

# Community Development



# CDBG Policies and Procedures Manual

2015



West Virginia Development Office



## Table of Contents

	Page
Introduction .....	1
Chapter One – Project Administration.....	1-1
Chapter Two – Environmental Review.....	2-1
Chapter Three – Financial Management .....	3-1
Chapter Four – Program Income.....	4-1
Chapter Five – Professional Services .....	5-1
Chapter Six – Construction Management .....	6-1
Chapter Seven – Labor Compliance .....	7-1
Chapter Eight – Civil Rights .....	8-1
Chapter Nine – Monitoring, Reporting & Closeout.....	9-1
Chapter Ten – Acquisition of Real Property .....	10-1

***This CDBG Policies and Procedures Manual is intended as a guide, not as a substitute for a thorough knowledge of state and federal laws and regulations referenced in this manual. In the event of any discrepancy, federal regulations will prevail. The Grantee is responsible for compliance with the most current and stringent of any applicable local, state or federal law or regulation(s).***

***The West Virginia Development Office does not discriminate on the basis of age, race, color, religion, sex, national origin, familial status or disability in the admission, access to, treatment of, or employment in, its federally assisted programs or activities.***



# Introduction





## Introduction

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The Community Development Block Grant Program (CDBG) is administered by the U.S. Department of Housing and Urban Development (HUD), and is authorized under Title 1 of the Housing and Community Development Act of 1974 (HCDA), as amended.

Prior to the HCDA, there were numerous Federal programs which addressed community development issues. The CDBG program was developed through the consolidation of various programs under which communities previously competed for funds. These programs included: Open Space, Urban Renewal, Neighborhood Development Program grants, Historic Preservation grants, Model Cities supplemental grants, Public Facilities loans, Neighborhood Facilities grants; and Water and Sewer grants.

The primary objective of Title 1 of the HCDA is the development of viable urban communities. These viable communities are achieved by providing the following, principally for persons of low and moderate income:

- 1. Decent housing;**
- 2. A suitable living environment;**
- 3. Expanded economic opportunities.**

To achieve these goals, the CDBG statutory and regulatory requirements set forth eligible activities and National Objectives that each activity must meet. The U.S. Department of Housing and Urban Development has established the following three National Objectives for the CDBG program. Each CDBG-funded activity must meet one of HUD's three National Objectives. Therefore, each project must:

- 1. Benefit low and moderate income individuals;**
- 2. Aid in the prevention or elimination of slum and blight; or**
- 3. Meet other community development needs having a particular urgency due to existing conditions that pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available.**

From 1975 to 1981, states did not participate in the CDBG program. Instead, HUD conducted an annual competition to fund small cities. Amendments to the HCDA in 1981 permitted states to administer the CDBG program for small cities, beginning in 1982. In West Virginia, the program is commonly known as CDBG-Small Cities.

The State program is designed to provide assistance to units of local government to improve economic opportunities and meet community revitalization needs, primarily for individuals of low and moderate income.

Under Title I of the HCDA, all units of general local government are eligible to apply for CDBG financial assistance, except for the West Virginia cities that participate in the CDBG Entitlement Program and receive CDBG funds directly from HUD. These include: Beckley, Charleston, Huntington, Martinsburg, Morgantown, Parkersburg, Vienna, Weirton and Wheeling.

## Introduction

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After CDBG funds are allocated to Indian Tribes (one percent of the Congressional allocation); funds are then split among entitlement communities and states, with 70 percent of funds dedicated to entitlement communities and 30 percent of funds dedicated to states.

Funds are allocated based upon a formula which factors total population, percent of population in poverty and housing. Therefore, funding allocations vary from year to year.

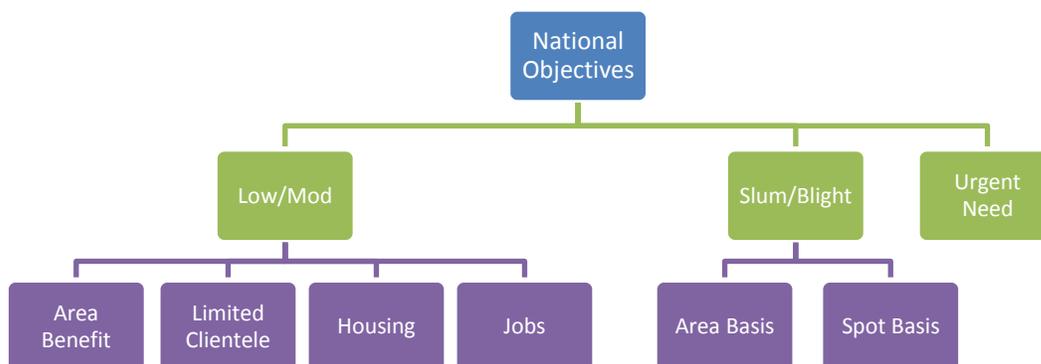
The West Virginia Development Office (WVDO), Project Development Section, is given the primary responsibility for the administration of the CDBG program at the State level. The WVDO is responsible for developing the consolidated plan; designing the program; reviewing applications; distributing funds; establishing financial management, reporting, monitoring, audit, and closeout procedures; and ensuring the compliance of CDBG grant recipients.

HUD is responsible for monitoring the states to ensure compliance with CDBG program requirements. The regulations implementing the CDBG Program are found in the Code of Federal Regulations: 24 CFR Part 570.

### Meeting a National Objective

Every CDBG-funded activity must meet one of HUD's three National Objectives. The National Objective category must be identified in the grant application prior to the award of funding, however, the National Objective is not met until the grant recipient carries out the activity, and the closeout reports document how the National Objective was met, and accepted. This requires that each activity meet specific tests for either:

- **Benefit low and moderate income individuals;**
- **Aid in the prevention or elimination of slum and blight; and**
- **Meet other community development needs having a particular urgency due to existing conditions that pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available.**



Each of the three National Objectives, and the subcategories of criteria for how that objective may be met, is described on the following pages.

### **Benefit to Low and Moderate Income Individuals**

The Benefit to Low and Moderate Income Individuals (also known as Low/Mod or LMI Benefit) is referred to as the “primary” National Objective because Federal regulations require that 70 percent of CDBG funds meet this National Objective. Within this National Objective, there are four subcategories:

1. Low Mod Area (LMA)
2. Limited Clientele (LMC)
3. Low Mod Housing (LMH)
4. Low Mod Job Creation and Retention (LMJ)

Public facilities activities, such as water, sewer and storm water projects, generally qualify under this National Objective; providing area wide benefit to LMI persons. The ‘benefit to LMI persons’ test is met by documenting - through census data or an income survey – that 51 percent or more of the persons who live in the project area may be defined as being low-to-moderate income.

For this purpose, LMI determination is based upon the income of a family, household, or individual living in the CDBG-Small Cities project area whose household income does not exceed 80 percent of the median income for the area. As defined, this means the activity benefits all residents in a particular area or neighborhood, where at least 51 percent of the residents are LMI persons. Note, the LMI determination for all subcategories under this National Objective, is based upon low to moderate income persons, with only one exception. The Low Mod Housing (LMH) is the only National Objective based upon households, rather than individuals.

In some limited circumstances, the project may qualify under the Limited Clientele criteria. These projects typically serve a specific group of individuals in a community but not necessarily the entire community. HUD has designated eight limited clientele groups that automatically qualify as meeting the benefit of low-to-moderate income persons test. These groups are: abused children; battered spouses; senior citizens (62 and over); illiterate adults; severely disabled adults; the homeless; persons with HIV-AIDS; and migrant farm workers.

### **Elimination of Slums and Blighted Conditions**

Public and/or private facilities requiring improvements that aid in the prevention or elimination of slums or blighted conditions in a designated slum/blight area may qualify for funding under the National Objective of Elimination of Slum and Blight Area Basis. Such projects would include demolition of multiple downtown buildings. Improvements could also be for a single building not located in a blighted area, and in such case, the project would qualify under the Spot Basis.

### **Urgent Need Projects**

If the improvement corrects a CDBG-defined urgent situation, the Urgent Need National Objective may be met. West Virginia seldom funds Urgent Need projects. In cases where Urgent Need projects have been funded, they typically addressed disaster relief or recovery.

### **Determining LMI Eligibility**

There are two ways to verify that proposed projects meet the National Objective of benefitting low to moderate income individuals. Eligibility may be verified through the use of Census/American Community Survey data, or an income survey of the project area.

If the project area is accurately represented by a particular Block Group, the applicant may cite Low and Moderate Income Summary Data (LMISD) data to qualify the project by LMI percentage. **In all cases, the LMI benefit must be accurately documented and the project area must be accurately represented.** If LMISD is being used to qualify a project, the census data must coincide with project area and the application must include a map to verify this representation.

If the LMISD data does not reflect current income levels, or census boundaries do not sufficiently coincide with the project area, an income survey may be warranted. Additional details regarding the State's guidelines for conducting income surveys are provided in a revised Income Survey Guide available at [www.wvcommerce.org](http://www.wvcommerce.org), and by calling the West Virginia Development Office (WVDO). Income surveys should be methodologically sound and conducted in accordance with 24 CFR 570.483(b)(1)(i), and according to CPD Notice 05-06.

### **Project/Service Area**

As stated in HUD CPD Notice 14-013, "One of the crucial aspects of qualifying an activity as principally benefiting LMI persons on an area basis is the proper identification of the service area. The service area must be defined first before deciding which data to use to determine the percentage of LMI persons and not vice versa." Each application must provide information for the Census Tract(s) and Block Group(s) most closely approximating the project area.

### **Income Eligibility: Area-Wide Benefit to Low and Moderate Income Individuals**

The Area-Wide Benefit to Low and Moderate Income Individuals category is the most commonly used National Objective for activities that benefit a residential neighborhood. As defined, this includes activities that benefit all residents in a particular area or neighborhood, where at least 51 percent of the residents are LMI persons. For this purpose, LMI determination is based upon the income of a family, household, or individual living in the CDBG-Small Cities project area whose household income does not exceed 80 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger households or families (HUD generated LMI data).

### **Eligibility must be verified by one of the following methods:**

- 1. HUD Low Income Summary Data/LMISD: HUD CPD Notice 14-10:** To qualify by Census, the census blocks/areas must closely with the service area and have a 51 percent or greater LMI population according to HUD generated census data (Low and Moderate – Income Summary Data/LMISD).

The HUD Income Summary Data/LMISD data, based upon the American Community Survey (ACS), is updated on an annual basis and is available [HERE](#). Use the most current data available. If the project area is a census tract(s), select ALL BLOCK GROUPS. If the project area is a whole town or county, select LOCAL GOVERNMENT SUMMARIES.

### 2. Income Summary in compliance with HUD CPD Notice 14-013:

To qualify by Income Survey, review HUD CPD Notice 14-013 and WVDO Income Survey Guidelines available [HERE](#) and the WVDO Income Survey Guide available at [www.wvcommerce.org](http://www.wvcommerce.org).

HUD Income Limits are updated on an annual basis. The WVDO provides notification of these updates to project administrators. The Fiscal Year 2015 limits are available at [www.huduser.org/portal/datasets/il/il15/index.html](http://www.huduser.org/portal/datasets/il/il15/index.html). Follow the link, choose West Virginia, and then identify the proper County or Metropolitan Statistical Area.

Visit [www.hud.gov/offices/cpd/systems/census/lowmod/dictionary.cfm](http://www.hud.gov/offices/cpd/systems/census/lowmod/dictionary.cfm) for data definitions.

**Contact the WVDO prior to conducting an Income Survey.** The Income Survey should include detailed descriptions of the project area, the methodology, tabulations and results.

### Eligible Activities

#### Eligible Activities

Each project that receives CDBG funds must meet two criteria: the project must meet a National Objective and it must also be an Eligible Activity. A listing of typical eligible activities includes, but is not limited, to:

1. Public facilities improvements
2. Public services
3. Economic development projects
4. Infrastructure improvements
5. Acquisition
6. Relocation
7. Clearance activities
8. Historic preservation
9. Planning activities
10. Grant administration
11. Accessibility projects

#### Ineligible Activities

In general, any activity not specifically authorized under CDBG statute or regulations is ineligible for CDBG funds. In addition, the statute specifically stipulates that the following activities may not be assisted with CDBG funds:

1. Buildings for the general conduct of government, except to create accessibility for disabled population (e.g., city hall),
2. General government expenses,
3. Political activities,
4. Purchase of equipment or furnishings for a property. This excludes, certain types of manufacturing equipment connected with economic development activities and the purchase of fire trucks as firefighting equipment,
5. New housing construction and Income Payments (Income Payments are defined in the regulations as direct payments to subsidize rent and/or utilities),
6. Operating and maintenance expenses for public facilities, improvements and services,

## Introduction

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### 7. Lobbying activities.

The Consolidated Plan for the State of West Virginia has identified three primary community development objectives, through which the CDBG program will:

1. Support local government efforts to provide affordable infrastructure systems;
2. Support local community efforts to assist low- to moderate-income citizens to achieve an improved quality of life; and
3. Support job creation and retention efforts.

## Implementation Manual

The purpose of the Implementation Manual is:

- 1. To assist grant recipients in the day-to-day administration of their CDBG projects;**
- 2. To provide practical information on how to implement a CDBG project to meet legal, financial and program obligations; and**
- 3. To provide the grant administrator a simple step-by-step approach to grant approval, set-up, implementation, audit and close-out of a CDBG project.**

This manual is intended as a guide, not as a substitute for a thorough knowledge of State and Federal laws and regulations referenced in this manual. Though not all inclusive, this manual covers the major areas of CDBG administration, provides required and suggested forms and instructions, and provides references for applicable laws and regulations. This Manual also covers several different program years. Depending on the program year, not all activities in this Manual may be currently eligible.

For project and activity eligibility and program updates, the current program year CDBG Program Description and Application Guidelines should be consulted. Revisions and/or additions to this manual will be updated and made available on the (WVDO) website at [www.wvdo.org](http://www.wvdo.org).

## Additional Resources and Information

In addition to this Manual, the State will post full copies of regulations, notices, circulars and other related information referenced in the Manual to the WVDO website, [www.wvdo.org](http://www.wvdo.org). Regulations and requirements are subject to change. Funding recipients are responsible for ensuring that they are in compliance with all applicable rules. This can be accomplished by periodically checking the websites listed below to see if updated or revised regulations have been issued:

## Introduction

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- National Archives: [www.gpoaccess.gov/nara/index.html](http://www.gpoaccess.gov/nara/index.html)
- HUD databases: [www.hud.gov/offices/adm/hudclips/](http://www.hud.gov/offices/adm/hudclips/)
- Department of Labor: [www.dol.gov/](http://www.dol.gov/)  
[www.dol.gov/osbp/sbrefa/poster/main.htm](http://www.dol.gov/osbp/sbrefa/poster/main.htm)
- Office of Management and Budget: [www.whitehouse.gov/omb](http://www.whitehouse.gov/omb)

The Grantee is responsible for applying the following rule:

Whether local, state or federal, the most stringent law or regulation must be followed.

The WVDO will conduct workshops to assist local governments and other interested parties in the preparation of grant applications and the administration and management of projects in accordance with program requirements. Also, the WVDO is available to provide technical assistance to local governments regarding the CDBG program.

### Glossary of Terms in the CDBG Program

1. **CDBG** - *Community Development Block Grant* – The Federal entitlement program that provides funds to states and cities/counties for community development programs and projects.
2. **Con Plan** - *Consolidated Plan* - A plan prepared in accordance with the requirements set forth in 24 CFR Part 91 which describes community needs, resources, priorities and proposed activities to be undertaken under certain HUD programs, including CDBG.
3. **Contractors** - A contractor is an entity paid with CDBG funds in return for a specific service (e.g., construction). Contractors must be selected through a competitive procurement process.
4. **DOL** – *Department of Labor* – The Federal department of the United States government that is responsible for labor regulations and requirements.
5. **EEO** – *Equal Employment Opportunity* – Laws and regulations that require CDBG recipients to provide equal opportunity to all individuals without regard to race, color, religion, age, familial status, disability, national origin, or sex in the administration of their programs.
6. **Extremely Low Income** – Under CDBG regulations, a household/family having an income equal to or less than the Section 8 Very Low Income limit (30 percent of the area median income) as established by HUD.
7. **Fair Housing** – Multiple laws and regulations applied to the CDBG program that prohibits a wide range of discriminatory practices and requires the CDBG program to be administered in a manner which affirmatively furthers fair housing.
8. **Family** – All persons living in a household who are related by birth, marriage, or adoption.

9. **Grantee** – See Recipient.
10. **Household** – All the persons who occupy a housing unit. The occupants may be a single family, one person living alone, two or more families living together, or any groups of related or unrelated persons who share living arrangements.
11. **HUD** – *The United States Department of Housing and Urban Development*. HUD establishes the regulations and requirements for the CDBG program and exercises oversight responsibilities for the use of CDBG funds.
12. **LMI** – *Low and Moderate Income* - A household/family having an income equal to or less than, the Section 8 Low Income limit (80 percent of the area median) as established by HUD.
13. **Local match** – Funding provided by a community/recipient as a condition of award or use of CDBG funds. The amount of local match varies by activity and can come from a variety of non-grant, cash sources. Local match funds must be used for CDBG-eligible activities and must be spent prior to drawing down CDBG funds.
14. **Low income** – Under CDBG regulations, a household/family having an income equal to or less than the Section 8 Very Low Income limit (50 percent of the area median income) as established by HUD.
15. **MBE/WBE** – *Minority Business Enterprise / Woman-owned Business Enterprise*; Companies owned by minorities and/or women.
16. **Middle Income** – Under CDBG regulations, a household/family having an income equal to or less than the Section 8 Low Income limit; a household with an income between 80 and 95 percent of the area median income.
17. **Moderate Income** – Under CDBG regulations, a household/family having an income equal to or less than the Section 8 Low Income limit (80 percent of the area median), but greater than the Section 8 Very Low Income limit (50 percent of the area median) as established by HUD.
18. **National Objective** – The three main goals of the CDBG program – benefit LMI individuals, prevent or eliminate slum/blight, or meeting a particular urgent need. All funds expended under the program must meet one of the three National Objectives.
19. **OMB** – *Office of Management and Budget* – The oversight agency for matters relating to financial management and audits. OMB requirements are issued in the form of “circulars.”
20. **Project Development** – The Division within the West Virginia Development Office that processes requests for payments for CDBG funds and monitors financial aspects of program implementation and reviews audits.

## Introduction

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21. **Recipient** – Eligible localities and agencies that receive and use CDBG funds under the State of West Virginia’s CDBG Program. Commonly referred to as “Grantee”.
22. **Regulations** – The requirements developed and issued by the agency responsible for specific programs and/or requirements. For CDBG, regulations are issued by HUD and are located in 24 CFR Part 58.
23. **RFP** – *Request for Payment* – The formal process of requesting payment of CDBG funds from the WVDO. RFP can also refer to procuring a Request for Proposal.
24. **RLF – Revolving Loan Fund** - a separate fund with a set of accounts that are independent of other program accounts established to carry out specific activities that, in turn, generate payments to the fund for use in carrying out such activities. Commonly used with CDBG program income funds for ongoing housing rehabilitation or economic development activities.
25. **Section 3** – The Housing and Urban Development Act of 1968, as amended in 1992, that requires employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing Federal, State and local laws and regulations, be directed to low and very low income persons; particularly those who are recipients of government assistance for housing, and to businesses that provide economic opportunities to low- and very low-income persons.
26. **Statute/Statutory** – Requirements that have their basis in laws passed by Congress. For CDBG, the statute is Title 1 of the Housing and Community Development Act of 1974. Statutory provisions cannot be waived by HUD except in cases of natural disaster and must be amended or approved by Congress.
27. **Sub-recipient** – Sub-recipients are government or private nonprofit organizations chosen by the Grantee to undertake certain eligible CDBG activities. Public Service Districts and County Commissions are examples of sub-recipients. Sub-recipients may also be referred to as sub-Grantees.
28. **URA** – *Uniform Relocation Act* – A Federal regulation governing the acquisition of real property and the relocation or displacement of persons from federally-assisted projects.
29. **Very Low Income** – Under CDBG regulations, a household/family having an income equal to or less than the Section 8 Low Income limit does not exceed 50 percent of the area median income.
30. **ABA** – Architectural Barriers Act of 1968
31. **ADA** – Americans with Disabilities Act
32. **AFFH** – Affirmatively Furthering Fair Housing
33. **AI** – Analysis of Impediments to Fair Housing
34. **ARC** – Appalachian Regional Council

## Introduction

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35. **BNA** – Block Numbering Area (now obsolete)
36. **CAPER** – Consolidated Annual Performance Evaluation Report (the annual Con Plan Report)
37. **CBDO** – Community-based development organizations
38. **Certs** – Certifications
39. **CDFI** – Community Development Financial Institutions
40. **CFR** – Code of Federal Regulations (24 CFR is HUD Regulations)
41. **COG** – Council of Governments
42. **ConPlan** – Consolidated Plan
43. **CP** – Citizen Participation
44. **CPD** – HUD Office of Community Planning and Development
45. **CRSA** – Community Revitalization Strategy Area
46. **CT** – Census Tract
47. **ED** – Economic Development
48. **EZ/EC/RC** – Empowerment Zones/Enterprise Communities/Renewal Communities
49. **FHA** – Federal Housing Administration – HUD Office of Housing
50. **FmHA** – Farmers Home Administration (sometimes also called FHA; both are obsolete), now the Rural Housing Administration in the Department of Agriculture
51. **FHEO** – HUD Office of Fair Housing and Equal Opportunity
52. **FTE** – Full-Time Equivalent of Jobs
53. **GoZone** – Gulf Opportunity Zone (hurricane recovery)
54. **HCDA** (or the Act) – Housing and Community Development Act of 1974, as amended
55. **HoZo** – Homeownership Opportunity Zone
56. **IDIS** – Integrated Disbursement and Information System
57. **LBP** – Lead-Based Paint
58. **LDP** – Limited Denial of Participation
59. **LMI (or low/mod)** – Low- and Moderate-Income person(s)

## Introduction

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60. **LMISD** – Low and Moderate Income Summary Data (shows percent of low/mod persons by state, and by CT, BG)
61. **MBE** – Minority-Owned Business Enterprise
62. **MOD** – Method of Distribution (part of the annual Action Plan for States)
63. **NRSA** – Neighborhood Revitalization Strategy Area
64. **OGC** – HUD Office of General Counsel
65. **PDR** – HUD Office of Policy Development and Research
66. **PI** – Program Income
67. **PJ** – participating Jurisdiction (in the HOME program)
68. **RLF** – Revolving Loan Fund
69. **Title VIII** – Title VIII of the Civil Rights Act of 1968 (also known as the Fair Housing Act)
70. **ULG** – Unit of Local Government
71. **URA** – Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
72. **WBE** – Woman-owned Business Enterprise
73. **105** – Section of the HCDA which contains the list of eligible activities in the CDBG program
74. **109** – Section of the HCDA prohibiting discrimination

The West Virginia Development Office does not discriminate on the basis of age, race, color, religion, sex, national origin, familial status or disability in the admission, access to, treatment of, or employment in, its federally assisted programs or activities.

## Introduction

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# Chapter 1

## Project Administration





# Chapter One: Project Administration

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## Table of Contents

	<b>Page</b>
Approval .....	1-1
Supporting Materials .....	1-1
Grant Agreement .....	1-2
Signature .....	1-2
Evidentiary Materials and Environmental Review .....	1-3
Records Management .....	1-4
Allowable Costs .....	1-8
Amendments .....	1-9
Technical Assistance and Monitoring .....	1-9
Annual Reporting and Registration Requirements .....	1-11
Grievance Procedures .....	1-12
Conflict of Interest .....	1-12
Laws and Regulations .....	1-13
Cancellation .....	1-15

## Introduction

Chapter 1: Project Administration provides a general overview of many aspects of the Community Development Block Grant (CDBG) program, from project approval to completion. Featured are key provisions required for proper project administration. Requirements for evidentiary materials, environmental review, record keeping, allowable costs, annual reporting and applicable laws and regulations are provided to assist each Grantee in the proper administration of CDBG projects. Topics outlined in this chapter are discussed in greater detail throughout this project manual.

This manual is intended as a guide, not as a substitute for a thorough knowledge of state and federal laws and regulations referenced in this manual. In the event of any discrepancy, federal regulations will prevail. The Grantee is responsible for compliance with the most current and stringent of any applicable local, state or federal law or regulation.

Upon investment of CDBG funding, all CDBG regulations apply to the project as a whole.

## Approval

Each year, the Governor of the State of West Virginia formally announces the recipients of the CDBG-Small Cities Block Grant program. At the awards ceremony, the Governor presents the representatives of each local government with an approval letter and an award certificate.

Following this award, the West Virginia Development Office (WVDO) will assist the Grantee to complete each project. Grantees must not incur any costs to be reimbursed with CDBG funding prior to the full execution of a contract and necessary clearances from the WVDO.

No project funds can be expended or obligated prior to the full execution of a Grant Agreement.

Further, the Grantee must obtain an Approval of Evidentiary Materials and Notice to Proceed with Exempt Activities; or the Authority to Use Funds - Release of Funds from the WVDO.

## Required Forms and Supporting Materials

### Submitted to WVDO as Evidentiary Materials:

Attachment 1-1	Project Performance Schedule and Instructions
Attachment 1-2	Certification of Financial Management System: 24 CFR Part 85
Attachment 1-3	Residential Anti-Displacement and Relocation Assistance Plan
Attachment 1-4	Request for Approval of Evidentiary Materials
Attachment 1-5	Federal Funding Accountability and Transparency Act (FFATA) Form Additional Documents as Requested

### Retained by Grantee in Project Files:

Attachment 1-6	Sample Equal Employment Opportunity (EEO) Policy
Attachment 1-7	Hatch Act Resolution
Attachment 1-8	Section 504 and ADA Complaint Resolution Procedures
Attachment 1-9	Request for Project Amendment Budget Change Form

**Grant Agreement**

The Grant Agreement contains general provisions of the grant, including:

- The amount and authorized uses of grant funds.
- The approved scope of work.
- The approved time period.
- The requirements for disbursement of grant funds.
- Applicable state and federal laws and regulations.
- Representations, warranties, and obligations.
- Inspection and review requirements.
- Defaults and remedies stipulations.
- Third party contract requirements.
- Supplementary provisions.
- Description of recipient activities.
- The project budget summary of proposed expenditures.

The Grantee will be informed of any additional documentation needed for the Grant Agreement. The recipient will have ten (10) business days from the date of additional request letter to submit the information to the WVDO.

**Signature**

The Grant Agreement will be mailed to the Grantee for review, approval and signature. The agreement must be signed by the Chief Elected Official (mayor, county commission president). The Grantee must pass a formal resolution adopting the Grant Agreement. This resolution must be returned, along with the Grant Agreement, to the WVDO.

Included with the agreement is a Grant Award page which provides the following information:

- Grant Agreement Number
- Grantee Name
- Project Name
- State Agency
- Catalogue of Federal Domestic Assistance (CFDA) title
- CFDA Number
- Federal Financial Accountability and Transparency Act
- The Grant Award Year

This information page should be filed by the Grantee as part of the official record.

The signed Grant Agreement must be returned to the WVDO for signature and processing within thirty (30) days from the date of issuance. The WVDO Executive Director will then sign the agreement. Upon completion of the signature process, the WVDO will return a signed Grant Agreement to the Grantee, along with other forms necessary to proceed. These forms outline the required Evidentiary Materials that must be submitted to the WVDO. The date the agreement is signed by the WVDO will be the effective date of the agreement. The agreement is to be kept by the Grantee as part of the project's official record.

## Evidentiary Materials and Environmental Review

The Grantee will be given one hundred twenty (120) days from the grant award date to submit the Evidentiary Materials and Exempt Determination (or Request for Release of Funds [RROF] if applicable) and all related or requested documents. Any time extension request must be submitted in writing and demonstrate a reason for the delay.

### Evidentiary Materials

The Grant Agreement packet will contain a list of Evidentiary Materials (Attachment 1-4) indicating documents that must be submitted to the WVDO prior to the obligation or expenditure of funds.

The Grantee must submit all required Evidentiary Materials and complete the appropriate level of environmental review prior to the obligation or expenditure of funds. If the Grantee obligates or expends funds for any activity prior to WVDO approval of Evidentiary Materials, the expenses will be considered an ineligible cost and the recipient will be denied access to those CDBG funds for the expenditure.

Delay in submitting these materials will delay project implementation, and may result in the recapture of funds. The WVDO may terminate the grant and grant agreement if the required Evidentiary Materials are not submitted within 120 days of the grant award date. Any extensions of the deadline must be requested in writing by the recipient.

### Environmental Review

Along with other Evidentiary Materials, the Grantee may request 1) Approval of Evidentiary Materials, and 2) Notice to Proceed with Exempt Activities. Pursuant to HUD environmental regulations found at 24 CFR Part 58, Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities, the Grantee must conduct the appropriate environmental review prior to the obligation or expenditure of funds.

Most often, the Grantee will request authorization for an Exempt Determination under the regulations found at 24 CFR Part 58, in order to proceed with exempt activities prior to the completion of a full environmental review and request for release of funds. **In certain circumstances, the Grantee may forego the Exempt Determination and request a Notice of Authority to Use Grant Funds and a Release of Funds based upon one of five levels of environmental review in compliance with 24 CFR Part 58.**

Upon approval, the WVDO will issue the appropriate written authorization, based upon the required level of environmental review. All aspects of the environmental review are presented in detail in Chapter 2: Environmental Review. In all cases, every CDBG activity is subject to one of five levels of environmental review:

1. Exempt (Attachment 2-9)
2. Categorically excluded not subject to 24 CFR 58.5 (rarely seen in the program)
3. Categorically excluded subject to 24 CFR 58.5 (Attachment 2-10)
4. Environmental Assessment (Attachment 2-11)
5. Environmental Impact Statement (rarely seen in the program)

The Grantee must group together and evaluate, as a single project, all the individual activities that will take place in order to complete the project. **This includes activities that are not assisted by HUD**, but aggregated by the Grantee in accordance with Sec. 58.32. Note the following guidelines:

1. To begin work on activities that are Exempt from NEPA procedures prior to the completion of the Environmental Review Record (ERR) and Release of Funds (ROF), the Grantee shall first complete Attachment 2-9 (Environmental Review for Activity that is Exempt).
  - The Grantee must list the activities that are being proposed for exemption on Attachment 2-9 under the heading “Level of Environmental Review Determination.”
2. The project description must be accurate, stable, finite, and capture the maximum scope of the project. The description must remain consistent throughout all components of the review.
3. Submit all components of the ERR to the WVDO for prior review before publication of notices.
4. Project plans and specifications are a required component of the ERR and must be submitted to the WVDO and included with the ERR for public comment.

Completion of the environmental review process is **mandatory** before taking a physical action on a site, or making a commitment or expenditure of HUD or non-HUD funds for property acquisition, rehabilitation, conversion, lease, repair, or construction activities.

A complete Environmental Review Record (ERR) and Request for Release of Funds (ROF), in accordance with 24 CFR Part 58.36, will be required for non-exempt activities, to include construction.

The WVDO will review the submitted forms and information and send a *Notice of Approval of Evidentiary Materials and Release of Funds* (ROF) form stating which requirements have been met and that funds have been released. If additional steps are required, they will be addressed on a case by case basis. Only after an approved ROF has been issued by the WVDO may a Grantee expend funds for construction activities. Refer to Chapter 2: Environmental Review for additional information.

## **Records Management**

**Record retention requirements are governed by 24 CFR 570.506. The Grantee must fully document compliance with all applicable regulations.** This is accomplished through maintaining records and submitting reports. The filing system should be easy to use and provide a historic, chronological account of all project activities for examination and review by federal, state and local staff.

In addition, United States Department of Housing and Urban Development (HUD) representatives, the Inspector General, the General Accounting Office, and the Comptroller General of the United States must have access to any pertinent financial files, books, records,

accounts, documents, papers, and other property belonging to the community that pertains to the grant.

Files should, to the extent possible, be maintained in a central location. The recipient is responsible for all files whether kept at the recipient's official office or at the office of the administrator. Records must be maintained for a period of three years from the issuance date of the final single audit report and be available for review at any time. Strict adherence to record keeping procedures should commence immediately following the grant award.

Examples and content requirements of major files are as follows:

**1. Project Application**

- a. Small Cities Application
- b. Amendments and revisions to the application, if any
- c. Correspondence concerning the application

**2. Grant Agreement**

- a. Letter from Governor approving the application
- b. Preliminary approval letter
- c. Grant agreement
- d. Request for Approval of Evidentiary Materials and ROF documentation
- e. Approval of Evidentiary Materials and Release of Funds
- f. Correspondence concerning Evidentiary Materials and Release of Funds
- g. Amendments and documentation

**3. Financial Management**

- a. Request for Payment with all supporting documents
- b. Accounting books of original and final entry: General Ledger
- c. Cancelled checks, deposit slips, bank statements, etc.
- d. Recipient's procurement policies
- e. Recipient's Code of Ethics
- f. Adoption of allowable, allocable cost policy
- g. Adoption of the Three-Day-Rule policy

**4. Project Monitoring**

- a. WVDO Technical Assistance and/or monitoring letters
- b. Recipient monitoring responses
- c. Evidence clearing any monitoring findings
- d. Other correspondence related to WVDO monitoring visits

**5. Citizen Participation**

- a. Copies of public notices and minutes of meetings
- b. Where program documents and records are available for public review
- c. Proposals from citizens or other groups for project activities
- d. Listing of persons attending meetings, including addresses
- e. Copies of handouts, guidebooks, or other technical assistance for citizens
- f. Evidence of special efforts made to secure minority- or low-income participation
- g. Copies of any citizen complaints or comments and actions taken
- h. Timetable specifying all activities undertaken to inform citizens of the local CDBG project

**6. Equal Opportunity**

- a. Recipient Section 3 Affirmative Action Plan
- b. Recipient Employment Affirmative Action Plan
- c. Recipient Fair Housing Resolution or Ordinance
- d. Evidence of attempts to identify and solicit minority contractors and vendor
- e. Demographic profiles of the city by enumeration district
- f. Documentation of all actions taken to achieve fair housing
- g. Documentation of persons estimated to benefit from program activities
- h. Data which record affirmative action in employment
- i. Equal Employment Opportunity Policy (Attachment 1-6)
- j. Hatch Act Restrictions Resolution (Attachment 1-7)
- k. 504 and ADA Complaint Resolution and Form (Attachment 1-8)
- l. 504 Self-Evaluation and Transition Sample available at: [tinyurl.com/504PlanExample](http://tinyurl.com/504PlanExample)

**7. Environmental Review Record**

- a. Level of Clearance Findings: Exempt, Categorically Excluded, or Environmental Assessment
- b. Copy of Public Notices-Combined Notice of Finding of No Significant Impact and Intent to Request Release of Funds OR Notice of Intent to Request
- c. Release of Funds AND Floodplain and Wetlands Notices, if applicable
- d. Copy of distribution list for public notices
- e. Request for Release of Funds and Certification
- f. Copy of all applicable regulatory agency clearances
- g. Statutory Checklist and Other Requirements Checklist, if applicable
- h. Copies of environmental comments received and responses
- i. Copies of draft Environmental Impact Statement with comments and Final EIS

**8. Audit**

- a. Audit Report
- b. Documentation that all audit findings have been cleared

**9. Project Closeout**

- a. Final Performance Report
- b. Evidence of public input, if applicable

**10. General Correspondence**

- a. Correspondence, incoming and outgoing, that does not fall into one of the above categories or into the project file categories

**11. Individual Project Files**

Include all data relating to the implementation of specific projects. This includes the following:

**11.1 Real Property Acquisition**

Except as otherwise specified, a separate file is to be maintained for each person displaced containing the following:

- a. A complete record form indicating the project #, project approval date, the recipient's parcel number for the real property, and the name of each owner and/or tenant

- b. A copy of the Preliminary Acquisition Notice and evidence, including dates, of receipt by owner
- c. Evidence that the owner was invited to accompany each appraiser on the inspection of the real property
- d. A copy of any appraisal report
- e. A copy of any review appraisal report
- f. A copy of document establishing just compensation
- g. A copy of the written purchase offer, including all basic terms and conditions and citation of date of delivery to owner
- h. A copy of the Statement of the Basis for the Determination of Just Compensation and citation of date of delivery to owner
- i. Purchase agreement, deed, declaration of taking, waiver, and any similar or related documents involving conveyance
- j. A copy of the Statement of Settlement Cost
- k. Evidence that owner received purchase price
- l. Waiver of compensation if property is voluntarily donated
- m. A copy of any appeal concerning payment of incidental or litigation expenses, along with a copy of all pertinent determinations and other relevant documentation

### **11.2 Construction Management**

- a. Method used to select architects/engineers/ contractors
- b. Preliminary design and costs estimates
- c. Final design documents and costs estimates
- d. Architect's compliance with Architectural Barriers Act
- e. Evidence that all necessary land or easement acquisition has been completed prior to advertising for bids
- f. Bid document
- g. Approval of bid documents by authorities having jurisdiction over the project, as appropriate
- h. Proof of publication of advertisement for bids
- i. Qualification statements, RFP(s) and Proposal(s) received
- j. Minutes of public bid opening
- k. Tabulation of bids
- l. Cost and pricing data supporting fee
- m. Verification of contractor eligibility
- n. Recommendations for award
- o. Notice of contract award and pre-construction conference
- p. Executed contract documents
- q. Certification of insurance/bonding
- r. Notice to Proceed
- s. Notice of State of Construction
- t. Records of partial payments and supporting documentation (in Financial Management Files)
- u. Contract amendments, if any, and rationale for amendment
- v. Copy of "as-built" plans.

### **11.3 Authorization to Bid**

- a. The Authorization to Bid must be issued by WVDO prior to the advertisement for bids.

- b. The Notice of Intent to Bid (Attachment 6-2) and Bid Document Checklist (Attachment 6-3) must be submitted and approved by WVDO prior to the advertisement for bids.
- c. Project Manual/Bid Document specifications are required.
- d. The ERR must be reviewed and approved by WVDO prior to the advertisement for bids.

#### **11.4 Labor Standards Compliance**

- a. Wage Rate Determination Request and Acknowledgment (SD-308)
- b. Review of changes in wage rate
- c. Verification of contractor and sub-contractor eligibility (filed in EO Compliance file)
- d. Minutes of pre-construction conference (cross-reference filed in EO Compliance file)
- e. Contractor's Certification Concerning Labor Standards
- f. Subcontractor's Certification Concerning Labor Standards and Prevailing Wage Requirements (HUD-1421)
- g. Weekly payrolls and statement of compliance
- h. Complaints, if any, and actions taken
- i. Employee interviews (HUD-11)
- j. Contractor's interviews
- k. Documentation of any required restitution made
- l. Final Wage Compliance Report

#### **11.5 Equal Opportunity Compliance**

- a. Minutes of pre-construction conference (cross-reference files to Labor Standards Compliance file)
- b. Contractor Certification of Equal Employment Opportunity (HUD 950.1)
- c. Subcontractor's Certification of Equal Employment Opportunity (HUD 950.1)
- d. Contractor's Certification Regarding Section 3 and Segregated Facilities
- e. Subcontractor's Certification Regarding Section 3 and Segregated Facilities
- f. Project Site Inspection Report (filed in Labor Standards compliance file)
- g. Correspondence

#### **11.6 Anti-Displacement and Relocation Plan and Documentation**

### **Allowable Costs**

Allowable costs are direct costs required for the implementation of a CDBG program and are directly allocable to an activity supported in the grant agreement. Costs are found in OMB Circular A-87: [www.whitehouse.gov/omb/circulars\\_a087\\_2004/](http://www.whitehouse.gov/omb/circulars_a087_2004/)

### **Administration**

Administration of a CDBG project is the responsibility of the Grantee. Administration may be completed internally by using recipient personnel, or externally by advertising and contracting for administrative services.

### Administrative Costs

Administrative costs **must not exceed 10 percent of the CDBG contract amount** and must be supported by proper documentation. Other funds must be used for additional administrative costs, if necessary.

- Funds may not be used to administer other federal or state grant programs which may be conducted in conjunction with a CDBG project.
- Funds may not be used to support salary increases of local government personnel due to administrative assignment to a CDBG project, and funds may not be used to increase salaries set by state law.

Amounts charged to the CDBG program for personal services will be based on payrolls documented and approved in accordance with generally accepted practices of the local government. Payrolls must be supported by time and attendance records for individual employees (**Chapter 3**). Salaries and wages of employees chargeable to more than one grant program or other cost objectives must be supported by appropriate time and distribution records (**Chapter 3**). The method used should produce an equitable distribution of time and effort.

### Amendments

A Project Amendment requires WVDO approval. A Request for Project Amendment Form (**Attachment 1-9**) must be completed, signed by the chief elected official and submitted to the WVDO. Please note that the WVDO will allow for changes necessary for project completion and does not expect the changes to alter the project completion date.

The amendment will be reviewed carefully by a WVDO project manager and the recipient will be notified of approval or disapproval within 15 days. It is very important that the recipient never proceed with the requested changes until WRITTEN approval is received from the project manager. Grants were selected for funding based on a proposed project. Contact the WVDO project manager if problems emerge which might lead to project modifications. Early notification of potential problems will permit the project manager to work with the recipient to try to resolve them.

Furthermore, Section 104a.2.E of the Act requires that significant modifications of the proposed activities must meet certain citizen participation requirements. Upon receipt of the Request for Project Amendment, the WVDO will determine what citizen participation requirements are necessary and notify the recipient. As a general rule, the recipient should always contact a WVDO project manager prior to submitting a Request for Project Amendment.

### Technical Assistance and Monitoring

The initial project review will be in the form of a Technical Assistance (TA) visit. All compliance areas (with the exception of labor and contracting if construction has not commenced) will be reviewed. A letter or email will be issued to the Project Administrator only as long as there are no major regulatory violations that require the involvement of the unit of local government. The Project Administrator must respond to the TA letter within 30 days.

If all areas of compliance are included in the TA visit and findings and concerns are minimal, the WVDO may convert this to a monitoring letter and eliminate the need for any additional monitoring visits. If a monitoring visit is still required due to major regulatory violations or the fact that construction has not commenced, the resolved TA visit compliance areas will be included in the subsequent monitoring letter referencing that no outstanding issues exist. This can only occur under the following two conditions:

1. There are no major regulatory violations that require the involvement of the unit of local government.
2. The TA letter was responded to for minor violations and they have been resolved within the allotted 30 days.

Monitoring visits may be scheduled with the recipient at any time during the life of the project to review performance. All projects must be monitored at least once during the life of the project. **Further, all projects must be monitored before submission of the Final Performance Review (FPR).**

The reviews may be conducted on site and/or at the WVDO. The WVDO will complete at least one review on site. These reviews may be a comprehensive evaluation, or they may be oriented toward assessing performance in specific areas. In either case, the recipient should cooperate with the project manager and provide files and other information as requested. Files are to be orderly. Some files might need to be obtained from other sources such as the engineer or city clerk to ensure their availability and to avoid findings being made by WVDO. Record keeping is an important component of the monitoring.

A monitoring visit is a structured session scheduled in advance. The Chief Elected Official of the recipient, as well as the grant administrator, is notified of the date, time, location, and purpose of the review visit. The WVDO project manager will conduct an entrance interview reiterating the purpose of the review and outlining files and documentation needed. Utilizing appropriate checklists, the project manager will review the files to determine if all requirements have been met. The primary issues being examined are consistent with the specific terms of the grant agreement and compliance with state and federal requirements.

When the review is completed, the project manager will conduct an exit interview, providing a preliminary summary of the results of the review. This gives the recipient an opportunity to provide more information or clarification for any problematic areas.

Within 30 days of the review, the recipient will receive a formal Monitoring Review Letter providing the results of the review. The letter will summarize the area(s) reviewed, performance expectations, analysis of what was discovered at the review, findings, and recommendations for resolution of the findings, if necessary. Following guidelines closely, all aspects of the project are usually in compliance with relevant laws and regulations.

Should problems be discovered during the review, the recipient might receive a finding of non-compliance. A finding of non-compliance constitutes a violation of law or regulation and must be remedied. A finding can result in an immediate sanction or threat of sanction if corrective action (if appropriate and required) is not taken in a timely manner. For each finding, the WVDO will determine if a corrective action, either to correct a past problem or to avoid a future problem, must be taken by the recipient.

If the required corrective action is not addressed in an appropriate or timely manner, the WVDO may impose a progressive level of sanctions ranging from additional reporting to suspension of funding, additional special conditions, return of misspent funds, termination of the grant or, if necessary, legal action.

The review letter may also include one or more concerns. These are matters that, if not properly addressed, can become a finding and can ultimately result in sanctions. Concerns are used to point out operational or management non-compliance, or patterns of performance that could lead to larger problems later, even if they are not evident at the time of the review.

The recipient (Chief Elected Official) will respond by letter to any findings and concerns listed in the compliance review letter within 30 days. The recipient will describe all corrective actions taken or provide new information not covered during the review. The corrective actions are to follow the recommendations made by the WVDO.

