on-site interviews and compare the results with the appropriate payrolls.

G. Monitor administrative paperwork to ensure compliance with equal opportunity, labor standards provisions, and Section 3 requirements

Grant Reporting Documentation. Prepare, receive, and submit signed grant metric reports from the UGLG. Those reports can include: Audit Reports, Job Creation Reports (if applicable), Progress Reports and Milestones.

Payment Submittal. Provide support documentation for Disbursement Requests. Support documentation can include, but are not limited to the following:

- 8A Disbursement Request Form
- 8B Invoice Summary Report
- Invoices/Proof of Services detailing Labor and Supplies Amounts
- Contractor Statement or Contractor Waiver
- 10-N Payroll Deduction Authorization (as applicable)
- 10-O Record of Employee Interview (as applicable)
- SAM and HUD Deniability List Information for New Subcontractors on the Project
- Review Change Orders submitted by the UGLG

Monitoring and Close Out

A. Attend and Assist UGLG during the MEDC’s monitoring visit(s).

B. Assist with close-out documentation

National Objective Compliance, Surveys, and Income Verification Requirements

A. For job creation: File semi-annual employment data and associated income certification forms

B. For blight elimination: File local building inspector letter certifying the project eliminated specific conditions of blight

C. For housing projects: File the Certificate of Occupancy. Collect and file lease information showing that at least 51% of the rental units are leased to low-income households.

D. Compliance, Surveys, and Income Verification Reports are not required for area benefit projects based on population.

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 the following criteria:

- 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 Policies and Processes
- Knowledge of Fair Housing Processes
- 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.

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<th>TYPE</th>
<th>CLASS LENGTH</th>
<th>VALID FOR</th>
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<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% and retesting at 85% 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 1 mandatory training 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% and retesting at 85% 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. CGA’s 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 noted in the grant agreement.
2. No more than two general findings either by the UGLG or MEDC.
3. Assist the UGLG in the timely submissions of all documents and forms required by the CDBG program.
4. Assist the UGLG in ensuring all deficiencies noted in the monitoring letter are resolved within 30 days.
5. Ensure that the same CGA deficiencies do not occur in multiple UGLG monitoring letters.
6. Attend the mandatory amount of continuing education classes each year.
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% 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:

1. Consistently bypassing federal or state policies and regulations.
2. Inappropriate measures resulting in de-obligation or refund of grant awards.
3. Two or more substantiated written complaints filed by the UGLG, agent, an elected official, or other individual involved in the implementation of federal grants.
4. Poor performance by the UGLG as documented through consistent grant extensions, modifications, project delays, and unresolved monitoring issues.
5. Undisclosed blatant conflict of interest, which results in the loss of a contract.
6. Additional violations while on probation.
7. Failure to complete or submit to a recertification examination.
8. 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.

9. Engaging in conduct involving significant dishonesty, fraud, deceit, or misrepresentation whether or not such activity is a crime.

10. 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

1. 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: (a) a summary of such party’s position regarding the complaint in the notice of decertification, (b) a list of documents and affidavits the party intends to use for the Director’s Opinion, and (c) copies of such documents.

2. 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.

3. 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

1. 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.

2. 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.

3. 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 as follows: 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 – CONTRACT BETWEEN CERTIFIED GRANT ADMINISTRATOR AND UGLG

The UGLG and CGA must execute a contract agreement between the two parties outlining the roles and responsibilities of each party.

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, the MEDC encourages consideration of the following processes 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 CDBG 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 Certified Grant Administrator understands the responsibilities required under the proposed contract (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. The CGA is there to assist but the grant recipient is the UGLG.

9. Establish and enforce active, ongoing, progress and financial reporting responsibilities for your project.

10. Make sure you have easy access to the MEDC Grant Administration Manual where forms and program requirements can be located.

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 Disbursement 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 (if applicable); and a Description of CDBG activities worked on.

CHAPTER 14 FORMS
14-A  Procurement Process for Selecting a Certified Grant Administrator
14-C  Certified Grant Administrators List
14-D  Certified Grant Administrator Request For Proposal Sample
CHAPTER 15
PROGRAM INCOME POLICY and
EMERGENCY REPAIR PROGRAM

INTRODUCTION
The Michigan Economic Development Corporation (MEDC) on behalf of the Michigan Strategic Fund (MSF) is issuing this Program Income Policy for CDBG Grantees, effective July 1, 2016.

It is imperative that all CDBG Program Income (PI) received by the Unit of General Local Government (UGLG) in the CDBG Grant Program Year (PY) from July 1 to June 30 be counted to determine if the UGLG received $35,000 or more in Program Income in the Program year (UGLG Total PI).

An UGLG may receive CDBG Program Income from various CDBG funds, grants and/or loans including housing, community development, business development, revolving loan funds, CDBG loan funds, etc.

PROGRAM INCOME POLICY

SECTION 1 - PROGRAM INCOME DEFINED
A. Program Income commonly includes:
   1. Principal and interest on loans made from CDBG funds.
   2. Interest earned from CDBG local Revolving Loan Funds.
   3. Proceeds from sale, disposition, or long-term lease of any privately-owned property or equipment purchased or improved in whole or in part with CDBG funds. For proceeds on sale of privately-owned property, proceeds will be netted against cost of maintaining the property and net proceeds will be subject to the Program Income rules. In this situation, please contact the MEDC for further guidance.
   4. Gross income from the use or rental of real property owned by the UGLG and purchased or improved with CDBG funds.
   5. See HUD regulation 24 CFR 570.489(e) for a full list of potential Program Income sources.

B. Program Income does NOT include:
   1. UGLG Total PI less than $35,000 in the Program Year. These funds cease to be federal money after the end of the PY in which the PI was received and may be used by the UGLG for any activity, including activities not eligible under CDBG regulations.
   2. Income received by 105(a)15 Lenders (Regional Loan Funds in the CDBG Loan Program) for successfully completed loans per the Grant Administration Manual (GAM) and other guidance.
   3. Proceeds on sale of real property purchased or improved more than 5 years after the expiration of the grant agreement between the UGLG and the State. This applies to UGLG owned property, subject to the terms of the grant agreement.
SECTION 2 - POLICY AND PROCEDURE

1. CDBG Program Income may NOT be expended during the Program Year (July 1 – June 30) in which PI was earned. Exceptions will be considered, please contact the MEDC.

2. CDBG Program Income may NOT be expended for non-CDBG eligible uses without receiving MEDC verification that the UGLG Total PI is less than $35,000.

3. At the end of the Program Year, all CDBG Program Income generated through all UGLG Programs (housing, CDBG Loan Funds, economic development projects, etc.) must be counted together to determine if the UGLG Total PI has exceeded the $35,000 limit.

4. One central contact for UGLG Total PI should be established for each UGLG to assist us in gathering and disseminating information related to CDBG Program Income. This person will be identified on the certification form submitted by the UGLG.

5. Near the end of the program Year, the CDBG PI Program Year Certification (Form 15-B) must be completed by all grantees. The form will verify the amount of PI received during the program year.

6. Upon receipt of the CDBG PI Program Year Certification forms, the MEDC will verify the amount of UGLG Total PI and advise UGLG as to whether the $35,000 threshold has been surpassed.

7. If the UGLG Total PI (from housing, CDBG loan funds, economic development grants, etc.) is $35,000 or more, then the funds retain their federal identity and the UGLG will have 12 months from June 30th to spend those funds on continuing CDBG activities as defined by the CDBG Program. Effective July 1, 2018, the only eligible CDBG continuing activity will be emergency home repairs.

8. If the UGLG Total PI (from housing, CDBG loan funds, economic development grants, etc.) is less than $35,000, the funds cease to be federal and may be used by the UGLG for any activity, including activities not eligible under CDBG regulations. It is recommended that UGLGs consider using said non-federal funds to administer an emergency repair program.

9. Program Income of $35,000 or over received in a single program year retains its federal nature indefinitely, except in very limited circumstances.

10. Program Income not expended within 12 months of the end of the Program Year must be returned to the State of Michigan.

11. If an UGLG does not wish to retain CDBG Program Income and comply with these requirements, the UGLG may return PI funds to the State. All Program Income returned to the State will be reported to HUD and reallocated to other CDBG programs.

12. Program Income Emergency Repair programs are subject to remote monitoring. The MEDC reserves the right to monitoring on-site.

13. Publication Affidavit and Public Hearing with Meeting Minutes for the amount of program income received from the emergency repair program.