WVDO will inform the recipient if the response is sufficient to clear the findings. WVDO will provide any assistance necessary during the review or after any findings or concerns are made to ensure that the project is completed according to the grant agreement and following all state and federal rules and regulations. Projects remain open until all outstanding findings and concerns have been addressed and a Clearance Letter has been issued.

### **Annual Reporting and Registration Requirements**

All applicants and Grantees must have a Data Universal Numbering System (DUNS) number, and must register with the Federal System for Award Management (SAM) at [www.sam.gov](http://www.sam.gov). This registration is required for the state's reporting in compliance with the Federal Financial Accountability and Transparency Act (FFATA). The following steps are required:

- **Step 1: Obtain a DUNS Number**

A DUNS number, assigned by Dun & Bradstreet, is required to register in sam.gov. If the applicant does not already have a DUNS Number, please advise them to visit [www.dnb.com](http://www.dnb.com) or call 1-866-653-1344. Most organizations will be assigned 9-digit number.

The DUNS number will be used as the unique identifier for registration at [www.sam.gov](http://www.sam.gov). The Sam website will pull data from the DUNS record to complete this registration. This ensures data consistency. The FFATA website then pulls data from sam.gov for the state's FFATA report. This report is due during the month following a grant award, so early registration at sam.gov is necessary.

- **Step 2: Register in Sam.Gov**

All applicants must be registered with the System for Award Management (SAM). Registration is free of charge and may be completed at [www.sam.gov](http://www.sam.gov).

### **Annual Reporting Requirements**

Annual Reports are required each year for each open grant. If a Final Performance Report is submitted, reports will include activity through the date of the FPR. The following forms are required on an annual basis, usually at the end of July:

- 1) Section 3 Hiring and Contracting Activity-HUD Report Form 60002

- 2) Minority and Women Owned Business Contracting-HUD Report Form 2516
- 3) Section 3 and Contracting Compilation Form
- 4) Compliance with the Fair Housing Act Report Form
- 5) Program Income/Interest Earned Report Form

### **Fair Housing Compliance and Reporting**

Compliance with the Fair Housing Act is required for each Grantee. Reports are required for each open grant on an annual basis, regardless of amount or type. As required by HUD, the WVDO encourages each Grantee, sub-recipient, and developer to update its analyses of impediments to fair housing as necessary to reflect current market conditions. As part of Fair Housing Month, each year in April, WVDO encouraged all Grantees to pass a Fair Housing Resolution as the first step in affirmatively furthering fair housing.

### **Grievance Procedures**

The recipient may receive complaints on the project, especially from those participating in and benefiting from the project. A grievance procedure needs to be established by the recipient to handle any complaints it may receive. The procedure should be a formal written procedure and should be made available to the citizens upon request. Each complaint should be addressed and responded to within 15 working days of receipt. Each complaint and the resolution to the complaint should be well documented in the project files. The complaint procedure must be published in the newspaper of record.

The WVDO will forward any complaints it receives concerning the project to the recipient for response. Generally, the resolution of the complaint is best handled at the local level. The person making the complaint will be notified that the complaint has been forwarded to the recipient for resolution. The recipient is to respond to the complaint within 30 working days of receipt from the WVDO. A copy of the letter of resolution should be submitted to WVDO. If the recipient does not provide a resolution, the WVDO will work with the recipient and the complainant to resolve the complaint.

### **Conflict of Interest**

The procedures for requesting, documenting, and submitting a request for an exception from the Conflict of Interest provisions shall include the applicable procedures delineated in 24 CFR 570 489(h)(4) and the local community ethics code. The Conflict of Interest provision is in addition to the requirements in the "Common Rule," 24 CFR Part 85, A-110.

Except for approved eligible administrative and personnel costs, the Grantee's designees, agents, members, officers, employees, consultants or members of its governing body in which the project is situated, and no other public official of the community of such locality or localities who exercises or who has exercised any functions or responsibilities with respect to the project during his or her tenure, or who is in a position to participate in a decision-making process or gain inside information with regard to the project, has or shall have any interest, direct or indirect, in any contract or subcontract or the proceeds thereof for work performed in connection with the project or in any activity, or benefit therefrom, which is part of the project at any time during or after such person's tenure unless all procedures for an exception have been documented and submitted in writing to the WVDO and the agency has approved such exception.

**Laws and Regulations**

Following is a list of federal laws, executive orders and state statutes applicable in part or in whole to the CDBG program. This list may not be all-inclusive. In the event of any discrepancy or regulation which follows the publication date of the manual, the federal law, executive order or state statute shall prevail.

**GENERAL****Title 1 of the Housing and Community Development Act of 1974, as amended: 24 CFR Part 570, Subpart I, Community Development Block Grant: State Program Regulations****ENVIRONMENTAL**

- National Environmental Policies Act of 1970, as amended
- National Historic Preservation Act of 1966, as amended, Section 106
- Executive Order 11593, Protection and Enhancement of the Cultural Environment
- The Reservoir Salvage Act of 1960, as amended by the Archeological and Historic Preservation Act of 1974
- Flood Disaster Protect Act of 1973, as amended
- Executive Order 11988, Floodplain Management
- Executive Order 11990, Protection of Wetlands
- Safe Drinking Water Act of 1974, as amended
- Endangered Species Act of 1973, as amended
- Wild and Scenic Rivers Act of 1968, as amended
- Clean Air Act, as amended
- Clean Water Act
- Solid Waste Disposal Act, as amended
- Farmland Protection Policy Act of 1981
- Executive Order 12895 – Federal Actions to Address Environmental Justice
- Executive Order 12898 – Justice in Minority Populations and Low-Income Populations

**FINANCIAL MANAGEMENT**

- 24 CFR Part 85, The Common Rule
- OMB Circular A-96
- OMB Circular A-87, Cost Principles
- OMB Circular A-102
- OMB Circular A-133 (Revised June 30, 1997), Audits Management
- West Virginia Code, Chapter 6, Article 9, Section 7

**PROCUREMENT/CONTRACTS**

- Section 3 of Housing and Urban Development Act of 1968, as amended
- 24 CFR Part 58, Article 3
- WV Code, Chapter 5G, Article 3

**LABOR STANDARDS**

- Contract Work Hours and Safety Standards Act
- Davis-Bacon Act
- Copeland "Anti-Kickback" Act
- WV Code, Chapter 21, Article 5A

**ACQUISITION/RELOCATION**

- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1987, as amended (49 CFR Part 24)
- WV Code, Chapter 54, Article 3

**HOUSING REHABILITATION**

- Truth in Lending Act
- Title I Consumer Protection Act
- Lead-Based Paint Poisoning Prevention Act
- Architectural Barriers Act of 1970 (41 CFR Part 101-107)
- Federal Non-Discrimination
- Davis Bacon Act (Rehabilitation of 8 or more units in a single structure)
- National Historic Preservation Act

**CIVIL RIGHTS**

- Title VI – Civil Rights Act of 1964
- Title VII – Civil Rights Act of 1968
- Title VIII – Civil Rights Act of 1968, as amended
- Section 109 of the Housing and Community Development Act of 1974, as amended
- Section 504 of the Rehabilitation Act of 1973, as amended
- Executive Order 11246 – Equal Employment Opportunity, as amended by Executive Order 12259
- Equal Employment Act of 1972
- Age Discrimination Act of 1975, as amended
- Executive Order 12432 – National Priority to Develop Minority- and Women-Owned Businesses
- Executive Order 12138 – National Women's Business Enterprise Policy
- Executive Order 11625 – Minority Business Participation
- Executive Order 12892 – Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing
- Vietnam Era Veterans' Readjustment Assistance Act of 1974
- Immigration Reform and Control Act of 1986
- Fair Housing Amendment Act of 1998
- Americans with Disabilities Act of 1990
- Civil Rights Restoration Act of 1988

**Cancellation**

The WVDO may cancel the grant and reallocate the grant funds if the grant agreement is not prepared, signed, and processed within 30 days of the date of the preliminary approval letter. The grant agreement also provides stipulations for termination of the agreement.

The grant agreement contains the project number for the awarded project. This number must be used on all future correspondence and reporting activities to the WVDO and referred to when contacting a WVDO project manager for assistance.

## CDBG-SCBG or ARC Project Schedule

Project No.: \_\_\_\_\_

Grantee: \_\_\_\_\_

IJDC No.: \_\_\_\_\_

Project Name: \_\_\_\_\_

Total SCBG Funds: \_\_\_\_\_  
Split Year

Administrating Agency: \_\_\_\_\_

Funding Scenerio: \_\_\_\_\_

Prepared By: \_\_\_\_\_

Construction Project:  Design Only:

As of Date: \_\_\_\_\_

ACTIVITY	DATE ACHIEVED OR EXPECTED TO ACHIEVE
Contract Date	
Implementation Meeting	
Project Design submitted to BPH/DEP	
Begin Easement Acquisition	
Rule 42 Completed	
Evidentiary Materials Approved by WVDO	
Environmentally Exempt Activity Determination to WVDO	
Exempt Activities Approved by WVDO/Notice To Proceed	
Submit Binding Commitment IJDC Application	
Project Design Approved by BPH/DEP	
Receive IJDC Binding Commitment	
File PSC Certificate Application	
80% Easements Secured	
Environmental Review/FONSI Approved by WVDO	
RROF Approved by WVDO/ROF Date	
Intent to Bid & Bid Document Checklist to WVDO	
Authorization To Bid by WVDO	
Advertise for Bids	
Pre-Bid Meeting	
Bid Opening Date	
Obtain PSC Approval	
SAM Check Confirmation Date	
Contracts Awarded with Grantee Approval	
Pre-Construction Meeting	
Notice to Proceed from Engineer	
Project Construction Begins	
Project Construction Completed	
Monitoring Date(s)	
FPR to WVDO/Approved Date	
Closeout Interim	
Closeout Final	



### CERTIFICATION OF FINANCIAL MANAGEMENT SYSTEM COMPLIANCE WITH THE "COMMON RULE," 24 CFR 85, REQUIREMENTS

Grantee	
Contact Person	
Telephone	
Email	

**This certification is required prior to release of funds pursuant to the "Common Rule," 24 CFR Part 85. The "Common Rule" requires recipients of Federal funds to have financial management systems meeting the requirements set forth in 24 CFR Part 85.20**

- Has a non-interest bearing checking account been created specifically for CDBG funds?  
 Yes                       No
- Does the grantee have a financial management system that provides accurate, current, and complete disclosure of the financial status of each activity supported by CDBG funds?  
 Yes                       No
- Has the grantee adopted written mechanisms to insure compliance with the "Three Day Rule" and "Procedures for Determining Reasonableness, Allocability, and Allowable Costs?"  
 Yes                       No
- Does the grantee have accounting records that are supported by source documentation?  
 Yes                       No
- Does the grantee have a system in place to compare actual outlays with budgeted amounts?  
 Yes                       No
- Does the grantee have a system in place to assure timely and appropriate resolution of monitoring and audit findings?  
 Yes                       No

Please provide an explanation regarding any "no" answers.

\_\_\_\_\_  
Grantee Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title of Signer

**Residential Anti-Displacement and Relocation Assistance Plan  
Section 104(d) of the Housing and Community Development Act of 1974, as  
Amended**

The \_\_\_\_\_ will replace all occupied and vacant occupiable low/moderate-income dwelling units demolished or converted to a use other than as low/moderate-income housing as a direct result of activities assisted with funds provided under the Housing and Community Development Act of 1974, as amended, as described in 24 CFR 570.488(c)(2), a copy of which is attached hereto.

All replacement housing will be provided within three (3) years of commencement of the demolition or rehabilitation relating to conversion. Before obligating or expending funds that will directly result in such demolition or conversion, the \_\_\_\_\_ will submit to the state, information that identifies:

- A. A description of the proposed assisted activity;
- B. The general location on a map and approximate number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than as low/moderate-income dwelling units as a direct result of the assisted activity;
- C. A time schedule for the commencement and completion of the demolition or conversion;
- D. The location on a map and the number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units. If such data are not available at the time of the general submission, the submission shall identify the general location on an area map and the approximate number of dwelling units by size, and information identifying the specific location and number of dwelling units by size shall be submitted and disclosed to the public as soon as it is available;
- E. The source of funds and a time schedule for the provision of replacement dwelling units;
- F. The basis for concluding that each replacement dwelling unit will remain a low/moderate-income dwelling unit for at least 10 years from the date of initial occupancy; and
- G. Information demonstrating that any proposed replacement of dwelling units with smaller dwelling units (e.g., a 2-bedroom unit with two 1-bedroom units) is consistent with the housing needs of low/moderate-income households in the jurisdiction.

The \_\_\_\_\_ will provide relocation assistance, as described in Section 570.488(c), to each low/moderate-income household displaced by the demolition of housing or by the conversion of a low/moderate-income dwelling to another use as a direct result of assisted activities.

Consistent with the goals and objectives of activities assisted under the Act, the \_\_\_\_\_ will take the following steps to minimize the displacement of persons from their homes:

- 1. Seek funds to provide seed money grants or loans, long-term mortgage loans at favorable rates, or capital grants to tenant groups of multi-family buildings to help them convert to cooperatives.
- 2. Establish temporary relocation facilities in order to house families whose displacement will be of short duration, so they can move back to their neighborhoods after new construction.
- 3. Evaluate housing codes and rehabilitation standards in reinvestment areas to prevent their placing undue financial burden on long-established owners or on tenants of multi-family buildings.
- 4. Adopt policies that help to ensure certain rights for tenants faced with housing conversions.
- 5. Develop displacement watch systems in cooperation with neighborhood organizations to continuously review neighborhood development trends, identify displacement problems, and identify individuals facing displacement who need assistance.

**No displacement or relocation is anticipated for this project.**

---

Grantee Signature

Date

---

Title of Signer

## West Virginia CDBG-Small Cities Block Grant Program REQUEST FOR APPROVAL OF EVIDENTIARY MATERIALS

<b>Grantee</b>		<b>Project #</b>	
<b>Project Name</b>		<b>Amount</b>	
<b>Prepared By</b>		<b>Agency</b>	
<b>Project Description</b>			
<b>Indicate below any documents previously submitted to the WVDO as part of the Design Grant for this project. Provide date of submittal for all documents.</b>		<b>Design Grant</b>	<b>Fully Funded</b>
		<b>WVDO APPROVAL</b>	<b>Initial/Date</b>

	Grantee Debarment Review Form <a href="http://www.sam.gov">www.sam.gov</a>	Date	Date	Initial/Date
	Signed Grant Agreement and Resolution <b>(Due within 30 Days)</b>			
1.	Project Performance Schedule indicating project completion within 36 months. <b>(Attachment 1-1)</b>			
2.	Financial Management Compliance with Common Rule 24 CFR Part 85 <b>(Attachment 1-2)</b>			
3.	Residential Anti-Displacement and Relocation Assistance Plan <b>(Attachment 1-3)</b>			
4.	Environmental Determination: 24 CFR Part 58 <b>Environmental Review Record Checklist (Attachment 2-4)</b>	ERR Attachment 2-4	ERR Attachment 2-4	
5.	FFATA Form <b>Due within 30 Days (Attachment 1-5)</b>			
6.	Commitments of Other Funds			
7.	Disclosure Form Update			
8.	Procurement Code and Standards			
9.	Legally Binding Agreements between the Grantee, Sub-recipients and Project Administrator			
10.	Other Documents as Requested			
<p><b>The Following Documents are Retained by the Grantee in the Project Files:</b></p> <p>Attachment 1-6: Sample Equal Employment Opportunity (EEO) Policy                      Attachment 1-7: Hatch Act Resolution                      Attachment 1-8: Section 504 and ADA Complaint Resolution Procedures                      Attachment 1-9: Request for Project Amendment Budget Change Form</p>				

\_\_\_\_\_  
**Signature of Chief Elected Official**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Typed Name of Chief Elected Official**

The Grantee is hereby advised that no funds may be obligated, expended or disbursed prior to the written authorization of the WVDO.

<b>Approved by WVDO:</b>		<b>Date:</b>	
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## Instructions for Completion of the Federal Financial Accountability and Transparency Act (FFATA) Form

The Federal Funding Accountability and Transparency Act (FFATA) was signed into law on September 26, 2006. FFATA legislation requires information on federal awards (federal financial assistance and expenditures) be made available to the public via a single, searchable website: [www.usaspending.gov](http://www.usaspending.gov).

As a recipient of federal funding, valued greater than or equal to \$25,000, you are required to report to the WVDO regarding the funding you receive in order to be in compliance with the Federal Funding Accountability Transparency Act. This information will be submitted by the WVDO to USASpending.gov.

You must complete the attached form for each federal funding award you receive from the WVDO. Sub-grantees will not be permitted to draw down funds until the signed form is received by the WVDO. Please return this form with your grant agreement.

Before completing the attached form, you must:

- 1) Determine your Congressional District Number(s); and
- 2) Obtain a DUNS number.

### **Zip+4**

Please input your expanded zip code; the base 5 digit plus the additional 4 digits. The FFATA reporting website requires the additional 4 digits. If you do not know your +4 digit code, you may look it up at: [USPS.com](http://USPS.com)<sup>®</sup> - ZIP Code™ Lookup or <https://tools.usps.com/go/ZipLookupAction!input.action>.

### **Congressional District**

To determine your congressional district go to the [The United States House of Representatives](http://The United States House of Representatives) website or [www.house.gov](http://www.house.gov) website and enter your Zip Code under "Find your Representative" in the upper right hand corner of the page.

### **DUNS Number**

According to federal government policy, every business that receives federal assistance must have a DUNS number, which is a unique 9-digit identifying number assigned by Dun & Bradstreet (D&B). HUD requires that this number be reported as part of grant close out; however, the grantee should ensure that each business has a DUNS number before the assistance is provided. If a business does not have a DUNS number, one can be obtained here: [www.dnb.com/get-a-duns-number.html](http://www.dnb.com/get-a-duns-number.html).

Return this completed and signed form, along with your grant agreement and resolution, to the attention of your WVDO Regional Representative in WVDO.

***If you have any questions, please contact your WVDO Regional Representative at 304-558-2234.***

## FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT

The Federal Funding Accountability and Transparency Act (FFATA) requires the WVDO to submit the following information to the FFATA Sub-award Reporting System (FSRS) for all awards that obligate \$25,000 or more in federal funds.

Please complete and return this form to:

West Virginia Development Office  
Attention: Project Development  
1900 Kanawha Boulevard, East, Building 6, Room 553  
Charleston, WV 25305-0311

Grantee Name:				
DUNS Number:		Congressional District:		
Principal Place of Business Address				
Address Line 1:				
Address Line 2:				
City:		State:		Zip Code+4:

Award Amount:		Award Date:		Phone:	
Project Name:					

Project Description:

Project Address				
Address Line 1:				
Address Line 2:				
City:		State:		Zip Code+4:

Congressional District of Project Performance Location:	
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### EXECUTIVE COMPENSATION INFORMATION

1.	In the previous fiscal year, did the Grantee receive: (a) 80% or more of its annual gross revenues in Federal Awards of procurement contracts and/or grants, loans, sub-grants, etc. AND (b) \$25,000,000 or more in annual gross revenues from Federal Awards of procurement contracts and/or grants, loans, sub-grants, etc.?	Yes		No	
----	---	-----	--	----	--

If the answer to Question 1 is "Yes", continue to Question 2.

If the answer to Question 1 is "No," move to the signature block below to complete the certification and submittal process.

2.	Does the public have access to information about executive compensation in your Grantee (including parent organization, all branches, and all affiliates worldwide) through periodic reporting to the Securities Exchange Commission?	Yes		No	
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If the answer to Question 2 is "Yes", move to the signature block below to complete the certification and submittal process.

If the answer to Question 2 is "No", provide the names and total compensation of the 5 highest compensated employees of the Grantee below:

Rank	Title	Name	Total Compensation
1			
2			
3			
4			
5			

The undersigned certifies that, on the date written below, the information provided in this form is accurate.

Grantee Name:			
Signature:		Date:	
Title:			

## EQUAL EMPLOYMENT OPPORTUNITY (EEO) POLICY

### PURPOSE

To provide equal employment opportunity in direct employment with the \_\_\_\_\_.

### POLICY

It is the policy of the \_\_\_\_\_ to provide equal opportunity to all of its employees and applicants for employment and to assure that there shall be no discrimination against any person on the basis of race, color, religion, creed, national origin, sex, age, physical or mental handicap, marital status or political beliefs unless related to a bona fide occupational requirement.

To this end, the \_\_\_\_\_ will take affirmative actions to equalize opportunity for employment at all levels of operation for those classes of people who have traditionally been denied equal opportunity – minority group members, women, and the disabled; and the \_\_\_\_\_ recognizes an obligation to make reasonable accommodations to the known physical or mental limitations of an otherwise qualified disabled applicants or employees unless the accommodation imposes an undue hardship.

All applicants for employment with the \_\_\_\_\_ will be recruited from the reasonably available labor market and evaluated on each person's individual qualifications and abilities.

All \_\_\_\_\_ employees shall be afforded equal employment opportunity during their terms of employment, and are guaranteed protection against retaliation for exercising any legal or administrative procedures to secure rights to equal employment opportunity or testifying on behalf of someone else doing so.

Adoption of this document reaffirms the \_\_\_\_\_'s policy of nondiscrimination in employment, including but not limited to the following:

- Recruitment
- Selection
- Placement
- Testing
- Training
- Promotion
- Transfer
- Discipline
- Demotion
- Layoff and termination

All supervisory personnel are responsible for, and shall be committed to, achieving and promoting equal employment opportunity with the \_\_\_\_\_ and for implementing this equal employment opportunity policy.

## ASSIGNMENT OF RESPONSIBILITY

Primary responsibility for the development, implementation and maintenance of procedures in accordance with this equal employment opportunity policy is assigned to \_\_\_\_\_, who will serve as the equal opportunity officer and will conduct periodic reviews of the \_\_\_\_\_'s personnel action to ensure that the policy of equal opportunity is being adhered to and will hold quarterly equal opportunity meetings with the \_\_\_\_\_ to apprise them of progress and of any developing problems for which remedial action would be appropriate.

The \_\_\_\_\_ hereby directs all employees of the \_\_\_\_\_ engaged in any phase of employments, including but not limited to the following:

- Recruitment
- Selection
- Placement
- Testing
- Training
- Promotion
- Transfer
- Discipline
- Demotion
- Layoff and termination

to take appropriate steps to ensure that employment opportunities with the \_\_\_\_\_ are offered on an equal basis to all without regard to race, color, sex, creed, religion, national origin, age, physical or mental handicap, marital status, or political beliefs unless such distinction is a bona fide occupational qualification.

## IMPLEMENTATION

The \_\_\_\_\_ will implement this policy and Title VII of the Civil Rights Act of 1964, by means of the Equal Employment Program outlined below. This program is drawn to the specifications and standards established by Presidential Executive Orders 11246 and 11375, which are described in Part 60-2 of the *Code of Federal Regulations* (issued by the Office of Federal Contract Compliance, U.S. Department of Labor).

This policy shall be comprehensive in its range. The \_\_\_\_\_ shall make good faith efforts to implement this policy. Procedures adopted will include, at a minimum:

- evaluate all current employment practices for evidence of discriminatory effect. Where such practices are found to be discriminatory in their effect, they shall be modified so as to excise any discriminatory effect;
- remedy any unwarranted instances of under-utilization of women, minorities, and other individuals who have traditionally been the victims of discrimination;

- develop training and upgrading procedures which will ensure full consideration for those classes of people who have traditionally been denied equal opportunity – minority group members, women, and the handicapped – in any future employment opportunities with the \_\_\_\_\_;
- seek out those who have been denied equal opportunity as applicants whenever vacancies occur;
- disseminate the substance of this policy on a continual basis through written notice to all employees, recruitment sources and other interested persons and organizations;
- provide equal pay for equal work;
- apprise all contractors and subcontractors of their affirmative action responsibilities in all contracts awarded by this jurisdiction;
- ensure compliance with all applicable federal and state equal employment requirements;
- include the following clause in all vacancy announcements:

**We are an Equal Opportunity Employer.**

- provide assistance to members of protected groups in completing applications;
- provide assistance to individuals needing help in meeting training and educational qualifications for job vacancies whenever possible;
- apprise all employment referral agencies of the substance of this policy in order to facilitate referral of qualified minorities, women and handicapped individuals;
- post EEO posters in conspicuous places on the \_\_\_\_\_ premises;
- instruct all supervisory personnel in the required procedures following an EEO complaint;
- inform all supervisory personnel of their duties and responsibilities with respect to equal employment opportunity; and
- inform all employees of the \_\_\_\_\_'s commitment to equal employment opportunity and of their rights and remedies under the law.

**EFFECTIVE DATE**

This policy shall take effect upon affirmative vote of the \_\_\_\_\_.  
(Please include resolution or minutes authorizing action.)

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**Chief Elected Official's Signature**

**Date**

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**Title of Chief Elected Official**

**HATCH ACT RESOLUTION**

RESOLUTION NO: \_\_\_\_\_

WHEREAS, the federal Hatch Act (5 USC, § § 1501 et seq.) restricts the political activity of local government employees employed in connection with programs financed in whole or in part by federal loans or grants; and

WHEREAS, the Hatch Act attempts to deter the political influence of public employees connected with federally funded programs; and

WHEREAS, the \_\_\_\_\_ receives federal loans or grants from the federal government to support various programs; and

WHEREAS, local governments which receive loans and grants from the federal government are required to inform all employees of the provisions of the Hatch Act and to adopt a policy of compliance with its regulations;

THEREFORE, BE IT RESOLVED, that the \_\_\_\_\_ is hereby appointed to serve as Hatch Act Information Officer, and that as such he/she will inform each of the \_\_\_\_\_ officials and employees of the provisions of the Hatch Act through the use of an employee manual, written memoranda or other written means of notification, maintain on file a copy of the brochure entitled *Political Activity and the State and Local Employee*, and monitor compliance with the provisions of the Hatch Act.

\_\_\_\_\_  
**Signature of Chief Elected Official** **Date**

\_\_\_\_\_  
**Typed Name of Chief Elected Official**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Attested By** **Date**

**SECTION 504 AND ADA  
COMPLAINT RESOLUTION PROCEDURES  
AND ADA COMPLAINT FORM**

Section 504 of the *Rehabilitation Act of 1973* and the *Americans with Disabilities Act of 1990* (ADA) provide comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services and programs, and telecommunications. Title II of the ADA states, in part, that:

*no otherwise qualified disabled individual shall, solely by reason of such disability, be excluded from the participation in, be denied the benefits of, or be subject to discrimination in programs or activities sponsored by a public entity.*

The \_\_\_\_\_ has adopted this complaint procedure to provide prompt and equitable resolution of complaints alleging any action prohibited by the U.S. Department of Justice regulations implementing Title II of the ADA.

Any individual who believes that she/he or a specific class of individuals with disabilities has been subjected to unlawful discrimination on the basis of that disability by the \_\_\_\_\_ or any of the \_\_\_\_\_'s contractors or suppliers may, by him or herself, or by an authorized representative, file a written complaint.

Complaints or questions should be addressed to:

<b>Name</b>	
<b>Address</b>	
<b>Telephone</b>	

The \_\_\_\_\_ has been designated to coordinate compliance with Section 504 of the *Rehabilitation Act of 1973* and the *Americans with Disabilities Act of 1990*.

1. The complaint must be filed in writing and contain the name, address and telephone number of the individual or representative filing the complaint; a description of the alleged discriminatory action in sufficient detail to inform the department of the nature and date of the alleged violation; the signature of the complainant or authorized representative; and a description of the corrective action that is being sought. Complaints filed on behalf of a third party must identify the alleged victims of the discrimination. Complaints may be filed on the attached complaint form.
2. The complaint must be received within 20 calendar days after the alleged violation occurs. This time may be extended, as determined by the Section 504/ADA Coordinator, for good cause shown.
3. The \_\_\_\_\_ shall promptly conduct an informal investigation of the complaint. Interested parties will be afforded an opportunity to submit information relevant to the complaint.
4. A written response will be issued and a copy forwarded to the complainant no later than 30 calendar days after completion of the investigation.

- 5. The \_\_\_\_\_ will maintain the files and records relating to the complaint and its investigation according to the SCBG records retention requirements.
  
- 6. Nothing in this complaint resolution procedure shall be construed as preventing an individual from pursuit of other remedies, including filing a formal complaint with the West Virginia Human Rights Commission, with any federal agency the individual believes is appropriate, or with the U.S. Department of Justice. The time limit for filing a formal complaint is 180 days after the alleged incident. This procedure also does not preclude the individual's right to file a lawsuit in federal district court.

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***Signature of Chief Elected Official***

***Date***

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***Title of Chief Elected Official***



**PLEASE SPECIFY THE CORRECTIVE ACTION YOU SOUGHT:**

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CHECK HERE if additional pages are attached

\_\_\_\_\_  
Signature of Complainant

\_\_\_\_\_  
DATE

**COMPLAINTS SHOULD BE ADDRESSED TO:**

\_\_\_\_\_  
Telecommunications Device for the Deaf

TTY/TDD/PC/Voice	Dial 7-1-1;
TTY/TDD/PC only	Dial 1-800-982-8771;
Voice only	Dial 1-800-982-8772 for the West Virginia Relay Service.

AGENCY USE ONLY				
<i>Reviewer</i>		<i>Signature</i>		<i>Date</i>
<i>Comments</i>				



**West Virginia Community Development Block Grant  
Request for Project Amendment**

*Change of Scope/Activity*

<b>Grantee</b>		<b>Amendment #</b>	
<b>Project Name</b>			
<b>Project Number</b>		<b>Date</b>	

Activity Number	Activity Category	Original/Current Activity	Amended Activity

<b>Reason for Proposed Change</b>

<b>Contact Person</b>		<b>Phone</b>	
		<b>Email</b>	

<b>Grantee Approval</b>		<b>WVDO Approval</b>	
Signature		Signature	
Typed Name		Typed Name	
Date		Date	

<b>Not Approved</b>		<b>Reason</b>	
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# REQUEST FOR PROJECT/BUDGET AMENDMENT

## INSTRUCTIONS

Complete all pages of the amendment forms as appropriate.

1. **Recipient:** Enter recipient name.
2. **Amendment Number:** Enter program amendment number. If this is your first program amendment, enter number 1, your second, enter number 2, etc.
3. **Date:** Enter date request submitted.
4. **Project Number:** Enter Grant Agreement Number
5. **Contact Persons:** Enter name and phone number of person to contact if there are questions concerning this amendment.
6. **Activity Number:** List the activity number and letter of (if applicable) identifier for each category to correspond with the activities identified in your Grant Agreement Cost Summary List only those activities to be changed.
7. **Activity Category:** List the activity category to correspond with the activity number and letter identified in Step 6.
8. **Original/Current Activity:** On the corresponding line provide a brief description of the activity to be changed as described in your Grant Agreement or last previous amendments.
9. **Amended Activity:** On the corresponding line provide a brief description of the amended activity. Describe each resultant activity in total perspective – do not just list the proposed modifications(s) to an activity.
10. **Reason:** Provide a brief description of the reason(s) for the proposed change(s),
11. **Budget Change:** In the original/current budget columns list all funds contained on your approved Cost Summary or latest amendment. List funds for each project activity.
12. **Recipient:** The amendment must be signed and dated by the mayor or county commissioner.
13. **Approval:** Only amendments signed and dated by the appropriate state official are valid. Remember; do not proceed with requested activities until your received written approval from the WVDO.

# Chapter 2

## Environmental Review





## Chapter Two: Environmental Review

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### Table of Contents

	<b>Page</b>
Abbreviations .....	2-1
Key Terms .....	2-2
Supporting Materials List .....	2-4
Responsibilities .....	2-4
Procedures .....	2-5
Developing the Environmental Review Record (ERR) .....	2-8
Levels of Environmental Review .....	2-10
Public Notices .....	2-19
Other Statutory Requirements .....	2-21
Related Federal Laws and Authorities .....	2-23

## Introduction

Chapter 2: Environmental Review is designed to aid Community Development Block Grant (CDBG) recipients in developing an environmental review record in compliance with the federal regulations. However, this chapter must not be considered a substitute for those regulations. **In all cases, federal regulations will apply.** It is the policy of the U.S. Department of Housing and Urban Development (HUD) to reject proposals that have significant adverse environmental impacts and to encourage the modification of projects in order to enhance environmental quality and minimize environmental harm.

Completion of the environmental review process is **mandatory** before taking physical action on a site, or making a commitment or expenditure of HUD or non-HUD funds for property acquisition, rehabilitation, conversion, lease, repair, or construction activities. Each project activity will be assessed to determine the applicable procedure that must be followed in order to obtain environmental clearance and/or a Release of Funds (ROF) from the West Virginia Development Office (WVDO).

The National Environmental Policy Act (NEPA) and “other federal laws and authorities” require that an environmental review be conducted for all federally-assisted actions, except those exempted from 24 CFR Part 58. The Grantee’s determination of exemption must be accepted by the WVDO before CDBG funds are expended. Current regulations may be found online at <http://tinyurl.com/HUD-Environmental-Regs><sup>1</sup> Citations used in this chapter may be reviewed in HUD’s “[Environmental Review Guide for Community Development Block Grant Programs.](#)”

## Abbreviations

CDBG	= Community Development Block Grant, including Small Cities Grants
CENST	= Categorically Excluded Not Subject To Section 58.5
CEST	= Categorically Excluded Subject To Section 58.5
CEQ	= Council on Environmental Quality
CFR	= Code of Federal Regulations
CO	= Certifying Officer
EA	= Environmental Assessment
EO	= Environmental Officer
EIS	= Environmental Impact Statement
ERR	= Environmental Review Record
FONSI	= Finding of No Significant Impact
HEROS	= HUD Environmental Review Online System
HUD	= Department of Housing and Urban Development
NEPA	= National Environmental Policy Act
NHPA	= National Historic Preservation Act
NOI/RROF	= Notice of Intent to Request Release of Funds
RE	= Responsible Entity
ROF	= Release of Funds
RROF	= Request for Release of Funds and Certification
SHPO	= WV State Historic Preservation Office
WVDO	= West Virginia Development Office

<sup>1</sup> The specific regulations can be found under Title 24, Subtitle A, Part 58

**Key Terms**

*Note: Many of the definitions are not direct quotes from CEQ or HUD regulations and have been slightly modified. For more precise definitions, users of this section are encouraged to consult the relevant source.*

- **Activity** – An action that a responsible entity puts forth as part of an assisted project, regardless of whether its cost is to be borne by the HUD assistance or is an eligible expense under the HUD assistance program.
- **Aggregation** – The grouping together and evaluating as a single project of all individual activities which are related either on a geographical or functional basis, or are logical parts of a composite of contemplated actions.
- **Categorical Exclusion** – Activities which do not have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a federal agency (40 CFR 1508.4). In such cases, neither an EA nor an EIS is required, however these activities must comply with non-NEPA statutes and regulations as specified in §58.35.
- **Certifying Officer** – The official who is authorized to execute the Request for Release of Funds and Certification and has the legal capacity to carry out the responsibilities of §58.13
- **Commitment** – For purposes of the environmental review process, commitment means the expenditure of private or public funds, or a legally binding agreement by any of the following parties: participating jurisdictions; insular areas; state recipients; subrecipients; Grantees; contractors; or owners/developers. To expend funds for a specific project for activities such as property acquisition, construction, conversion, demolition, movement, rehabilitation, or repair or the provision of an environmental review for complying with the applicable requirements of “other federal laws and authorities” listed in §58.5 and §58.6. Activities that require compliance with any of the federal laws and authorities also require the publishing of a Notice of Intent to Request Release of Funds and submittal of a Request for Release of Funds and Certification form (HUD-7015.15) to the WVDO.
- **Contractor** – An entity contracted by the participating jurisdiction to provide goods and services in accordance with a written agreement (the contract). The contractor cannot assume the RE’s responsibilities for environmental review, decision making, and action under §58.30.
- **Cumulative Impacts** – Impacts on the environment resulting from the incremental impact of the action which added to the past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions.
- **Environmental Assessment (EA)** – A concise public document that serves to: 1) provide sufficient evidence and analysis for determining whether to prepare an Environmental Impact Statement or a finding of no significant impact; 2) aid an agency’s compliance with NEPA when an Environmental Impact Statement is not necessary; and 3) facilitate the preparation of a statement when one is necessary.
- **Environmental Clearance** – The completion of the environmental review process and documentation of compliance with §58.
- **Environmental Review** – The appropriate level of environmental analysis for a project or activity. This may include a Compliance Determination, Environmental Assessment, or Environmental Impact Statement.
- **Environmental Review Process** – The completion of all procedural steps necessary for compliance with NEPA and all related laws and authorities cited in §58. This includes conducting and documenting all environmental requirements, making an environmental determination, publishing required public notices, submission of a Request for Release of

Funds and Certification form, and receipt of an Authority to Use Grant Funds form from the WVDO.

- **Environmental Review Record (ERR)** – The Responsible Entity must maintain a written record of the environmental review undertaken under this part for each project. This document will be designated as the “Environmental Review Record” (ERR), and shall be available for public review. The Responsible Entity must use the current HUD-recommended formats or develop approved equivalent formats. The ERR shall contain all environmental review documents, public notices and written determinations or environmental findings required by §58 as evidence of review, decision making and actions pertaining to a particular project as specified in §58.38.
- **Exempt Activities** – Activities for which there is no environmental requirement are “exempt” from both NEPA and other related statutory requirements as defined in §58.34
- **Finding of No Significant Impact (FONSI)** – A document by the Responsible Entity briefly presenting the reasons why an action, not otherwise excluded or exempt will not have a significant effect on the human environment and for which an EIS will not be prepared.
- **Grantee** – A unit of local government that is an eligible recipient under a program listed in §58.1(b). Also referred to as “Responsible Entity.”
- **Mitigation** – Measures taken to reduce potential environmental impacts.
- **Project** – An activity, or a group of integrally related activities, designed by the recipient to accomplish, in whole or in part, a specific objective.
- **Recipient** – A unit of local government when they are eligible recipients or Grantees under a program listed in §58.1(b).
- **Release of Funds (ROF)** – The issuance of the “Authority to Use Funds” form or equivalent letter by the WVDO for activities which require the Responsible Entity to submit a Request for Release of Funds and Certification form to the WVDO.
- **Responsible Entity (RE)** – The participating jurisdiction responsible for conducting environmental reviews. Also referred to as “Grantee.”
- **Source Documents** – Verifiable information and data, such as studies, correspondence, maps, interviews, places, and observations, used or cited as a basis to make an environmental determination. The type of source documentation shall be included in the Environmental Review Record and made available for inspection by interested parties.
- **Tiering** – The evaluation of an action or an activity at various points in the development process as a proposal or event becomes subject for an Environmental Assessment or Review.

### Supporting Materials

Attachment 2-1	24 CFR Part 58
Attachment 2-2	Summary of Levels of Environmental Review & Documentation Required in the ERR
Attachment 2-3	Environmental Review Flowchart
Attachment 2-4	ERR Checklist
<del>Attachment 2-5</del>	<del>Other Requirements Checklist [Omitted]</del>
<del>Attachment 2-6</del>	<del>Flood Insurance Protection [Omitted]</del>
<del>Attachment 2-7</del>	<del>Flood Insurance Policy Declaration – SAMPLE [Omitted]</del>
Attachment 2-8	Civil Primary and Commercial Service Airports
Attachment 2-9	Environmental Review for Exempt Activity or CENST Activity
Attachment 2-10	Environmental Review for CEST Activity
Attachment 2-11	Environmental Review for Environmental Assessment
Attachment 2-12	SAMPLE – Request for Review of Historic Preservation Letter
Attachment 2-13	Section 106 Review Information
Attachment 2-14	Floodplain 8-Step Decision Making Process Flow Chart
Attachment 2-15	Floodplain and Wetland – Early Notice and Public Review
Attachment 2-16	Floodplain and Wetland – Final Notice and Public Explanation
Attachment 2-17	Distribution List
Attachment 2-18/ 19/20	Calculation of Time Periods – Concurrent Combined Noticed with Floodplain Notice; Concurrent Combined Notice FONSI-NOI-RROF; and NOI-RROF
Attachment 2-21	Public Notice – FONSI-NOI-RROF
Attachment 2-22	Public Notice – NOI-RROF
Attachment 2-23	Request for Release of Funds and Certification (HUD-7015.15)

**Note: Strikethroughs are Attachments from previous manuals which are no longer used.**

### Responsibilities

In order to complete its environmental review responsibilities, the Grantee should designate two responsible parties:

#### **Certifying Officer**

The Grantee must designate a Certifying Officer who is authorized to execute the Request for Release of Funds and Certification and has the legal capacity to carry out the responsibilities of Section 58.13.

This individual is usually the chief elected official, chief executive official, or other official designated by formal resolution of the governing body. The Certifying Officer must have the authority to assume legal responsibility for certifying that all environmental requirements have been followed. This function may not be assumed by administering agencies or consultants.

#### **Environmental Officer**

The Grantee should designate an Environmental Officer. This individual is usually the grant administrator or the consulting engineer. The Environmental Officer will be responsible for writing the project narrative, obtaining maps of the project area, soliciting comments from appropriate local, state and federal agencies, and facilitating responses to comments received

on the environmental findings. However, the Certifying Officer is responsible for ensuring compliance with NEPA and the federal laws and authorities has been achieved, for issuing the public notification, for submitting the request for release of funds, when required, and for ensuring the ERR is complete.

### **Environmental Review Record**

Each CDBG recipient must prepare and maintain a well-organized, written record of the environmental review for each project, including exempt activities such as administrative costs, design costs, and tenant-based rental assistance. This file is called the ERR and must be available for public review.

Be sure that any ERR that is maintained electronically meets the requirements of 24 CFR 58.38. Electronically maintained ERRs must remain available for public review and monitoring in accordance with 24 CFR 58.45 (i.e., an individual, organization, or HUD monitor wishing to review an ERR cannot be denied access to an ERR because it is stored on an employee's computer or a private network). Therefore, it is recommended by HUD that the RE keep both an electronic copy and paper copy of the ERR.

**Note:** The WVDO still requires a hard copy to be submitted for review.

A preliminary environmental review, including source documentation, must be conducted prior to contacting applicable agencies for comment. Agencies must be provided ample project information, maps, and source documentation to make a determination of compliance with applicable laws.

## **Procedures**

Pursuant to 24 CFR Part 58, "Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities," the Grantee, also known as the Responsible Entity, must conduct the appropriate environmental review prior to the expenditure or obligation of funds.

If the review process was not completed prior to submission of an application to the West Virginia Development Office (WVDO), the project will be conditionally approved. The environmental review procedure and, if applicable, a formal Release of Funds, must be executed and approved by the WVDO prior to the obligation or expenditure of project funds (§58.22[a]). If funds are obligated or expended for activities that have not completed the environmental review process, these will be considered ineligible and a reimbursement will be required. Therefore, compliance with Part 58, Environmental Review Procedures, is imperative.

Each CDBG-funded activity is subject to one of five levels of environmental review:

1. 24 CFR 58.34 Exempt
2. 24 CFR 58.35(a) Categorically Excluded Subject to 24 CFR 58.5
3. 24 CFR 58.35(b) Categorically Excluded Not Subject to 24 CFR 58.5 (rarely seen in West Virginia's program.)
4. 24 CFR 58.36 Environmental Assessment
5. 24 CFR 58.37 Environmental Impact Statement (rarely seen in our state's program.)

### **WVDO Approval of Evidentiary Materials and Notice to Proceed**

In all cases regarding the levels of Environmental Reviews listed above, the Grantee must obtain environmental clearance from the WVDO. Project funds may NOT be obligated or

expended prior to environmental clearance from the WVDO, including the Exempt Activities.

### **WVDO Prior Review of Public Notices**

The Grantee shall submit all components of the ERR to the WVDO for prior review before publication of public notices. This will accomplish two goals: First, all requirements concerning standard language will be included in the public notice; and second, the public notice will not be issued prematurely.

### **Project Aggregation**

The Grantee must group together and evaluate, **as a single project, all the individual activities that will take place in order to complete the project.** This includes activities that are not assisted by HUD but are aggregated by the Grantee in accordance with §58.32. This includes activities which: are related on a geographic basis (site specific) or a functional basis (activity specific), are logical parts of a larger project, are funded by several federal programs, or are partially funded with non-federal sources. The purpose of aggregation is to reduce the number of individual reviews by analyzing the impacts of the entire proposed activity.

The environmental review must state whether or not the proposed activity will receive multiple year funding, identify all sources of funds, and address all aspects of the project. Additionally, the public notice(s) shall identify the sources of all other funds.