Notice for public hearing, which must be substantiated with a publication affidavit, will show five (5) calendar days minimum notice was provided to citizens, and the notice was published in a local or applicable newspaper, a sample of a Public Hearing Notice can be found in the Grant Administration Manual, Chapter 11 Citizen Participation and Other Requirements form 11-A. Begin counting day one (1) on the day following the notice. The following items must be included in the public notice:
a. The amount of emergency repair program income funds available.
b. The estimated amount proposed to be used for to benefit LMI persons.
c. 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.
d. Information regarding the applicant’s performance in prior CDBG programs funded by the State, if applicable.

Proof of notice, written minutes of hearings and an attendance roster must be kept for review by State officials.

SECTION 3 - COMPLIANCE

The expenditure of $35,000 and over of PI received in a single program year is subject to standard federally required compliance, reporting and monitoring. National objectives must be met, and accomplishment data collected.

- CDBG Program regulations (24 CFR 570)
- CDBG Program regulations relative to Program Income (24 CFR 570.489e(3)(ii)
- NEPA Environmental Review (24 CFR 58)
- National Objective (1040 Income Verification)
- Davis Bacon (not required for Homeowner Emergency Repair activities)
- Uniform Relocation Act (not required for Homeowner Emergency Repair activities)
- Federal Administrative Requirements (2 CFR 200 OMB Super Circular)
- MEDC and/or HUD reporting and monitoring requirements

SECTION 4 - CDBG ACTIVITIES PERMITTED WITH PROGRAM INCOME

Low/Mod Housing
- Emergency Repair

Administration
- Reasonable and necessary costs for administering a PI Emergency Repair Program
- Administrative costs may not exceed 18% of total Program Income received
- Not more than 18% of the total funds spent on each activity may go towards admin.
- Administrative costs must be fully documented and will be reviewed at monitoring.

Program Income Generated from CDBG Non-housing Grants may only be used for the eligible continuing activity identified by the CDBG Program.

SECTION 5 - SINGLE AUDIT GUIDANCE FOR PROGRAM INCOME

The following are suggestions and guidance to be provided to your Certified Public Accountant (CPA) for determining proper treatment of Program Income funds for Single Audit and SEFA purposes. This information is provided for informational purposes only and should not be considered professional advice. Please consult your CPA.

Here are a few broad points to consider.

1. Locally Held Program Income are all federal funds reportable under CFDA 14.228.
2. Any expenditures from these funding types should be taken into consideration for purposes of both calculating total federal expenditures to determine if a Single Audit is required, and for inclusion in the SEFA.

3. For any community or organization receiving CDBG funds, including loan funds and program income a MEDC Form 8-C “Audit Requirements Certification Form” will be required annually within 60 days of the community or organization’s fiscal year end, in compliance with HUD regulations.

There are many variations of these types of funds. Below are details on individual situations that may exist.

**Locally Held Program Income (PI)**
Program Income received must be included when calculating whether a Single Audit is required. Program Income expended in the UGLG’s fiscal year must be reported on the SEFA, if applicable.
EMERGENCY REPAIR PROGRAM

SECTION 1 - UGLG PROGRAM GUIDELINES

The UGLG must have Emergency Repair Program Guidelines setting forth how program income will be used including a description of the emergency repair program. The UGLG:

1. May use MSHDA County Allocation Program Income Guidelines; however, they must be updated.
2. Edit all references to MSHDA to read as the County’s name.
3. Is responsible for the emergency homeowner repair projects.
4. Must list any and all activities to be included for emergency rehabilitation housing projects.
5. Must utilize the compliance guide for program income emergency repair.
6. Must send their Emergency Repair Program Guidelines to MEDC for review.
7. Upon MEDC review and approval, they must be approved by the County Board.
8. Upon approval from the County Board, the UGLG will be allowed to utilize their program income funds.

SECTION 2 - EMERGENCY REPAIR ACTIVITY

The UGLG is charged with the fiscal responsibility of certifying that 100% of the CDBG Program Income Emergency Repairs 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.

- Program Income has been used in accordance with Title I requirements, in accordance with CDBG Program Income Emergency Repair, and program requirements outlined in the GAM.
- UGLG has a system for tracking Program Income generated by CDBG Loan Program funds
- Program Income must be deposited into a separate fund or account (may be interest-bearing).
- Program Income information in UGLGs accounting records match the information reported to the State.
- Program Income received is prorated based on the percentage of MEDC federal funds used or is directly tied to the mortgage and note or net proceeds of sale.