### **Limitations on Activities Pending Clearance (24 CFR 58.22)**

- Neither a recipient nor any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance under a program listed in §58.1(b) on an activity or project until the WVDO has issued a Notice to Proceed letter and approved the recipient's RROF and the related certification from the responsible entity. **In addition, until the RROF and the related certification have been approved, neither a recipient nor any participant in the development process may commit non-HUD funds on or undertake an activity or project under a program listed in §58.1(b).**
- The Grantee must ensure that non-governmental entities refrain from undertaking any activities that would have an adverse environmental impact or limit the choice of reasonable alternatives until the WVDO has approved the RROF (HUD 7015.15.) and the Authority to Use Grant Funds (HUD 7015.16) and the Notice to Proceed letter is issued by the WVDO.
- If a project or activity is exempt under §58.34, or is Categorically Excluded (except in extraordinary circumstances) under §58.35(b), no RROF is required and the recipient may undertake the activity when the **Notice to Proceed letter is issued by WVDO,** however the recipient must comply with applicable requirements under §58.6.

### **Re-evaluations (24 CFR 58.47)**

After completing the original environmental review process, circumstances may require that the original review be re-evaluated. This will occur when:

- Substantial changes to the nature, magnitude, or extent of the project are proposed,
- New activities not anticipated in the original review are proposed,
- New circumstances and environmental conditions that may affect the project or have a bearing on its impacts are discovered during the implementation of the project, or
- The selection of an alternative not in the original finding is proposed.

If the original findings are still valid but the data or conditions upon which those findings were based have changed, the Grantee must affirm the original findings and update the ERR by including this re-evaluation and its determination based on these new findings. A statement addressing the above four points will suffice as documentation of the re-evaluation. In this case, a new FONSI is not required however the re-evaluation statement shall be included as part of the original ERR.

If the Grantee determines that the original findings are no longer valid, it must prepare a new Environmental Assessment. A new FONSI must be published and distributed, and submitted to the WVDO.

### **Emergencies (24 CFR 58.33)**

When an emergency, disaster or imminent threat to health and safety is declared, the combined Notice of FONSI and Notice of Intent to Request Release of Funds may be disseminated and/or published simultaneously with the submission of the Request for Release of Funds and Certification form to the WVDO. The combined FONSI Notice and Notice of Intent to Request Release of Funds shall state that the funds are needed immediately due to a Presidential Declared Disaster and the comment periods have been combined. Any comments made by the public, other organizations or agencies are to be sent to both the WVDO and the Grantee.

### **Project Description**

The project description must be **accurate, stable, and finite** throughout all documents to capture the maximum scope of the project, not just a single activity that the funds are going toward. It should include all contemplated actions that are a composite part of the project. Activities should be aggregated according to the regulations at §58.32, which says that a responsible entity must group together and evaluate as a single project all individual activities which are related either on the geographical or functional basis, or both, or are logical parts of a composite of contemplated actions.

The project description for the environmental review may not be identical to the description of the project and activities used by the funding program, as the project description in the environmental review may consider activities not financed by HUD. This project description must be **clear and consistent** throughout all components of the review.

**Developing the Environmental Review Record**

The Grantee should initiate the environmental review process as soon as possible to avoid delay of project implementation. Contact the WVDO if there are questions on the environmental review process and responsibilities.

**Create Environmental Review Record file**

Establish a file known as the Environmental Review Record (ERR). The Environmental Review is a means of providing decision makers with sufficient information on which to base informed choices. Further, the review should clearly outline the proposed action so that the public may sufficiently understand the action and all associated environmental concerns.

The ERR must contain all of the documentation of the review process: an environmental determination for each activity and its level of clearance finding, copies of the various public notices, evidence of compliance with related provisions for historic preservation, floodplains/wetlands, and all other federal laws and authorities as outlined in this chapter.

The ERR must be available for public review. One copy must be in the Grantee's office; others should be in public places such as the public or high school libraries or a community center. An ERR checklist is provided in this chapter to guide the completion of the environmental review record.

**Establish a Timeline**

The Grantee should allow at least 60 days to complete the environmental review process and receive environmental clearance from WVDO. When another federal agency has funds in the project, it frequently conducts its own environmental review process. The Grantee is permitted to use that agency's review to compile its own record. (§58.52 and 58.53) The Grantee is reminded that utilization of another agency's documentation does not eliminate or minimize its own responsibilities for either the contents of the review or conducting the public comment requirements. Before making a finding based on another agency's review, the Grantee should carefully check the review against the requirements referenced in this chapter to ensure the contents are sufficiently inclusive to allow the Grantee to meet its responsibilities.

If the adopted review does not meet all of the requirements of 24 CFR 58, it must be supplemented by the Grantee to meet all HUD CDBG-Small Cities requirements.

**Designate an Environmental Certifying Officer**

The Grantee's Chief Executive Officer, generally the mayor or county commission president, must agree to assume the role of "Responsible Federal Official" under the provisions of the National Environmental Policy Act (NEPA). In the event of action against the Grantee in federal court on environmental grounds, the Chief Executive Officer will be named as the defendant. The Chief Executive Officer may designate a staff person to serve as the "Environmental Certifying Officer" to assume overall responsibility for the environmental review process. This person does not need to be a technical expert, but should be credible if it becomes necessary to defend the finding.

If the Chief Executive Officer designates a staff person as the Environmental Certifying Officer, the ultimate environmental responsibility remains with the Chief Executive Officer. To ensure the Chief Executive Officer has properly reviewed the environmental packet prepared by the Environmental Certifying Officer, the WVDO requires that the Chief Executive Officer sign the

Finding of No Significant Impact and Request for Release of Funds Certification, where applicable.

**Submit Public Notices to the WVDO for Prior Review**

All public notices must be submitted to the WVDO prior to publication. This will ensure that appropriate clearances are issued, and that proper language is used in the public notice.

**HUD Environmental Review Online System (HEROS)**

HEROS is an online system for documenting and managing environmental reviews. The system includes all levels of HUD environmental reviews and includes on-screen guidance for completing the reviews.

HEROS is expected to increase transparency in the environmental reviews process, as reviews will be posted to the OneCPD website for public review. The system improves consistency, as many functions of the environmental review process will be automated to guide Grantees through the appropriate functions and forms associated with each level of review. WVDO will provide additional details on HEROS as they become available.

**Levels of Environmental Review**

The Grantee should consult §58.34, §58.35, §58.36, and §58.37 to determine the level of review applicable to each proposed activity. Examples of each level of review are provided on the following pages, and the Summary of Levels of Environmental Review & Documentation Required in ERR (**Attachment 2-2**).

**The following steps are required:**

1. Determine the level of review required:
  - A. Exempt (24 CFR 58.34)
  - B. Categorically excluded NOT subject to 24 CFR 58.5 (24 CFR 58.35 (a))
    - This category includes tenant based rental assistance and redevelopment housing costs, and is rarely seen in our state's program.
  - C. Categorically Excluded Subject to 24 CFR 58.5 (24 CFR 58.35 (a))
  - D. Environmental Assessment (24 CFR 58.36)
  - E. Environmental Impact Statement (24 CFR 58.37)
2. Initiate contacts with other sources and agencies, such as the WV State Historic Preservation Office, WV Department of Environmental Protection, and the USDA Natural Resources Conservation Service to name a few.
3. Collect Data.
4. Complete applicable review format for the determined level of review.
5. Make environmental determination; Compliance with federal laws and authorities, or finding of no significant impact, or finding of significant impact.
6. Submit public notices to WVDO for approval; publish and disseminate public notices when applicable.
7. Submit Request for Release of Funds and Certification form to the WVDO.
8. Wait for receipt of Authority to Use Grant Funds, Notice to Proceed or equivalent letter from the WVDO.

**Obtain any other necessary clearances from WVDO, such as Authorization to Bid.**

### A. Exempt (24 CFR 58.34)

This category includes, but is not limited to, environmental and other studies, administrative and management activities, engineering and design, and inspections. The complete list of exempt activities from the CFR is listed below. If the Grantee wishes to begin work on activities that are exempt from NEPA procedures prior to the approval of the completed ERR and Release of Funds (ROF), the Grantee shall complete the appropriate form stating which activities are determined to be part of this level of environmental review. The form must be signed by the Certifying Officer.

#### Types of Projects

List of exempt activities is provided below. For complete details outlining exempt activities, refer to 24 CFR 58.34.

- Environmental and other studies
- Information and financial services
- Administrative and management activities
- Engineering and design costs for an eligible project activity
- Assistance for improvements that do not alter environmental conditions and are limited to protection, repair, or restoration actions necessary only to control or arrest the effects of imminent threats or physical deterioration
- Public services that will not have a physical impact, including but not limited to employment, crime prevention, child care, drug abuse
- Inspections and testing of properties for hazards or defects
- Purchase of tools and insurance
- Technical assistance or training
- Payment of principal and interest on loans made or guaranteed by HUD

#### Required Documentation

To proceed with exempt activities, the following items must be submitted to the WVDO, as indicated on the “Summary of Levels of Environmental Review & Documentation Required in ERR” spreadsheet (**Attachment 2-2**):

- Environmental Review for CE or CENST form (**Attachment 2-9**)
- Other required supportive documentation

When the above activities are undertaken, the RE does not have to publish a Notice of Intent/Request for Release of Funds (NOI/RROF). The WVDO will assume the validity of the exempt determination and will verify the other evidentiary materials before issuing the “Notice of Approval of Evidentiary Materials” or equivalent letter to the Grantee. This finding will apply to the activities specifically excluded from NEPA and do not, under any circumstances, apply to any construction activity or activity not listed in the exempt determination. A separate environmental determination will be required for construction activity.

**B. Categorical Exclusions Not Subject to §58.5 (24 CFR 58.35.(b))**

This category of projects, Categorically Excluded Not Subject to §58.5 (CENST), would not alter any conditions that would require an environmental review or compliance determination under federal laws and authorities cited in §58.5. Examples of activities that are categorical exclusions not subject to §58.5 include the following:

**Types of Projects:**

- Tenant-based rental assistance.
- Supportive services including but not limited to health care; housing services; permanent housing placement; day care; nutritional services; short-term payments for rent/mortgage/utility costs; and assistance in gaining access to local, state, and federal government benefits and services.
- Operating costs including maintenance, security, operation, utility, furnishings, equipment, supplies, staff training and recruitment, and other incidental costs.
- Economic development activities including but not limited to equipment purchase, inventory financing, interest subsidy, operating expenses, and similar costs not associated with construction or expansion of existing operations.
- Activities to assist home ownership of existing “or new dwelling units not assisted with federal funds” including closing costs and down payment assistance to home buyers, interest buy downs, and similar activities that result in the transfer of title to a property.
- Affordable housing predevelopment costs including legal, consulting 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.

**Required Documentation:**

To proceed with CENST activities, the following items must be submitted to the WVDO, as indicated on the “Summary of Levels of Environmental Review & Documentation Required in ERR” spreadsheet (**Attachment 2-2**):

- Environmental Review for CE or CENST form (**Attachment 2-9**)
- Other required supportive documentation

When the above activities are undertaken, the RE does not have to publish a Notice of Intent/Request for Release of Funds (NOI/RROF). The WVDO will assume the validity of the CENST determination and will verify the other evidentiary materials before issuing the “Notice of Approval of Evidentiary Materials” or equivalent letter to the Grantee. This finding will apply to the activities specifically excluded from NEPA and do not, under any circumstances, apply to any construction activity or activity not listed in the CENST determination. A separate environmental determination will be required for construction activity.

The Grantee is responsible for determining that a given activity qualifies under the definitions for

exclusion and/or expedited procedures. Even when federal regulations presume that an activity probably will not impact the environment or require compliance with other environmental laws does not necessarily make it true. The clearance level of an activity may be elevated if it exhibits extraordinary circumstances that affect its impact on the environment. Such circumstances are defined as:

- Actions that are unique and without precedent;
- Are substantially similar to those which would require an Environmental Assessment (EA) or EIS;
- Are unlikely to alter HUD policy or HUD mandates; or
- Due to unusual physical conditions on the site or in the vicinity, have a potential for a significant impact on the environment or in which the environment could have a significant impact on users of the facility.

### C. Categorical Exclusions Subject to §58.5 (24 CFR 58.35(a))

This category of projects, Categorically Excluded Subject to §58.5 (CEST), does not individually or cumulatively have a significant effect on the human environment. Categorically excluded projects typically replace or improve existing facilities or structures, and retain the original use of a structure or facility. Projects will be considered CEST provided that they:

- Do not increase the size or unit density of the structure or facility being improved by more than 20 percent,
- Do not change land uses (commercial to residential), and
- Do not exceed 75 percent of the total estimated cost of replacement after rehabilitation, in the case of rehabilitation.

These projects require the completion of a compliance determination review using the Statutory Worksheet found in the CEST form. This format lists the federal laws and authorities found in §58.5. The proposed project is reviewed to determine whether it complies with the requirements of the federal laws and authorities.

If the proposed project triggers any of the federal laws and authorities, such as Executive Order 11988, Floodplain Management, the specific review must be completed before the compliance determination can be considered complete. If none of the compliance factors require mitigation, it is likely that the project will qualify for a CEST determination.

#### Types of Projects

The following activities are Categorically Excluded under NEPA, but are subject to review under CDBG regulations:

- Acquisition, repair, improvement, reconstruction or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are in place and will be retained in the same use without change in size or capacity of more than 20 percent (e.g., replacement of water or sewer lines, reconstruction of curbs and sidewalks, repaving of streets, etc.).
- Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons.
- Rehabilitation of buildings and improvements when the following conditions are met:
  - For single-family residential buildings:**
    - Unit density is not increased beyond four units.
    - Project doesn't involve change in land use from residential to non-residential.
    - The footprint of the building is not increased in a floodplain or a wetland.
  - For multifamily residential buildings:**
    - Unit density is not changed more than 20 percent.
    - The project does not involve changes in land use from residential to nonresidential.
    - The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.

**For nonresidential structures, including commercial, industrial, and public buildings:**

- The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent.
- The activity does not involve a change in land use such as from nonresidential to residential, commercial to industrial, or from one industrial use to another.
- An individual action on a one-to-four family dwelling or an individual action on a project of five or more units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four units on any one site.
- Acquisition or disposition of an existing structure or acquisition of vacant land provided that the structure or land acquired or disposed of will be retained for the same use.
- Combination of the above activities.

**Required Documentation**

To proceed with CEST activities, the following items must be submitted to the WVDO, as indicated on the “Summary of Levels of Environmental Review & Documentation Required in ERR” spreadsheet (**Attachment 2-2**):

- Environmental Review for CEST form (**Attachment 2-10**)
- Statutory Worksheet (included in **Attachment 2-10**)
- All supportive documentation
- NOI/RROF Notice (**Attachment 2-22**)
- RROF- HUD Form 7015.15 (**Attachment 2-23**)

The WVDO will assume the validity of the RROF and will approve the CEST determination in the absence of any receipt of objection, except as provided in §58.72(b), after the appropriate public comment periods have elapsed and will then issue the Authority to Use Grant Funds (HUD Form 7015.16) or equivalent letter to the Grantee.

This finding will apply to the activities specifically stated in the CEST determination and do not, under any circumstances, apply to any other activities. A separate determination will be required for any additional activities.

**Categorically Excluded Activities Converted to Exempt Activities (24 CFR 58.34(a)(12))**

Activities that are listed in §58.35(a)(1)-(6) as Categorical Exclusions may be converted to Exempt activities under the following conditions:

- The Grantee completes the compliance determinations under the federal laws and authorities cited in §58.5 for the proposed activity.
- The Grantee concludes that no circumstances exist where any of the federal laws and authorities require compliance with its own review procedures.
- The Grantee documents its determinations on the Environmental Review for CEST form (**Attachment 2-10**) and places it in the ERR. No public notices are published and no Request for Release of Funds and Certification is submitted to WVDO.

When these conditions are shown to apply, the WVDO will assume the validity of the “CEST converts to Exempt” determination and will verify the other evidentiary materials before issuing the “Notice of Approval of Evidentiary Materials” or equivalent letter to the Grantee. This finding will apply to the activities specifically excluded from NEPA and do not, under any

circumstances, apply to any other construction activity or activity not listed in the “CEST converts to Exempt” determination. A separate environmental determination will be required for all additional activities.

### D. Environmental Assessment (24 CFR 58.40)

Activities which cannot be determined to be Exempt (§58.34) or Categorically Excluded (§58.36), require that an Environmental Assessment (EA) be completed. While the EA addresses the same issues as those found in other compliance determination reviews, it also includes the following analysis:

- Determines existing conditions
- Identifies, analyzes and evaluates all potential environmental impacts
- Examines and recommends feasible ways to eliminate or minimize adverse impacts
- Examines alternatives to the project
- Includes a compliance determination for all other federal laws and authorities cited in §58.5 and §58.6
- Leads to an RE's Finding of No Significant Impact (FONSI), or a Finding of Significant Impact and thereby requiring the execution of an Environmental Impact Statement (EIS)

### Types of Projects

An EA generally includes the following types of projects:

- New construction of any kind
- Major rehabilitation of water and sewer systems
- Major rehabilitation and reconstruction of five or more residential units
- Conversion of non-residential land use to residential land use
- New construction of five or more residential units
- Acquisition of vacant land for development when five or more units are involved

For EA activities, the Environmental Assessment – Determinations and Compliance Findings (**Attachment 2-11**) must be used to document compliance with NEPA, the environmental requirements of other federal laws (§58.5 and §58.6), and determine whether or not the proposed project will result in a significant impact on the quality of the human environment. This determination cannot be made until all compliance criteria with the applicable regulatory agencies outlined on the statutory worksheet have been met.

### Required Documentation

To proceed with EA activities, the following items must be submitted to the WVDO, as indicated on the “Summary of Levels of Environmental Review & Documentation Required in ERR” spreadsheet (**Attachment 2-2**):

- Environmental Assessment Determinations and Compliance Findings (**Attachment 2-11**)
- Significant Impact Determination (included in **Attachment 2-11**)
- Statutory Worksheet (included in **Attachment 2-11**)
- All supportive documentation
- NOI/RROF Notice (**Attachment 2-22**)
- RROF- HUD Form 7015.15 (**Attachment 2-23**)

The WVDO will assume the validity of the RROF and will approve the EA documents in the absence of any receipt of objection, except as provided in §58.72(b), after the appropriate public comment periods have elapsed and will then issue the Authority to Use Grant Funds (HUD

Form 7015.16) or equivalent letter to the Grantee.

This finding will apply to the activities specifically stated in the EA and do not, under any circumstances, apply to activity not included. A separate determination will be required for any additional activity.

### **E. Environmental Impact Statement (24 CFR 58.37)**

An Environmental Impact Statement (EIS) details the recipient's final analyses and conclusions, according to NEPA, related to potential significant environmental impact of the project. Recipients must follow prescribed steps in the course of preparation, filing and review of an Environmental Impact Statement (See 24 CFR 58, Subpart G).

If the project requires an EIS, consult early in that process with a Project Manager Specialist at the WVDO.

An EIS may be required when:

- The project is so large that it triggers density thresholds, and it is apparent that it may have a substantial environmental impact
- A Finding of Significant Impact is found as a result of completing an environmental assessment for the project

Preparation of an EIS is mandatory if the project meets any of these requirements below:

- Any project to provide a site or sites for hospitals and nursing homes with a total of at least 2,500 beds
- Any project to remove, destroy, convert, or substantially rehabilitate at least 2,500 existing housing units
- Any project to construct, install or provide sites for at least 2,500 housing units
- Any project to provide water and sewer capacity for at least 2,500 housing units
- Any project that exceeds the 2,500-unit threshold for nonresidential housing construction

If the sole reason for preparing an EIS is that a project will exceed one or more of the thresholds listed above, the recipient may prepare an EA. In such cases, if the recipient makes a Finding of No Significant Impact (FONSI), the FONSI must be made available for public review for at least 30 days before the recipient makes a final determination about whether to prepare an EIS.

**Public Notices****Publication and/or Posting**

Grantees have the option of either publishing the FONSI and NOI/RROF in a newspaper of general circulation serving the affected geographical area or posting the notices in prominent public places within the recipient's geographical boundaries. Suitable locations for posting may include but are not limited to:

- Municipal and county buildings accessible to the general public
- Post offices
- Libraries
- Health departments
- Other local establishments frequented by project area residence

In addition to publishing or posting public notices, copies must be disseminated to the following entities:

- The local news media
- Individuals and groups known to be interested in the activities
- The Regional Office of the Environmental Protection Agency
- Appropriate local, state, and federal agencies including all of those contacted as part of the environmental review process.

**Floodplain and Wetland Notices**

Most projects require the submission of a legible Flood Insurance Rate Map (FIRM) from FEMA which must show the elements of the project located on the map along with the flood data it provides. If activities are located in floodplain or wetland areas, the Eight-Step Process is required by Executive Order 11988 and 11990. The ERR must contain evidence that the Eight-Step Process was used in the decision to locate CDBG-Small Cities activities in floodplain or wetland areas. Steps 2 and 7 require that notices be published; an Early Notice of Floodplain Activity (Attachment 2-15) identifying the project and soliciting comments and a Notice of Explanation for Floodplain Activity (Attachment 2-16), including your judgment that the benefits of the project outweigh the environmental considerations.

**Submit Public Notices to WVDO for Prior Review**

All public notices must be submitted to WVDO prior to publication. This will ensure that appropriate clearances are issued, and that proper language is used in the public notice.

**Calculating Time Periods for Public Notices**

The Calculation of Time Periods form (**Attachments 2-18, 2-19, and 2-20**) may be used to accurately calculate required notification time periods. All time periods shall be counted in calendar days. The first day of a time period begins at 12:01 a.m. local time on the day following the publication date of the notice which initiates the time period. If a time period ends on a holiday or weekend, extend the time period to the next business day.

Document	Published Time Period	Posted/Mailed Time Period	Comments
NOI/RROF	7 days for comments 15 days for the WVDO to receive objections	10 days for comments 15 days for the WVDO to receive objections	Published for a project that is CEST and does not convert to Exempt; or after a FONSI comment period ends for an EA
FONSI	15 days	18 days	Published for all EA-type projects
FONSI and NOI/RROF	15 days for comments 15 days for the WVDO to receive objections	18 days for comments 15 days for the WVDO to receive objections	Published as a Combined Notice
Early Notice and Public Review	15 days		Floodplains EO 11988 and Wetlands EO 11990
Final Notice and Public Explanation	7 days		Floodplains and Wetlands May be run at the same time as the Combined Notice

**Other Statutory Requirements §58.6**

The RE must certify that it has complied with the requirements that would apply to HUD under these “Other Statutory Requirements” and must consider the criteria, standards, policies, and regulations of the requirements. Record in the appropriate form (**Attachments 2-9, 2-10, or 2-11**) the compliance determination below. Provide credible, transparent, and supportive source documentation for each item.

**Airport Hazards**

Some types of development are incompatible for locations in the immediate vicinity of airports and airfields. Potential aircraft accident problems pose a hazard to end users of these development projects. If the proposed project is located near an airport or in the immediate area of the landing and approach zones, additional information is necessary to determine whether this issue is a concern and if so, how to mitigate it.

It is HUD’s policy to apply standards to prevent incompatible development around civil airports and military airfields. See 24 CFR 51, Subpart D. The policy does not apply to research demonstration projects which do not result in new construction or reconstruction, flood insurance, interstate land sales registration, or any action or emergency assistance under disaster assistance provisions or appropriations which are provided to save lives, protect property, protect public health and safety, remove debris and wreckage, or assistance that has the effect of restoring facilities substantially as they existed prior to the disaster.

The Environmental Review Record should contain one of the following:

- Documentation that the rule is not applicable to the proposed project (i.e., acquisition of an existing building, “minor” rehabilitation, or emergency action)
- A map showing the site is not within 15,000 feet of a military airport or within 2,500 feet of a civilian airport
- If within 15,000 feet of a military airport, a map showing the site is not within a designated APZ or a letter from the airport operator stating so
- If within 2,500 feet of a civilian airport, a map showing the site is not within a designated RPZ/CZ or a letter from the airport operator stating so
- If the site is in a designated APZ, documentation of consistency with DOD Land Use Compatibility Guidelines
- If the site is in a designated RPZ/CZ and the project does not involve any facilities that will be frequently used or occupied by people, and a determination of such and a written assurance from the airport operator that there are no plans to purchase the land as part of a RPZ/CZ program
- If the site is in a designated RPZ/CZ and the project involves the acquisition or sale of an existing property that will be frequently used or occupied by people, a copy of the notice to prospective buyers signed by the prospective buyer

### **Coastal Barrier Resources**

The Coastal Barrier Resources Act (CBRA) of 1982 designated relatively undeveloped coastal barriers along the Atlantic and Gulf coasts as part of the John H. Chafee Coastal Barrier Resources System (CBRS) and made these areas ineligible for most new federal expenditures and financial assistance. The Coastal Barrier Improvement Act (CBIA) of 1990 reauthorized the CBRA and expanded the CBRS to include undeveloped coastal barriers along the Florida Keys, Great Lakes, Puerto Rico, and U.S. Virgin Islands.

The environmental review record should contain the following:

A general location map establishing there are no Coastal Barrier Resource System units in the city or county

### **Flood Insurance**

HUD State-administered assistance such as Community Development Block Grants (CDBG) is considered "formula grant made to states." By law, "formula grants made to states" are exempt from the flood insurance purchase requirements by Section 3(a)(3) of the Act. 24 CFR 58.6(a)(3).

**Related Federal Laws and Authorities §58.5**

The RE must certify that it has complied with the requirements that would apply to HUD under these laws and authorities and must consider the criteria, standards, policies, and regulations of these laws and authorities. Record in the appropriate form (**Attachments 2-10 or 2-11**) the compliance determination below. Provide credible, transparent, and supportive source documentation for each item.

**Clean Air**

The Clean Air Act was implemented to remedy the damaging effects that bad air quality can have on human health and the environment. Although it is a federal act applied nationally, much of the work and planning is done at the state and local level to tailor air quality requirements to local needs. The Act was most recently revised in 1990, when major changes were enacted.

The Clean Air Act is administered by the U.S. Environmental Protection Agency (EPA), which sets National Ambient Air Quality Standards (NAAQS). These are limits on certain “criteria” air pollutants, including limits on how much of these pollutants can be in the air anywhere in the United States. Geographic areas that are in compliance with standards are called “attainment areas,” while areas that do not meet standards are called “nonattainment” areas. The location of areas designated by U.S. EPA as polluted under the Clean Air Act is documented in the U.S. EPA’s Green Book on Nonattainment Areas for Criteria Pollutants.

In addition to the EPA, the Clean Air Act is administered by state, tribal, and local agencies, which are responsible for developing local solutions to air quality problems. states must develop State Implementation Plans (SIPs) to regulate their state air quality.

In order to show compliance with the NAAQS, projects funded by HUD must demonstrate that they conform to the appropriate SIP.

The environmental review record should contain one of the following:

- A determination that the project does not include new construction or conversion of land use facilitating the development of public, commercial, or industrial facilities OR five or more dwelling units
- Documentation that the project’s county or air quality management district is not in nonattainment or maintenance status for any criteria pollutants
- Evidence that estimated emissions levels for the project do not exceed the minimum emissions levels for the nonattainment or maintenance level pollutants
- A determination that the project can be brought into compliance with the State Implementation Plan (SIP) through modification or mitigation, including documentation on how the project can be brought into compliance

**Coastal Zone Management**

A general location map establishing the project is located in a state where there are no coastal zones or documentation showing the state is not participating in the CZM program.

**Contamination and Toxic Substances**

It is HUD policy, as described in 24 CFR Part 50.3(i) and 24 CFR 58.5(i)(2), that:

1. All property proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gasses, and radioactive substances, where a hazard

- could affect the health and safety of occupants or conflict with the intended utilization of the property.
2. Environmental review of multifamily and non-residential properties shall include evaluation of previous uses of the site and other evidence of contamination on or near the site, to assure that occupants of proposed sites are not adversely affected by the hazards.
  3. Particular attention should be given to any proposed site on or in the general proximity of such areas as dumps, landfills, industrial sites, or other locations that contain, or may have contained, hazardous wastes.
  4. The RE shall use current techniques by qualified professionals to undertake investigations determined necessary.

It is therefore essential that REs, potential grant applicants, and other HUD program participants become familiar with the potential environmental issues involving property before leasing, optioning, and/or acquiring the property. Unknowing individuals or parties that acquire contaminated property with good intentions could face liability for clean-up costs under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), third party lawsuits, and cause costly delays in implementing the project.

For non-FHA-insured programs, the Environmental Review Record should contain one of the following:

- Evidence the site is not contaminated (for multifamily housing projects this includes on site and off site contamination and previous uses of the site); a Phase I Environmental Site Assessment is strongly encouraged for multifamily and non-residential projects
- Evidence supporting a determination the hazard will not affect health and safety of the occupants or conflict with the intended use of the site, including any mitigation measures used
- Documentation the site has been cleaned up according to EPA or state standards for residential properties, which requires a letter of “No Further Action” (NFA) required from the appropriate state department/agency, or a RAO letter from the LSRP

### **Endangered Species**

The Endangered Species Act (ESA) of 1973, as amended, and its implementing regulations were designed to protect and recover species in danger of extinction and the ecosystems that they depend upon. When passed, the ESA spoke specifically to the value - tangible and intangible - of conserving species for future generations. In passing the Act, Congress recognized another key fact that subsequent scientific understanding has only confirmed: the best way to protect species is to conserve their habitat.

Under Section 7 of the ESA, the federal government and each of its agencies have a statutory mandate to use their powers for the conservation of species. Each agency must ensure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of a listed species in the wild or destroy or adversely modify its critical habitat.

The U.S. Fish and Wildlife Service (USFWS) part of the US Department of Interior is responsible for terrestrial and freshwater species. This office is responsible for listing species under their authority as threatened or endangered as appropriate. If an agency determines that a proposed action may affect one or more listed species, it must formally consult with the USFWS office or offices responsible for the affected species.

The environmental review must consider potential impacts of the HUD-assisted project to endangered and threatened species and critical habitats. The review must evaluate potential impacts not only to any listed but also to any proposed endangered or threatened species and critical habitats. This responsibility is cited in environmental procedures at 24 CFR 58.5(e) and 24 CFR 50.4 (e).

The environmental review record should contain one of the following determinations and supporting documentation:

- No Effect, including a determination that the project does not involve any activities that have a potential to affect species or habitats, evidence that there are no federally listed species in the area, or other analysis supporting a No Effect finding
- May Affect, Unlikely to Adversely Affect, including all correspondence with the USFWS
- Likely to Adversely Affect, including all correspondence with the USFWS

### **Explosive and Flammable Hazards**

There are inherent potential dangers associated with locating HUD-assisted projects near hazardous facilities which store, handle, or process hazardous substances of a flammable or explosive nature. Project sites located too close to facilities handling, storing or processing conventional fuels, hazardous gases or chemicals of an explosive or flammable nature may expose occupants or end-users of a project to the risk of injury in the event of an explosion.

Blast overpressure and thermal radiation standards are used as a basis for calculating acceptable separation distances (ASDs) for HUD-assisted projects from specific, stationary hazardous operations which store, handle, or process substances of fire or explosive prone nature. HUD-assisted projects must meet ASDs or else mitigation measures must be undertaken.

The environmental review record should include:

- **One of the following on aboveground storage tanks:**
  - A determination that the project does not include development, construction, rehabilitation that will increase residential densities, or conversion
  - Evidence that within one mile of the project site there are no current or planned stationary aboveground storage containers of more than 100-gallon capacity containing common liquid industrial fuels or of any capacity containing hazardous liquids or gases that are not common liquid industrial fuels
  - A determination along with all supporting documentation that the separation distance of such containers from the project is acceptable
  - Documentation of the existing or planned barrier that would serve as sufficient mitigation, including correspondence with a licensed engineer
- **AND one of the following on hazardous facilities:**
  - A determination that the project does not include a hazardous facility
  - A determination along with all supporting documentation that the hazardous facility is located at an acceptable separation distance from residences and any other facility or area where people may congregate or be present
  - Documentation of the existing or planned barrier that would serve as sufficient mitigation, including correspondence with a licensed engineer

### Farmlands Protection

The importance of farmlands to the national and local economy requires the consideration of the impact of activities on land adjacent to prime or unique farmlands. The purpose of the Farmland Protection Policy Act (7 U.S.C. 4201 et seq., implementing regulations 7 CFR Part 658, of the Agriculture and Food Act of 1981, as amended) is to minimize the effect of federal programs on the irreversible conversion of farmland to nonagricultural uses.

The Act does not apply to projects already in or committed to urban development or those that could otherwise not convert farmland to non-agricultural uses. However, land that meets the definition of prime or unique farmlands or is determined to be of statewide or local significance (with concurrence by the U.S. Secretary of Agriculture) is subject to the Act. In some states agricultural lands are protected from development by agricultural districting, zoning provisions, or special tax districts.

The environmental review record should contain one of the following:

- A determination that the project does not include any activities, including new construction, acquisition of undeveloped land, or conversion, that could potentially convert one land use to another
- Evidence that the exemption applies, including all applicable maps
- Evidence supporting the determination that “Important Farmland,” including prime farmland, unique farmland, or farmland of statewide or local importance regulated under the FPPA does not occur on the project site
- Documentation of all correspondence with NRCS, including the completed AD-1006 and a description of the consideration of alternatives and means to avoid impacts to Important Farmland

### Floodplain Management

Executive Order 11988 - Floodplain Management requires federal activities to avoid impacts to floodplains and to avoid direct and indirect support of floodplain development to the extent practicable. The Federal Emergency Management Agency (FEMA) designates floodplains. The FEMA Map Service Center provides this information in the form of FEMA Flood Insurance Rate Maps (FIRMs).

The environmental review record should contain one of the following:

- Documentation supporting the determination that an exception at 55.12(c) applies.
- A FEMA map showing the project is not located in a Special Flood Hazard Area.
- A FEMA map showing the project is located in a Special Flood Hazard Area along with documentation of the 8-Step Process and required notices. If the 5-Step Process is applicable, provide documentation of the 5-Step Process and indicate the applicable citation. If the 8-Step Process is inapplicable, indicate the applicable citation and document the determination.

### Historic Preservation

HUD programs support and facilitate the use of historic properties for affordable housing, economic development, and community revitalization. HUD encourages the rehabilitation of historic buildings and the preservation of irreplaceable resources like archeological sites that convey centuries of human cultural activity. The National Historic Preservation Act (NHPA), 16 U.S.C. 470 et seq., directs each federal agency, and those tribal, state, and local governments that assume federal agency responsibilities, to protect historic properties and to avoid, minimize,

or mitigate possible harm that may result from agency actions. The review process, known as Section 106 review, is detailed in 36 CFR Part 800. Early consideration of historic places in project planning and full consultation with interested parties are key to effective compliance with Section 106. The WV State Historic Preservation Officer is the primary consulting party in the process. A qualified historic preservation consultant may assist with the technical components of the Section 106 review process. The RE must prepare the Section 106 Review documents for the WV State Historic Preservation Office (SHPO). Details on this process can be found at the following website: [www.wvculture.org/shpo/review.html](http://www.wvculture.org/shpo/review.html). The initial assessment may take up to 30 days.

It is important to remember that the environmental review record (ERR) must show that Section 106 review was completed before approval is given to proceed with HUD assisted projects.

The environmental review record should contain documentation on one of these types of findings:

- **No Historic Properties Affected**
  - Letter from SHPO that concurs with HUD's or the Responsible Entity's determination of "no historic properties affected"
  - With documentation on 1) the undertaking and the Area of Potential Effect (APE) (including photographs, maps, and drawings, as necessary), 2) steps taken to identify historic properties, 3) the basis for determining that no historic properties are present or affected, and 4) copies or summaries of any views provided by consulting parties and the public
  - If the SHPO has not responded to a properly documented request for concurrence within 30 days of receipt of the request, document the request and lack of response as part of the record
- **No Adverse Effect**
  - Letter from SHPO that concurs with HUD'S or the Responsible Entity's finding of "no adverse effect"
  - With documentation on 1) the undertaking and the APE (including photographs, maps, and drawings, as necessary), 2) steps taken to identify historic properties, 3) affected historic properties (including characteristics qualifying them for the NR), 4) the undertaking's effects on historic properties, 5) why the criteria of adverse effect were not applicable (§800.5), and 6) copies or summaries of any views provided by consulting parties and the public
  - If the SHPO has not responded to a properly documented request for concurrence within 30 days of receipt of the request, document the request and lack of response as part of the record
- **Adverse Effect**
  - Notification of adverse effect sent to Advisory Council on Historic Preservation
  - Letter from SHPO that concurs with a finding of "adverse effect"
  - With documentation on 1) the undertaking and the APE (including photographs, maps, and drawings, as necessary), 2) steps taken to identify historic properties, 3) affected historic properties (including characteristics qualifying them for the NR), 4) the undertaking's effects on historic properties, 5) why the criteria of adverse effect are applicable (§ 800.5), and 6) copies or summaries of any views provided by consulting parties and the public
  - A Memorandum of Agreement (MOA) or a Programmatic Agreement (PA) signed by the HUD official or Responsible Entity, SHPO, the Advisory Council on Historic Preservation if participating, and other signatory and concurring parties

- If resolution is not reached in an MOA or PA, provide correspondence and comments between the Advisory Council on Historic Preservation and HUD Secretary (for Part 50 projects) or Responsible Entity's chief elected local official (for Part 58 projects)

### Noise Abatement and Control

HUD's noise standards may be found in 24 CFR Part 51, Subpart B. For proposed new construction in high noise areas, the project must incorporate noise attenuation features. Consideration of noise applies to the acquisition of undeveloped land and existing development as well.

All sites whose environmental or community noise exposure exceeds the day night average sound level (DNL) of 65 decibels (dB) are considered noise-impacted areas. For new construction that is proposed in high noise areas, grantees shall incorporate noise attenuation features to the extent required by HUD environmental criteria and standards contained in Subpart B (Noise Abatement and Control) of 24 CFR Part 51. The interior standard is 45dB.

The "Normally Unacceptable" noise zone includes community noise levels from above 65 decibels to 75 decibels. Approvals in this noise zone require a minimum of 5 dB additional sound attenuation for buildings having noise-sensitive uses if the day-night average sound level is greater than 65 dB but does not exceed 70 dB, or a minimum of 10 decibels of additional sound attenuation if the day-night average sound level is greater than 70 dB but does not exceed 75 dB.

Locations with day-night average noise levels above 75 dB have "Unacceptable" noise exposure. For new construction, noise attenuation measures in these locations require the approval of the Assistant Secretary for Community Planning and Development (for projects reviewed under Part 50) or the Responsible Entity's Certifying Officer (for projects reviewed under Part 58). The acceptance of such locations normally requires an environmental impact statement.

In "Unacceptable" noise zones, HUD strongly encourages conversion of noise-exposed sites to land uses compatible with the high noise levels.

The environmental review record should contain one of the following:

- Documentation the proposed action is not within 1000 feet of a major roadway, 3,000 feet of a railroad, or 15 miles of a military or FAA-regulated civil airfield
- If within those distances, documentation showing the noise level is *Acceptable* (at or below 65 DNL)
- If within those distances, documentation showing that there's an effective noise barrier (i.e., that provides sufficient protection)
- Documentation showing the noise generated by the noise source(s) is *Normally Unacceptable* (66 – 75 DNL) and identifying noise attenuation requirements that will bring the interior noise level to 45 DNL and/or exterior noise level to 65 DNL

### Sole Source Aquifers

Aquifers and surface water are drinking water systems that may be impacted by development. The Safe Drinking Water Act of 1974 requires protection of drinking water systems that are the sole or principal drinking water source for an area and, if contaminated, would create a significant hazard to public health.

Sole Source Aquifer designations are one tool to protect the drinking water supplies in areas where alternatives to the groundwater resource are few, cost-prohibitive, or nonexistent. The designation protects an area's ground water resource by requiring U.S. Environmental Protection Agency (EPA) review of any proposed projects within the designated area that are receiving federal financial assistance. All proposed projects receiving federal funds are subject to review to ensure they do not endanger the water source.

Resources to contact for further information include the local water department or authority, WV Department of Environmental Protection Offices, and the WV Department of Natural Resources.

The environmental review record should contain one of the following:

- Documentation, including a map, showing that the project site is not on a sole source aquifer
- A determination that the project consists solely of acquisition, leasing, or rehabilitation of existing buildings
- Documentation showing that a memorandum of understanding (MOU) or agreement with the EPA excludes your project from further review
- Documentation that EPA has reviewed and commented on the proposed action within an SSA and a description of any mitigation measures, if necessary

### **Wetlands Protection**

Executive Order 11990: Protection of Wetlands requires federal activities to avoid adverse impacts to wetlands where practicable. As primary screening, HUD or grantees must verify whether the project is located within wetlands identified on the National Wetlands Inventory (NWI) or else consult directly with the USFWS staff. If USFWS staff is unavailable, HUD or grantees are to consult with the USDA/NRCS National Soils Survey or the U.S. Army Corp of Engineers (ACE).

The environmental review record should contain one of the following:

- Documentation supporting the determination that an exception at 55.12(a)(3), 55.12(a)(4), 55.12(c)(3), 55.12(c)(7), or 55.12(c)(10) applies.
- Documentation supporting the determination that the project does not involve new construction (as defined in Executive Order 11990), expansion of a building's footprint, or ground disturbance.
- A map or other relevant documentation supporting the determination that the project does not impact an on- or off-site wetland.
- A completed 8-Step Process, including a map and the early and final public notices.

### **Wild and Scenic Rivers**

The Wild and Scenic Rivers Act (16 U.S.C. 1271-1287) provides federal protection for certain free-flowing, wild, scenic, and recreational rivers designated as components or potential components of the National Wild and Scenic Rivers System (NWSRS). The National Wild and Scenic Rivers System (NWSRS) was created by Congress in 1968 (Public Law 90-542; 16 U.S.C. 1271 et seq., as amended) to preserve certain rivers with outstanding natural, cultural, and recreational values in a free-flowing condition for the enjoyment of present and future generations. The Act is notable for safeguarding the special character of these rivers, while also recognizing the potential for their appropriate use and development. It encourages river management that crosses political boundaries and promotes public participation in developing goals for river protection.

Each river or river segment in the National Wild and Scenic Rivers System is administered with the goal of protecting and enhancing the values that caused it to be eligible for inclusion in the system. Designated rivers need not include the entire river and may include tributaries.

Four primary federal agencies are charged with protection and managing our wild and scenic rivers: the National Park Service, Bureau of Land Management, U.S. Forest Service and U.S. Fish and Wildlife Service. Each river segment is administered by generally one of these federal agencies and/or state boundaries for protected rivers generally extend one-quarter mile from either bank in order to protect river-related values.

HUD-assisted activities are subject to the requirements of the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.). The environmental review must evaluate the potential to impact any listed Wild and Scenic River when the assisted project is within proximity to a listed natural resource (24 CFR 58.5(f) or 24 CFR 50.4(f)).

Wild and Scenic Rivers These rivers or river segments have been designated by Congress or by states (with the concurrence of the Secretary of the Interior) as wild, scenic or recreational.

Study Rivers These rivers or river segments are being studied as a potential component of the Wild & Scenic River system.

Nationwide Rivers Inventory (NRI) The National Park Service has compiled and maintains the NRI, a register of river segments that potentially qualify as national wild, scenic or recreational river areas.

The environmental review record should contain one of the following:

- Evidence the proposed action is not within proximity to a designated Wild, Scenic, or Recreational River
- Documentation that contact was made with the federal (or state) agency that has administrative responsibility for management of the river and that the proposed action will not affect river designation or is not inconsistent with the management and land use plan for the designated river area

### **Environmental Justice**

Environmental justice means ensuring that the environment and human health are protected fairly for all people regardless of race, color, national origin, or income. Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations" (2/94) requires certain federal agencies, including HUD, to consider how federally assisted projects may have disproportionately high and adverse human health or environmental effects on minority and low-income populations.

Environmental justice is an integral part of HUD's mission. The Department works with multiple stakeholders and other federal agencies in its efforts to assure environmental justice concerns are addressed.

Review land use plans, census information and the U.S. EPA Environmental Justice webpage (EJ View). Consider local government sources such as the health department or school district that may be more current or focused on the neighborhood as their unit of analysis.

The environmental review record should contain one of the following:

- Evidence that the site or surrounding neighborhood does not suffer from adverse environmental conditions and evidence that the proposed action will not create an adverse and disproportionate environmental impact or aggravate an existing impact. (Describe how the proposed action will not have a disproportionate adverse impact on minority or low-income populations.)
- Evidence that the project is not in an environmental justice community of concern (demographics, income, etc.) or evidence that the project does not disproportionately affect a low-income or minority population
- If there are adverse effects on low-income or minority populations, documentation that the affected community residents have been meaningfully informed and involved in a participatory planning process to address (remove, minimize, or mitigate) the adverse effect from the project and the resulting changes

U.S. Department of Housing and Urban Development

**24 CFR Part 58**

**ENVIRONMENTAL REVIEW PROCEDURES FOR  
ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES**

This is a copy of the text from the e-CFR webpage ([www.ecfr.gov](http://www.ecfr.gov)).  
The data contain within this document is current as of June 3, 2014 and the most recent revision was dated November 15, 2013.

## Title 24: Housing and Urban Development

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### **PART 58—ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD ENVIRONMENTAL RESPONSIBILITIES**

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#### **Contents**

#### **Subpart A—Purpose, Legal Authority, Federal Laws and Authorities**

- §58.1 Purpose and applicability.
- §58.2 Terms, abbreviations and definitions.
- §58.4 Assumption authority.
- §58.5 Related Federal laws and authorities.
- §58.6 Other requirements.

#### **Subpart B—General Policy: Responsibilities of Responsible Entities**

- §58.10 Basic environmental responsibility.
- §58.11 Legal capacity and performance.
- §58.12 Technical and administrative capacity.
- §58.13 Responsibilities of the certifying officer.
- §58.14 Interaction with State, Federal and non-Federal entities.
- §58.15 Tiering.
- §58.17 [Reserved]
- §58.18 Responsibilities of States assuming HUD environmental responsibilities.

#### **Subpart C—General Policy: Environmental Review Procedures**

- §58.21 Time periods.
- §58.22 Limitations on activities pending clearance.
- §58.23 Financial assistance for environmental review.

#### **Subpart D—Environmental Review Process: Documentation, Range of Activities, Project Aggregation and Classification**

- §58.30 Environmental review process.
- §58.32 Project aggregation.
- §58.33 Emergencies.
- §58.34 Exempt activities.
- §58.35 Categorical exclusions.
- §58.36 Environmental assessments.
- §58.37 Environmental impact statement determinations.
- §58.38 Environmental review record.

#### **Subpart E—Environmental Review Process: Environmental Assessments (EA's)**

- §58.40 Preparing the environmental assessment.
- §58.43 Dissemination and/or publication of the findings of no significant impact.
- §58.45 Public comment periods.
- §58.46 Time delays for exceptional circumstances.
- §58.47 Re-evaluation of environmental assessments and other environmental findings.

#### **Subpart F—Environmental Review Process: Environmental Impact Statement Determinations**

- §58.52 Adoption of other agencies' EISs.
- §58.53 Use of prior environmental impact statements.

#### **Subpart G—Environmental Review Process: Procedures for Draft, Final and Supplemental Environmental Impact Statements**

- §58.55 Notice of intent to prepare an EIS.
- §58.56 Scoping process.
- §58.57 Lead agency designation.
- §58.59 Public hearings and meetings.
- §58.60 Preparation and filing of environmental impact statements.

#### **Subpart H—Release of Funds for Particular Projects**

- §58.70 Notice of intent to request release of funds.
- §58.71 Request for release of funds and certification.
- §58.72 HUD or State actions on RROFs and certifications.
- §58.73 Objections to release of funds.
- §58.74 Time for objecting.
- §58.75 Permissible bases for objections.
- §58.76 Procedure for objections. §58.77 Effect of approval of certification.

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AUTHORITY: 12 U.S.C. 1707 note, 1715z-13a(k); 25 U.S.C. 4115 and 4226; 42 U.S.C. 1437x, 3535(d), 3547, 4332, 4852, 5304(g), 11402, 12838, and 12905(h); title II of Pub. L. 105-276; E.O. 11514 as amended by E.O 11991, 3 CFR 1977 Comp., p. 123.

SOURCE: 61 FR 19122, Apr. 30, 1996, unless otherwise noted.

## Subpart A—Purpose, Legal Authority, Federal Laws and Authorities

### §58.1 Purpose and applicability.

(a) *Purpose.* This part provides instructions and guidance to recipients of HUD assistance and other responsible entities for conducting an environmental review for a particular project or activity and for obtaining approval of a Request for Release of Funds.

(b) *Applicability.* This part applies to activities and projects where specific statutory authority exists for recipients or other responsible entities to assume environmental responsibilities. Programs and activities subject to this part include:

(1) Community Development Block Grant programs authorized by Title I of the Housing and Community Development Act of 1974, in accordance with section 104(g) (42 U.S.C. 5304(g));

(2) [Reserved]

(3)(i) Grants to states and units of general local government under the Emergency Shelter Grant Program, Supportive Housing Program (and its predecessors, the Supportive Housing Demonstration Program (both Transitional Housing and Permanent Housing for Homeless Persons with Disabilities) and Supplemental Assistance for Facilities to Assist the Homeless), Shelter Plus Care Program, Safe Havens for Homeless Individuals Demonstration Program, and Rural Homeless Housing Assistance, authorized by Title IV of the McKinney-Vento Homeless Assistance Act, in accordance with section 443 (42 U.S.C. 11402);

(ii) Grants beginning with Fiscal Year 2001 to private non-profit organizations and housing agencies under the Supportive Housing Program and Shelter Plus Care Program authorized by Title IV of the McKinney-Vento Homeless Assistance Act, in accordance with section 443 (42 U.S.C. 11402);

(4) The HOME Investment Partnerships Program authorized by Title II of the Cranston-Gonzalez National Affordable Housing Act (NAHA), in accordance with section 288 (42 U.S.C. 12838);

(5) Grants to States and units of general local government for abatement of lead-based paint and lead dust hazards pursuant to Title II of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1992, and grants for lead-based paint hazard reduction under section 1011 of the Housing and Community Development Act of 1992, in accordance with section 1011(o) (42 U.S.C. 4852(o));

(6)(i) Public Housing Programs under Title I of the United States Housing Act of 1937, including HOPE VI grants authorized under section 24 of the Act for Fiscal Year 2000 and later, in accordance with section 26 (42 U.S.C. 1437x);

(ii) Grants for the revitalization of severely distressed public housing (HOPE VI) for Fiscal Year 1999 and prior years, in accordance with Title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105-276, approved October 21, 1998); and

(iii) Assistance administered by a public housing agency under section 8 of the United States Housing Act of 1937, except

for assistance provided under part 886 of this title, in accordance with section 26 (42 U.S.C. 1437x);

(7) Special Projects appropriated under an appropriation act for HUD, such as special projects under the heading "Annual Contributions for Assisted Housing" in Title II of various Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Acts, in accordance with section 305(c) of the Multifamily Housing Property Disposition Reform Act of 1994 (42 U.S.C. 3547);

(8) The FHA Multifamily Housing Finance Agency Pilot Program under section 542(c) of the Housing and Community Development Act of 1992, in accordance with section 542(c)(9)(12 U.S.C. 1707 note);

(9) The Self-Help Homeownership Opportunity Program under section 11 of the Housing Opportunity Program Extension Act of 1996 (Pub. L. 104-120, 110 Stat. 834), in accordance with section 11(m);

(10) Assistance provided under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), in accordance with:

(i) Section 105 for Indian Housing Block Grants and Federal Guarantees or Financing for Tribal Housing Authorities (25 U.S.C. 4115 and 4226); and

(ii) Section 806 for Native Hawaiian Housing Block Grants (25 U.S.C. 4226);

(11) Indian Housing Loan Guarantees authorized by section 184 of the Housing and Community Development Act of 1992, in accordance with section 184(k) (12 U.S.C. 1715z-13a(k)); and

(12) Grants for Housing Opportunities for Persons with AIDS (HOPWA) under the AIDS Housing Opportunity Act, as follows: competitive grants beginning with Fiscal Year 2001 and all formula grants, in accordance with section 856(h) (42 U.S.C. 12905(h)); all grants for Fiscal Year 1999 and prior years, in accordance with section 207(c) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105-276, approved October 21, 1998).

(c) When HUD assistance is used to help fund a revolving loan fund that is administered by a recipient or another party, the activities initially receiving assistance from the fund are subject to the requirements in this part. Future activities receiving assistance from the revolving loan fund, after the fund has received loan repayments, are subject to the environmental review requirements if the rules of the HUD program that initially provided assistance to the fund continue to treat the activities as subject to the Federal requirements. If the HUD program treats the activities as not being subject to any Federal requirements, then the activities cease to become Federally-funded activities and the provisions of this part do not apply.

(d) To the extent permitted by applicable laws and the applicable regulations of the Council on Environmental Quality, the Assistant Secretary for Community Planning and Development may, for good cause and with appropriate conditions, approve waivers and exceptions or establish criteria for exceptions from the requirements of this part.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56127, Sept. 29, 2003]

## §58.2 Terms, abbreviations and definitions.

(a) For the purposes of this part, the following definitions supplement the uniform terminology provided in 40 CFR part 1508:

(1) *Activity* means an action that a grantee or recipient puts forth as part of an assisted project, regardless of whether its cost is to be borne by the HUD assistance or is an eligible expense under the HUD assistance program.

(2) *Certifying Officer* means the official who is authorized to execute the Request for Release of Funds and Certification and has the legal capacity to carry out the responsibilities of §58.13.

(3) *Extraordinary Circumstances* means a situation in which an environmental assessment (EA) or environmental impact statement (EIS) is not normally required, but due to unusual conditions, an EA or EIS is appropriate. Indicators of unusual conditions are:

(i) Actions that are unique or without precedent;

(ii) Actions that are substantially similar to those that normally require an EIS;

(iii) Actions that are likely to alter existing HUD policy or HUD mandates; or

(iv) Actions that, due to unusual physical conditions on the site or in the vicinity, have the potential for a significant impact on the environment or in which the environment could have a significant impact on users of the facility.

(4) *Project* means an activity, or a group of integrally related activities, designed by the recipient to accomplish, in whole or in part, a specific objective.

(5) *Recipient* means any of the following entities, when they are eligible recipients or grantees under a program listed in §58.1(b):

(i) A State that does not distribute HUD assistance under the program to a unit of general local government;

(ii) Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, and Palau;

(iii) A unit of general local government;

(iv) An Indian tribe;

(v) With respect to Public Housing Programs under §58.1(b)(6)(i), fiscal year 1999 and prior HOPE VI grants under §58.1(b)(6)(ii) or Section 8 assistance under §58.1(b)(6)(iii), a public housing agency;

(vi) Any direct grantee of HUD for a special project under §58.1(b)(7);

(vii) With respect to the FHA Multifamily Housing Finance Agency Program under §58.1(b)(8), a qualified housing finance agency;

(viii) With respect to the Self-Help Homeownership Opportunity Program under §58.1(b)(9), any direct grantee of HUD.

(ix)(A) With respect to NAHASDA assistance under §58.1(b)(10), the Indian tribe or the Department of Hawaiian Home Lands; and

(B) With respect to the Section 184 Indian Housing Loan Guarantee program under §58.1(b)(11), the Indian tribe.

(x) With respect to the Shelter Plus Care and Supportive Housing Programs under §58.1(b)(3)(ii), nonprofit organizations and other entities.

(6) *Release of funds*. In the case of the FHA Multifamily Housing Finance Agency Program under §58.1(b)(8), Release of Funds, as used in this part, refers to HUD issuance of a firm approval letter, and Request for Release of Funds refers to a recipient's request for a firm approval letter. In the case of the Section 184 Indian Housing Loan Guarantee program under §58.1(b)(11), Release of Funds refers to HUD's issuance of a commitment to guarantee a loan, or if there is no commitment, HUD's issuance of a certificate of guarantee.

(7) *Responsible Entity*. Responsible Entity means:

(i) With respect to environmental responsibilities under programs listed in §58.1(b)(1), (2), (3)(i), (4), and (5), a recipient under the program.

(ii) With respect to environmental responsibilities under the programs listed in §58.1(b)(3)(ii) and (6) through (12), a state, unit of general local government, Indian tribe or Alaska Native Village, or the Department of Hawaiian Home Lands, when it is the recipient under the program. Under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) listed in §58.1(b)(10)(i), the Indian tribe is the responsible entity whether or not a Tribally Designated Housing Entity is authorized to receive grant amounts on behalf of the tribe. The Indian tribe is also the responsible entity under the Section 184 Indian Housing Loan Guarantee program listed in §58.1(b)(11). Regional Corporations in Alaska are considered Indian tribes in this part. Non-recipient responsible entities are designated as follows:

(A) For qualified housing finance agencies, the State or a unit of general local government, Indian tribe or Alaska native village whose jurisdiction contains the project site;

(B) For public housing agencies, the unit of general local government within which the project is located that exercises land use responsibility, or if HUD determines this infeasible, the county, or if HUD determines this infeasible, the State;

(C) For non-profit organizations and other entities, the unit of general local government, Indian tribe or Alaska native village within which the project is located that exercises land use responsibility, or if HUD determines this infeasible, the county, or if HUD determines this infeasible, the State;

(8) *Unit Density* refers to a change in the number of dwelling units. Where a threshold is identified as a percentage change in density that triggers review requirements, no distinction is made between an increase or a decrease in density.

(9) *Tiering* means the evaluation of an action or an activity at various points in the development process as a proposal or event becomes ripe for an Environment Assessment or Review.

(10) *Vacant Building* means a habitable structure that has been vacant for more than one year.

(b) The following abbreviations are used throughout this part:

(1) CDBG—Community Development Block Grant;

(2) CEQ—Council on Environmental Quality;

(3) EA—Environmental Assessment;

(4) EIS—Environmental Impact Statement;

(5) EPA—Environmental Protection Agency;

(6) ERR—Environmental Review Record;

(7) FONSI—Finding of No Significant Impact;

(8) HUD—Department of Housing and Urban Development;

(9) NAHA—Cranston-Gonzalez National Affordable Housing Act of 1990;

(10) NEPA—National Environmental Policy Act of 1969, as amended;

(11) NOI/EIS—Notice of Intent to Prepare an EIS;

(12) NOI/RROF—Notice of Intent to Request Release of Funds;

(13) ROD—Record of Decision;

(14) ROF—Release of Funds; and

(15) RROF—Request for Release of Funds.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56128, Sept. 29, 2003]

#### §58.4 Assumption authority.

(a) *Assumption authority for responsible entities: General.* Responsible entities shall assume the responsibility for environmental review, decision-making, and action that would otherwise apply to HUD under NEPA and other provisions of law that further the purposes of NEPA, as specified in §58.5. Responsible entities that receive assistance directly from HUD assume these responsibilities by execution of a grant agreement with HUD and/or a legally binding document such as the certification contained on HUD Form 7015.15, certifying to the assumption of environmental responsibilities. When a State distributes funds to a responsible entity, the State must provide for appropriate procedures by which these responsible entities will evidence their assumption of environmental responsibilities.

(b) *Particular responsibilities of the States.* (1) States are recipients for purposes of directly undertaking a State project and must assume the environmental review responsibilities for the State's activities and those of any non-governmental entity that may participate in the project. In this case, the State must submit the certification and RROF to HUD for approval.

(2) States must exercise HUD's responsibilities in accordance with §58.18, with respect to approval of a unit of local government's environmental certification and RROF for a HUD assisted project funded through the state. Approval by the state of a unit of local government's certification and RROF satisfies the Secretary's responsibilities under NEPA and the related laws cited in §58.5.

(c) *Particular responsibilities of Indian tribes.* An Indian tribe may, but is not required to, assume responsibilities for environmental review, decision-making and action for programs authorized by the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (other than title VIII) or section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z-13a). The tribe must make a separate decision regarding assumption of responsibilities for each of these Acts and communicate that decision in writing to HUD. If the tribe assumes these responsibilities, the requirements of this part shall apply. If a tribe formally declines assumption of these responsibilities, they are retained by HUD and the provisions of part 50 of this title apply.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56128, Sept. 29, 2003]

#### §58.5 Related Federal laws and authorities.

In accordance with the provisions of law cited in §58.1(b), the responsible entity must assume responsibilities for environmental review, decision-making and action that would apply to HUD under the following specified laws and authorities. The responsible entity must certify that it has complied with the requirements that would apply to HUD under these laws and authorities and must consider the criteria, standards, policies and regulations of these laws and authorities.

(a) *Historic properties.* (1) The National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*), particularly sections 106 and 110 (16 U.S.C. 470 and 470h-2).

(2) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921), 3 CFR 1971-1975 Comp., p. 559, particularly section 2(c).

(3) Federal historic preservation regulations as follows:

(i) 36 CFR part 800 with respect to HUD programs other than Urban Development Action Grants (UDAG); and

(ii) 36 CFR part 801 with respect to UDAG.

(4) The Reservoir Salvage Act of 1960 as amended by the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 *et seq.*), particularly section 3 (16 U.S.C. 469a-1).

(b) *Floodplain management and wetland protection.* (1) Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951), 3 CFR, 1977 Comp., p. 117, as interpreted in HUD regulations at 24 CFR part 55, particularly section 2(a) of the order (For an explanation of the relationship between the decision-making process in 24 CFR part 55 and this part, see §55.10 of this subtitle A.)

(2) Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961), 3 CFR, 1977 Comp., p. 121, as interpreted in HUD regulations at 24 CFR part 55, particularly sections 2 and 5 of the order.

(c) *Coastal Zone Management.* The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 *et seq.*), as amended, particularly section 307(c) and (d) (16 U.S.C. 1456(c) and (d)).

(d) *Sole source aquifers.* (1) The Safe Drinking Water Act of 1974 (42 U.S.C. 201, 300(f) *et seq.*, and 21 U.S.C. 349) as amended; particularly section 1424(e)(42 U.S.C. 300h-3(e)).

(2) Sole Source Aquifers (Environmental Protection Agency—40 CFR part 149).

(e) *Endangered species.* The Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) as amended, particularly section 7 (16 U.S.C. 1536).

(f) *Wild and scenic rivers.* The Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 *et seq.*) as amended, particularly section 7(b) and (c) (16 U.S.C. 1278(b) and (c)).

(g) *Air quality.* (1) The Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended; particularly section 176(c) and (d) (42 U.S.C. 7506(c) and (d)).

(2) Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency—40 CFR parts 6, 51, and 93).

(h) *Farmlands protection.* (1) Farmland Protection Policy Act of 1981 (7 U.S.C. 4201 *et seq.*) particularly sections 1540(b) and 1541 (7 U.S.C. 4201(b) and 4202).

(2) Farmland Protection Policy (Department of Agriculture—7 CFR part 658).

(i) *HUD environmental standards.* (1) Applicable criteria and standards specified in part 51 of this title, other than the runway clear zone notification requirement in §51.303(a)(3).

(2)(i) Also, it is HUD policy that all properties that are being proposed for use in HUD programs be free of hazardous materials, contamination, toxic chemicals and gases, and radioactive substances, where a hazard could affect the health and safety of occupants or conflict with the intended utilization of the property.

(ii) The environmental review of multifamily housing with five or more dwelling units (including leasing), or non-residential property, must include the evaluation of previous uses of the site or other evidence of contamination on or near the site, to ensure that the occupants of proposed sites are not adversely affected by any of the hazards listed in paragraph (i)(2)(i) of this section.

(iii) Particular attention should be given to any proposed site on or in the general proximity of such areas as dumps, landfills, industrial sites, or other locations that contain, or may have contained, hazardous wastes.

(iv) The responsible entity shall use current techniques by qualified professionals to undertake investigations determined necessary.

(j) *Environmental justice.* Executive Order 12898—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994 (59 FR 7629), 3 CFR, 1994 Comp. p. 859.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56128, Sept. 29, 2003; 78 FR 68734, Nov. 15, 2013]

## §58.6 Other requirements.

In addition to the duties under the laws and authorities specified in §58.5 for assumption by the responsible entity under the laws cited in §58.1(b), the responsible entity must comply with the following requirements. Applicability of the following requirements does not trigger the certification and release of funds procedure under this part or preclude exemption of an activity under §58.34(a)(12) and/or the applicability of §58.35(b). However, the responsible entity remains responsible for addressing the following requirements in its ERR and meeting these requirements, where applicable, regardless of whether the activity is exempt under §58.34 or categorically excluded under §58.35(a) or (b).

(a)(1) Under the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4128), Federal financial assistance for acquisition and construction purposes (including rehabilitation) may not be used in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(i) The community in which the area is situated is participating in the National Flood Insurance Program (see 44 CFR parts 59 through 79), or less than one year has passed since the FEMA notification regarding such hazards; and

(ii) Where the community is participating in the National Flood Insurance Program, flood insurance protection is to be obtained as a condition of the approval of financial assistance to the property owner.

(2) Where the community is participating in the National Flood Insurance Program and the recipient provides financial assistance for acquisition or construction purposes (including rehabilitation) for property located in an area identified by FEMA as having special flood hazards, the responsible entity is responsible for assuring that flood insurance under the National Flood Insurance Program is obtained and maintained.

(3) Paragraph (a) of this section does not apply to Federal formula grants made to a State.

(4) Flood insurance requirements cannot be fulfilled by self-insurance except as authorized by law for assistance to state-owned projects within states approved by the Federal Insurance Administrator consistent with 44 CFR 75.11.

(b) Under section 582 of the National Flood Insurance Reform Act of 1994, 42 U.S.C. 5154a, HUD disaster assistance that is made available in a special flood hazard area may not be used to make a payment (including any loan assistance payment) to a person for repair, replacement or restoration for flood damage to any personal, residential or commercial property if:

(1) The person had previously received Federal flood disaster assistance conditioned on obtaining and maintaining flood insurance; and

(2) The person failed to obtain and maintain flood insurance.

(c) Pursuant to the Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3501), HUD assistance may not be used for most activities proposed in the Coastal Barrier Resources System.

(d) In all cases involving HUD assistance, subsidy, or insurance for the purchase or sale of an existing property in a Runway Clear Zone or Clear Zone, as defined in 24 CFR part 51,

the responsible entity shall advise the buyer that the property is in a runway clear zone or clear zone, what the implications of such a location are, and that there is a possibility that the property may, at a later date, be acquired by the airport operator. The buyer must sign a statement acknowledging receipt of this information.

[61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15271, Mar. 30, 1998; 78 FR 68734, Nov. 15, 2013]

## **Subpart B—General Policy: Responsibilities of Responsible Entities**

### **§58.10 Basic environmental responsibility.**

In accordance with the provisions of law cited in §58.1(b), except as otherwise provided in §58.4(c), the responsible entity must assume the environmental responsibilities for projects under programs cited in §58.1(b). In doing so, the responsible entity must comply with the provisions of NEPA and the CEQ regulations contained in 40 CFR parts 1500 through 1508, including the requirements set forth in this part.

[68 FR 56128, Sept. 29, 2003]

### **§58.11 Legal capacity and performance.**

(a) A responsible entity which believes that it does not have the legal capacity to carry out the environmental responsibilities required by this part must contact the appropriate local HUD Office or the State for further instructions. Determinations of legal capacity will be made on a case-by-case basis.

(b) If a public housing, special project, HOPWA, Supportive Housing, Shelter Plus Care, or Self-Help Homeownership Opportunity recipient that is not a responsible entity objects to the non-recipient responsible entity conducting the environmental review on the basis of performance, timing, or compatibility of objectives, HUD will review the facts to determine who will perform the environmental review.

(c) At any time, HUD may reject the use of a responsible entity to conduct the environmental review in a particular case on the basis of performance, timing or compatibility of objectives, or in accordance with §58.77(d)(1).

(d) If a responsible entity, other than a recipient, objects to performing an environmental review, or if HUD determines that the responsible entity should not perform the environmental review, HUD may designate another responsible entity to conduct the review in accordance with this part or may itself conduct the environmental review in accordance with the provisions of 24 CFR part 50.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56129, Sept. 29, 2003]

### **§58.12 Technical and administrative capacity.**

The responsible entity must develop the technical and administrative capability necessary to comply with 40 CFR parts 1500 through 1508 and the requirements of this part.

### **§58.13 Responsibilities of the certifying officer.**

Under the terms of the certification required by §58.71, a responsible entity's certifying officer is the "responsible Federal official" as that term is used in section 102 of NEPA and in statutory provisions cited in §58.1(b). The Certifying Officer is

therefore responsible for all the requirements of section 102 of NEPA and the related provisions in 40 CFR parts 1500 through 1508, and 24 CFR part 58, including the related Federal authorities listed in §58.5. The Certifying Officer must also:

(a) Represent the responsible entity and be subject to the jurisdiction of the Federal courts. The Certifying Officer will not be represented by the Department of Justice in court; and

(b) Ensure that the responsible entity reviews and comments on all EISs prepared for Federal projects that may have an impact on the recipient's program.

### **§58.14 Interaction with State, Federal and non-Federal entities.**

A responsible entity shall consult with appropriate environmental agencies, State, Federal and non-Federal entities and the public in the preparation of an EIS, EA or other environmental reviews undertaken under the related laws and authorities cited in §58.5 and §58.6. The responsible entity must also cooperate with other agencies to reduce duplication between NEPA and comparable environmental review requirements of the State (see 40 CFR 1506.2 (b) and (c)). The responsible entity must prepare its EAs and EISs so that they comply with the environmental review requirements of both Federal and State laws unless otherwise specified or provided by law. State, Federal and local agencies may participate or act in a joint lead or cooperating agency capacity in the preparation of joint EISs or joint environmental assessments (see 40 CFR 1501.5(b) and 1501.6). A single EIS or EA may be prepared and adopted by multiple users to the extent that the review addresses the relevant environmental issues and there is a written agreement between the cooperating agencies which sets forth the coordinated and overall responsibilities.

[63 FR 15271, Mar 30, 1998]

### **§58.15 Tiering.**

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

### **§58.17 [Reserved]**

### **§58.18 Responsibilities of States assuming HUD environmental responsibilities.**

States that elect to administer a HUD program shall ensure that the program complies with the provisions of this part. The state must:

(a) Designate the state agency or agencies that will be responsible for carrying out the requirements and administrative responsibilities set forth in subpart H of this part and which will:

(1) Develop a monitoring and enforcement program for post-review actions on environmental reviews and monitor compliance with any environmental conditions included in the award.

(2) Receive public notices, RROFs, and certifications from recipients pursuant to §§58.70 and 58.71; accept objections from the public and from other agencies (§58.73); and perform other related responsibilities regarding releases of funds.

(b) Fulfill the state role in subpart H relative to the time period set for the receipt and disposition of comments, objections and appeals (if any) on particular projects.

[68 FR 56129, Sept. 29, 2003]

## **Subpart C—General Policy: Environmental Review Procedures**

### **§58.21 Time periods.**

All time periods in this part shall be counted in calendar days. The first day of a time period begins at 12:01 a.m. local time on the day following the publication or the mailing and posting date of the notice which initiates the time period.

### **§58.22 Limitations on activities pending clearance.**

(a) Neither a recipient nor any participant in the development process, including public or private nonprofit or for-profit entities, or any of their contractors, may commit HUD assistance under a program listed in §58.1(b) on an activity or project until HUD or the state has approved the recipient's RROF and the related certification from the responsible entity. In addition, until the RROF and the related certification have been approved, neither a recipient nor any participant in the development process may commit non-HUD funds on or undertake an activity or project under a program listed in §58.1(b) if the activity or project would have an adverse environmental impact or limit the choice of reasonable alternatives.

(b) If a project or activity is exempt under §58.34, or is categorically excluded (except in extraordinary circumstances) under §58.35(b), no RROF is required and the recipient may undertake the activity immediately after the responsible entity has documented its determination as required in §58.34(b) and §58.35(d), but the recipient must comply with applicable requirements under §58.6.

(c) If a recipient is considering an application from a prospective subrecipient or beneficiary and is aware that the prospective subrecipient or beneficiary is about to take an action within the jurisdiction of the recipient that is prohibited by paragraph (a) of this section, then the recipient will take appropriate action to ensure that the objectives and procedures of NEPA are achieved.

(d) An option agreement on a proposed site or property is allowable prior to the completion of the environmental review if the option agreement is subject to a determination by the recipient on the desirability of the property for the project as a result of the completion of the environmental review in accordance with this part and the cost of the option is a nominal portion of the purchase price. There is no constraint on the purchase of an option by third parties that have not been selected for HUD funding, have no responsibility for the environmental review and have no say in the approval or disapproval of the project.

(e) *Self-Help Homeownership Opportunity Program (SHOP)*. In accordance with section 11(d)(2)(A) of the Housing Opportunity Program Extension Act of 1996 (42 U.S.C. 12805 note), an organization, consortium, or affiliate receiving assistance under the SHOP program may advance nongrant funds to acquire land prior to completion of an environmental review and approval of a Request for Release of Funds (RROF) and certification, notwithstanding paragraph (a) of this section. Any advances to acquire land prior to approval of the RROF and certification are made at the risk of the organization, consortium, or affiliate and reimbursement for such advances may depend on the result of the environmental review. This authorization is limited to the SHOP program only and all other forms of HUD assistance are subject to the limitations in paragraph (a) of this section.

(f) *Relocation*. Funds may be committed for relocation assistance before the approval of the RROF and related certification for the project provided that the relocation assistance is required by 24 CFR part 42.

[68 FR 56129, Sept. 29, 2003]

### **§58.23 Financial assistance for environmental review.**

The costs of environmental reviews, including costs incurred in complying with any of the related laws and authorities cited in §58.5 and §58.6, are eligible costs to the extent allowable under the HUD assistance program regulations.

## **Subpart D—Environmental Review Process: Documentation, Range of Activities, Project Aggregation and Classification**

### **§58.30 Environmental review process.**

(a) The environmental review process consists of all the actions that a responsible entity must take to determine compliance with this part. The environmental review process includes all the compliance actions needed for other activities and projects that are not assisted by HUD but are aggregated by the responsible entity in accordance with §58.32.

(b) The environmental review process should begin as soon as a recipient determines the projected use of HUD assistance.

### **§58.32 Project aggregation.**

(a) A responsible entity must 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.

(b) In deciding the most appropriate basis for aggregation when evaluating activities under more than one program, the responsible entity may choose: *functional aggregation* when a specific type of activity (e.g., water improvements) is to take place in several separate locales or jurisdictions; *geographic*

*aggregation* when a mix of dissimilar but related activities is to be concentrated in a fairly specific project area (e.g., a combination of water, sewer and street improvements and economic development activities); or a *combination of aggregation approaches*, which, for various project locations, considers the impacts arising from each functional activity and its interrelationship with other activities.

(c) The purpose of project aggregation is to group together related activities so that the responsible entity can:

(1) Address adequately and analyze, in a single environmental review, the separate and combined impacts of activities that are similar, connected and closely related, or that are dependent upon other activities and actions. (See 40 CFR 1508.25(a)).

(2) Consider reasonable alternative courses of action.

(3) Schedule the activities to resolve conflicts or mitigate the individual, combined and/or cumulative effects.

(4) Prescribe mitigation measures and safeguards including project alternatives and modifications to individual activities.

(d) *Multi-year project aggregation*—(1) *Release of funds*. When a recipient's planning and program development provide for activities to be implemented over two or more years, the responsible entity's environmental review should consider the relationship among all component activities of the multi-year project regardless of the source of funds and address and evaluate their cumulative environmental effects. The estimated range of the aggregated activities and the estimated cost of the total project must be listed and described by the responsible entity in the environmental review and included in the RROF. The release of funds will cover the entire project period.

(2) When one or more of the conditions described in §58.47 exists, the recipient or other responsible entity must re-evaluate the environmental review.

### §58.33 Emergencies.

(a) In the cases of emergency, disaster or imminent threat to health and safety which warrant the taking of an action with significant environmental impact, the provisions of 40 CFR 1506.11 shall apply.

(b) If funds are needed on an emergency basis and adherence to separate comment periods would prevent the giving of assistance during a Presidentially declared disaster, or during a local emergency that has been declared by the chief elected official of the responsible entity who has proclaimed that there is an immediate need for public action to protect the public safety, the combined Notice of FONSI and Notice of Intent to Request Release of Funds (NOI/RROF) may be disseminated and/or published simultaneously with the submission of the RROF. The combined Notice of FONSI and NOI/RROF shall state that the funds are needed on an emergency basis due to a declared disaster and that the comment periods have been combined. The Notice shall also invite commenters to submit their comments to both HUD and the responsible entity issuing the notice to ensure that these comments will receive full consideration.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56129, Sept. 29, 2003]

### §58.34 Exempt activities.

(a) Except for the applicable requirements of §58.6, the responsible entity does not have to comply with the requirements of this part or undertake any environmental review, consultation or other action under NEPA and the other provisions of law or authorities cited in §58.5 for the activities exempt by this section or projects consisting solely of the following exempt activities:

(1) Environmental and other studies, resource identification and the development of plans and strategies;

(2) Information and financial services;

(3) Administrative and management activities;

(4) Public services that will not have a physical impact or result in any physical changes, including but not limited to services concerned with employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation and welfare or recreational needs;

(5) Inspections and testing of properties for hazards or defects;

(6) Purchase of insurance;

(7) Purchase of tools;

(8) Engineering or design costs;

(9) Technical assistance and training;

(10) Assistance for temporary or permanent improvements that do not alter environmental conditions and are limited to protection, repair, or restoration activities necessary only to control or arrest the effects from disasters or imminent threats to public safety including those resulting from physical deterioration;

(11) Payment of principal and interest on loans made or obligations guaranteed by HUD;

(12) Any of the categorical exclusions listed in §58.35(a) provided that there are no circumstances which require compliance with any other Federal laws and authorities cited in §58.5.

(b) A recipient does not have to submit an RROF and certification, and no further approval from HUD or the State will be needed by the recipient for the drawdown of funds to carry out exempt activities and projects. However, the responsible entity must document in writing its determination that each activity or project is exempt and meets the conditions specified for such exemption under this section.

[61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15271, Mar. 30, 1998]

### §58.35 Categorical exclusions.

Categorical exclusion refers to a category of activities for which no environmental impact statement or environmental assessment and finding of no significant impact under NEPA is required, except in extraordinary circumstances (see §58.2(a)(3)) in which a normally excluded activity may have a significant impact. Compliance with the other applicable Federal environmental laws and authorities listed in §58.5 is required for any categorical exclusion listed in paragraph (a) of this section.

(a) *Categorical exclusions subject to §58.5.* The following activities are categorically excluded under NEPA, but may be subject to review under authorities listed in §58.5:

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

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

(3) Rehabilitation of buildings and improvements when the following conditions are met:

(i) In the case of a building for residential use (with one to four units), the density is not increased beyond four units, and the land use is not changed;

(ii) In the case of multifamily residential buildings:

(A) Unit density is not changed more than 20 percent;

(B) The project does not involve changes in land use from residential to non-residential; and

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

(iii) In the case of non-residential structures, including commercial, industrial, and public buildings:

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

(B) 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)(i) 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; or

(ii) 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.

(iii) Paragraphs (a)(4)(i) and (ii) of this section do not apply to rehabilitation of a building for residential use (with one to four units) (see paragraph (a)(3)(i) of this section).

(5) 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.

(6) Combinations of the above activities.

(b) *Categorical exclusions not subject to §58.5.* The Department has determined that the following categorically

excluded activities would not alter any conditions that would require a review or compliance determination under the Federal laws and authorities cited in §58.5. When the following kinds of activities are undertaken, the responsible entity does not have to publish a NOI/RROF or execute a certification and the recipient does not have to submit a RROF to HUD (or the State) except in the circumstances described in paragraph (c) of this section. Following the award of the assistance, no further approval from HUD or the State will be needed with respect to environmental requirements, except where paragraph (c) of this section applies. The recipient remains responsible for carrying out any applicable requirements under §58.6.

(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 buydowns, 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.

(c) *Circumstances requiring NEPA review.* If a responsible entity determines that an activity or project identified in paragraph (a) or (b) of this section, because of extraordinary circumstances and conditions at or affecting the location of the activity or project, may have a significant environmental effect, it shall comply with all the requirements of this part.

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

[61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15272, Mar. 30, 1998; 68 FR 56129, Sept. 29, 2003; 78 FR 68734, Nov. 15, 2013]

### **§58.36 Environmental assessments.**

If a project is not exempt or categorically excluded under §§58.34 and 58.35, the responsible entity must prepare an EA in accordance with subpart E of this part. If it is evident without preparing an EA that an EIS is required under §58.37, the responsible entity should proceed directly to an EIS.

### §58.37 Environmental impact statement determinations.

(a) An EIS is required when the project is determined to have a potentially significant impact on the human environment.

(b) An EIS is required under any of the following circumstances, except as provided in paragraph (c) of this section:

(1) The project would provide a site or sites for, or result in the construction of, hospitals or nursing homes containing a total of 2,500 or more beds.

(2) The project would remove, demolish, convert or substantially rehabilitate 2,500 or more existing housing units (but not including rehabilitation projects categorically excluded under §58.35), or would result in the construction or installation of 2,500 or more housing units, or would provide sites for 2,500 or more housing units.

(3) The project would provide enough additional water and sewer capacity to support 2,500 or more additional housing units. The project does not have to be specifically intended for residential use nor does it have to be totally new construction. If the project is designed to provide upgraded service to existing development as well as to serve new development, only that portion of the increased capacity which is intended to serve new development should be counted.

(c) If, on the basis of an EA, a responsible entity determines that the thresholds in paragraph (b) of this section are the sole reason for the EIS, the responsible entity may prepare a FONSI pursuant to 40 CFR 1501.4. In such cases, the FONSI must be made available for public review for at least 30 days before the responsible entity makes the final determination whether to prepare an EIS.

(d) Notwithstanding paragraphs (a) through (c) of this section, an EIS is not required where §58.53 is applicable.

(e) *Recommended EIS Format.* The responsible entity must use the EIS format recommended by the CEQ regulations (40 CFR 1502.10) unless a determination is made on a particular project that there is a compelling reason to do otherwise. In such a case, the EIS format must meet the minimum requirements prescribed in 40 CFR 1502.10.

### §58.38 Environmental review record.

The responsible entity must maintain a written record of the environmental review undertaken under this part for each project. This document will be designated the "Environmental Review Record" (ERR), and shall be available for public review. The responsible entity must use the current HUD-recommended formats or develop equivalent formats.

(a) *ERR Documents.* The ERR shall contain all the environmental review documents, public notices and written determinations or environmental findings required by this part as evidence of review, decisionmaking and actions pertaining to a particular project of a recipient. The document shall:

(1) Describe the project and the activities that the recipient has determined to be part of the project;

(2) Evaluate the effects of the project or the activities on the human environment;

(3) Document compliance with applicable statutes and authorities, in particular those cited in §58.5 and 58.6; and

(4) Record the written determinations and other review findings required by this part (e.g., exempt and categorically excluded projects determinations, findings of no significant impact).

(b) *Other documents and information.* The ERR shall also contain verifiable source documents and relevant base data used or cited in EAs, EISs or other project review documents. These documents may be incorporated by reference into the ERR provided that each source document is identified and available for inspection by interested parties. Proprietary material and special studies prepared for the recipient that are not otherwise generally available for public review shall not be incorporated by reference but shall be included in the ERR.

## Subpart E—Environmental Review Process: Environmental Assessments (EA's)

### §58.40 Preparing the environmental assessment.

The responsible entity may prepare the EA using the HUD recommended format. In preparing an EA for a particular project, the responsible entity must:

(a) Determine existing conditions and describe the character, features and resources of the project area and its surroundings; identify the trends that are likely to continue in the absence of the project.

(b) Identify all potential environmental impacts, whether beneficial or adverse, and the conditions that would change as a result of the project.

(c) Identify, analyze and evaluate all impacts to determine the significance of their effects on the human environment and whether the project will require further compliance under related laws and authorities cited in §58.5 and §58.6.

(d) Examine and recommend feasible ways in which the project or external factors relating to the project could be modified in order to eliminate or minimize adverse environmental impacts.

(e) Examine alternatives to the project itself, if appropriate, including the alternative of no action.

(f) Complete all environmental review requirements necessary for the project's compliance with applicable authorities cited in §§58.5 and 58.6.

(g) Based on steps set forth in paragraph (a) through (f) of this section, make one of the following findings:

(1) A Finding of No Significant Impact (FONSI), in which the responsible entity determines that the project is not an action that will result in a significant impact on the quality of the human environment. The responsible entity may then proceed to §58.43.

(2) A finding of significant impact, in which the project is deemed to be an action which may significantly affect the quality of the human environment. The responsible entity must then proceed with its environmental review under subpart F or G of this part.

**§58.43 Dissemination and/or publication of the findings of no significant impact.**

(a) If the responsible entity makes a finding of no significant impact, it must prepare a FONSI notice, using the current HUD-recommended format or an equivalent format. As a minimum, the responsible entity must send the FONSI notice to individuals and groups known to be interested in the activities, to the local news media, to the appropriate tribal, local, State and Federal agencies; to the Regional Offices of the Environmental Protection Agency having jurisdiction and to the HUD Field Office (or the State where applicable). The responsible entity may also publish the FONSI notice in a newspaper of general circulation in the affected community. If the notice is not published, it must also be prominently displayed in public buildings, such as the local Post Office and within the project area or in accordance with procedures established as part of the citizen participation process.

(b) The responsible entity may disseminate or publish a FONSI notice at the same time it disseminates or publishes the NOI/RROF required by §58.70. If the notices are released as a combined notice, the combined notice shall:

(1) Clearly indicate that it is intended to meet two separate procedural requirements; and

(2) Advise the public to specify in their comments which "notice" their comments address.

(c) The responsible entity must consider the comments and make modifications, if appropriate, in response to the comments, before it completes its environmental certification and before the recipient submits its RROF. If funds will be used in Presidentially declared disaster areas, modifications resulting from public comment, if appropriate, must be made before proceeding with the expenditure of funds.

**§58.45 Public comment periods.**

Required notices must afford the public the following minimum comment periods, counted in accordance with §58.21:

(a) Notice of Finding of No Significant Impact (FONSI)	15 days when published or, if no publication, 18 days when mailing and posting
(b) Notice of Intent to Request Release of Funds (NOI-RROF)	7 days when published or, if no publication, 10 days when mailing and posting
(c) Concurrent or combined notices	15 days when published or, if no publication, 18 days when mailing and posting

[68 FR 56130, Sept. 29, 2003]

**§58.46 Time delays for exceptional circumstances.**

The responsible entity must make the FONSI available for public comments for 30 days before the recipient files the RROF when:

(a) There is a considerable interest or controversy concerning the project;

(b) The proposed project is similar to other projects that normally require the preparation of an EIS; or

(c) The project is unique and without precedent.

**§58.47 Re-evaluation of environmental assessments and other environmental findings.**

(a) A responsible entity must re-evaluate its environmental findings to determine if the original findings are still valid, when:

(1) The recipient proposes substantial changes in the nature, magnitude or extent of the project, including adding new activities not anticipated in the original scope of the project;

(2) There are new circumstances and environmental conditions which may affect the project or have a bearing on its impact, such as concealed or unexpected conditions discovered during the implementation of the project or activity which is proposed to be continued; or

(3) The recipient proposes the selection of an alternative not in the original finding.

(b)(1) If the original findings are still valid but the data or conditions upon which they were based have changed, the responsible entity must affirm the original findings and update its ERR by including this re-evaluation and its determination based on its findings. Under these circumstances, if a FONSI notice has already been published, no further publication of a FONSI notice is required.

(2) If the responsible entity determines that the original findings are no longer valid, it must prepare an EA or an EIS if its evaluation indicates potentially significant impacts.

(3) Where the recipient is not the responsible entity, the recipient must inform the responsible entity promptly of any proposed substantial changes under paragraph (a)(1) of this section, new circumstances or environmental conditions under paragraph (a)(2) of this section, or any proposals to select a different alternative under paragraph (a)(3) of this section, and must then permit the responsible entity to re-evaluate the findings before proceeding.

[61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15272, Mar. 30, 1998]

**Subpart F—Environmental Review Process: Environmental Impact Statement Determinations**

**§58.52 Adoption of other agencies' EISs.**

The responsible entity may adopt a draft or final EIS prepared by another agency provided that the EIS was prepared in accordance with 40 CFR parts 1500 through 1508. If the responsible entity adopts an EIS prepared by another agency, the procedure in 40 CFR 1506.3 shall be followed. An adopted EIS may have to be revised and modified to adapt it to the particular environmental conditions and circumstances of the project if these are different from the project reviewed in the EIS. In such cases the responsible entity must prepare, circulate, and file a supplemental draft EIS in the manner prescribed in §58.60(d) and otherwise comply with the clearance and time requirements of the EIS process, except that scoping requirements under 40 CFR 1501.7 shall not apply. The agency that prepared the original EIS should be informed that the responsible entity intends to amend and adopt the EIS. The responsible entity may adopt an EIS when it acts as a cooperating agency in its preparation under 40 CFR 1506.3. The responsible entity is not required to re-circulate or file the EIS, but must complete the clearance process for the RROF.

The decision to adopt an EIS shall be made a part of the project ERR.

#### **§58.53 Use of prior environmental impact statements.**

Where any final EIS has been listed in the FEDERAL REGISTER for a project pursuant to this part, or where an area-wide or similar broad scale final EIS has been issued and the EIS anticipated a subsequent project requiring an environmental clearance, then no new EIS is required for the subsequent project if all the following conditions are met:

(a) The ERR contains a decision based on a finding pursuant to §58.40 that the proposed project is not a new major Federal action significantly affecting the quality of the human environment. The decision shall include:

(1) References to the prior EIS and its evaluation of the environmental factors affecting the proposed subsequent action subject to NEPA;

(2) An evaluation of any environmental factors which may not have been previously assessed, or which may have significantly changed;

(3) An analysis showing that the proposed project is consistent with the location, use, and density assumptions for the site and with the timing and capacity of the circulation, utility, and other supporting infrastructure assumptions in the prior EIS;

(4) Documentation showing that where the previous EIS called for mitigating measures or other corrective action, these are completed to the extent reasonable given the current state of development.