UGLG’s have the flexibility under the CDBG Program Income Emergency Repair to design programs that meet the needs of their residents. Examples of the types of local programs that may be funded include:

The CDBG Program Income Emergency Repairs 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, which typically bring the property up to local codes and standards.

Emergency repair programs that provide for the repair of certain elements of a housing unit in emergency situations, such as:

1. Repairs to a **roof** that is leaking, but the whole house is not rehabilitated.
2. Malfunctioning **hot water equipment** resulting in total lack of running hot water in the household.

3. **Plumbing** repairs in cases where water supply or drainage lines have ruptured, and the house is without running water.

4. **Septic tank** is overflowing, or the **drain field** has deteriorated.

5. **Electrical or gas repairs in electrical fire or gas hazard situations** and or cases where the faulty electrical wiring has resulted in total lack of illumination in the household or inability to use such necessary major appliances as the refrigerator or range or furnace or water heater.

6. **Structural damage** that creates an emergency safety situation.

7. Emergency **handicapped accessibility improvements**, such as installation of a ramp can be approved with an emergency health, triggering event.

8. **Other emergency items** not listed above will need approval by the CDBG Program Specialist.

**SECTION 3 - HOUSEHOLD ELIGIBILITY REQUIREMENTS**

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, RR Income Eligibility Calculation SAMPLE. Grantees are responsible for maintaining all documents used to determine and verify CDBG program recipient’s income used with the HUD income calculator.

**SECTION 4 - LIEN REQUIREMENTS**

The UGLG, has the discretion to provide a grant, or a mortgage loan. The CDBG does not require Liens, nor repayment of mortgage loans. It is for the UGLG to determine and comply with their own policy regarding CDBG Program Income Emergency Repair liens.

**Land Contracts.** Please Note: The CDBG does not require Liens. If you are dealing with a land contract, Please Note: The Land Contract seller(s) must sign the UGLG’s mortgage and the Land Contract Subordination Agreement. This document would be recorded and would give the grantee a superior lien position to the Land Contract seller(s).
SECTION 5 – COMPLIANCE

The UGLG is responsible for the compliance, regulations, requirements and forms set forth in the GAM. The following items are located at:

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LEAD SAFE HOUSING RULE-EXEMPTIONS

Some CDBG projects may be exempt from the Lead Safe Housing Rule if they meet the criteria listed below:

1. Housing units constructed after 1978.
2. The CDBG Program Income Emergency Repairs 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.
3. 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.
4. An inspection performed according to HUD standards found the property contained no lead-based paint.
5. According to documented methodologies, lead-based paint has been identified and removed, and the property has achieved clearance.
6. The rehabilitation will not disturb any painted surface.
7. The property has no bedrooms.
8. The property is currently vacant and will remain vacant until demolition.

UGLGs administering emergency repair programs should pay 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.

All exemptions must be documented in the project file. A Program Income Exempt Project Determination and a Lead-Based Paint Requirements Applicability Worksheet must be submitted to and approved by the MEDC for each activity before costs for the activity can be incurred.

SECTION 6 – REPORTING REQUIREMENTS

Records for program income transactions after the period of performance. In some cases, Grantees must report program income after the period of performance. Where there is such a requirement, the 3-year retention period for the records pertaining to the earning of the program income starts from the end of the Grantee’s fiscal year in which the program income is earned.
Program Income Certification. Grantees that receive Program Income, as defined above, must certify each Program Year the amount of Program Income is received using Form 15-H, Program Income PY Expenditure and Accomplishment Report. This is required for each Program Year, whether the grantee has received funds or not.

SECTION 7 – ADDITIONAL REQUIREMENTS

CONFLICTS PROHIBITED
No persons described above may obtain a financial interest or benefit from a (UGLG) County program income emergency rehabilitation program-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 a family or business ties, during their tenure or for one year thereafter.

COOPERATION
At all times the UGLG shall cooperate fully with the MSF, MSF Fund Manager, HUD, Office of Inspector General or similar department, and law enforcement officials and agencies.

CHAPTER 15 FORMS
15-A UGLG PI Decision Tree
15-B Program Income Certification
15-C Program Income Emergency Repair Activity Checklist
15-D Program Income Emergency Repair Grant Checklist
15-E Certifying Officer Designation
15-F Land Contract Subordination, SAMPLE
15-G Program Income Exempt Project Determination
15-H Program Income PY Expenditure and Accomplishment Report