(b) The prior final EIS has been filed within five (5) years, and updated as follows:

(1) The EIS has been updated to reflect any significant revisions made to the assumptions under which the original EIS was prepared;

(2) The EIS has been updated to reflect new environmental issues and data or legislation and implementing regulations which may have significant environmental impact on the project area covered by the prior EIS.

(c) There is no litigation pending in connection with the prior EIS, and no final judicial finding of inadequacy of the prior EIS has been made.

### **Subpart G—Environmental Review Process: Procedures for Draft, Final and Supplemental Environmental Impact Statements**

#### **§58.55 Notice of intent to prepare an EIS.**

As soon as practicable after the responsible entity decides to prepare an EIS, it must publish a NOI/EIS, using the HUD recommended format and disseminate it in the same manner as required by 40 CFR parts 1500 through 1508.

#### **§58.56 Scoping process.**

The determination on whether or not to hold a scoping meeting will depend on the same circumstances and factors as for the holding of public hearings under §58.59. The responsible entity must wait at least 15 days after disseminating or publishing the NOI/EIS before holding a scoping meeting.

#### **§58.57 Lead agency designation.**

If there are several agencies ready to assume the lead role, the responsible entity must make its decision based on the criteria in 40 CFR 1501.5(c). If the responsible entity and a Federal agency are unable to reach agreement, then the responsible entity must notify HUD (or the State, where applicable). HUD (or the State) will assist in obtaining a determination based on the procedure set forth in 40 CFR 1501.5(e).

#### **§58.59 Public hearings and meetings.**

(a) *Factors to consider.* In determining whether or not to hold public hearings in accordance with 40 CFR 1506.6, the responsible entity must consider the following factors:

(1) The magnitude of the project in terms of economic costs, the geographic area involved, and the uniqueness or size of commitment of resources involved.

(2) The degree of interest in or controversy concerning the project.

(3) The complexity of the issues and the likelihood that information will be presented at the hearing which will be of assistance to the responsible entity.

(4) The extent to which public involvement has been achieved through other means.

(b) *Procedure.* All public hearings must be preceded by a notice of public hearing, which must be published in the local news media 15 days before the hearing date. The Notice must:

(1) State the date, time, place, and purpose of the hearing or meeting.

(2) Describe the project, its estimated costs, and the project area.

(3) State that persons desiring to be heard on environmental issues will be afforded the opportunity to be heard.

(4) State the responsible entity's name and address and the name and address of its Certifying Officer.

(5) State what documents are available, where they can be obtained, and any charges that may apply.

#### **§58.60 Preparation and filing of environmental impact statements.**

(a) The responsible entity must prepare the draft environmental impact statement (DEIS) and the final environmental impact statements (FEIS) using the current HUD recommended format or its equivalent.

(b) The responsible entity must file and distribute the (DEIS) and the (FEIS) in the following manner:

(1) Five copies to EPA Headquarters;

(2) Five copies to EPA Regional Office;

(3) Copies made available in the responsible entity's and the recipient's office;

(4) Copies or summaries made available to persons who request them; and

(5) FEIS only—one copy to State, HUD Field Office, and HUD Headquarters library.

(c) The responsible entity may request waivers from the time requirements specified for the draft and final EIS as prescribed in 40 CFR 1506.6.

(d) When substantial changes are proposed in a project or when significant new circumstances or information becomes available during an environmental review, the recipient may prepare a supplemental EIS as prescribed in 40 CFR 1502.9.

(e) The responsible entity must prepare a Record of Decision (ROD) as prescribed in 40 CFR 1505.2.

[61 FR 19122, Apr. 30, 1996, as amended at 63 FR 15272, Mar. 30, 1998]

### **Subpart H—Release of Funds for Particular Projects**

#### **§58.70 Notice of intent to request release of funds.**

The NOI/RROF must be disseminated and/or published in the manner prescribed by §58.43 and §58.45 before the certification is signed by the responsible entity.

#### **§58.71 Request for release of funds and certification.**

(a) The RROF and certification shall be sent to the appropriate HUD Field Office (or the State, if applicable), except as provided in paragraph (b) of this section. This request shall be executed by the Certifying Officer. The request shall describe the specific project and activities covered by the request and contain the certification required under the applicable statute cited in §58.1(b). The RROF and certification must be in a form specified by HUD.

(b) When the responsible entity is conducting an environmental review on behalf of a recipient, as provided for in §58.10, the recipient must provide the responsible entity with all available project and environmental information and refrain from undertaking any physical activities or choice limiting actions until HUD (or the State, if applicable) has approved its request for release of funds. The certification form executed by the responsible entity's certifying officer shall be sent to the recipient that is to receive the assistance along with a description of any

special environmental conditions that must be adhered to in carrying out the project. The recipient is to submit the RROF and the certification of the responsible entity to HUD (or the State, if applicable) requesting the release of funds. The recipient must agree to abide by the special conditions, procedures and requirements of the environmental review, and to advise the responsible entity of any proposed change in the scope of the project or any change in environmental conditions.

(c) If the responsible entity determines that some of the activities are exempt under applicable provisions of this part, the responsible entity shall advise the recipient that it may commit funds for these activities as soon as programmatic authorization is received. This finding shall be documented in the ERR maintained by the responsible entity and in the recipient's project files.

#### **§58.72 HUD or State actions on RROFs and certifications.**

The actions which HUD (or a State) may take with respect to a recipient's environmental certification and RROF are as follows:

(a) In the absence of any receipt of objection to the contrary, except as provided in paragraph (b) of this section, HUD (or the State) will assume the validity of the certification and RROF and will approve these documents after expiration of the 15-day period prescribed by statute.

(b) HUD (or the state) may disapprove a certification and RROF if it has knowledge that the responsible entity or other participants in the development process have not complied with the items in §58.75, or that the RROF and certification are inaccurate.

(c) In cases in which HUD has approved a certification and RROF but subsequently learns (e.g., through monitoring) that the recipient violated §58.22 or the recipient or responsible entity otherwise failed to comply with a clearly applicable environmental authority, HUD shall impose appropriate remedies and sanctions in accord with the law and regulations for the program under which the violation was found.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56130, Sept. 29, 2003]

#### **§58.73 Objections to release of funds.**

HUD (or the State) will not approve the ROF for any project before 15 calendar days have elapsed from the time of receipt of the RROF and the certification or from the time specified in the notice published pursuant to §58.70, whichever is later. Any person or agency may object to a recipient's RROF and the related certification. However, the objections must meet the conditions and procedures set forth in subpart H of this part. HUD (or the State) can refuse the RROF and certification on any grounds set forth in §58.75. All decisions by HUD (or the State) regarding the RROF and the certification shall be final.

#### **§58.74 Time for objecting.**

All objections must be received by HUD (or the State) within 15 days from the time HUD (or the State) receives the recipient's RROF and the related certification, or within the time period specified in the notice, whichever is later.

#### **§58.75 Permissible bases for objections.**

HUD (or the State), will consider objections claiming a responsible entity's noncompliance with this part based only on any of the following grounds:

(a) The certification was not in fact executed by the responsible entity's Certifying Officer.

(b) The responsible entity has failed to make one of the two findings pursuant to §58.40 or to make the written determination required by §§58.35, 58.47 or 58.53 for the project, as applicable.

(c) The responsible entity has omitted one or more of the steps set forth at subpart E of this part for the preparation, publication and completion of an EA.

(d) The responsible entity has omitted one or more of the steps set forth at subparts F and G of this part for the conduct, preparation, publication and completion of an EIS.

(e) The recipient or other participants in the development process have committed funds, incurred costs or undertaken activities not authorized by this part before release of funds and approval of the environmental certification by HUD (or the state).

(f) Another Federal agency acting pursuant to 40 CFR part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality.

[61 FR 19122, Apr. 30, 1996, as amended at 68 FR 56130, Sept. 29, 2003]

#### **§58.76 Procedure for objections.**

A person or agency objecting to a responsible entity's RROF and certification shall submit objections in writing to HUD (or the State). The objections shall:

(a) Include the name, address and telephone number of the person or agency submitting the objection, and be signed by the person or authorized official of an agency.

(b) Be dated when signed.

(c) Describe the basis for objection and the facts or legal authority supporting the objection.

(d) State when a copy of the objection was mailed or delivered to the responsible entity's Certifying Officer.

#### **§58.77 Effect of approval of certification.**

(a) *Responsibilities of HUD and States.* HUD's (or, where applicable, the State's) approval of the certification shall be deemed to satisfy the responsibilities of the Secretary under NEPA and related provisions of law cited at §58.5 insofar as those responsibilities relate to the release of funds as authorized by the applicable provisions of law cited in §58.1(b).

(b) *Public and agency redress.* Persons and agencies seeking redress in relation to environmental reviews covered by an approved certification shall deal with the responsible entity and not with HUD. It is HUD's policy to refer all inquiries and complaints to the responsible entity and its Certifying Officer. Similarly, the State (where applicable) may direct persons and agencies seeking redress in relation to environmental reviews covered by an approved certification to deal with the responsible

entity, and not the State, and may refer inquiries and complaints to the responsible entity and its Certifying Officer. Remedies for noncompliance are set forth in program regulations.

(c) *Implementation of environmental review decisions.* Projects of a recipient will require post-review monitoring and other inspection and enforcement actions by the recipient and the State or HUD (using procedures provided for in program regulations) to assure that decisions adopted through the environmental review process are carried out during project development and implementation.

(d) *Responsibility for monitoring and training.* (1) At least once every three years, HUD intends to conduct in-depth monitoring and exercise quality control (through training and consultation) over the environmental activities performed by responsible entities under this part. Limited monitoring of these environmental activities will be conducted during each program monitoring site visit. If through limited or in-depth monitoring of these environmental activities or by other means, HUD becomes aware of any environmental deficiencies, HUD may take one or more of the following actions:

(i) In the case of problems found during limited monitoring, HUD may schedule in-depth monitoring at an earlier date or may schedule in-depth monitoring more frequently;

(ii) HUD may require attendance by staff of the responsible entity at HUD-sponsored or approved training, which will be provided periodically at various locations around the country;

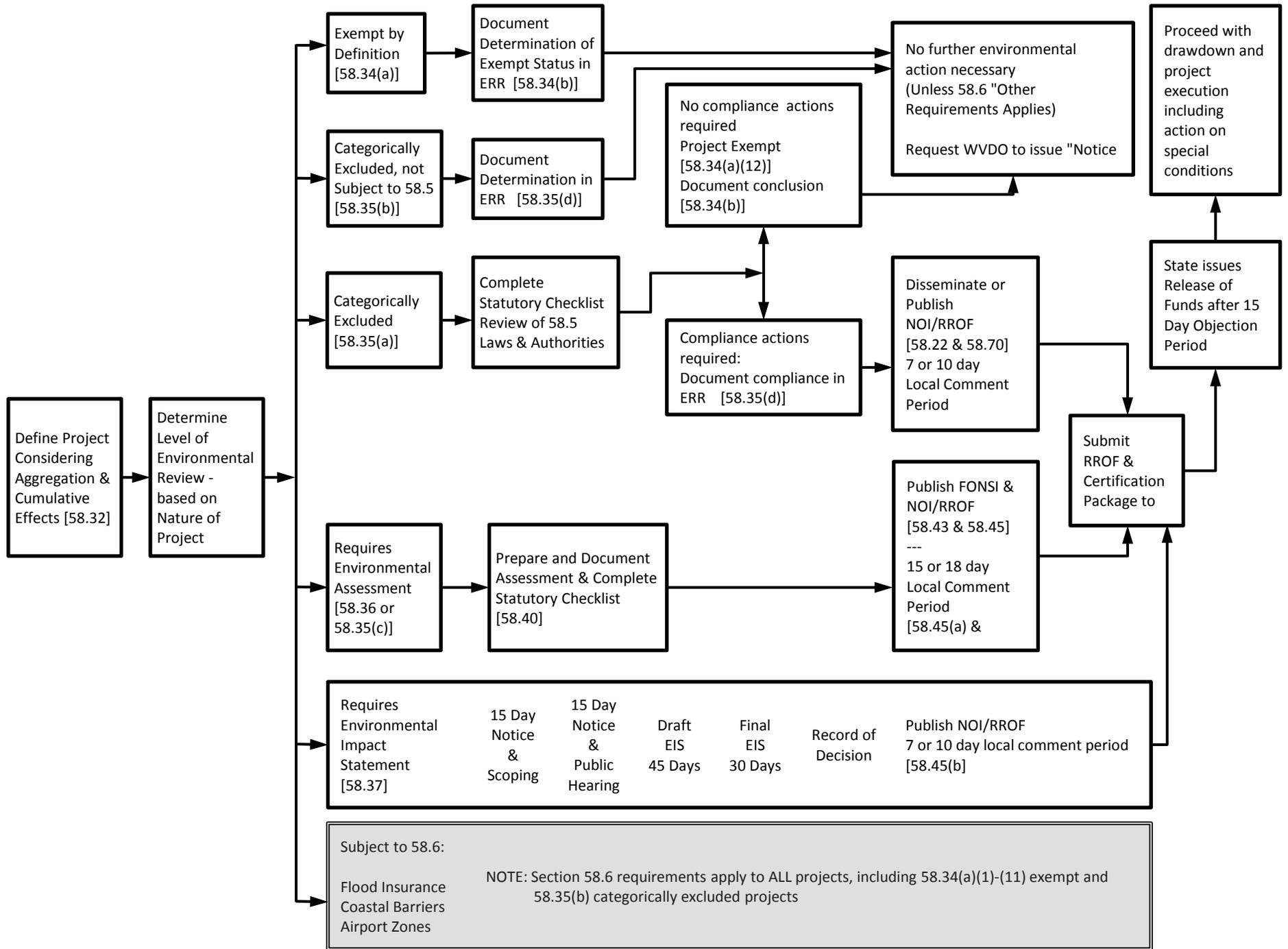
(iii) HUD may refuse to accept the certifications of environmental compliance on subsequent grants;

(iv) HUD may suspend or terminate the responsible entity's assumption of the environmental review responsibility;

(v) HUD may initiate sanctions, corrective actions, or other remedies specified in program regulations or agreements or contracts with the recipient.

(2) HUD's responsibilities and action under paragraph (d)(1) of this section shall not be construed to limit or reduce any responsibility assumed by a responsible entity with respect to any particular release of funds under this part. Whether or not HUD takes action under paragraph (d)(1) of this section, the Certifying Officer remains the responsible Federal official under §58.13 with respect to projects and activities for which the Certifying Officer has submitted a certification under this part.

LEVEL OF ENVIRONMENTAL REVIEW			
24 CFR 58.34 Exempt	24 CFR 58.35(a) Categorically Excluded AND subject to 58.5 "No" checked for <b>all</b> on Statutory Worksheet	24 CFR 58.35(a) Categorically Excluded AND subject to 58.5 "Yes" checked for <b>one or more</b> on Statutory Worksheet	24 CFR 58.36 NEPA Environmental Assessment
TYPE OF ACTIVITIES			
Environmental and other studies Resource Identification Development of plans and strategies Information and financial services Administrative and Management Activities Public services, i.e., employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation, welfare, recreational needs Inspections and testing Purchase insurance and tools Engineering or design costs Technical assistance and training Temporary or permanent improvements that do not alter environmental conditions and are limited to activities to protect, repair or arrest the effects of disasters, imminent threats, or physical deterioration Payments of principal and interest on loans or obligations guaranteed by HUD Combinations of the above activities	Acquisition, repair, improvement, reconstruction, or rehabilitation of public facilities and improvements (other than buildings) when the facilities and improvements are already in place and will be retained in the same use without change in size or capacity of more than 20% <ul style="list-style-type: none"> <li>Replacement of water or sewer lines</li> <li>Reconstruction of curbs &amp; sidewalks</li> <li>repaving of streets</li> </ul> Special projects directed toward the removal of material and architectural barriers that restrict the mobility of and accessibility to the elderly and handicapped.  Single Family Housing Rehab <ul style="list-style-type: none"> <li>Unit density is not increased beyond 4 units,</li> <li>Project doesn't involve change in land use from residential to non-residential</li> <li>The footprint of the building is not increased in a floodplain or a wetland.</li> </ul> Multifamily Housing Rehab <ul style="list-style-type: none"> <li>Unit density change is not more than 20%</li> <li>Project doesn't involve change in land use from residential to non-residential</li> <li>Cost of rehabilitation is less than 75% of the estimated cost of replacement after rehab</li> </ul> Non-Residential Structures <ul style="list-style-type: none"> <li>Facilities and improvements were in place and will not be changed in size or capacity by more than 20%</li> <li>Activity does not involve change in land use from non-residential to residential, commercial to industrial, or one industrial use to another</li> </ul> Individual action (e.g., disposition, new construction, demolition, acquisition) on a 1 to 4 family dwelling; or individual action on five or more units scattered on sites more than 2000 feet apart and no more than 4 units per site.  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 or disposed of will be retained for the same use.  Combinations of the above activities	Activities not exempt or categorically excluded.  Generally, any new construction activity and construction of 5 or more homes, and conversion from one type of land use to another.  To be able to start work on the Exempt Activities associated with any project, the WVDO needs to have the following documentation prior to issuing a Notice to Proceed: <ul style="list-style-type: none"> <li>Finding of Exemption letter on the Grantee's letterhead listing which Activities are Exempt.</li> <li>Other Requirements Checklist with source documentation.</li> <li>Both documents shall be dated and signed by the Certifying Officer.</li> </ul>	
DOCUMENTATION REQUIRED IN ERR			
Written determination of exemption.*  Other Requirements Checklist (Sec. 58.6)  *Use: <b>Environmental Review for Activity/Project that is Exempt or Cat Ex Not Subject to Section 58.5</b>	Complete Statutory Worksheet, (Sec. 58.5) and indicate <b>converts exempt</b> .*  Other Requirements Checklist (Sec. 58.6)  *Use: <b>Environmental Review for Activity/Project that is Cat Ex Subject to Section 58.5</b>	Complete Statutory Worksheet (sec. 58.5)*  NOI/RROF notification RROF & Certification (HUD form 7015.15) Authority to Use Grant Funds (HUD form 7015.16) Other Requirements Checklist (Sec. 58.6)  *Use: <b>Environmental Review for Activity/Project that is Cat Ex Subject to Section 58.5</b>	Environmental Assessment (including Statutory Worksheet)*  FONSI and NOI/RROF notification Form 7015.15 Form 7015.16 Other Req. Checklist (Sec. 58.6)  *Use: <b>Environmental Assessment Determinations and Compliance Findings</b>



**Environmental Review Record Checklist**

Project No.: \_\_\_\_\_

Grantee: \_\_\_\_\_

Grant Amount: \_\_\_\_\_

Project: \_\_\_\_\_

Form	Level of Environmental Review			Notes
	Exempt [24 CFR 58.34], becomes Exempt [24 CFR 58.34(a)(12)], or CENST [24 CFR 58.35(b)]	Categorically Excluded Sub. To 58.5 [24 CFR 58.35(a)]	Environmentally Assessed [24 CFR 58.36]	
ERR Checklist (Attachment 2-4)	Optional	Optional	Optional	
Environmental Review for Exempt Activity or CENST Activity (Attachment 2-9)	Required	N/A	N/A	
Environmental Review for Cat. Ex. Subject To Activity (Attachment 2-10)	N/A	Required	N/A	
Environmental Assessment (Attachment 2-11)	N/A	N/A	Required	
FONSI - signed prior to publication of Notices (Part of Attachment 2-11)	N/A	N/A	Required	
Letters from DNR, DOI, FWS, Army Corp, DEP, etc. *	N/A	As Necessary	As Necessary	
Floodplain Map	N/A	Required	Required	
Floodplains and Wetlands First Notice (Attachment 2-15)	N/A	If in Floodplain	If in Floodplain	
Floodplains and Wetlands Second Notice (Attachment 2-16)	N/A	If in Floodplain	If in Floodplain	
SHPO Letter (Sample - Attachment 2-12)	N/A	Required	Required	
Engineering Report	Optional	Required	Required	
Legible plan from Engineer clearly showing project elements	Optional	Required	Required	
Other Reports or Documents as supporting evidence *	Optional	Optional	Optional	
Other Reports or Documents required as part of the ERR process (such as Phase I Archeological or Phase I ASTM)	N/A	As Necessary	Required	
FONSI, NOI, & RROF Notices (Attachment 2-21 and/or 2-22)	N/A	Required	Required	
Distribution List (Attachment 2-17)	N/A	N/A	Required	
Calculations of Comment Periods (Attachment 2-18, 2-19, or 2-20)	N/A	Required	Required	
Performance Schedule (Attachment 1-1)	Required	Required	Required	
Request for Release of Funds (HUD Form 7015.15) (Attachment 2-23)	N/A	Required	Required	
Authority to Use Grant Funds (HUD Form 7015.16)	Notice to Proceed Ltr	Required	Required	
* Required if used as source documentation for Statutory Worksheet or Environmental Assessment				

## West Virginia Civil Primary and Commercial Service Airports

<p><b>Greenbrier Valley Airport - LBW</b>  <a href="http://www.gvairport.com">www.gvairport.com</a>          Jerry O'Sullivan          P.O. Box 329          Lewisburg, WV 24901          Telephone: 304-645-3961          Fax: 304-645-4683  <a href="mailto:jerryosull@aol.com">jerryosull@aol.com</a></p>	<p><b>Morgantown Municipal Airport - MGW</b>  <a href="http://www.morgantownairport.com">www.morgantownairport.com</a>          Jackie Marhefka          Interim Director          100 Hart Field Road          Morgantown, WV 26505          Telephone: 304-291-7461          Fax: 304-291-7463  <a href="mailto:jmarhefka@cityofmorgantown.org">jmarhefka@cityofmorgantown.org</a></p>
<p><b>North Central West Virginia Airport – CKB</b>  <a href="http://www.flyckb.com">www.flyckb.com</a>          Richard Rock, Director          2000 Aviation Way          Bridgeport, WV 26330          Telephone: 304-842-3400          Fax: 304-842-0825  <a href="mailto:rrock@flyckb.com">rrock@flyckb.com</a>  <a href="mailto:gjenkins@flyckb.com">gjenkins@flyckb.com</a></p>	<p><b>Raleigh County Memorial Airport - BKW</b>  <a href="http://www.flybeckley.com">www.flybeckley.com</a>          Tom Cochran          176 Airport Road          Beaver, WV 25813          Telephone: 304-255-0476          Fax: 304-253-2095  <a href="mailto:tcochran@suddenlinkmail.com">tcochran@suddenlinkmail.com</a></p>
<p><b>Mid-Ohio Valley Regional Airport - PKB</b>  <a href="http://www.flymov.com">www.flymov.com</a>          Jeff McDougle          P.O. Box 4089          Parkersburg, WV 26104          Telephone: 304-464-5113          Fax: 304-464-5112  <a href="mailto:jeffmcdougle@flymov.com">jeffmcdougle@flymov.com</a></p>	<p><b>Tri-State Airport - HTS</b>  <a href="http://www.tristateairport.com">www.tristateairport.com</a>          Jerry Brienza          1449 Airport Road          Huntington, WV 25704          Telephone: 304-453-2801          Alternate Telephone: 304-453-6165 x18          Fax: 304-453-6183  <a href="mailto:jbrienza@tristateairport.com">jbrienza@tristateairport.com</a></p>
	<p><b>Yeager Airport - CRW</b>  <a href="http://www2.yeagerairport.com">www2.yeagerairport.com</a>          Richard A. Atkinson, III          100 Airport Road, Suite 175          Charleston, WV 25311          Telephone: 304-344-8033          Fax: 304-344-8034  <a href="mailto:rick@yeagerairport.com">rick@yeagerairport.com</a></p>



**West Virginia Development Office**  
Community Development Division  
Capitol Complex  
Building 6 Room 553  
Charleston, WV 25305-0311  
<http://www.wvcommerce.org/people>

**Environmental Review  
for Activity/Project that is Exempt or  
Categorically Excluded Not Subject to Section 58.5  
Pursuant to 24 CFR Part 58.34(a) and 58.35(b)**

**Project Information**

**Project Name:**

**Project Number:**

**HEROS Number:**

**Grantee** (Responsible Entity):

**Grantee Address:**

**Grantee Phone:**

**Certifying Officer:**  
(Local Elected Official and Title)

**Preparer/Lead Agency:**

**Preparer Address:**

**Preparer Phone:**

**Project Engineer** (if applicable):

**Engineering Company:**

**Direct Comments to:**

**Project Location:**

**Description of the Proposed Project** [24 CFR 50.12 & 58.32; 40 CFR 1508.25]:

**Level of Environmental Review Determination:**

Activity/Project is **Exempt per 24 CFR 58.34(a)** Except for the applicable requirements of Sec. 58.6, the responsible entity does not have to comply with the requirements of this part or undertake any environmental review, consultation or other action under NEPA and the other provisions of law or authorities cited in Sec. 58.5 for the activities exempt by this section or projects consisting solely of the following exempt activities:

Cite specific subsection and text from CFR:

Activity/Project is **Categorically Excluded Not Subject To §58.5 per 24 CFR 58.35(b)** The Department has determined that the following categorically excluded activities would not alter any conditions that would require a review or compliance determination under the Federal laws and authorities cited in Sec. 58.5. ... The recipient remains responsible for carrying out any applicable requirements under Sec. 58.6.

Cite specific subsection and text from CFR:

**HUD Funding Information**

<b>Grant Number</b>	<b>HUD Program</b>	<b>Funding Amount</b>

**Estimated Total HUD Funded Amount:**

**This project anticipates the use of funds or assistance from another Federal agency in addition to HUD in the form of (if applicable):**

**Estimated Total Project Cost** (HUD and non-HUD funds) [24 CFR 58.32(d)]:

<b>Funding Source</b>	<b>Date Committed</b>	<b>Funding Amount</b>

**Compliance with 24 CFR §50.4 and §58.6 Laws and Authorities**

Below, record the compliance or conformance determinations for each statute, executive order, or regulation. Provide credible, traceable, and supportive source documentation for each authority. Where applicable, complete the necessary reviews or consultations and obtain or note applicable permits of approvals. Clearly note citations, dates/names/titles of contacts, and page references. Attach additional documentation as appropriate.

<b>Compliance Factors:</b> Statutes, Executive Orders, and Regulations listed at 24 CFR §58.5 and §58.6	Are formal compliance steps or mitigation required?	Compliance determinations
<b>STATUTES, EXECUTIVE ORDERS, AND REGULATIONS LISTED AT 24 CFR 50.4 and 58.6</b>		
<b>Airport Runway Clear Zones            and Accident Potential Zones</b>  24 CFR Part 51 Subpart D	Yes    No <input type="checkbox"/> <input type="checkbox"/>	
<b>Coastal Barrier Resources</b>  Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 [16 USC 3501]	Yes    No <input type="checkbox"/> <input type="checkbox"/>	
<b>Flood Insurance</b>  Flood Disaster Protection Act of 1973 and National Flood Insurance Reform Act of 1994 [42 USC 4001- 4128 and 42 USC 5154a]	Yes    No <input type="checkbox"/> <input type="checkbox"/>	

**Mitigation Measures and Conditions** [40 CFR 1505.2(c)]

Summarize below all mitigation measures adopted by the Responsible Entity to reduce, avoid, or eliminate adverse environmental impacts and to avoid non-compliance or non-conformance with the above-listed authorities and factors. These measures/conditions must be incorporated into project contracts, development agreements, and other relevant documents. The staff responsible for implementing and monitoring mitigation measures should be clearly identified in the mitigation plan.

Law, Authority, or Factor	Mitigation Measure

Preparer Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name, Title: \_\_\_\_\_

Organization: \_\_\_\_\_

**Responsible Entity**

Certifying Officer Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name, Title: \_\_\_\_\_

Organization: \_\_\_\_\_

This original, signed document and related supporting material must be retained on file by the Responsible Entity in an Environmental Review Record (ERR) for the activity/project (ref: 24 CFR Part 58.38) and in accordance with recordkeeping requirements for the HUD program(s).



U.S. Fish and Wildlife Service

# Coastal Barrier Resources System Mapper - Beta

Measure

Streets

Imagery/Labels

Topo

USGS Topo

Enter address or zip code...

Find Location

CBRS

Enter CBRS unit number(e.g. Q01P)

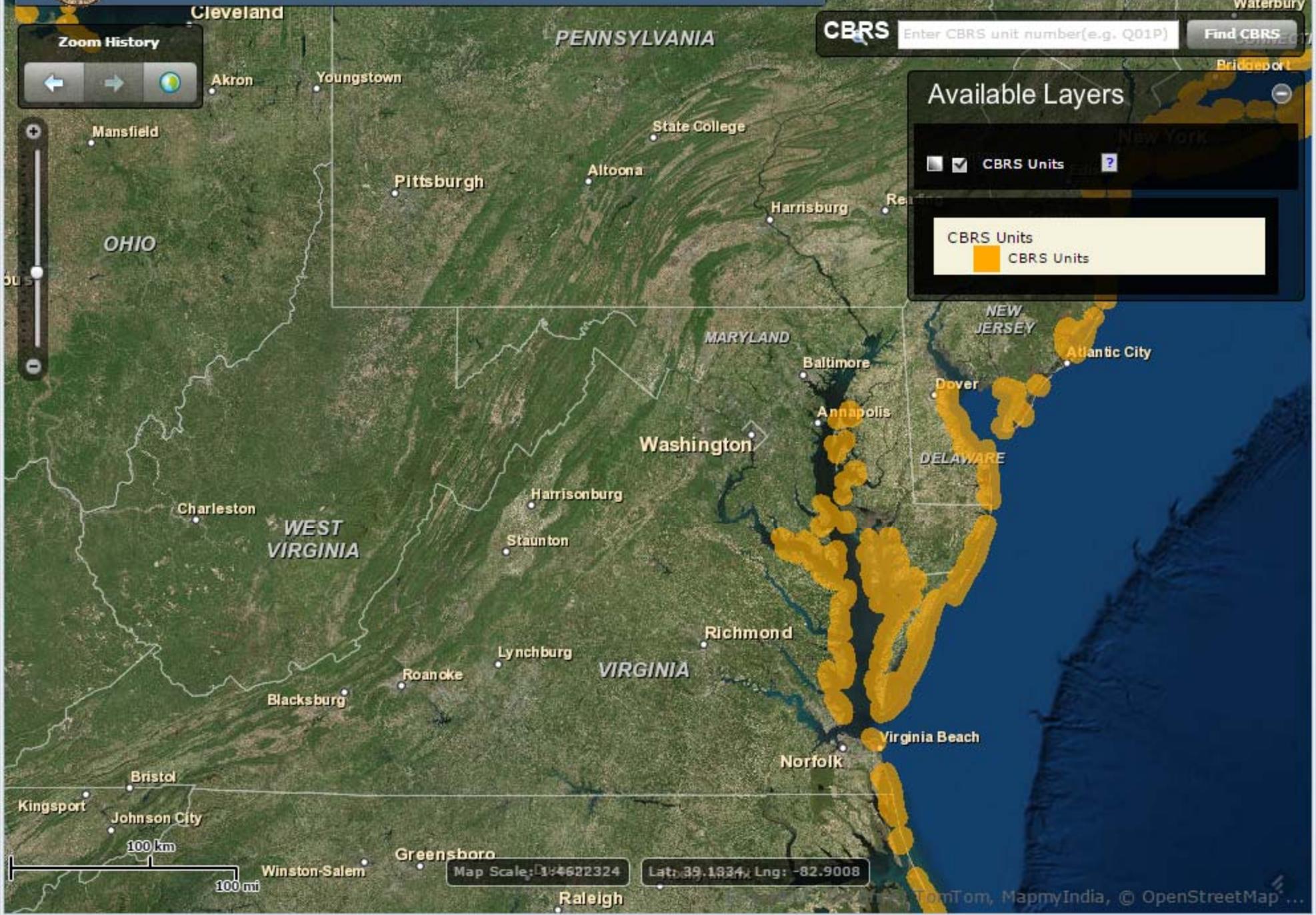
Find CBRS

## Available Layers

CBRS Units

CBRS Units

CBRS Units



Map Scale: 1:4622324

Lat: 39.1934, Lng: -82.9008



**West Virginia Development Office**  
Community Development Division  
Capitol Complex  
Building 6 Room 553  
Charleston, WV 25305-0311  
<http://www.wvcommerce.org/people>

**Environmental Review  
For Activity/Project that is  
Categorically Excluded Subject to Section 58.5  
Pursuant to 24 CFR Part 58.35(a)**

**Project Information**

**Project Name:**

**Project Number:**

**HEROS Number:**

**Grantee** (Responsible Entity):

**Grantee Address:**

**Grantee Phone:**

**Certifying Officer:**  
(Local Elected Official and Title)

**Preparer/Lead Agency:**

**Preparer Address:**

**Preparer Phone:**

**Project Engineer** (if applicable):

**Engineering Company:**

**Direct Comments to:**

**Project Location:**

**Description of the Proposed Project** [24 CFR 50.12 & 58.32; 40 CFR 1508.25]:

**Level of Environmental Review Determination:**

Activity/Project is **Categorically Excluded per 24 CFR 58.35(a)** The following activities are categorically excluded under NEPA, but may be subject to review under authorities listed in Sec. 58.5:

Cite specific subsection and text from CFR:

**HUD Funding Information**

<b>Grant Number</b>	<b>HUD Program</b>	<b>Funding Amount</b>

**Estimated Total HUD Funded Amount:**

**Estimated Total Project Cost** (HUD and non-HUD funds) [24 CFR 58.32(d)]:

<b>Other Funding Source</b>	<b>Date Committed</b>	<b>Funding Amount</b>

# Statutory Worksheet

## Compliance with 24 CFR 50.4, 58.5, and 58.6 Laws and Authorities

Record below the compliance or conformance determinations for each statute, executive order, or regulation. **Provide credible, traceable, and supportive source documentation for each authority.** Where applicable, complete the necessary reviews or consultations and obtain or note applicable permits of approvals. Clearly note citations, dates/names/titles of contacts, and page references.

**Attach additional documentation as appropriate.**

<b>Compliance Factors:</b> Statutes, Executive Orders, and Regulations listed at 24 CFR §58.5 and §58.6	Are formal compliance steps or mitigation required?	Compliance determinations
<b>STATUTES, EXECUTIVE ORDERS, AND REGULATIONS LISTED AT 24 CFR 50.4 and 58.6</b>		
<b>Airport Runway Clear Zones            and Accident Potential Zones</b>  24 CFR Part 51 Subpart D	Yes    No <input type="checkbox"/> <input type="checkbox"/>	
<b>Coastal Barrier Resources</b>  Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 [16 USC 3501]	Yes    No <input type="checkbox"/> <input type="checkbox"/>	
<b>Flood Insurance</b>  Flood Disaster Protection Act of 1973 and National Flood Insurance Reform Act of 1994 [42 USC 4001- 4128 and 42 USC 5154a]	Yes    No <input type="checkbox"/> <input type="checkbox"/>	

Be sure to include the "Other Requirements (Section 58.6) Checklist" Form with this document.

<b>STATUTES, EXECUTIVE ORDERS, AND REGULATIONS LISTED AT 24 CFR 50.4 and 58.5</b>		
<b>Clean Air</b>  Clean Air Act, as amended, particularly section 176(c) & (d); 40 CFR Parts 6, 51, 93	Yes    No <input type="checkbox"/> <input type="checkbox"/>	
<b>Coastal Zone Management</b>  Coastal Zone Management Act, sections 307(c) & (d)	Yes    No <input type="checkbox"/> <input type="checkbox"/>	
<b>Contamination and Toxic            Substances</b>  24 CFR Part 50.3(i) & 58.5(i)(2)	Yes    No <input type="checkbox"/> <input type="checkbox"/>	

<b>Endangered Species</b>  Endangered Species Act of 1973, particularly section 7; 50 CFR Part 402	Yes No <input type="checkbox"/> <input type="checkbox"/>	
<b>Explosive and Flammable Hazards</b>  24 CFR Part 51 Subpart C	Yes No <input type="checkbox"/> <input type="checkbox"/>	
<b>Farmlands Protection</b>  Farmland Protection Policy Act of 1981, particularly sections 1504(b) and 1541; 7 CFR Part 658	Yes No <input type="checkbox"/> <input type="checkbox"/>	
<b>Floodplain Management</b>  Executive Order 11988, particularly section 2(a); 24 CFR Part 55	Yes No <input type="checkbox"/> <input type="checkbox"/>	
<b>Historic Preservation</b>  National Historic Preservation Act of 1966, particularly sections 106 and 110; 36 CFR Part 800	Yes No <input type="checkbox"/> <input type="checkbox"/>	
<b>Noise Abatement and Control</b>  Noise Control Act of 1972, as amended by the Quiet Communities Act of 1978; 24 CFR Part 51 Subpart B	Yes No <input type="checkbox"/> <input type="checkbox"/>	
<b>Sole Source Aquifers</b>  Safe Drinking Water Act of 1974, as amended, particularly section 1424(e); 40 CFR Part 149	Yes No <input type="checkbox"/> <input type="checkbox"/>	
<b>Wetlands Protection</b>  Executive Order 11990, particularly sections 2 and 5	Yes No <input type="checkbox"/> <input type="checkbox"/>	
<b>Wild and Scenic Rivers</b>  Wild and Scenic Rivers Act of 1968, particularly section 7(b) and (c)	Yes No <input type="checkbox"/> <input type="checkbox"/>	
<b>ENVIRONMENTAL JUSTICE</b>		
<b>Environmental Justice</b>  Executive Order 12898	Yes No <input type="checkbox"/> <input type="checkbox"/>	

**Field Inspection** (Date and completed by):

**Summary of Findings and Conclusions:**

**Mitigation Measures and Conditions** [40 CFR 1505.2(c)]

Summarize below all mitigation measures adopted by the Responsible Entity to reduce, avoid, or eliminate adverse environmental impacts and to avoid non-compliance or non-conformance with the above-listed authorities and factors. These measures/conditions must be incorporated into project contracts, development agreements, and other relevant documents. The staff responsible for implementing and monitoring mitigation measures should be clearly identified in the mitigation plan.

<b>Law, Authority, or Factor</b>	<b>Mitigation Measure</b>

**Determination:**

- This categorically excluded activity/project converts to **EXEMPT** per Section 58.34(a)(12), because it does not require any mitigation for compliance with any listed statutes or authorities, nor requires any formal permit or license; Recipient does not have to publish or submit a NOI-RROF; **Funds may be committed and drawn down after WVDO issues a Notice to Proceed** for this (now) EXEMPT project.; OR
- This categorically excluded activity/project cannot convert to Exempt status because one or more statutes or authorities listed at Section 58.5 requires formal consultation or mitigation. Complete consultation/mitigation protocol requirements, **publish NOI/RROF and obtain "Authority to Use Grant Funds"** (HUD 7015.16) per Section 58.70 and 58.71 before committing or drawing down any funds; OR
- This project is not categorically excluded OR, if originally categorically excluded, is **now subject to a full Environmental Assessment** according to Part 58 Subpart E due to extraordinary circumstances (Section 58.35(c)).

Preparer Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name, Title: \_\_\_\_\_

Organization: \_\_\_\_\_

**Responsible Entity**

Certifying Officer Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name, Title: \_\_\_\_\_

Organization: \_\_\_\_\_

This original, signed document and related supporting material must be retained on file by the Responsible Entity in an Environmental Review Record (ERR) for the activity/project (ref: 24 CFR Part 58.38) and in accordance with recordkeeping requirements for the HUD program(s).



U.S. Fish and Wildlife Service

# Coastal Barrier Resources System Mapper - Beta

Measure

Streets

Imagery/Labels

Topo

USGS Topo

Enter address or zip code...

Find Location

CBRS

Enter CBRS unit number(e.g. Q01P)

Find CBRS

Zoom History

← → ↻

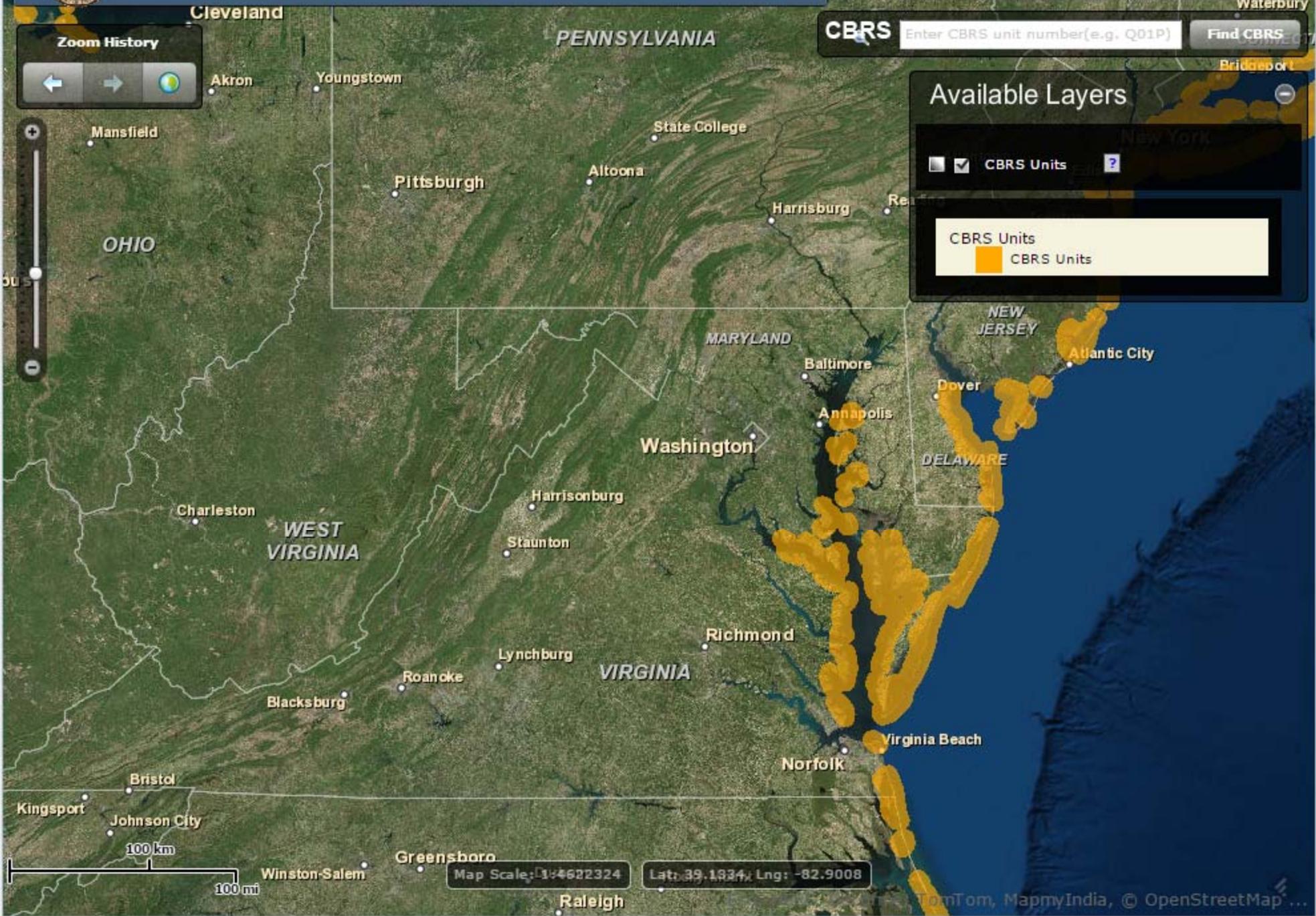
Zoom slider

### Available Layers

CBRS Units

CBRS Units

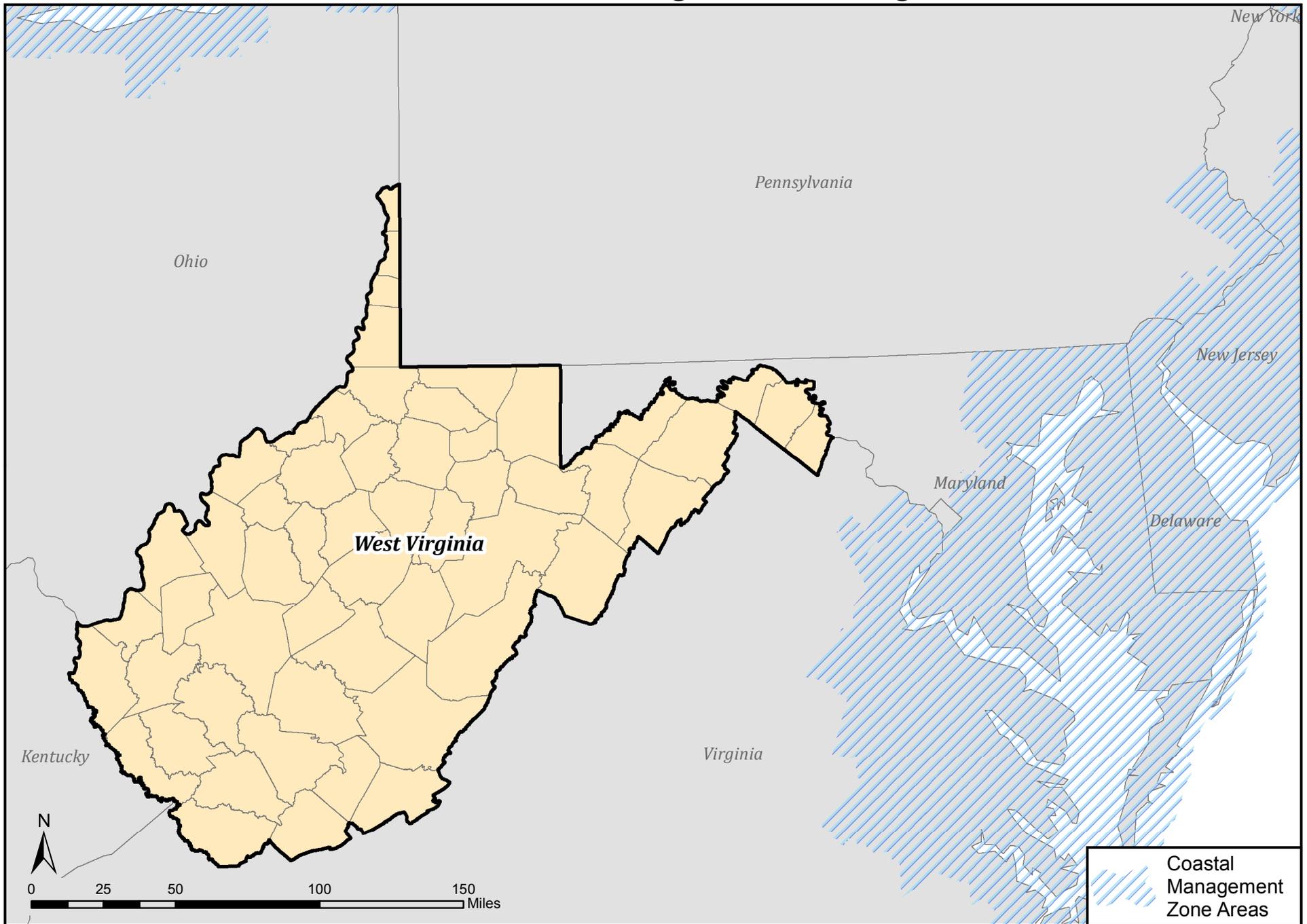
CBRS Units



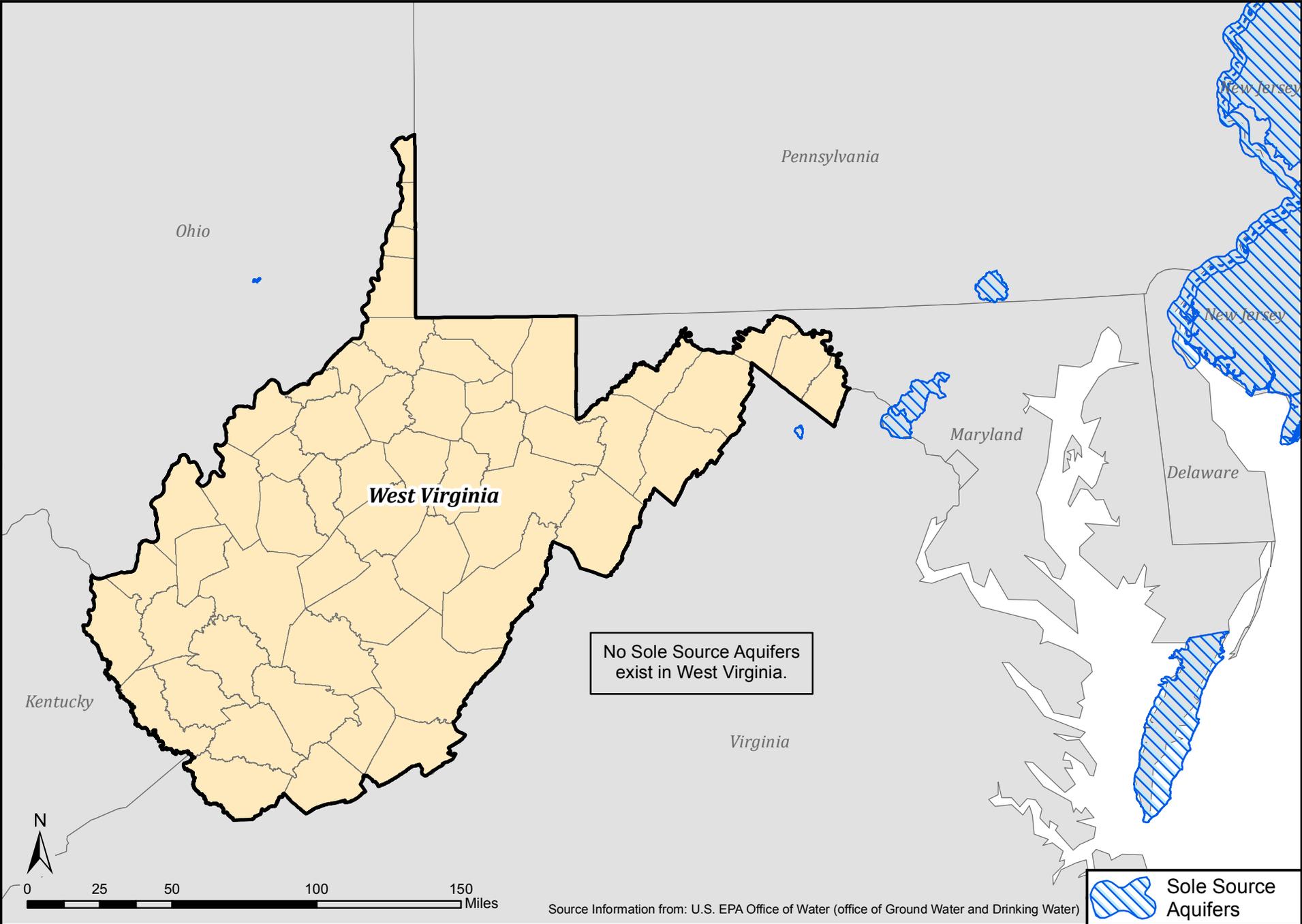
Map Scale: 1:4622324 Lat: 39.1934 Lng: -82.9008

TomTom, MapmyIndia, © OpenStreetMap

# U.S. Coastal Zone Management Program Areas



# U.S. Sole Source Aquifers



Source Information from: U.S. EPA Office of Water (office of Ground Water and Drinking Water)



**West Virginia Development Office**  
Community Development Division  
Capitol Complex  
Building 6 Room 553  
Charleston, WV 25305-0311  
<http://www.wvcommerce.org/people>

**Environmental Assessment  
Determinations and Compliance Findings  
for HUD-assisted Projects  
24 CFR Part 58**

**Project Information**

**Project Name:**

**Project Number:**

**HEROS Number:**

**Grantee** (Responsible Entity):

**Grantee Address:**

**Grantee Phone:**

**Certifying Officer:**  
(Local Elected Official and Title)

**Preparer/Lead Agency:**

**Preparer Address:**

**Preparer Phone:**

**Project Engineer** (if applicable):

**Engineering Company:**

**Direct Comments to:**

**Project Location:**

**Description of the Proposed Project** [24 CFR 50.12 & 58.32; 40 CFR 1508.25]:

**Statement of Purpose and Need for the Proposal** [40 CFR 1508.9(b)]:

**Existing Conditions and Trends** [24 CFR 58.40(a)]:

**HUD Funding Information**

Grant Number	HUD Program	Funding Amount

**Estimated Total HUD Funded Amount:**

**Estimated Total Project Cost** (HUD and non-HUD funds) [24 CFR 58.32(d)]:

Funding Source	Date Committed	Funding Amount

## Statutory Worksheet

### Compliance with 24 CFR 50.4, 58.5, and 58.6 Laws and Authorities

Record below the compliance or conformance determinations for each statute, executive order, or regulation. Provide credible, traceable, and supportive source documentation for **each** authority. Where applicable, complete the necessary reviews or consultations and obtain or note applicable permits of approvals. Clearly note citations, dates/names/titles of contacts, and page references.

**Attach additional documentation as appropriate.**

<b>Compliance Factors:</b> Statutes, Executive Orders, and Regulations listed at 24 CFR §58.5 and §58.6	Are formal compliance steps or mitigation required?	Compliance determinations
<b>STATUTES, EXECUTIVE ORDERS, AND REGULATIONS LISTED AT 24 CFR 50.4 and 58.6</b>		
<b>Airport Runway Clear Zones            and Accident Potential Zones</b>  24 CFR Part 51 Subpart D	Yes    No <input type="checkbox"/> <input type="checkbox"/>	
<b>Coastal Barrier Resources</b>  Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 [16 USC 3501]	Yes    No <input type="checkbox"/> <input type="checkbox"/>	
<b>Flood Insurance</b>  Flood Disaster Protection Act of 1973 and National Flood Insurance Reform Act of 1994 [42 USC 4001- 4128 and 42 USC 5154a]	Yes    No <input type="checkbox"/> <input type="checkbox"/>	
<b>STATUTES, EXECUTIVE ORDERS, AND REGULATIONS LISTED AT 24 CFR 50.4 and 58.5</b>		
<b>Clean Air</b>  Clean Air Act, as amended, particularly section 176(c) & (d); 40 CFR Parts 6, 51, 93	Yes    No <input type="checkbox"/> <input type="checkbox"/>	
<b>Coastal Zone Management</b>  Coastal Zone Management Act, sections 307(c) & (d)	Yes    No <input type="checkbox"/> <input type="checkbox"/>	
<b>Contamination and Toxic            Substances</b>  24 CFR Part 50.3(i) & 58.5(i)(2)	Yes    No <input type="checkbox"/> <input type="checkbox"/>	

<b>Endangered Species</b>  Endangered Species Act of 1973, particularly section 7; 50 CFR Part 402	Yes    No <input type="checkbox"/> <input type="checkbox"/>	
<b>Explosive and Flammable Hazards</b>  24 CFR Part 51 Subpart C	Yes    No <input type="checkbox"/> <input type="checkbox"/>	
<b>Farmlands Protection</b>  Farmland Protection Policy Act of 1981, particularly sections 1504(b) and 1541; 7 CFR Part 658	Yes    No <input type="checkbox"/> <input type="checkbox"/>	
<b>Floodplain Management</b>  Executive Order 11988, particularly section 2(a); 24 CFR Part 55	Yes    No <input type="checkbox"/> <input type="checkbox"/>	
<b>Historic Preservation</b>  National Historic Preservation Act of 1966, particularly sections 106 and 110; 36 CFR Part 800	Yes    No <input type="checkbox"/> <input type="checkbox"/>	
<b>Noise Abatement and Control</b>  Noise Control Act of 1972, as amended by the Quiet Communities Act of 1978; 24 CFR Part 51 Subpart B	Yes    No <input type="checkbox"/> <input type="checkbox"/>	
<b>Sole Source Aquifers</b>  Safe Drinking Water Act of 1974, as amended, particularly section 1424(e); 40 CFR Part 149	Yes    No <input type="checkbox"/> <input type="checkbox"/>	
<b>Wetlands Protection</b>  Executive Order 11990, particularly sections 2 and 5	Yes    No <input type="checkbox"/> <input type="checkbox"/>	
<b>Wild and Scenic Rivers</b>  Wild and Scenic Rivers Act of 1968, particularly section 7(b) and (c)	Yes    No <input type="checkbox"/> <input type="checkbox"/>	
<b>ENVIRONMENTAL JUSTICE</b>		
<b>Environmental Justice</b>  Executive Order 12898	Yes    No <input type="checkbox"/> <input type="checkbox"/>	

**Environmental Assessment Factors** [24 CFR 58.40; Ref. 40 CFR 1508.8 &1508.27] Recorded below is the qualitative and quantitative significance of the effects of the proposal on the character, features and resources of the project area. Each factor has been evaluated and documented, as appropriate and in proportion to its relevance to the proposed action. Verifiable source documentation has been provided and described in support of each determination, as appropriate. Credible, traceable and supportive source documentation for each authority has been provided. Where applicable, the necessary reviews or consultations have been completed and applicable permits of approvals have been obtained or noted. Citations, dates/names/titles of contacts, and page references are clear. Additional documentation is attached, as appropriate. **All conditions, attenuation or mitigation measures have been clearly identified.**

**Impact Codes:** Use an impact code from the following list to make the determination of impact for each factor.

- (1) Minor beneficial impact
- (2) No impact anticipated
- (3) Minor Adverse Impact – May require mitigation
- (4) Significant or potentially significant impact requiring avoidance or modification which may require an Environmental Impact Statement

Environmental Assessment Factor	Impact Code	Impact Evaluation
<b>LAND DEVELOPMENT</b>		
Conformance with Plans / Compatible Land Use and Zoning / Scale and Urban Design		
Soil Suitability/ Slope/ Erosion/ Drainage/ Storm Water Runoff		
Hazards and Nuisances including Site Safety and Noise		
Energy Consumption		

Environmental Assessment Factor	Impact Code	Impact Evaluation
<b>SOCIOECONOMIC</b>		
Employment and Income Patterns		
Demographic Character Changes, Displacement		

Environmental Assessment Factor	Impact Code	Impact Evaluation
<b>COMMUNITY FACILITIES AND SERVICES</b>		
Educational and Cultural Facilities		
Commercial Facilities		
Health Care and Social Services		
Solid Waste Disposal / Recycling		
Waste Water / Sanitary Sewers		
Water Supply		
Public Safety - Police, Fire and Emergency Medical		
Parks, Open Space and Recreation		
Transportation and Accessibility		

Environmental Assessment Factor	Impact Code	Impact Evaluation
<b>NATURAL FEATURES</b>		
Unique Natural Features, Water Resources		
Vegetation, Wildlife		
Other Factors		

**Additional Studies Performed:**

**Field Inspection** (Date and completed by):

**List of Sources, Agencies and Persons Consulted** [40 CFR 1508.9(b)]:

**List of Permits Obtained:**

**Public Outreach** [24 CFR 50.23 & 58.43]:

**Cumulative Impact Analysis** [24 CFR 58.32]:

**Alternatives** [24 CFR 58.40(e); 40 CFR 1508.9]

**No Action Alternative** [24 CFR 58.40(e)]:

**Summary of Findings and Conclusions:**

**Mitigation Measures and Conditions** [40 CFR 1505.2(c)]

Summarize below all mitigation measures adopted by the Responsible Entity to reduce, avoid, or eliminate adverse environmental impacts and to avoid non-compliance or non-conformance with the above-listed authorities and factors. These measures/conditions must be incorporated into project contracts, development agreements, and other relevant documents. The staff responsible for implementing and monitoring mitigation measures should be clearly identified in the mitigation plan.

Law, Authority, or Factor	Mitigation Measure

**Determination:**

**Finding of No Significant Impact** [24 CFR 58.40(g)(1); 40 CFR 1508.27]  
The project will not result in a significant impact on the quality of the human environment.

**Finding of Significant Impact** [24 CFR 58.40(g)(2); 40 CFR 1508.27]  
The project may significantly affect the quality of the human environment.

Preparer Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name, Title: \_\_\_\_\_

Organization: \_\_\_\_\_

**Responsible Entity**

Certifying Officer Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name, Title: \_\_\_\_\_

Organization: \_\_\_\_\_

This original, signed document and related supporting material must be retained on file by the Responsible Entity in an Environmental Review Record (ERR) for the activity/project (ref: 24 CFR Part 58.38) and in accordance with recordkeeping requirements for the HUD program(s).



U.S. Fish and Wildlife Service

# Coastal Barrier Resources System Mapper - Beta

Measure

Streets

Imagery/Labels

Topo

USGS Topo

Enter address or zip code...

Find Location

CBRS

Enter CBRS unit number(e.g. Q01P)

Find CBRS

Zoom History

← → ↻

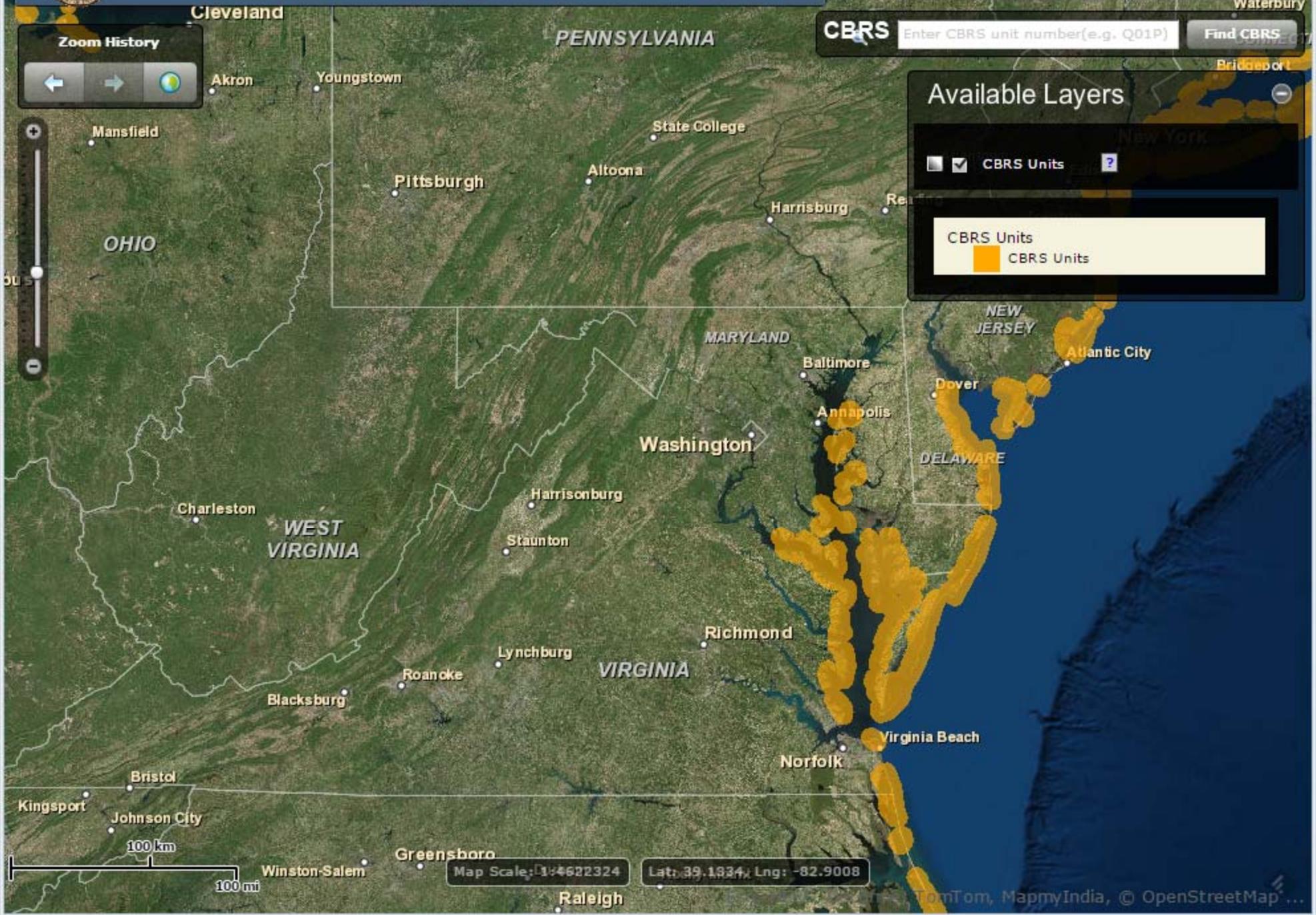
Zoom slider

### Available Layers

CBRS Units

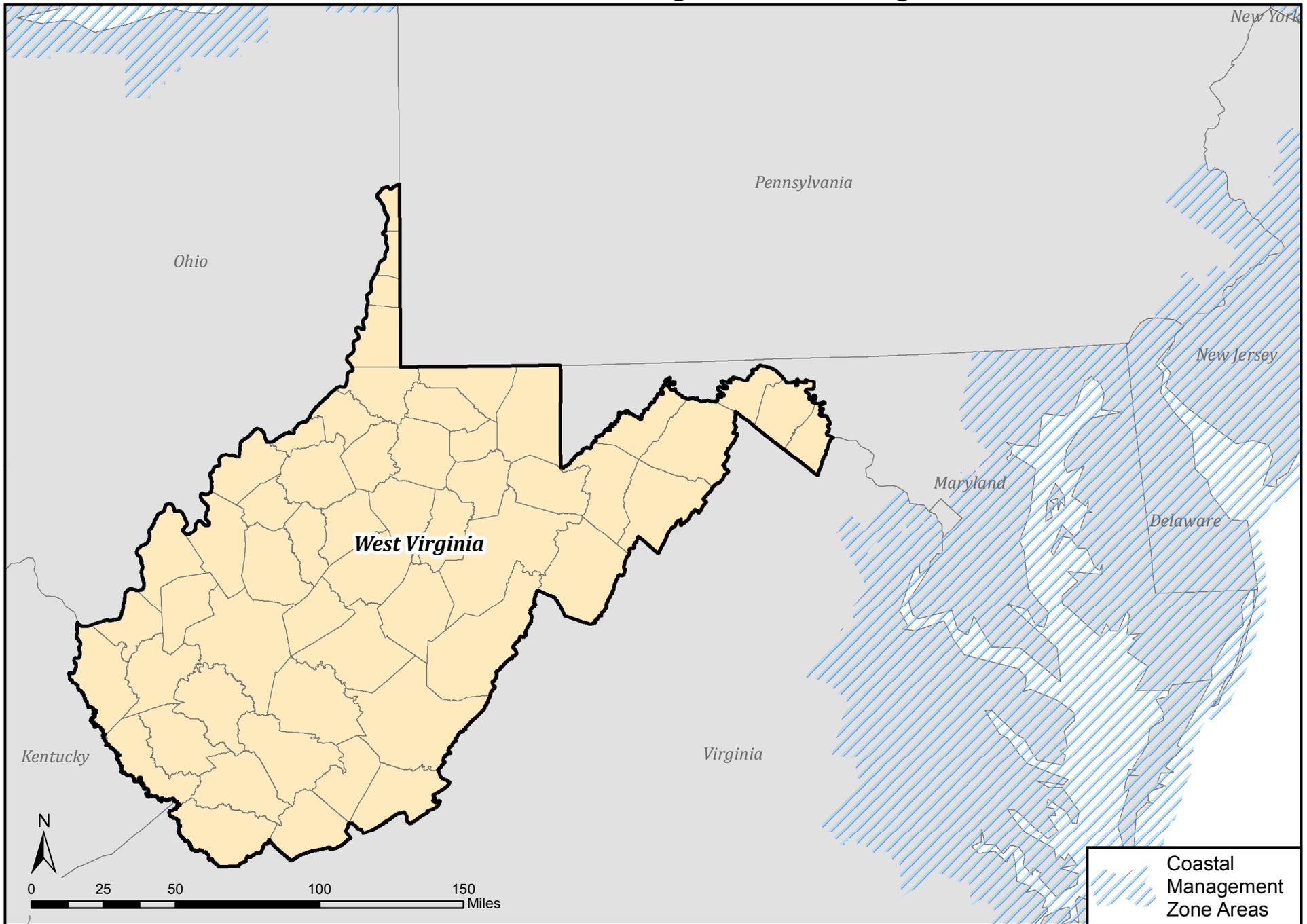
CBRS Units

CBRS Units

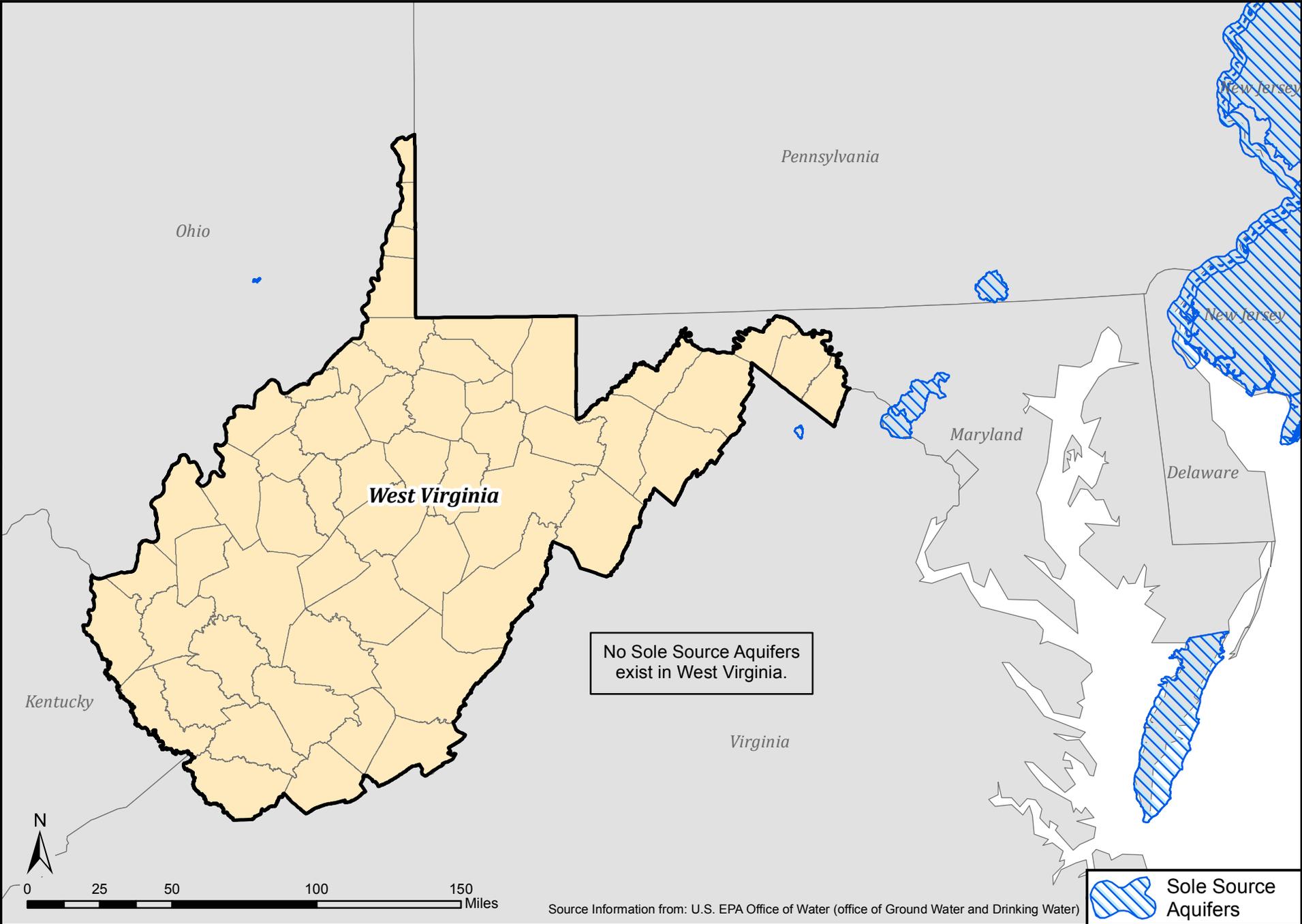


Map Scale: 1:4622324 Lat: 39.1934 Lng: -82.9008

# U.S. Coastal Zone Management Program Areas



# U.S. Sole Source Aquifers



Source Information from: U.S. EPA Office of Water (office of Ground Water and Drinking Water)

**SAMPLE REQUEST FOR REVIEW OF HISTORIC PRESERVATION**

Ms. Betty T. Reviewer, Administrator  
Historic Preservation Unit  
Department of Culture and History  
The Cultural Center  
Capitol Complex  
Charleston, West Virginia 25305

Dear Ms. Reviewer:

The city of West Linn is proposing to make street improvements on Fifth Street immediately in front of Founders Hall. Founders Hall is listed on the Register of Historic Places.

The improvements will include street widening and reconstruction with concrete curbs and gutters. All improvements will take place within existing rights-of-way. There will, however, be short-term construction noise, dust and impaired access to the property for a week. The Historic Society is in favor of the project and has written us in support. We are attaching a copy of their letter for your information.

It is the request of the city of West Linn that, as the State Historic Preservation Officer, you examine the proposed project in accordance with the procedures for protection of historic and cultural properties (36 CFR Part 800) to determine whether or not the proposed project may adversely affect the historic property.

Please provide a written determination of your finding, which will be included as part of our Environmental Review Record.

Thank you for your prompt attention to this request.

Sincerely,

Garcia Lorca  
Director of Public Works

GL:cs

## West Virginia SHPO Information Sheet for Section 106 Review Projects

The following information is needed for SHPO staff to be able to complete a review of a federal or state funded or permitted project (undertaking):

### **I. General Information regarding all project submissions:**

Is this project a new submission or supplemental information relating to a previously submitted project?

If this is supplemental information, please identify the project FR# (our project file number).

- a. Project Name
- b. Federal Agency, if applicable (agency providing funds, permit, license or assistance)
- c. Federal Agency Contact Person: Name, Street Address, Phone Number, email
- d. State Agency, if applicable
- e. State Agency Contact Person: Name, Street Address, Phone Number, email
- f. Project Contact Person: (individual(s) who are knowledgeable of project activities). Name, Street Address and Phone Number, email
- g. Project Street Address, City, County, Zip Code
- h. Project Location: Please attach the appropriate USGS Topographic Quadrangle Map indicating the location of the project. If applicable, attach a street map indicating the location(s) of specific addresses. If providing UTM coordinates, please specify whether the projection is NAD 27 or 83. For DEP projects, it is required that a 1"-500' scale (Engineering Map) be submitted in addition to the USGS Topographic Map. All maps must clearly depict the project boundaries.
- g. Project Description: Describe the activities proposed within the defined project area and provide any available information regarding past land use of the project area. Provide the project size, including acres or project right-of-way length and width. If applicable, describe proposed construction depths. If the project will involve building rehabilitation or renovation, please identify materials and provide any available drawings, plans and specifications. If demolition is proposed, please provide cost comparison of repair vs. demolition, explanation of alternatives considered or justification as to why structure cannot be rehabilitated. This may include copies of building inspection or engineering reports.
- h. Project Photographs: These should document the project area showing general views, known disturbances, any rock outcrops, and buildings and/or structures (50 years or older) within

and adjacent to project area. All photographs should be clear, concise, clearly labeled and keyed to a project map.

Photographs of buildings should incorporate the entire building. These may include photographs of the front, back and sides of the building. It is important that you provide photographs that show the entire building as well as photographs of any particular areas where any alterations will occur (e.g., a change in the windows, doors, lighting, etc.).

- i. Date of Construction for existing buildings that will be directly or indirectly impacted by the project.

## **II. Identification of Cultural Resources**

Please provide any information regarding the following within or adjacent to project area:

- a. Known archaeological sites
- b. Cemeteries
- c. Structures
- d. Historic Structures or Districts

If there are standing structures within or adjacent to the project area, please provide photographs. You may be asked to submit an WV Historic Property Inventory Form for any structure 50 years or older within the project area or if with the line of sight of the project. Forms and instructions can be found at <http://www.wvculture.org/shpo/forms.html>. Information regarding National Register listings may be found at <http://www.wvculture.org/shpo/nr.html>

**This information can be mailed to:**

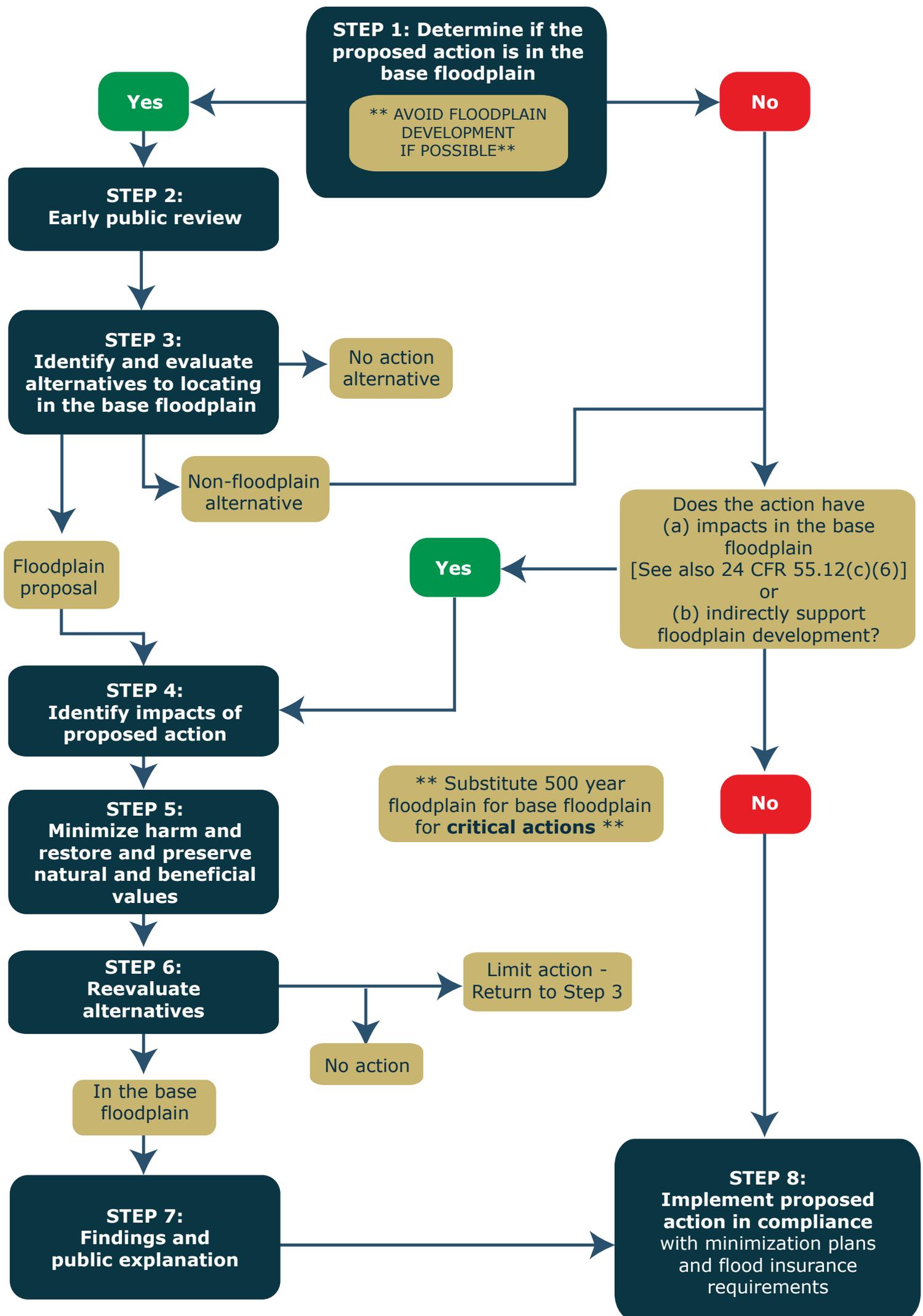
**Review and Compliance Staff  
State Historic Preservation Office  
WV Division of Culture and History  
1900 Kanawha Boulevard East  
Charleston, WV 25305**

**The office has 30 days to review a project. Please insure that all information is provided; missing information may delay the completion of review.**

**36 CFR 800 outlines the steps of the review process.**

The activity that is the subject of this publication has been financed in part with Federal funds from the National Park Service, Department of the Interior. The Division of Culture and History receives Federal funds from the National Park Service. Regulations of the U.S. Department of the Interior strictly prohibit unlawful discrimination in the departmental Federally Assisted Programs on the basis of race, color, national origin, age, or handicap. Any person who believes he or she has been discriminated against in any program, activity, or facility operated by a recipient of Federal assistance should write to: Office of Equal Opportunity, National Park Service, 1849 C Street, NW, Washington, D.C. 20240.

# 8- Step Decision-Making Process for Executive Order 11988



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

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

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

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

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

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

Date:

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

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

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

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

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

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

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

Date:

## DISTRIBUTION LIST

To comply with the procedures mandatory for publication and dissemination (24 CFR Part 58.43(a), at a minimum the recipient must send copies of the **Combined Notice of Finding of No Significant Impact and Notice of Intent to Request Release of Funds** to

- (1) the local news media:
- (2) individuals and groups known to be interested in its activities; and
- (3) to local, state, and federal agencies, including all those contacted as part of the environmental review process. The local, state, and federal agencies which **must** be notified are the Regional Planning and Development Councils, the **Chief of the Planning and Analysis Section of EPA, Region III, whose address is as follows:**

**U.S. Environmental Protection Agency  
Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029**

## SAMPLE

### Distribution List

The **Combined Notice of No Significant Impact on the Environmental and Notice of Intent to Request Release of Funds** was mailed to the following organizations, as well as published in the local news media:

**Regional Planning and Development Council  
Consulting Engineer  
WV Department of Culture and History  
WV Department of Environmental Protection  
WV DNR National Heritage Program  
WV Public Service Commission  
FEMA Region III  
US Environmental Protection Agency (EPA)  
US Fish and Wildlife  
USDA Natural Resources Conservation Service  
USDA Rural Development  
US Army Corps of Engineers**

Grantee:

Project:

**Calculation of Time Periods for Public Comment  
Concurrent/Combined Notices including Floodplain Notices**

Enter Published Date of Early Public Notice (1st Floodplain Notice)		
Start Comment Period	1 day	
End Comment Period	15 days	
Enter Published Date of Notice of Explanation (2nd Floodplain Notice)	Earliest Pub. Date	
Start Comment Period	1 day	
End Comment Period	7 days	
Enter Published Date of Combined Notices (can run concurrent to 2nd Floodplain Notice)	Earliest Pub. Date	
Start Comment Period	1 day	
End Comment Period	15 days	
Submit Request & Certification	16 days	
Receipt by State (same day if sent via email or fax; RE must also send original)	Earliest Rec. Date	
Start Review Period	1 day	
End Review Period	15 days	
Release of Funds by State	16 days	

Note:

Time periods cannot end on a weekend or holiday; enter the next business day in the cell if this occurs.

Grantee:

Project:

**Calculation of Time Periods for Public Comment  
Concurrent/Combined Notices**

Enter Date of Publish Finding & Request		
Start Comment Period	1 day	
End Comment Period	15 days	
Submit Request & Certification	16 days	
Receipt by State (same day if sent via email or fax; RE must also send original)	Earliest Rec. Date	
Start Objection Period	1 day	
End Objection Period	15 days	
Release of Funds by State	16 days	

Note:

Time periods cannot end on a weekend or holiday; enter the next business day in the cell if this occurs.

Grantee:

Project:

**Calculation of Time Periods for Public Comment  
Request for Release of Funds**

Enter Date of Publish Request		
Start Comment Period	1 day	
End Comment Period	7 days	
Submit Request & Certification	8 days	
Receipt by State (same day if sent via email or fax; RE must also send original)	Earliest Rec. Date	
Start Objection Period	1 day	
End Objection Period	15 days from receipt by State	
Release of Funds by State	16 days from receipt by State	

Note:

Time periods cannot end on a weekend or holiday; enter the next business day in the cell if this occurs.

**Sample Notice of Finding of No Significant Impact and  
Notice of Intent to Request a Release of Funds**

The language below is HUD's recommended wording of the combined Notice of Finding of No Significant Impact and Notice of Intent to Request a Release of Funds. This Notice is used for projects requiring an Environmental Assessment (24 CFR Part 58, Section 58.36). Words in **bold type** are required language. Words in *italics* are to be replaced by language appropriate to the particular project and Responsible Entity.

-----  
**NOTICE OF FINDING OF NO SIGNIFICANT IMPACT AND  
NOTICE OF INTENT TO REQUEST RELEASE OF FUNDS**

**Date of Publication:** *[date published]*

*Name of Responsible Entity (RE)  
Address (e.g., Street No. or P.O. Box)  
City, State, Zip Code  
Telephone Number of RE*

**These notices shall satisfy two separate but related procedural requirements for activities to be undertaken by the *name of RE or grant recipient.***

**REQUEST FOR RELEASE OF FUNDS**

**On or after at least one day after the end of the comment period the name of RE will if the RE is not also the grant recipient, insert the following language here: "authorize the [name of grant recipient] to" submit a request to the HUD/State administering agency for the release of name of grant program funds under Title/Section [xx] of the name of the appropriation Act of [year], as amended, to undertake the following project:**

**Project Title:** *project name*

**Purpose:** *nature/scope of project*

**Location:** *project location*

**Estimated Cost:** *both estimated HUD funding & total project cost, as applicable*

**FINDING OF NO SIGNIFICANT IMPACT**

**The *name of RE* has determined that the project will have no significant impact on the human environment. Therefore, an Environmental Impact Statement under the National Environmental Policy Act of 1969 (NEPA) is not required. Additional project information is contained in the Environmental Review Record (ERR) on file at *name and address of RE office where ERR can be examined and name and address of other locations where the record is available for review and may be examined or copied weekdays \_\_A.M to \_\_P.M.***

## PUBLIC COMMENTS

**Any individual, group, or agency may submit written comments on the ERR to the RE designated office responsible for receiving and responding to comments. All comments received by if notice is published: publication date plus fifteen days; if notice is mailed and posted: mailing and posting date plus eighteen days will be considered by the name of RE prior to authorizing submission of a request for release of funds. Comments should specify which Notice they are addressing.**

## RELEASE OF FUNDS

**The name of RE certifies to HUD/State that name of Certifying Officer in his/her capacity as Official Title consents to accept the jurisdiction of the Federal Courts if an action is brought to enforce responsibilities in relation to the environmental review process and that these responsibilities have been satisfied. HUD's/State's approval of the certification satisfies its responsibilities under NEPA and related laws and authorities and allows the name of grant recipient to use HUD program funds.**

## OBJECTIONS TO RELEASE OF FUNDS

**HUD/State will accept objections to its release of fund and the RE's certification for a period of fifteen days following the anticipated submission date or its actual receipt of the request (whichever is later) only if they are on one of the following bases: (a) the certification was not executed by the Certifying Officer of the name of RE; (b) the RE has omitted a step or failed to make a decision or finding required by HUD regulations at 24 CFR part 58; (c) the grant recipient or other participants in the development process have committed funds, incurred costs or undertaken activities not authorized by 24 CFR Part 58 before approval of a release of funds by HUD/State; or (d) another Federal agency acting pursuant to 40 CFR Part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality. Objections must be prepared and submitted in accordance with the required procedures (24 CFR Part 58, Sec. 58.76) and shall be addressed to HUD/State administration office at address of that office. Potential objectors should contact HUD/State to verify the actual last day of the objection period.**

*Name and Title of RE Certifying Officer*

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Note: The fifteen or eighteen-day public comment periods are the minimum time periods required by regulation prior to submission of a Request for Release of Funds and Certification (form HUD-7015.15) to HUD/State. The Responsible Entity may choose to allow a longer comment period. 24 CFR Part 58 requires, at Section 58.46, "Time delays for exceptional circumstances," a 30-day comment period for controversial or unique projects or those similar to projects normally requiring preparation of an Environmental Impact Statement. The fifteen-day objection period is a statutory requirement. The objection period follows the submission date specified in the Notice or the actual date of receipt by HUD/State, whichever is later.

## Sample Notice of Intent to Request a Release of Funds

The language below is HUD's recommended wording of the Notice of Intent to Request a Release of Funds. This Notice is used to request the environmental release of funds for Categorically Excluded projects (24 CFR Part 58, Section 58.35(a) or for projects for which a Notice of Finding of No Significant Impact was previously issued. Words in **bold type** are required language. Words in *italics* are to be replaced by language appropriate to the particular project and Responsible Entity.

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### NOTICE OF INTENT TO REQUEST RELEASE OF FUNDS

**Date of Publication:** *[date published]*

*Name of Responsible Entity (RE)  
Address (e.g., Street No. or P.O. Box)  
City, State, Zip Code  
Telephone Number of RE*

**On or after** *at least one day after the end of the comment period* **the name of RE will** *if the RE is not also the grant recipient, insert the following language here: "authorize the [name of grant recipient] to"* **submit a request to the HUD/State administering agency for the release of name of grant program funds under Title/Section [xx] of the name of the appropriation Act of [year], as amended, to undertake the following project:**

**Project Title:** *project name*

**Purpose:** *nature/scope of project*

**Location:** *project location*

**Estimated Cost:** *both estimated HUD funding & total project cost, as applicable*

**The activities proposed** *alternative #1: are categorically excluded under HUD regulations at 24 CFR Part 58 from National Environmental Policy Act (NEPA) requirements or alternative #2: comprise a project for which a Finding of No Significant Impact on the environment was [published/posted] on [date of Finding publication/posting].* **An Environmental Review Record (ERR) that documents the environmental determinations for this project is on file at name and address of RE office where ERR can be examined and name and address of other locations where the record is available for review and may be examined or copied weekdays \_\_A.M to \_\_P.M.**

### PUBLIC COMMENTS

**Any individual, group, or agency may submit written comments on the ERR to the RE designated office responsible for receiving and responding to comments. All comments received by if notice is published: notice date plus seven days; if notice is mailed and posted:**

*mailing and posting date plus ten days will be considered by the name of RE prior to authorizing submission of a request for release of funds.*

## RELEASE OF FUNDS

**The name of RE certifies to HUD/State that name of Certifying Officer in his/her capacity as Official Title consents to accept the jurisdiction of the Federal Courts if an action is brought to enforce responsibilities in relation to the environmental review process and that these responsibilities have been satisfied. HUD's/State's approval of the certification satisfies its responsibilities under NEPA and related laws and authorities and allows the name of grant recipient to use HUD program funds.**

## OBJECTIONS TO RELEASE OF FUNDS

**HUD/State will accept objections to its release of fund and the RE's certification for a period of fifteen days following the anticipated submission date or its actual receipt of the request (whichever is later) only if they are on one of the following bases: (a) the certification was not executed by the Certifying Officer of the name of RE; (b) the RE has omitted a step or failed to make a decision or finding required by HUD regulations at 24 CFR part 58; (c) the grant recipient or other participants in the development process have committed funds, incurred costs or undertaken activities not authorized by 24 CFR Part 58 before approval of a release of funds by HUD/State; or (d) another Federal agency acting pursuant to 40 CFR Part 1504 has submitted a written finding that the project is unsatisfactory from the standpoint of environmental quality. Objections must be prepared and submitted in accordance with the required procedures (24 CFR Part 58, Sec. 58.76) and shall be addressed to HUD/State administration office at address of that office. Potential objectors should contact HUD/State to verify the actual last day of the objection period.**

*Name and Title of RE Certifying Officer*

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Note: The seven or ten-day public comment periods are the minimum time periods required by regulation prior to submission of a Request for Release of funds and Certification (form HUD-7015.15 to HUD/State. The Responsible Entity may choose to allow a longer comment period. The fifteen-day objection period is a statutory requirement. The objection period follows the submission date specified in the Notice or the actual date of receipt by HUD/State, whichever is later.

# Request for Release of Funds and Certification

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

This form is to be used by Responsible Entities and Recipients (as defined in 24 CFR 58.2) when requesting the release of funds, and requesting the authority to use such funds, for HUD programs identified by statutes that provide for the assumption of the environmental review responsibility by units of general local government and States. Public reporting burden for this collection of information is estimated to average 36 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

## Part 1. Program Description and Request for Release of Funds (to be completed by Responsible Entity)

1. Program Title(s)	2. HUD/State Identification Number	3. Recipient Identification Number (optional)
4. OMB Catalog Number(s)	5. Name and address of responsible entity	
6. For information about this request, contact (name & phone number)		
8. HUD or State Agency and office unit to receive request	7. Name and address of recipient (if different than responsible entity)	

**The recipient(s) of assistance under the program(s) listed above requests the release of funds and removal of environmental grant conditions governing the use of the assistance for the following**

9. Program Activity(ies)/Project Name(s)	10. Location (Street address, city, county, State)
11. Program Activity/Project Description	

---

**Part 2. Environmental Certification** (to be completed by responsible entity)

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**With reference to the above Program Activity(ies)/Project(s), I, the undersigned officer of the responsible entity, certify that:**

1. The responsible entity has fully carried out its responsibilities for environmental review, decision-making and action pertaining to the project(s) named above.
2. The responsible entity has assumed responsibility for and complied with and will continue to comply with, the National Environmental Policy Act of 1969, as amended, and the environmental procedures, permit requirements and statutory obligations of the laws cited in 24 CFR 58.5; and also agrees to comply with the authorities in 24 CFR 58.6 and applicable State and local laws.
3. The responsible entity has assumed responsibility for and complied with and will continue to comply with Section 106 of the National Historic Preservation Act, and its implementing regulations 36 CFR 800, including consultation with the State Historic Preservation Officer, Indian tribes and Native Hawaiian organizations, and the public.
4. After considering the type and degree of environmental effects identified by the environmental review completed for the proposed project described in Part 1 of this request, I have found that the proposal did  did not  require the preparation and dissemination of an environmental impact statement.
5. The responsible entity has disseminated and/or published in the manner prescribed by 24 CFR 58.43 and 58.55 a notice to the public in accordance with 24 CFR 58.70 and as evidenced by the attached copy (copies) or evidence of posting and mailing procedure.
6. The dates for all statutory and regulatory time periods for review, comment or other action are in compliance with procedures and requirements of 24 CFR Part 58.
7. In accordance with 24 CFR 58.71(b), the responsible entity will advise the recipient (if different from the responsible entity) of any special environmental conditions that must be adhered to in carrying out the project.

As the duly designated certifying official of the responsible entity, I also certify that:

8. I am authorized to and do consent to assume the status of Federal official under the National Environmental Policy Act of 1969 and each provision of law designated in the 24 CFR 58.5 list of NEPA-related authorities insofar as the provisions of these laws apply to the HUD responsibilities for environmental review, decision-making and action that have been assumed by the responsible entity.
9. I am authorized to and do accept, on behalf of the recipient personally, the jurisdiction of the Federal courts for the enforcement of all these responsibilities, in my capacity as certifying officer of the responsible entity.

---

Signature of Certifying Officer of the Responsible Entity

Title of Certifying Officer

---

Date signed

**X**

Address of Certifying Officer

---

**Part 3. To be completed when the Recipient is not the Responsible Entity**

---

The recipient requests the release of funds for the programs and activities identified in Part 1 and agrees to abide by the special conditions, procedures and requirements of the environmental review and to advise the responsible entity of any proposed change in the scope of the project or any change in environmental conditions in accordance with 24 CFR 58.71(b).

---

Signature of Authorized Officer of the Recipient

Title of Authorized Officer

---

Date signed

**X**

**Warning:** HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

# Chapter 3

## Financial Management





## Chapter Three: Financial Management

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### Table of Contents

	<b>Page</b>
Supporting Materials .....	3-1
Designate Responsible Individual .....	3-1
Bank Accounts .....	3-1
Accounting Records .....	3-2
Internal Control .....	3-3
Request for Payment .....	3-5
Audit Requirements .....	3-6

## Introduction

Chapter 3: Financial Management presents the financial and administrative guidelines designed to establish consistency and uniformity among local governments in record keeping and administration of a Community Development Block Grant (CDBG) funded project. In establishing a financial management system, Grantees must follow 24 CFR Part 85: Uniform Administrative Requirements for Grants and Cooperative Agreements to state, local and federally recognized Indian Tribal Governments (Appendix) which requires the Grantee's financial management system to provide the following:

- Accurate, current and complete disclosure of financial results.
- Records adequately identifying the source and application of grant funds.
- Effective control over, and accountability for, all funds, property and other assets.
- Comparison of actual disbursements with the amounts budgeted for the grants related to performance or productivity data.
- Procedures to minimize the amount of time that elapses between the transfer of funds from the U.S. Treasury and the disbursement by the Grantee; (3-Day Rule).
- Procedures for determining reasonableness, allowability and allocability of costs.
- Accounting records supported by source documentation, such as cancelled checks, paid bills, payrolls, time and attendance records, contracts.
- A systematic method to assure timely and appropriate resolution of audit findings and recommendations.

## Supporting Materials

Attachment 3-1	Individual Monthly Time and Attendance Form
Attachment 3-2	Individual Daily Time Distribution Report
Attachment 3-3	Three Day Rule Compliance Policy
Attachment 3-4	Request for Payment Form
Attachment 3-5	Letter of Transmittal Sample

## Designate a Responsible Individual/Finance Officer

The Grantee must appoint an individual who will be responsible for the financial management of the project. This individual should be familiar with the Grantee's present accounting system and involved with all aspects of the financial administration of grant funds, in accordance with the regulations found at: [www.access.gpo.gov/nara/cfr/waisidx\\_02/31cfr205\\_02.html](http://www.access.gpo.gov/nara/cfr/waisidx_02/31cfr205_02.html).

## Bank Accounts

Each Grantee will establish a depository account for the receipt of all CDBG payments made from the CDBG program. Consistent with the national goal of expanding the opportunities for minority business enterprises, Grantees are encouraged to use minority banks (a bank that is owned at least 50 percent by minority group members). A list of minority-owned banks can be found here: [www.fdic.gov/regulations/resources/minority/mdi.html](http://www.fdic.gov/regulations/resources/minority/mdi.html)

CDBG funds must be maintained in a separate, non-interest bearing checking account in a bank with Federal Deposit Insurance Corporation (FDIC) insurance coverage. Any balance exceeding the FDIC coverage amount must be collaterally secured.

Check signature cards must be maintained within the project bank statement file. All CDBG checks should have dual signature requirements. One of the signatures must be the Chief Elected Official.

The checks should be pre-numbered and state the name of the Grantee, the name of the project and the project number. Counter checks (checks that are not pre-numbered and do not provide project identification) must not be utilized.

Bank statements and canceled checks or check images must be maintained with the appropriate accounting records. The bank statements must be reconciled monthly and appropriate documentation supporting the reconciliation must be included with the bank statements.

### Accounting Records

The Grantee must have a financial management system that provides accurate, current and complete disclosure of the financial status of each activity supported by CDBG funds. This means that reports indicate the dollar amount allocated for each activity (including any budget revisions), the amount obligated (i.e., for which contracts exist), and the amount expended for each activity.

The system must permit the comparison of actual expenditures and revenues against budgeted amounts. If the project budget includes sources of funding in addition to those provided by the CDBG program, including program income, these funds must appear in the financial management system just as they were shown in the proposal. **The Grantee's financial management system must be able to isolate and trace CDBG funds received and also document their disbursement and use of applicable statutes.**

Financial records should be kept on a program year basis to facilitate audit and closeout. Receipts and expenses should be posted monthly within all financial records.

Separate accounting records for CDBG funds must be maintained. Not only will separate records serve all of the above recordkeeping requirements, they will also eliminate potential conflicts with the Grantee's usual recordkeeping systems, which may reflect a different local fiscal year, accounting-by-function or department, rather than activity.

Grantees must maintain records that adequately identify the source and application of funds provided for financially assisted activities. These records must contain information pertaining to grant or sub-grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

At a minimum, three accounting documents must be established for recording CDBG transactions:

- » **Cash Receipts Journal:** This journal must be maintained to record the receipt of all funds (local, state and federal) used for program activities. The record must include the

date funds were received, the amount of funds received, the source of the funds, and the accounts into which funds were assigned.

- » **Cash Disbursement Journal:** This journal must be maintained to record all checks issued for the payment of program costs. The record must include the payment date, the payee, the check number, the amount and the account from which the disbursement was made.
- » **General Ledger:** This ledger must be maintained to summarize cash receipts and disbursements on a sub-account basis. All entries to the General Ledger must be made from the Cash Receipts and Cash Disbursements Journal.

In all financial recordkeeping, the Grantee is required to treat administration as a separate activity and account for administrative costs in the same manner.

Accounting records should also be maintained on an activity-level basis to make it easier to monitor the financial status of separate activities.

The WVDO also strongly urges the Grantee to maintain a Federal Cash Control Register if funds should be commingled. The Register will greatly facilitate the preparation of Request for Payment. It is simple to maintain and its use is highly recommended.

Accounting records must be supported by source documentation. Invoices, bills of lading, purchase vouchers, payrolls and other fiscal support must be secure and retained for three years from the issuance date of the final audit report in order to provide support for what purpose funds were spent. Payment must never be made without invoices and vouchers physically in hand. All vouchers/invoices must be on vendor's letterhead and include project identification, such as project name and number.

### **Internal Control**

Effective control and accountability must be maintained for all grant and sub-grant cash, real and personal property, and other assets. Grantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

### **Budget Control**

Actual expenditures or outlays must be compared with budgeted amounts for each activity.

### **Time Sheets/Time Distribution Records**

All employees paid in whole or in part from CDBG funds must prepare a monthly and daily time sheet indicating the hours worked on CDBG projects for each pay period (**Attachments 3-1 and 3-2**). Based on these time sheets and the hourly payroll costs for each employee, a voucher statement indicating the distribution of payroll charges should be prepared and placed in the appropriate files. Invoices presented to Grantees from contracts or agreements set up on a "cost reimbursement basis" shall be supported by similar records.

### **Review System**

The Grantee must adopt a written procedure for determining the reasonableness, allowability and allocability of costs. Since a Grantee's finance officer may not be familiar with the CDBG

program, CDBG administrators should review and approve vouchers and invoices. This process will ensure that all costs are reasonable and eligible under CDBG regulations. The project administrator will indicate review and approval by initialing all invoices submitted for reimbursement from CDBG funds.

### Three-Day Rule

Written mechanisms must be developed and adopted to ensure compliance with the "Three-Day Rule." **The "Three-Day Rule" means that funds requested in excess of \$5,000 must be deposited and expended within three working days after they are received.** (Add PSD 3 day rule)

The time period begins upon receipt of the check, not the deposit. Thus, if a state-issued CDBG check is received on a Friday, it must be immediately deposited and checks should be written for the full amount of the deposit by the close of business the following Wednesday. If there is money remaining in the program account at the time an additional request is being prepared, the amount drawn should be the amount needed, less than the amount remaining in the account. In this way, all funds will be expended within the three-day limit.

**Funds on hand after three days of receipt should be the minimum amount needed to carry on the program and should never exceed \$5,000.** If the Grantee finds that funds on hand after three days from receipt exceed \$5,000 and will not be disbursed within two weeks, the entire amount not being disbursed within the two-week period should be returned to the WVDO.

**The easiest way to meet the "Three-Day Rule" requirements is to use Grantee funds to pay CDBG invoices and then submit a Request for Payment to the WVDO to reimburse the Grantee for these payments.**

If the Grantee's cash flow will not permit this, a Request for Payment should, in most cases, be submitted only upon receipt of invoices or progress payment requests to ensure that funds are expended within three days of receipt. If payment is requested in anticipation of receiving major invoices or other methods of billing, delays in the contractor submitting a payment request can cause funds to be held longer than three days.

If the Grantee proceeds on the basis that requests for payment are made only upon receipt of major invoices or bills, it is necessary that contractors be informed that there will be approximately 30 days between receipt of invoice by the WVDO and payment. When progress payments will be made, it is essential that the contract specifies the approximate schedule of payments and ties them to identifiable project milestones (i.e., completion of community center foundation). If not specified, it may be viewed as a payment in advance, a practice not approved by the WVDO.

Certain situations encountered by a Grantee might necessitate a drawdown based on an estimation of needed funds. One such situation is in the case of real estate transactions where the expenditure must be anticipated and the drawdown scheduled as close to the closing date as practicable. Therefore, in certain cases, the WVDO will permit drawdown based on estimates that are imminent and reasonably firm. Such requests will be closely scrutinized and any Grantee abusing this procedure will have more stringent guidelines placed on their ability to draw in advance.

**Request for Payment**

After a Grantee has submitted a grant agreement and all required documents to the WVDO for processing, the WVDO will issue an executed grant agreement.

Prior to any payment of funds, the Grantee must submit all required Evidentiary Materials as referenced in Chapter 1: Project Administration. Following the submittal of Evidentiary Materials, the Grantee may request 1) Approval of Evidentiary Materials, and 2) Notice to Proceed with Exempt Activities.

Pursuant to 24 CFR Part 58, "Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities," the Grantee must conduct the appropriate environmental review prior to the expenditure or obligation of funds. Upon approval, the WVDO will issue written authorization for Exempt activities. This authorization will apply exclusively to the Exempt activities associated with the project, to include administration, engineering and design.

Completion of the environmental review process is **mandatory** before taking a physical action on a site, or making a commitment or expenditure of HUD or non-HUD funds for property acquisition, rehabilitation, conversion, lease, repair, or construction activities.

A complete Environmental Review Record (ERR) and Request for Release of Funds (ROF), in accordance with 24 CFR Part 58.36, will be required for non-exempt activities, to include construction.

In order to obtain funds obligated for an approved project, a Grantee must submit the following to the WVDO:

**Request for Payment – Financial Report:**

This Request for Payment-Financial Report will show the correspondence of cost(s) claimed to the approved budget. This report must be complete or it will not be processed.

**Expenditure Schedule:**

The expenditure schedule must document all project funding. The expenditure schedule must also illustrate any invoices partially attributed to other funding sources.

**Letter of Transmittal – Progress Report:**

A Request for Payment must be accompanied by a Letter of Transmittal that includes a narrative description of the accomplishments and a factual and complete explanation of the need for funds as represented by the Request for Payment. A Request for Payment will not be processed without a Progress Report.

**A Request for Payment will not be processed without an adequate report on the progress of the project.** Failure to provide an adequate Letter of Transmittal may result in the withholding of funds. The WVDO staff will review the Request for Payment and Letter of Transmittal, and upon approval, the request will be processed.

In order for payment to be made, the WVDO must request a transfer of funds from the U.S. Treasury to the state's CDBG account. Upon notification of deposit, a state transmittal must be prepared and processed before a check can be issued. When a check is issued, it will be

forwarded directly from the State Treasurer's Office to the Grantee for deposit into the Grantee's CDBG project account. The check must be deposited immediately. Receipt of the U.S. Treasury check triggers the count of the three-day rule.

It is anticipated that the payment process outlined above will take approximately 30 days. Grantees are advised that they will have to use their own resources to accommodate probable cash flow problems.

Funds are to be requested in amounts of \$5,000 or more (unless there is less than \$5,000 remaining) and may be requested as often as needed. As explained earlier, funds must be expended in accordance with the "Three-Day Rule."

### **Audit Requirements**

OMB Circular A-133 and 24 CFR Part 85.26 establish audit requirements for state and local governments that receive federal aid and define federal responsibilities for implementing and monitoring those requirements. OMB Circular A-133 provides the procedures for implementing the Single Audit Act.

[www.whitehouse.gov/sites/default/files/omb/assets/a133/a133\\_revised\\_2007.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/a133/a133_revised_2007.pdf)

[www.whitehouse.gov/omb/circulars/a133\\_compliance\\_supplement\\_2014](http://www.whitehouse.gov/omb/circulars/a133_compliance_supplement_2014)

#### **Contracted Audit**

The audit of a CDBG project must be included in audits performed by auditors contracted for through the Office of the Chief Inspector of the State Auditor's Office per provisions of the West Virginia Code 6-9-1.

The audit of the CDBG program must be included within the scope of a comprehensive, agency-wide audit for any Grantee expending **\$750,000** or more in federal funds per fiscal year in accordance with the Single Audit Act and OMB Circular A-133. A pro rata share of the cost may be charged against the CDBG project. All Grantees expending less than **\$750,000**, starting December 2014, of federal funds in any given fiscal year will receive an audit review.

Costs for an audit review will not be eligible. This audit goes beyond a simple financial audit to include an assessment of compliance with other major program provisions, including labor standards, acquisition and relocation procedures, environmental review procedures, etc.

Grantees and auditors must use the following guidelines:

#### **Guidelines for Financial and Compliance Audits of Federally-Assisted Programs**

[www.gao.gov/products/108390](http://www.gao.gov/products/108390)

#### **Standards for Audit of Governmental Organizations, Programs, Activities, and Functions**

[www.gao.gov/products/136670](http://www.gao.gov/products/136670)

Copies of the final audit shall be provided to the Development Office within 30 days of receipt by the Grantee.

**A project shall not be closed out until all costs claimed have been audited and all federal concerns and findings have been resolved.** The state retains the right to review audit working papers during the audit for a period of three years after issuance of the final audit report. A statement to this effect must be included in any contract or memorandum letter of agreement between the Grantee and its auditors.

#### **Internal Audits**

In addition to the contract audits, the CDBG internal audit staff will perform financial management audits. These audits will be performed upon schedules determined by CDBG management and grant administrative staff. The same audit standards utilized for the State Auditor's Office audits will apply.

#### **Retention of Records**

Files should be maintained in a central location. The Grantee is responsible for all files, whether maintained at the Grantee's office or at the office of the administrator.

**Following final closeout, the Grantee must retain all project records for three years after the date of the final audit report, according to 24 CFR 570.506, and must be available for review at any time.** Records must include all working documents established during the audit. A complete listing of required records is provided in Chapter 1: Project Administration. Strict adherence to record keeping procedures should begin immediately following the grant award.

If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period.

In addition, WVDO or HUD representatives, the U.S. Inspector General, the General Accounting Office, and the Comptroller General of the United States must have access to any pertinent financial files, books, records, accounts, documents, papers, and other property belonging to the community that pertains to the grant.





**Individual Daily Time Distribution Record**

Name:					Division:															Month:							Year:													
					Section:																																			
Program	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	Total	%							
																																	8.0			8.0	9%			
																																		8.0			8.0	9%		
																																		8.0			8.0	9%		
	8.0																																	8.0			16.0	18%		
																																			8.0			8.0	9%	
																																			8.0			8.0	9%	
																																			8.0			8.0	9%	
<b>Annual Leave Used</b>																																			8.0			8.0	9%	
<b>Sick Leave Used</b>																																				8.0			8.0	9%
<b>TOTAL</b>	8.0	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	80.0	X	X	88.0	100%		

**Instructions:**

Total for each day must be 8.0. (Both full days worked and days with leave.)  
 Enter an "X" for weekends/holidays.

I certify that the reported information is correct.

\_\_\_\_\_  
 Employee's Signature

\_\_\_\_\_  
 Date

Approved by:

\_\_\_\_\_  
 Supervisor's Signature

\_\_\_\_\_  
 Date

**Community Development Block Grant  
THREE-DAY RULE COMPLIANCE POLICY  
DETERMINATION OF COST ALLOWABILITY, ALLOCABILITY AND REASONABLENESS**

1. The \_\_\_\_\_ and \_\_\_\_\_ will establish a financial record keeping system. A non-interest-bearing checking account will be opened by the grantee in anticipation of the first drawdown, advance, or reimbursement.
2. All costs will be:
  - a) necessary and reasonable;
  - b) allocable to the CDBG-Small Cities Block Grant Program;
  - c) adequately documented.
3. Contractors will submit all payment requests to the Project Engineer and Grantee for review and approval before submission to the Project Administrator.
4. All other invoices must be submitted to the Grantee for approval before submission to the Project Administrator.
5. The Project Administrator will review the payment request to determine if the services are within the project scope, contract terms, budget, and to which line item the invoice will be charged.
6. Following their review, the Project Administrator must approve and sign each invoice.
7. The Project Administrator must prepare a letter of transmittal requesting approval of the Grantee's financial officer and/or other designated representative.
8. The \_\_\_\_\_ must sign the drawdown and forward the approval request and supporting documentation to the West Virginia Development Office.
9. The \_\_\_\_\_ Grantee will contact the Project Administrator immediately upon receipt of the CDBG funds and deposit the check into the CDBG Checking Account. Receipt of the check begins the 3-day rule clock.
10. Immediately upon notification from the \_\_\_\_\_, the governing body's representative must prepare checks for payment and mail them to the appropriate vendors.
11. The Project Administrator must maintain a record of receipts and disbursements that are supported by bank statements and canceled checks and provide monthly to the Grantee.

---

**Chief Elected Official's Signature**

**Date**

---

**Attested By**

**Date**

**Community Development Block Grant -Small Cities Block Grant Program  
REQUEST FOR PAYMENT**

**TO:** West Virginia Development Office  
Building 6, Room 553  
1900 Kanawha Boulevard, East  
Charleston, WV 25305-0311  
304-558-2234      304-558-3248

**FROM:**

<b>Project Name</b>		<b>Project #</b>	
<b>Drawdown #</b>		<b>% of Project Complete</b>	0.0%

**Time Period Covered by this Request:**  TO

**Amount of CDBG Funds on hand at the time of this Request** \$ -

<b>COST CATEGORIES</b>	<b>APPROVED BUDGET AMOUNT</b>	<b>AMOUNT REQUESTED TO DATE</b>	<b>AMOUNT REQUESTED THIS DRAW</b>	<b>TOTAL AMOUNT REQUESTED</b>	<b>AMOUNT DISBURSED TO DATE</b>	<b>BALANCE</b>
Administration				\$ -		\$ -
Arch/Engineering				\$ -		\$ -
Land Acquisition				\$ -		\$ -
Construction				\$ -		\$ -
Permits/Fees				\$ -		\$ -
Other				\$ -		\$ -
Other				\$ -		\$ -
<b>SUB-TOTAL:</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Less Income						
<b>TOTAL:</b>	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

**PROGRESS REPORT: REQUEST FOR PAYMENT WILL NOT BE PROCESSED WITHOUT PROGRESS REPORT.**

I certify costs claimed by this report are correct and just and based upon actual requirements; that work and services are in accordance with the approved project agreement; and that work and services are satisfactory and consistent with the amount claimed. Supporting documents are attached to verify costs claimed and are available locally for audit and inspection. City, county, or other direct recipients of funds are not involved in any court litigation or lawsuit involving any applicable laws contained in the grant contract

**Chief Elected Official**

**Date**

*Original Signature Required*

*Copies of Invoices Required*

## LETTER OF TRANSMITTAL

Mr. John Jones  
Project Manager  
West Virginia Development Office  
Building 6, Room 553  
Charleston, West Virginia 25305-0311

**RE: Town of Pinepoca-Sewer Improvements  
Small Cities Block Grant - Request for Payment #5  
Project Number: 12SCBG0001**

Dear Mr. Jones:

In accordance with the drawdown procedures established by the State, this letter of transmittal contains a progress report on the above-referenced grant to support the enclosed Request for Payment.

1. **Administration** – All necessary administrative activities have been completed and files have been established in conformance with the Grants Management Handbook by the (Project Administrator). Five (5) invoices for project administration totaling \$5,000 are enclosed.
2. **Engineering** – The Cedar PSD has paid its share for the on-site pilot test of a solids handling unit. The Town and XYZ Consultants, Inc. are certain the specified unit will perform adequately. Invoices are enclosed from XYZ totaling \$20,000.
3. **Construction** – The wastewater treatment plant improvements contract was awarded to ABC Construction Company of Clear Fork, WV. Construction began in late 2014 and is expected to be completed by the fall of 2015. This request is partial payment #1—totaling \$95,000.
4. **Legal** – All legal work has been completed. Awaiting legal counsel to invoice for services rendered to date. Amount requested is \$0.00.

If you have any questions or need any additional information, please contact our (Project Administrator) at 304-555-5555.

Sincerely,

John Q. Citizen  
Mayor

GC:ab

Enclosures

# Chapter 4

## Program Income





## Chapter Four: Program Income

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### Table of Contents

	<b>Page</b>
Definitions .....	4-1
Program Income Potential .....	4-1
Revolving Loan Fund Policy .....	4-3
Program Income Accounting System .....	4-4

**Introduction**

Chapter 4: Program Income provides an overview of the requirements applicable to the financial management of the Community Development Block Grant (CDBG) Program specifically related to Program Income derived through the use of CDBG funds.

**Program Income** is defined in 24 CFR 570.489(e) as gross income received by a unit of local government that was generated from the use of CDBG-Small Cities and Neighborhood Stabilization Program (NSP) funds. **All CDBG-Small Cities Program Income must be reported to the WVDO on an annual basis.**

**Definitions**

*Program Income (PI)* is the gross income received by a Grantee that was generated from use of CDBG funds.

[Specific regulations regarding program income can be found in the Electronic Code of Federal Regulations under Title 24](#)

24 CFR Part 570.489(e)(1)  
Part 570.489(e)(2)(i)  
Part 570.489(e)(2)(ii)  
Part 570.504

*Miscellaneous Revenue* is revenue that may have been received after a contractual break or, under some circumstances, when a sub-recipient received funds that are not subject to federal requirements.

**Program Income Potential**

24 CFR Part 570.489(3)(ii)

A Grantee must determine whether the funds generated are Program Income or Miscellaneous Revenue before proceeding. Requirements of Title I of the Housing and Community Development Act of 1974, as amended, include appropriate regulations, addressing a national objective, compliance with procurement, equal opportunity, environmental, labor standards regulations, and the Uniform Act. Miscellaneous Revenue is not subject to federal regulations but may be subject to certain state restrictions and requirements. All recovered funds must be used to further activities as defined in the grant agreement (i.e., economic development or housing-related activities) and be reported upon annually.

Program Income/Miscellaneous Revenue may be generated from the following activities and is not limited to the following activities:

- Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG funds;
- Proceeds from the disposition of equipment purchased with CDBG funds;

- Gross income from the use or rental of real or personal property acquired by the unit of general local government or a sub-recipient of a unit of general local government with CDBG funds, less than costs incidental to the generation of the income;
- Payments of principal and interest on loans made using CDBG funds;
- Proceeds from the sale of loans made with CDBG funds;
- Proceeds from the sale of obligations secured by loans made with CDBG funds;
- Interest earned on funds held in a revolving fund account;
- Interest earned on program income pending disposition of the income;
- Funds collected through special assessments made against properties owned and occupied by households not of low and moderate income, where the special assessments are used to recover all or part of the CDBG portion of public improvements; and
- Gross income paid to a unit of general/local government or sub-recipient from the ownership interest in a for-profit entity acquired in return for the provision of CDBG assistance.

When income is generated by an activity that is only partially assisted with CDBG funds, the income shall be pro-rated to reflect the percentage of CDBG funds used (e.g., a single loan supported by CDBG funds or a single parcel of land purchased with CDBG funds and other funds).

#### **Program Income Received Before Full Project Closeout**

24 CFR Part 570.489(e)(3)(ii)

Program Income received by the Grantee or sub-recipient before closeout of the grant that generated the Program Income is treated as additional CDBG funds and is subject to all applicable Title I and other federal regulations and state policies governing the CDBG program. (Note: The \$25,000 threshold does not apply to Program Income received if the grant is not fully programmatically closed out and there are further grant costs to be paid.)

Program Income received before full project closeout must be substantially expended to the extent practical before drawing additional CDBG funds from the West Virginia Development Office (WVDO) for the project from which the program income was generated. An exception is that if Program Income is used to establish a Revolving Loan Fund (RLF), it is not required to be expended for non-revolving fund.

#### **Program Income Received After Full Project Closeout**

24 CFR Part 570.489(e)(3)(iii)

Provisions of this section are primarily related to Program Income generated from housing projects. Program Income that is received after full project closeout of the grant that generated the Program Income is not subject to the requirements in this chapter, except:

1. If the Grantee has another ongoing CDBG project at the time of closeout, the Program Income continues to be subject to the requirements of this chapter (i.e., until there is a contractual break with the WVDO, defined as full project closeout of all open grants). Note that the provisions of the following item (2) may be triggered at any time during the ongoing grant relationship.
2. If Program Income is used to continue the activity that generated the funds, the requirements of this chapter apply as long as the Grantee uses the Program Income to continue the activity.

A Grantee cannot give Program Income to an agency for use in other cities or counties while the Grantee is still participating in the CDBG program. If the WVDO decides that Program Income received after closeout should go to an agency or to a local government other than the locality that realized the Program Income, CDBG requirements would continue to apply. This prohibition is based on statutory language mandating that CDBG funds must benefit the eligible Grantee that received the original funds.

### **Revolving Loan Fund Policy**

#### **24 CFR Part 570.489(f)**

The WVDO may approve the use of CDBG recovered funds for the purpose of capitalizing a Revolving Loan Fund (RLF) for specific, identified activities. RLFs are typically established to continue housing rehabilitation or economic development activities. The establishment of an RLF must be in the grant application and approved by the WVDO.

An RLF, for this purpose, is a separate fund (with a set of accounts independent of other program accounts) established to carry out specific activities which then generate payments for use in carrying out such activities. These payments to the RLF are Program Income/Miscellaneous Revenue and must be substantially disbursed from the revolving fund before additional grant funds are drawn from the WVDO.

If the RLF is established to continue the activities of the grant which generated the Program Income, the RLF is subject to all the requirements of this chapter (i.e., Title I, state policies, etc.) regardless of whether the grant was open or closed at the time the funds were received.

The WVDO requires that written guidelines and procedures be developed for the administration of the RLF. These guidelines must be prepared and submitted to the WVDO for approval. This must be prior to any program income being expended and prior to the release of funds of the grant that generated the program income and capitalized the RLF.

The local governing body must approve the written RLF guidelines. In addition, any substantive changes to local RLF guidelines must be submitted to the WVDO prior to implementation.

Failure to submit local RLF policies and procedures in a timely manner could result in the recovery of Program Income by the WVDO. If recovered funds will not be retained by a sub-recipient, the above information must identify and describe the role of the sub-recipient, as appropriate. (The sub-recipient's governing board must approve the Revolving Loan Fund and the sub-recipient's participation prior to Release of Funds.)

Such approval must legally bind the sub-recipient to perform in accordance with the provisions of the Revolving Loan Fund and be submitted, in writing, to the WVDO. It is a federal requirement that a sub-recipient be governed by the CDBG regulations in the same manner and to the same extent as the Grantee. In any case, the Grantee remains responsible for ensuring compliance with the RLF and is liable for any misuse of Program Income funds.

The WVDO may waive or modify the requirements of this chapter when it determines that, in so doing, it will promote the more efficient administration of the program and/or further the accomplishment of objectives. However, the WVDO cannot waive HUD or other federal regulatory requirements concerning the use of recovered funds. Program Income may not be expended until a Revolving Loan Fund has been approved by the WVDO and any applicable federal requirements, such as environmental review requirements, have been met.

Revolving Loan Funds will be monitored periodically by the WVDO to ensure compliance with all federal and state requirements. A Grantee must agree to return all unexpended funds and collectable accounts to the WVDO in the event of fraud, waste or mismanagement and/or substantial non-compliance with the local RLF guidelines.

### **Program Income Accounting System**

A Program Income accounting system should:

- Record Program Income in the Grantee's accounting records;
- Ensure that all Program Income is collected and properly classified; and
- Ensure that the handling of Program Income complies with federal and state requirements.

The method of accounting to be used for tracking Program Income shall meet Generally Accepted Accounting Principles (GAAP). Any accounting system used must provide the necessary information for completing the WVDO's Annual Program Income/Miscellaneous Revenue Report (PI/MR) and comply with the requirements of 24 CFR Part 85 (Interest bearing accounts are not allowed for anything other than program income.).

The Grantee must maintain files that accurately account for all funds received and disbursed. This documentation must include bank statements and canceled checks (copies are acceptable if both sides of canceled checks are copied).

The Grantee must also maintain documentation that shows recovered funds were spent in compliance with Title I requirements. This includes documentation that the funds were spent on eligible activities, documentation that a National Objective was met, and any materials used in a funding decision. In addition, the requirements pertaining to environmental, citizen participation, acquisition, relocation, labor, fair housing and equal opportunity, Section 504, etc., must be followed and properly documented.

### Request for Program Income Expenditure Authorization

In order to expend Program Income funds, a Grantee must request approval from the WVDO. WVDO staff will review the request to determine compliance with eligibility and national objective requirements. With WVDO approval, a Grantee may also use Program Income on a newly proposed project. This would be included in the CDBG application. As a condition to grants currently being funded, the WVDO now requires Program Income to be used before requesting additional CDBG funds. If approved, the transaction is reported on the subsequent PI/MR Report.

### Complete Annual Reporting Requirements

HUD requires vigorous state oversight of recovered funds retained at the local level. The WVDO has the ultimate responsibility for the proper use of these funds and must ensure that Program Income is used in a manner consistent with CDBG requirements. For this reason, annual Program Income Revenue Reports are required (**see Attachment 4-1**). A Grantee with the potential of generating recapture funds must submit a report for the fiscal year ending June 30.

Since the Grantee is ultimately responsible for grant PI/MR compliance, it is responsible for the completion and submission of the report. Should the Grantee utilize a nonprofit sub-recipient organization to manage the RLF that entity is responsible for providing the Grantee the necessary program and financial information required for reporting to the WVDO.

The Grantee can expend up to a maximum of 10 percent of the total Program Income/Miscellaneous Receipts received to date for administration. Review of PI/MR may be included as part of a normal project monitoring. Any deficiency that is noted and appears as a finding in the monitoring letter must be resolved the same as any other.

## Program Income Revenue Report

<b>Grantee</b>					
<b>Project Name</b>				<b>Project #</b>	
<b>Address</b>					
<b>Telephone</b>		<b>Fax</b>		<b>Email</b>	
<b>Preparer Name</b>					
<b>Preparer Address</b>					
<b>Preparer Phone</b>		<b>Fax</b>		<b>Email</b>	

*The Grantee's Chief Elected Official certifies that:*

- (a) The information in this report is true and correct to the best of their knowledge on the date below.
- (b) The records, as required, are being maintained and will be made available upon request.

\_\_\_\_\_  
**Chief Elected Official**

\_\_\_\_\_  
**Typed Name of Chief Elected Official**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Date**

# PROGRAM INCOME

24 CFR Part 489(e)

## Program Income may be earned from the:

## Example

- |   |   |
|---|---|
| 1. Sale or long-term lease of real property acquired or improved with SCBG funds.   | Sale of water system/lease of shell building/Sale of industrial site. |
| 2. Disposition of equipment purchased with CDBG funds.  | Sale of vehicle/computer purchased with SCBG funds.                   |
| 3. Use or rental of real or personal property acquired with CDBG funds.   | Rental of office space in buildings purchased with CDBG funds.        |
| 4. Use or rental of real property constructed or improved with SCBG funds which results in increased value.                           | Rental income from buildings improved with CDBG funds.                |
| 5. Payments of principal and interest on loans made with SCBG funds.  | Housing rehabilitation or economic development loan repayments.       |
| 6. Proceeds from sale or loans.   | Sold portfolio of housing rehabilitation loans to the bank.           |
| 7. Sale of obligations secured by loans.  | Sale of property obtained as security on a loan default.              |
| 8. Interest earned on funds held in a revolving fund account.   | Self-explanatory.   |
| 9. Interest earned on Program Income pending disposition of the income.   | Self-explanatory.   |
| 10. Special assessment funds received from property owners and occupants not of low- to moderate-income.                              | Assessment levied against property owners for sidewalk improvements.  |
| 11. Gross income received from the ownership interest in a for-profit entity acquired in return for the provision of SCBG assistance. |   |

# PROGRAM INCOME PORTFOLIO

From \_\_\_\_\_ To \_\_\_\_\_

	SOURCE OF PROGRAM INCOME	PROJECT #	GRANT/LOAN	PI RECEIVED	PI EXPENDED	PI BALANCE
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						
11.						
12.						
13.						
14.						
15.						
16.						
17.						
18.						
19.						
20.						
<b>Totals</b>						

# REVOLVING LOAN FUND PORTFOLIO

	LOAN APPLICANT	PROJECT #	LOAN AMOUNT	INTEREST RATE	LOAN TERM	DATE LOAN MADE	RECEIPTS THIS PERIOD	ANNUAL SCHEDULED PAYMENTS	TOTAL PAYMENTS RECEIVED TO DATE	BALANCE OF PRINCIPAL/ INTEREST	PAYMENTS ON SCHEDULE *YES/NO
1.											
2.											
3.											
4.											
5.											
6.											
7.											
8.											
9.											
10.											
11.											
12.											
13.											
14.											
15.											
16.											
17.											
18.											
19.											
20.											
<b>Totals</b>											

*\*If No, attach a separate sheet indicating date of last payment, amount delinquent, and action being taken by the community.*

# Chapter 5

## Professional Services





## Chapter Five: Professional Services

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### Table of Contents

	<b>Page</b>
Supporting Materials .....	5-1
Procurement Procedures .....	5-1
Price and Cost Analysis .....	5-6

**Introduction**

Chapter 5: Professional Services provides guidance to Grantees of the Community Development Block Grant (CDBG) program regarding statutory and regulatory requirements for the procurement of professional services. Professional services may include architects, engineers, accountants, appraisers, attorneys, land surveyors, right-of-way specialists, etc.

Federal, state and local procurement policies apply to all small purchases. Therefore, the Grantee must follow the most stringent procurement policy.

**Supporting Materials**

Attachment 5-1	Terms and Conditions for Contracts for All Professional Services
Attachment 5-2	Request for Proposals for Professional Services
Attachment 5-3	Request for Quotations for Professional Services

**Procurement Procedures**

All procurement transactions must be conducted in a manner that provides full and open competition. **Federal, state and local procurement policies apply to all small purchases. Therefore, the Grantee must follow the most stringent of all applicable procurement policies.** Procurement procedures should avoid any provisions that would restrict or eliminate competition. Some of the situations considered to be restrictive of competition include:

1. Placing unreasonable requirements on firms in order for them to qualify to do business;
2. Requiring unnecessary experience and excessive bonding;
3. Noncompetitive pricing practices between firms or affiliated companies;
4. Noncompetitive awards to consultants that are on retainer contracts;
5. Organizational conflicts of interest;
6. Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement; and
7. Any arbitrary action in the procurement process.

**Direct Solicitation Recommendation**

Maximum competition is required. Grantees are encouraged to maximize competition by increasing the number of solicited firms. Using direct solicitation in combination with all types of procurement could assist the Grantee if sole source approval is requested. Locating firms or individuals can be accomplished in a number of ways, including the following:

- Contacting individuals or firms that have provided services for similar types of projects; and
- Referencing sources, such as telephone directories and other business listings.

## Methods of Procurement

Of the five methods of procurement for professional services, Grantees should select the most appropriate method based upon the need and nature of the services required. **Federal, state and local procurement policies apply to all small purchases. Therefore, the Grantee must follow the most stringent procurement policy.**

The West Virginia Division of Purchasing handbook is available at the following link: [www.state.wv.us/admin/purchase/handbook/2007R26/hand3.htm](http://www.state.wv.us/admin/purchase/handbook/2007R26/hand3.htm). Following is a summary of the five basic selection alternatives and the requirements associated with each:

### a. Small Purchase Procurement Procedures

This is a relatively simple and informal method of procurement used for professional services.

The WVDO has delegated purchasing authority to Grantees for procurements estimated to cost less than \$25,000 based upon the West Virginia Purchasing Division's small purchase limits, ([www.state.wv.us/admin/purchase/Handbook/2007/hand3.htm](http://www.state.wv.us/admin/purchase/Handbook/2007/hand3.htm)) or less than the Grantee's small purchase dollar limit.

The award will be made to the lowest responsive and responsible bidder.

- Goods, materials and professional services that are expected to cost **\$2,500 or less** require no bids; however, competition is always encouraged.
- For purchases of **\$2,500.01 to \$5,000**, three verbal bids are required. Grantees must document all verbal bids in writing and place documentation in the project files. (**Attachment 5-1**)
- For purchases **\$5,000.01 to \$25,000**, three written bids are required. Grantees must place copies of all written bids in the project file to document those firms or individuals solicited and their responses. Faxed bids are acceptable and should be confirmed with an original copy within two working days. Please refer to **Attachments 5-2 and 5-3** for sample forms for written bids.

**Federal, state and local procurement policies apply to all small purchases. Therefore, the Grantee must follow the most stringent procurement policy.** For example, if the local small purchase dollar limit is \$15,000, the state small purchase dollar limit is \$25,000, and the federal small purchase limit is \$100,000, the Grantee must follow the most stringent policy - a \$15,000 small purchase dollar limit, which is the local policy.

For all service purchases in excess of \$25,000, the Grantee must follow procurement procedures that may include Competitive Sealed Bids, Request for Proposals and Request for Quotations.

### b. Procurement by Competitive Sealed Bids

Bids are publicly solicited by a Class II legal advertisement (**Attachment 5-2**), and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid conforms to all the terms and conditions of the invitation for bids and is the lowest

price. The advertisement must contain all HUD-related requirements, in particular, Section 3, and state it is a CDBG-Small Cities project.

**c. Procurement by Request for Proposals: Architects/Engineers - WV Code 5G**

Procurement of architectural/engineering services, as well as incidental services that members of those professions and those in their employment may logically or justifiably perform, must be consistent with the West Virginia State Code, Chapter 5G ([www.legis.state.wv.us/WVCODE/Code.cfm?chap=05g&art=1](http://www.legis.state.wv.us/WVCODE/Code.cfm?chap=05g&art=1)) and with federal procurement standards contained in 24 Code of Federal Regulations (CFR) Part 85.35 and 36. This procurement method must be utilized for the procurement of architectural/engineering services. Please refer to the West Virginia Qualifications Based Selection Council brochure at [www.wvqbs.org/docs/qbs\\_manual.pdf](http://www.wvqbs.org/docs/qbs_manual.pdf) for specific samples for selection of an engineer or architect.

**Total Project Costs Estimated at \$250,000 or More – Architects/Engineers**

The procurement shall meet the requirements set forth in WV Code 5G-1-3. The Grantee must announce by public notice published as a Class II legal advertisement.

**Total Project Costs Estimated Less Than \$250,000 – Architects/Engineers**

The procurement of services shall meet the requirements set forth in WV Code 5G-1-4 and the WVDO will consider a Class I legal advertisement, which is published one time, and other documentation as evidence of seeking acceptable competition. In accordance with Chapter 5G, Article 1, Section 4, the local "Director of Purchasing" shall obtain prior approval from the WVDO to select a firm on the basis of "previous satisfactory performance and knowledge of the agency's facilities and needs." The WVDO can only approve such a request if it is in accordance with the criteria established in 25 CFR Part 55, 36b(4) Procurement by Non-Competitive Proposals, which are addressed in the Procurement by Non-Competitive Proposals/Sole Source Procurement section of this chapter.

**Request for Proposals Evaluation Criteria – Architects/Engineers**

The review process for proposals received in response to an RFP should be thorough, uniform, well documented and in accordance with WV Code Chapter 5G. This review should be conducted by a selection committee, which, to the greatest extent possible, includes persons with subject matter expertise.

Reviewers should have no conflicts of interest with the firms or individuals under review. Documentation should be on file to reflect the review and evaluation process of the selection committee and actions taken in the selection process. All proposals must be evaluated utilizing the same selection criteria. In addition to the criteria set forth in WV Code Chapter 5G for architectural and engineering services, evaluation criteria commonly used in the selection process include, but are not limited to:

- Specialized experience or technical expertise of the firm and its personnel in connection with the type of services to be provided and the complexity of the project;
- Past record of performance on contracts with the Grantee and other clients, including quality work, timeliness and cost control;

- Capacity of firm to perform the work within time limitations, taking into consideration the current and planned work load of the firm; and
- Familiarity of the firm with the type of problems applicable to the project.

### **Request for Proposals Negotiation of Fees – Architects/Engineers**

WV Code Chapter 5G prohibits the use of price as evaluation criteria and it is to be negotiated after the selection of the architect/engineer. Due to this requirement, a price analysis or a cost analysis must be performed prior to the execution of the contract. Details on these procedures are discussed in this chapter under the Price Analysis and/or Cost Analysis section.

In addition, please note that "cost plus a percentage of cost" and "percentage of actual construction cost" contracts are not acceptable and must not be used. All contracts must be lump sum with a "not-to-exceed" clause.

For additional information on procuring a project engineer, please see "How to Select an Engineering or Architectural Company for Your Project Handbook" published by the West Virginia Qualifications Based Selection Council at: [www.wvqbs.org/docs/qbs\\_manual.pdf](http://www.wvqbs.org/docs/qbs_manual.pdf). Please note that this publication references a Request for Qualifications which for CDBG purposes is the same as a Request for Proposal.

### **Request for Proposal – All Other Professional Services**

A Request for Proposal (RFP) (**Attachment 5-2**) is a written announcement that invites vendors to compete for the provision of services. This procurement method is used to acquire professional services where the scope of work may not be well defined and cost is not the sole factor in determining the award. All criteria by which the bidders will be evaluated must be contained within the bid document. When using a RFP the following requirements apply:

1. The Grantee must announce by public notice published as a Class II legal advertisement.
2. The RFP should specify that the project is being undertaken with CDBG funds and that federal and state regulations governing the CDBG program are applicable.
3. Proposals must be received from two or more qualified sources to permit reasonable competition consistent with state and federal regulations.
4. The RFP must identify all significant evaluation factors and their relative importance.
5. All proposals received must be evaluated. The Grantee must have a formal process for the technical evaluation of proposals and determination of the responsible vendor. The selection method must be documented. This process must be stated in the advertisement.

6. The award must be made to the vendor whose proposal would be most advantageous to the recipient with consideration of the factors identified in the RFP.
7. Unsuccessful vendors should be notified promptly in writing and documentation of notification retained in the project files.

### **Procurement by Request for Quotation**

A Request for Quotation (RFQ) (**Attachment 5-3**) is a written announcement that invites vendors to compete for the provision of services. This procurement method is used to acquire professional services where the scope of work is specific and conformity to specifications and price are the only factors used in the evaluation process. When using an RFQ, the following requirements apply:

1. The Grantee must announce by public notice published as a Class II legal advertisement. Proposals must be received from two or more qualified sources to permit reasonable competition consistent with state and federal regulations.
2. The RFQ must identify all technical qualification requirements and that price is a factor in the selection process.
3. All quotations received must be evaluated. The Grantee must have a formal process for technical evaluation of quotations.
4. Determination of responsible vendors and the selection method must be documented. This process must be disclosed in the advertisement.
5. The award may be made to the firm or individual whose proposal meets the minimum qualifications at the lowest price.
6. Unsuccessful vendors should be notified promptly in writing and documentation of notification retained in the project files.

**Applicability:** This method of procurement can only be used for non-engineering/architect procurements.

### **Noncompetitive Proposals/Sole Source Procurement**

Noncompetitive negotiation is procurement through the solicitation of a proposal from only one source or, after solicitation of a number of sources; competition is determined to be inadequate.

Procurement by noncompetitive proposals may be used only when the award of a contract is unfeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

1. The item or service required is only available from a single source.
2. A public emergency exists such that the urgency will not permit a delay beyond the time needed to employ one of the other authorized procurement methods.

3. After solicitation from a number of sources, competition is determined to be inadequate and the WVDO authorized the noncompetitive method. In all cases, noncompetitive negotiation which will involve CDBG funds must have prior approval from the WVDO.

A price or cost analysis must be provided and include the projections of the data and the evaluation of the specific elements of costs and profits.

### **Price and Cost Analysis**

Price analysis is a review and evaluation of a proposed price without evaluating separate cost elements. Price analysis is to be used in all cases where a cost analysis is not performed. In most cases where three or more responses to a solicitation are received, only a price analysis is performed.

Cost analysis is a review and evaluation of the separate elements of cost that make up the proposal. Cost analysis requires that the cost principles of OMB Circulars A-87 and/or A-122 be used to determine the allowability and reasonableness of costs. A cost analysis is required when only one response to solicitations is received. Cost analysis also requires that profit be negotiated as a separate element of the price. In negotiating profit, the following is to be considered:

1. The complexity for the work to be performed.
2. The risk born by the contractor.
3. The contractor's investment.
4. The amount of subcontracting.
5. The quality of the contractor's record of past performance.
6. The industry profit rates in the surrounding geographical areas for similar work.

For more information on cost and price analysis, please see the "Quick Guide to Cost and Price Analysis for HUD Grantees and Funding Recipients" at:

[www.hud.gov/offices/cpo/grantees/cstprice.pdf](http://www.hud.gov/offices/cpo/grantees/cstprice.pdf)

### **Professional Services by Individuals Employed by the Grantee**

These employees may be employed in two separate ways. The first method is for those professional individuals who are hired on a full-time basis to work for the Grantee. These employees meet the IRS definition of an employee. Procurement procedures do not apply to employees of the Grantee who are acting in their official capacity and are eligible to be reimbursed to the extent that:

- They are reasonable for the services provided;
- They follow an appointment made in accordance with state and local laws; and

- The amount of compensation charged to the grant will be based on payrolls, documented and provided in accordance with generally accepted practices of state and local governments.

The second method is employees that are hired through a competitive process to work for the Grantee on a contract basis. The advertisement must clearly state that the employee will work on CDBG project(s) in addition to normal duties. Types of employees may include attorneys, accountants and other non-engineering professional employees.

### **Debarment Review - Verification of Eligibility**

When a successful vendor has been selected, and prior to the award of a contract, the Grantee must conduct a debarment review to ensure that the vendor is not on the federal or state list of debarred or ineligible firms or individuals.

1. The Federal Debarment review may be conducted at: [www.sam.gov](http://www.sam.gov). The verification must be placed in the project file.
2. The State Debarment review may be conducted at: [www.state.wv.us/admin/purchase/Debar.html](http://www.state.wv.us/admin/purchase/Debar.html). The verification must be placed in the project file.

### **Executing a Professional Service Contract**

The Grantee then must prepare a contract with the successful firm or individual. The contract must include all of the following provisions:

#### **General Administrative Provisions**

- Effective date of contract
- Names and addresses of city and firm or individual
- Names of representatives of Grantee and firm or individual who will act as liaison for administration of the contract
- Citation of the authority of the Grantee under which the contract is entered into and source of funds
- Conditions and terms under which the contract may be terminated by either party and remedies for violation/breach of contract

#### **Scope of Services**

- Detailed description of extent and character of the work to be performed.
- Time for performance and completion of contract services, including project milestones, if any
- Specification of materials or other services to be provided by both parties, i.e., maps, reports, printing

**Compensation Method**

- Provisions for compensation for services including fee and/or payment schedules and specification of maximum amount payable under contract
- All contracts must be written as lump sum not-to-exceed contracts

**Federal Standards Provisions**

- Executive Order 11246 clause (seven paragraphs if more than \$10,000 or three paragraphs if \$10,000 or less)
- Title VI Clause
- Access to Records
- Conflict of Interest
- Section 3 (if applicable, the amount of the assistance exceeds \$200,000 and the contract or subcontract exceeds \$100,000)
- Section 109 of the Housing and Community Development Act of 1974

Some professional service firms and individuals uniformly use standardized contracts. Although these contracts may contain some or most of the requirements, the Grantee must ensure that all Federal Standards Provisions are incorporated into the contract. The inclusion of these provisions is accomplished by adding **Part II-TERMS AND CONDITIONS (Attachment 5-1)** to the standard contract.

Architectural/engineering contracts for Public Service Districts must be approved in advance by the West Virginia Public Service Commission.

After negotiating the contract, it should be submitted to the appropriate governing body of the Grantee for approval (by resolution) and then executed by both the Grantee and the firm or individual. Award may be made to the responsible vendor whose proposal will be advantageous to the Grantee, price and other factors considered. Unsuccessful vendors should be promptly notified in writing that they were unsuccessful.

The Grantee must then establish a contract file and monitor the contract to ensure that the contract is completed in a satisfactory and timely manner. The contract file must contain:

- Description of method used to select consultants
- Qualification statements, RFPs, and proposal(s) received
- Negotiation methods
- Cost and pricing data supporting the negotiated fee
- Verification of contractor eligibility

- The contract for services
- Records of all payments and supporting documentation
- Contract amendments, if any, and rationale for amendments

**Addendum to Professional Service Contracts**

All addenda issued to a professional services contract funded in whole or in part with CDBG funds must be approved by the West Virginia Development Office prior to execution.

**Common Deficiencies**

- Failure to comply with applicable federal, state and local procurement regulations
- Absence of necessary documentation
- Vague or inadequate Scope of Services
- One or more required provisions omitted from contract
- Contracts not written as lump sum, not-to-exceed
- Failure to attach Part II Terms and Conditions to all professional contracts

**TERMS AND CONDITIONS**  
**CONTRACTS FOR ALL PROFESSIONAL SERVICES**

**CONTRACT FOR PROFESSIONAL SERVICES  
PART II – TERMS AND CONDITIONS**

**1. Termination of Contract for Cause**

If through any cause the Consultant shall fail to fulfill in a timely and proper manner his/her obligations under this Contract, or if the Consultant shall violate any of the covenants, agreements, or stipulations of this Contract, the Grantee (or other contingency agency) shall thereupon have the right to terminate this Contract by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Consultant under this Contract shall, at the option of the Grantee, become its property and the Consultant shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the Consultant shall not be relieved of liability to the Grantee for damages sustained by the Grantee by virtue of any breach of the Contract by the Consultant and the Grantee may withhold any payments to the Consultant for the purpose of set-off until such time as the exact amount of damages due the Grantee from the Consultant is determined.

**2. Termination for Cause and Convenience of the Grantee**

The Grantee may terminate this Contract at any time by giving at least ten (10) day's notice in writing to the Consultant. If the Contract is terminated by the Grantee as provided herein, the Consultant will be paid for the time provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of the Consultant, Paragraph 1 hereof relative to termination shall apply (all contracts in excess of \$10,000).

**3. Reports and Information**

The Consultant, at such times and in such forms as the Grantee may require, shall furnish the Grantee such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection therewith and any other matters covered by this Contract.

**4. Copyrights and Inventions**

No report, maps or other documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the Consultant.

**5. Records and Audits**

The Consultant shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the Grantee to assure proper accountability for all project funds, both federal and non-federal shares. These records will be made available for audit purposes to the Grantee, HUD, the Comptroller General of the United States, the State of West Virginia, or any authorized representative, and will be retained for three years after the expiration of this Contract unless permission to destroy them is granted to the Grantee.

6. **Changes**

The Grantee may, from time to time, request changes in the scope of services of the Consultant to be performed hereunder. Such changes, including any increase or decrease in the amount of the Consultant's compensation, which are mutually agreed upon by and between the Grantee and the Consultant, shall be incorporated in written amendments to this Contract.

7. **Compliance with Local Laws**

The Consultant shall comply with all applicable laws, ordinances and codes of the State and local governments, and the Consultant shall save the Grantee harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Contract.

8. **Civil Rights Act of 1964**

Under Title VI of the Civil Rights Act of 1964, no persons shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

9. **Section 109 of the Housing and Community Development Act of 1974**

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

10. **"Section 3" Compliance in the Provision of Training, Employment and Business Opportunities** (for contracts over \$100,000).

a. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted project covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

b. The parties of this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implements Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.

c. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 Clause and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number of job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the

- persons taking applications for each of the positions; and the anticipated date the work shall begin.
- d. The contractor agrees to include this Section 3 Clause in every contract subject to compliance with regulations in 24 CFR Part 135 and agrees to take appropriate actions, as provided in an applicable provision of the subcontract or in this Section 3 Clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations of 24 CFR Part 135.
  - e. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
  - f. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default and debarment or suspension from future HUD assisted contracts.
  - g. With respect to work performed in connection with Section 3-covered Indian Housing Assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).
11. **Interest of Member of a Grantee** No member of the governing body of the Grantee and other officers, employees or agents of the Grantee who exercises any functions or responsibilities in connection with the planning and carrying out of the program shall have any personal financial interest, direct or indirect, in the Contract and the Consultant shall take appropriate steps to assure compliance.
  12. **Interest of Other Local Public Officials**  
No member of the governing body of the locality and no other public official of such locality who exercises any functions or responsibilities in connection with the planning and carrying out of the program shall have any personal financial interest, direct or indirect, in the Contract, and the Consultant shall take appropriate steps to assure compliance.
  13. **Interest of Consultant and Employees**  
The Consultant covenants that he presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Consultant further covenants that in the performance of this Contract, no person having any such interest shall be employed.

14. **Rights to Inventions and Materials**

Contracts or agreements, the principal purpose of which is to create, develop or improve products, processes or methods; or for exploration into fields which directly concern public health, safety or welfare; or experience outside of work funded by federal assistance, shall contain a notice to the effect that matters regarding rights to inventions and materials generated under the contract or agreement are subject to the regulations issued by the federal grantor agency. Although HUD presently has no regulations governing these matters, use of the following contract provisions reflects current Department policy:

- a. If the Contractor or an employee of the contractor produces patentable items, patent rights, process or inventions as a result of this agreement, the Contractor shall promptly and fully report such production to the City which shall in turn report it to HUD. HUD shall determine whether protection on such invention or discovery shall be sought in the name of the United States Government and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy."
- b. If the Contractor or an employee of the Contractor produces a book or other copyrightable material as a result of this agreement, the author or authors may copyright the book or material, but HUD reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use the material for government purposes.

15. **Access to Records**

All negotiated contracts (except those of \$10,000 or less) awarded by grantees shall include a provision to the effect that the grantee, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to a specific grant program for the purpose of making audit, examination, excerpts and descriptions.

16. **Architectural Barriers Act of 1968 (24 CFR 570.606)**

Every building or facility (other than a privately owned residential structure) designed, constructed or altered with funds made available under this part, shall comply with the requirements of the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," Number A-117, 1-R 19 subject to the exceptions contained in 41 CFR Subpart 101-19.604, issued pursuant to the Architectural Barriers Act of 1968, 42 USC-4151.

Procurement procedures and Contracts for the design, construction alteration (including rehabilitation) of public or private structures subject to this requirement should include provisions obligating the Contractor to comply with the Specifications.

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**Grantee Signature**

**Date**

---

**Vendor Signature**

**Date**

**REQUEST FOR PROPOSALS FOR PROFESSIONAL SERVICES**

*(Published Advertisement)*

The \_\_\_\_\_ is requesting proposals from qualified Firms to provide architectural and construction management services for

***project description***

Services being sought include preliminary drawings, cost estimates and final design.

The \_\_\_\_\_ plans to apply for federal assistance to fund this project.

Proposals must show the following:

1. Experience of the firm with federal grant programs
2. Experience in architectural and construction management of this type of project
3. Qualifications of personnel directly involved in the project
4. Completeness of Proposal

A copy of the Request for Proposal may be obtained from the Office of the \_\_\_\_\_ Clerk.

The selected firm will be required to comply with Title VI of the Civil Rights Act of 1964, Executive Order 11246, Section 109 of the Housing and Urban Development Act of 1974, Section 3 of the Housing and Urban Development Act of 1968, Conflict of Interest Statement and Access to Records provisions and all other requirements as related to HUD-funded projects.

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**Chief Elected Official** **Date**

\_\_\_\_\_ Date of First Publication

\_\_\_\_\_ Date of Second Publication

\_\_\_\_\_ Publication Name

**REQUEST FOR QUOTATIONS FOR PROFESSIONAL SERVICES**

*(Published Advertisement)*

The \_\_\_\_\_ is requesting proposals from qualified Firms to provide legal, accounting, right-of-way and additional services for

**project description**

Quotations must include but may not be limited to the following:

- 1.
- 2.
- 3.
- 4.

The \_\_\_\_\_ is applying for federal assistance to fund this project.

A copy of the Request for Proposal may be obtained from the Office of the \_\_\_\_\_ Clerk.

The selected firm will be required to comply with Title VI of the Civil Rights Act of 1964, Executive Order 11246, Section 109 of the Housing and Urban Development Act of 1974, Section 3 of the Housing and Urban Development Act of 1968, Conflict of Interest Statement and Access to Records provisions and all other requirements as they relate to HUD-funded projects.

Proposals must include the hourly fee and a proposed project cost for this contract. The contract will be awarded to the most qualified, reasonable and responsible quotation.

The \_\_\_\_\_ reserves the right to reject any and all bids.

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**Chief Elected Official** **Date**

\_\_\_\_\_ Date of First Publication

\_\_\_\_\_ Date of Second Publication

\_\_\_\_\_ Publication Name

# Chapter 6

## Construction Management





## Chapter Six: Construction Management

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### Table of Contents

	<b>Page</b>
Supporting Materials .....	6-1
Procurement Methods .....	6-2
Construction Contract Requirements .....	6-3
Solicitation of Bids .....	6-6
Verification of Contractor Eligibility/Debarment Review .....	6-8
Construction Contract .....	6-8
Construction Management .....	6-11
Section 3 Administration and Reporting .....	6-14
Common Deficiencies .....	6-17

## Introduction

Chapter 6: Construction Management provides guidance to Grantees of the Community Development Block Grant (CDBG) program with assistance in carrying out statutory and regulatory requirements for procurement of construction contracts. All CDBG Grantees will be monitored to determine whether CDBG funds are expended in compliance with all applicable program requirements and in within the terms outlined in the grant agreement for each project.

Bids must be publicly solicited by a Class II legal advertisement using the language and template provided in **Advertisement for Bids (Attachment 6-1)**. The **Notice of Intent to Bid (Attachment 6-2)**, must be submitted to the WVDO prior to the bid advertisement, along with the **Bid Document Checklist (Attachment 6-3)**, and a digital or bound copy of the project manual/specifications. Upon review and approval of these documents, the WVDO will issue an Authorization to Bid. A sample **Authorization to Bid (Attachment 6-3A)**, and other required attachments, are listed below and provided in this chapter.

The purpose of WVDO prior review is to ensure that all Labor Standards provisions, Equal Opportunity and Section 3 requirements, and other conditions, are properly addressed prior to an advertisement for bids. These documents must be placed in the project file. The bid document checklist will provide the Grantee with an assessment of the bid package for completion and accuracy of technical requirements and will also provide more detailed knowledge concerning the construction of the project.

## Supporting Materials

Attachment 6-1	Advertisements for Bids
Attachment 6-2	Notice of Intent to Bid
Attachment 6-3	Bid Document Checklist
Attachment 6-3A	Sample Authorization to Bid Letter
Attachment 6-4	Sample Minutes of Bid Opening
Attachment 6-5	Contract Document Checklist
Attachment 6-5A	Certification of Bidder - Section 3 and Segregated Facilities
Attachment 6-5B	Federal Labor Standards Provisions
Attachment 6-5C	Special Equal Opportunity Provisions
Attachment 6-5D	Section 3 of the HUD Act <ul style="list-style-type: none"> <li>• Section 3 Workforce Needs</li> <li>• Section 3 Business Projects</li> <li>• Section 3 Contractor's Plan</li> </ul>
Attachment 6-5E	Clean Air and Water Acts
Attachment 6-5F	Special Conditions Pertaining to Hazards, Safety Concerns, and Accident Prevention
Attachment 6-5G	Architect's Certification
Attachment 6-5H	Bonding and Insurance Requirements
Attachment 6-5I	Access to and Maintenance of Records
Attachment 6-5J	Certification of Owner's Attorney
Attachment 6-6	Debarment Review Certification and Instructions
Attachment 6-7	Sample Preconstruction Conference Checklist
Attachment 6-8	Notice to Proceed with Construction

**Procurement Methods**

Of the three methods of procurement for construction services, Grantees should select the most appropriate method based upon need and nature of the services required. The following is a summary of the three basic selection alternatives and the requirements associated with each:

**a. Small Purchase Procurement Procedures**

This is a relatively simple and informal method of procurement used for purchasing goods and materials and construction services.

The WVDO has delegated purchasing authority to Grantees for procurements estimated to cost less than \$25,000 (based on the West Virginia Purchasing Division's small dollar purchase limits) or less than the Grantee's small purchase dollar limit. The award will be made to the lowest responsive and responsible bidder.

A complete review of the state's **Purchasing Levels of Authority** is provided in the following link: [www.state.wv.us/admin/purchase/handbook/2007R26/hand3.htm](http://www.state.wv.us/admin/purchase/handbook/2007R26/hand3.htm), and are summarized as follows:

- Goods, materials and professional services that are expected to cost **\$2,500 or less** require no bids; however, competition is always encouraged.
- For purchases of **\$2,500.01 to \$5,000**, three verbal bids are required. Grantees must document all verbal bids in writing and place documentation in the project files.
- For purchases **\$5,000.01 to \$25,000**, three written bids are required. Grantees must place copies of all written bids in the project file to document those firms or individuals solicited and their responses. Fax bids are acceptable and should be confirmed with an original copy within two working days.

Federal, state and local procurement policies apply to all small purchases. Therefore, the Grantee must follow the most stringent procurement policy. For example, if the local small purchase dollar limit is \$15,000, the state small purchase dollar limit is \$25,000, and the federal small purchase limit is \$100,000, the Grantee must follow the most stringent policy - a \$15,000 small purchase dollar limit which is the local policy.

For all purchases of construction services in excess of \$25,000, the Grantee must follow procurement procedures that may include Competitive Sealed Bids or Design-Build Method.

**b. Competitive Sealed Bids Procurement Method**

Bids must be publicly solicited by a Class II legal advertisement using the language and template provided in **Advertisement for Bids (Attachment 6-1)**. A firm fixed-price contract (lump sum or unit price) will be awarded to the responsible bidder whose bid conforms to all the material terms and conditions of the invitation for bids and is submitted as the lowest price bid. This method must be used for the procurement of all construction contracts. The sealed bid method is the preferred method for procuring construction when the following conditions exist:

1. A complete, adequate and realistic specification or purchase description is available;
2. Two or more responsible suppliers are willing and able to compete effectively for the business;
3. The procurement lends itself to a firm fixed-price contract (a specified price to be paid when the items or services are delivered); and
4. Selection of the successful bidder can appropriately be made principally on the basis of price.

**The advertisement must contain all HUD-related requirements and certifications for Federal Labor Standards, EEO and Section 3, and the advertisement must specifically state that the ad is for a CDBG project.**

#### **c. Design-Build Procurement Method**

A Design-Build contract is a contract between an agency and a design-build firm to furnish the architectural, engineering and related services as required for a given public project and to furnish the labor, materials and other construction services for the same public project.

The Design-Build method of procurement cannot be used for a water/sewer-related project. For further instructions, please see WV State Code 5-22A at: [www.legis.state.wv.us/WVCODE/Code.cfm?chap=05&art=22A#22A](http://www.legis.state.wv.us/WVCODE/Code.cfm?chap=05&art=22A#22A). Before attempting a design-build project, the WVDO must be contacted for approval and guidance in proceeding with the project.

### **Construction Contract Requirements**

The Grantee must develop construction contracting procedures that comply with all Federal Labor Standards and Equal Opportunity provisions and compliance procedures. Applicable federal and state wage rates, Labor Standards provisions and Equal Opportunity requirements must be included in the bid specifications and contract documents.

This manual is intended as a guide, not as a substitute for a thorough knowledge of state and federal laws and regulations referenced in this manual. In the event of any discrepancy, applicable federal or state regulations will prevail. The Grantee is responsible for compliance with the most stringent of any applicable local, state or federal law or regulation.

The Grantee is responsible for monitoring for compliance. Labor Standards and Equal Opportunity compliance files must be maintained for each project. Labor standards requirements are discussed thoroughly in Chapter 7. Equal Employment Opportunity requirements are discussed thoroughly in Chapter 8.

#### **Bid Package Preparation**

The architect or engineer will commonly prepare the technical bid specifications. The specifications must provide a clear and accurate description of the technical requirements for materials, products, and/or services to be provided and for which the work is to be performed. The complete plans and specifications must be stamped or bear the seal of an architect or

engineer registered by the state unless exempted by state law. If plans and specifications are subject to review by other agencies, arrangements should be made to facilitate the review process prior to bidding.

The specifications must contain all applicable HUD CDBG Certifications, as indicated in the **Contract Document Checklist (Attachment 6-5)** and as provided in this chapter. Certain documents required for each bidder as indicated in the following list and in the **Bid Document Checklist (Attachment 6-3)**.

- Attachment 6-5 Contract Document Checklist
- \*Attachment 6-5A Certification of Bidder-Section 3 and Segregated Facilities
- Attachment 6-5B Federal Labor Standards Provisions
- \*Attachment 6-5C Special Equal Opportunity Provisions
- Attachment 6-5D Section 3 of the HUD Act
  - \*Section 3 Workforce Needs
  - \*Section 3 Business Projects
  - \*Section 3 Contractor's Plan
- Attachment 6-5E Clean Air and Water Acts
- Attachment 6-5F Special Conditions Pertaining to Hazards, Safety Concerns, and Accident Prevention
- Attachment 6-5G Architect's Certification
- Attachment 6-5H Bonding and Insurance Requirements
- Attachment 6-5I Access to and Maintenance of Records
- Attachment 6-5J Certification of Owner's Attorney

**\*To verify that all bidders will comply with Equal Opportunity and Section 3 Requirements upon the award of a contract for a CDBG project, these certifications are required for each bidder as indicated above.**

**Note:** Upon completion of the working drawings, a certified architect or engineer must execute a certification to the effect that the project design is in conformance with the minimum standards contained in the American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable By, the Physically Handicapped, Number A-117.1R-1971, as modified by 41 CFR 101-19.603. Such certifications also must be co-signed by the chief elected official of the Grantee.

The bid package must also include cost and pricing formats. For unit cost contracts, the bid specifications should delineate each type of item-estimating quantity, unit price and total cost.

**a. Additional/Deductive Alternates**

When preparing bid documents for a project that will be funded in whole or in part by CDBG, the project engineer must use additive/deductive alternates. This will simplify the handling of cost overruns and under runs.

The bid document must specify the method and order in which alternatives will be applied in determining the low bid. **Failure to include additive/deductive alternates will require the project to be re-bid if the bid exceeds the amount allocated for the project.** Please note that if deductive alternatives are utilized, caution must be taken to ensure that the amount of low-to-moderate-income residents proposed in the original application are still going to be served.

**b. Land Acquisition Requirements Prior to Bidding**

The Grantee must obtain all land, rights-of-ways and easements necessary for carrying out the project prior to bidding the project. The provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 are applicable to the purchase of real property and all permanent easements. Please see [HUD Handbook 1378: Tenant Assistance Relocation and Real Property Acquisition](#) for additional information. See Chapter 10: Property Acquisition for additional details.

**c. Notification of Public Utilities**

All public utilities (gas, water, electrical, sewer, etc.) that might have any underground installations within the project area should be notified. Engineers may contact Miss Utility of West Virginia, Inc. at [www.wv811.com](http://www.wv811.com) or 1-800-245-4848 to assist in this notification. Engineering firms are responsible for contacting utilities and ensuring that underground installations are known and provisions are made in the plans and specifications.

**d. Bid Date Clearinghouse**

The Contractors Association of West Virginia (CAWV) maintains a clearinghouse to ensure that a project's bid date does not conflict with an already established date for another project. Contact the CAWV at 304-342-1166 or visit [www.cawv.org](http://www.cawv.org), to schedule a bid date that maximizes the number of firms bidding on a project.

**e. Bonding Requirements**

Bonds are negotiable instruments from contracting firms or individuals as a form of insurance. The Grantee should follow local and state requirements relating to bid guarantees, performance bonds and payment bonds unless the contract or subcontract exceeds \$100,000.

For those contracts or subcontracts exceeding \$100,000, the minimum requirements are presented in 24 CFR Part 85.36(h) and are as follows:

- **Bid Bond** - an insurance agreement in which a third party agrees to be liable to pay five percent of the total bid amount in the event a selected bidder fails to accept the contract as bid. A "**bid guarantee**" shall 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 his bid, execute such contractual documents as may be required within the time specified.
- **Performance Bond** - an insurance agreement in which a valid surety agrees to be liable to pay 100 percent of the contract price in the event the contractor fails to perform a contract as bid. A "**performance bond**" is one executed in connection with a contract to secure fulfillment of all contractor's obligations under such contract.
- **Payment Bond** - a valid bond submitted by the apparent successful contractor for 100 percent of the contract price to ensure payment of labor and materials purchased or contracted for on behalf of the Grantee in a construction project. A "**payment bond**" is one executed in connection with a contract to ensure payment as required by law of all persons supplying labor and materials in the execution of the work provided for in the contract.

Bonds may be turned over to the Grantee to protect against situations such as:

- Contractors bidding low and then, prior to contract execution, requesting a price adjustment due to "unforeseen" events; or
- Work not completed as specified and/or the contractor's refusing to finish the work without a change order or price escalation; or
- Laborers or subcontractors not being paid for work and suing the Grantee to recover their loss; or
- Payment of liquidated damages arising from labor standards violations.

**f. Bid Package Review and Approval**

The entire bid package must be reviewed by the Grantee's legal counsel and project administrative staff to ensure compliance with applicable federal, state and local provisions. Bid packages must be reviewed carefully. Contract awards are made on the basis of criteria set forth in the bid package including all contractual terms and conditions applicable to the procurement.

The **Notice of Intent to Bid (Attachment 6-2)**, must be submitted to the WVDO prior to the bid advertisement, along with the **Bid Document Checklist (Attachment 6-3)** and a digital or bound copy of the project manual/specifications.

Upon review and approval of these documents, the WVDO will issue an **Authorization to Bid Letter (Attachment 6-3A)**.

The purpose of this review is to ensure that all Labor Standards provisions, EEO and Section 3 requirements and other conditions have been addressed prior to an advertisement for bids. These documents must be placed in the project file. **The Bid Document Checklist, (Attachment 6-3)** will provide the Grantee with an assessment of the bid package for completion and accuracy of technical requirements and will also provide more detailed knowledge concerning the construction of the project.

### **Solicitation of Bids**

The standard procedure for procurement of construction contracts is through a competitive sealed bid process. This method of procurement requires that specifications be written clearly and accurately and completely describe the requirements. Selection of the successful bidder is made solely on conformity to specifications and price.

**a. Request for Authorization to Bid**

The Grantee must submit a request for Authorization to Bid. The **Notice of Intent to Bid (Attachment 6-2)** must be submitted to the WVDO prior to the bid advertisement, along with the **Bid Document Checklist (Attachment 6-3)**, and a digital or bound copy of the project manual/specifications. Upon review and approval of these documents, the WVDO will issue an Authorization to Bid. A sample **Authorization to Bid (Attachment 6-3A)** is provided in this chapter.

**b. Authorization to Bid/Bid Advertisement**

**The WVDO must issue an Authorization to Bid Letter (Attachment 6-3A) prior to a bid.** Following WVDO authorization to bid, the Grantee must announce by public notice published as a Class II legal advertisement using the language and template provided in **Advertisement for Bid (Attachment 6-1)**.

A Class II legal advertisement must be published once a week for two successive weeks. Bid advertisements must be published not less than one week apart in a local newspaper of general circulation. Also, the bid date must be at least 14 days after the first publication date.

**c. Addenda**

If it is necessary to amend bid documents during the advertisement period, addenda must be sent to all bidders who have received bid documents. However, no addenda may be issued within five days of bid opening. If an addendum is necessary within the five-day period, the bid opening date must be extended the appropriate time to allow all vendors sufficient time to amend their bids. Also, see provisions for modification of wage rates.

**d. Pre-Bid Conference**

A pre-bid conference is recommended to review technical materials or legal requirements contained in the bid package. Bidders should specifically be made aware of Federal Labor Standards Provisions, Equal Opportunity Requirements and Section 3 requirements.

A mandatory pre-bid conference may be conducted by the Grantee, provided that the requirement is stated in the bid advertisement and noted in the bid document.

**e. Bidder Certifications**

To verify that all bidders will comply with Equal Opportunity and Section 3 requirements upon the award of a contract for a CDBG project, certain certifications are required for each bidder as indicated below and in the **Bid Document Checklist (Attachment 6-3)**. All bidders must acknowledge these requirements when bidding CDBG projects. Additional documents in the checklist may be executed upon award of the contract.

Required bidder certification documents should be thoroughly reviewed at the Pre-Bid Conference, provided as supplemental information to bidders, and included on all checklists or addenda, and as follows:

- |                    |   |
|--------------------|---|
| 1. Attachment 6-5A | Certification of Bidder - Section 3 and Segregated Facilities   |
| 2. Attachment 6-5C | Special Equal Opportunity Provisions  |
| Attachment 6-5D    | Section 3 of the HUD Act  |
|                    | <ul style="list-style-type: none"> <li>• Section 3 Workforce Needs</li> <li>• Section 3 Project Business Section 3 Contractor's Plan</li> </ul> |

**f. Bid Receipt/Bid Opening Minutes**

Bids should be opened publicly and read aloud in the presence of one or more witnesses at the time and place designated in the Invitation for Bids, and in accordance with state law. The amounts of each bid, name of vendor, time and date of receipt and other relevant information will be recorded. The Grantee may also choose to have a

legal representative present. See the **Sample of Bid Opening Minutes (Attachment 6-4)** for a sample form.

**g. Bid Evaluation**

Bids must be evaluated based on the requirements set forth in the Invitation for Bids which may include criteria to determine acceptability such as inspection, testing, quality, workmanship and delivery. No criteria may be used in bid evaluation that is not set forth in the Invitation for Bids. Bids should be evaluated carefully by a review committee, which may consist of the consulting engineer, a legal advisor, project administrative staff and Grantee officials.

### **Verification of Contractor Eligibility/Debarment Review**

Following receipt and review of bids but prior to the award of a contract, the Grantee must verify that the proposed contractor is not on the federal or state list of debarred contractors. Two reviews are required:

**1. Federal Debarment Review System:**

Grantees should use the System for Award Management (SAM) website, [www.sam.gov](http://www.sam.gov), to determine if the potential contractor is excluded from receiving federal contracts.

**2. State Debarment Review System:**

Grantees should use the Division of Purchasing website to determine if the potential contractor is excluded from receiving state contracts.  
[www.state.wv.us/admin/purchase/Debar.html](http://www.state.wv.us/admin/purchase/Debar.html).

To complete the debarment review in each system, print the search results page(s); and attach the results pages to the completed **Debarment Review Certification and Instructions (Attachment 6-6)**.

Submit the search results, along with the completed **Debarment Review Certification and Instructions (Attachment 6-6)**, the bid tabulations and any review forms, to the WVDO prior to the award of a contract. These documents must also be retained in all project files.

A single certification satisfies both Labor and Equal Opportunity requirements. **This verification must be signed and dated by the reviewer, and placed in the Labor Standards compliance file and cross-referenced in the Equal Opportunity file.**

### **Construction Contract**

**a. Contract Award**

The contract shall be awarded with reasonable promptness to the lowest responsible and responsive bidder whose bid meets the technical and legal requirements and criteria set forth in the bid documents. A responsible bidder is a bidder who has the technical and financial capacity to secure the necessary resources in order to deliver the goods or services. A responsive bidder is a bidder that submits a bid that conforms exactly to the requirements in the **Invitation for Bids (Attachment 6-1)**.

A bidder's quote is good for the amount of time specified in the bid documents; every effort must be made to award the contract within this time period. However, if a contract has not been awarded within 90 days after bid opening, any wage modifications published in the Federal Register, prior to the award of the contract or the beginning of construction, as appropriate, shall be effective with respect to that contract.

Exceptions to the above will be considered if the Grantee requests and obtains an extension of the 90-day period from the United States Department of Labor. If the contract is awarded to other than the low bidder, the Grantee must prepare a written statement of explanation which justifies the decision, stating specific reasons why the low bid was rejected, citing nonconformance with the material terms and technical conditions of the Invitation for Bid.

The Grantee's governing body must approve the contract and the chief elected official must be authorized to sign the contract. Please note that a contract is awarded when all parties have signed the contract. It is not the date the Grantee's governing body authorized the contract award. Therefore, it is imperative that the Grantee and contractor sign the contract within the 90-day bid hold period.

**b. Cost Overruns**

**When the lowest bid exceeds the amount allocated for the project, the Grantee cannot negotiate with the low bidder to bring the contract within the amount of available funds.** The use of deductive alternatives will decrease the probability of an overrun. The Grantee may take deductive alternatives in the order shown in the bid package until one of the responsive bids, less deductive alternates, results in a price within the amount of funds available; or

If the low bid, with or without deductive alternatives, exceeds the funds available, the Grantee may:

- Provide the additional funds;
- Reallocate CDBG funds; or
- Reject all bids and redesign the project.

**c. Cost Underruns**

If the total amount of the awarded project contract (or contracts) is less than the approved budget cost for construction, excess CDBG funds cannot be used to add items or activities or change the scope of the project unless additives were used in the bid document. All requests must have prior approval from the WVDO. Grant funds that remain available following a cost underrun or bid underrun is subject to recapture and may be prorated with other funding agencies.

**d. Contract Documents**

Contract documents must be reviewed carefully and thoroughly prior to signing to ensure that all Federal Labor Standard Provisions, Equal Opportunity provisions and Section 3 requirements are incorporated. Authority to enter into all contracts must be given by resolution from the Grantee in conjunction with requirements of any intergovernmental relations agreement or memorandum of understanding which have been entered into specifically on behalf of the project. Please see the **Contract Document Checklist**

**(Attachment 6-5).** The Grantee's attorney must complete a **Certificate of Owner's Attorney Form (Attachment 6-5J)**.

**e. Pre-Construction Conference**

After the award of the contract, the Grantee must notify the WVDO that a contract has been awarded and that a pre-construction conference has been scheduled.

See the **Pre-Construction Conference Checklist (Attachment 6-7)**, for a checklist of items to discuss at this meeting. At the pre-construction conference, the contractor must certify compliance with all applicable Labor Standards, Equal Opportunity provisions, and Section 3 requirements, as well as the Grantee's oversight role in monitoring for compliance. Further, the project administrator must verify the execution of the completed forms contained in the **Contract Document Checklist (Attachment 6-5)**, from the prime construction contractor, as well as the project wage rate sheet. Any additional documents should be obtained and the contractor should be provided with posters for the construction site.

**f. Notice to Proceed**

Work cannot proceed until projects comply with 24 CFR Part 58 and all evidentiary materials have been submitted to and approved by the WVDO.

Following execution of the contract documents and completion of the pre-construction conference, the Grantee will issue a Notice to Proceed to each prime contractor to begin work. The Notice to Proceed must identify the construction start date, the scheduled completion date and provide the basis of assessing liquidated damages consistent with the terms of the contract documents. A copy of the notice must be sent to the WVDO. A sample **Notice to Proceed (Attachment 6-8)** is provided in this chapter.

**g. Contract Change Orders**

A change order may be required after contract award to respond to unexpected conditions which arise during construction and are necessary to accommodate or facilitate the completion of construction. Change orders are generally not approved prior to the start of construction.

The Grantee may approve field expedient change orders that add minimally or incidentally to the project cost (\$10,000 or less), provided that approval is based upon a finding that the change is within the approved project scope and is necessary for the successful completion of the project and provided that sufficient funds are on hand to cover the change without jeopardizing the completion of the project. **All work initiated under a change order must be eligible under the CDBG guidelines.** The Grantee assumes responsibility for making eligibility determination prior to state concurrence. **Under no circumstances will the Grantee approve change orders that alter the scope of the project or which adversely affect the project.**

All change orders over **\$10,000** will be prepared by the architect/engineer and will be presented to the Grantee and the WVDO for approval with necessary supporting documentation including estimates, specifications and plans. A change order request must be signed by the engineer, Grantee and contractor. **No action can be taken without the approval of the WVDO.** Any work started prior to approval cannot be reimbursed with CDBG funds.

**h. Compliance Files**

Comprehensive Labor Standards, Equal Opportunity and Section 3 files must be established for each construction project. The Construction Contract Checklist, Attachment 6-5 and the Bid Document Checklist, Attachment 6-3, referred to previously, have identified all required Labor Standards, Equal Opportunity and Section 3 provisions and compliance certifications which are required to be included in bid documents, solicitations, specifications and contract documents. The Grantee should again review the checklists for familiarity, ensure that all documents are accurate and formulate a strategy for compliance monitoring. All site visitations related to compliance monitoring must be documented in the appropriate files.

**i. Direct Benefit and Record Keeping Requirements**

The use of CDBG funds for tap fees or assessment fees for public utility connections is considered a Direct Benefit Activity, and must be extended only to LMI households upon verification of eligibility. The intent to include tap fees or assessment fees in a project must be stated in the project application.

If a CDBG projects results in a direct benefit to individuals and households, recipients must self-certify income eligibility and Grantees must verify the data through a third-party administrator. In addition, Grantees must verify the ethnicity and race of those receiving a direct benefit. See Chapter 8: Civil Rights, Record Keeping Requirements, for additional information regarding the collection of data.

**Construction Management**

During construction, the Grantee is also responsible for construction management. This may be done by the project architect/engineer and, if so, should be included in the scope of services identified in the professional service contract. Construction management includes inspection and general supervision of construction to check the contractor's work for compliance with drawings and specifications and quality and control. Written inspection reports should accompany the contractor's requests for payment. Construction management responsibilities include the following aspects of project review:

- **General Supervision:** Includes monitoring construction to determine the need for adjustments in design as dictated by actual field conditions and the preparation of contract amendments and change orders for the Grantee. All contract amendments or change orders affecting alignment, detail or dimensions shown on drawings must include revised drawings.
- **Quality Control:** Includes quality tests as necessary to verify conformance with technical specifications concerning minimum quality standards.
- **Quantity Control:** Includes verification of in-place quantities and other records reflecting the as-built facility.
- **Certification of Pay Estimates:** Should include inspection reports, copies of field measurement notes and test results used to verify contractor's periodic pay estimate for partial payment and should be attached to and filed with the periodic estimate for partial payment.

- **General Construction Management:** May also include other responsibilities including, but not limited to, providing horizontal and vertical control in the form of benchmarks and base lines to be used by the contractor in staking the construction, review and approval of shop drawings, and project coordination.

**a. Progress Monitoring and Progress Payment**

Upon completion of agreed quantities of work, the contractor may submit requests for partial or progress payments. Written inspection reports should accompany the contractor's request for payment. Inspection reports, copies of field measurement notes and test results used to verify the contractor's periodic pay estimate for partial payment should be attached to and filed with the periodic estimate for partial payment.

Upon receipt of Certificates for Partial Payment and necessary documentation, the Grantee must review Labor Standards, Equal Opportunity and Section 3 compliance files to ensure that all payrolls have been received and reviewed, that any necessary restitution has been paid, that employee interviews have been conducted and that all discrepancies have been corrected.

**b. Retainage**

The state will permit full payment of current monthly progress payments when progress under a construction contract has been determined by the Grantee to be satisfactory. Grantees need not routinely retain funds throughout the term of the contract; decisions to retain may be made on a case-by-case basis as directed by industry standards.

Retainage may be used in the following circumstances:

- Where performance deficiencies have been identified under the contract or past unsatisfactory performance by the contractor has been experienced; and
- As the contract approaches completion to ensure that deficiencies will be corrected and that completion is timely.

**The level of retainage withheld, if any, shall not exceed 10 percent in the case of unsatisfactory performance or five percent where the retainee is to ensure satisfactory completion. Upon completion of all contract requirements, retained amounts shall be paid promptly.**

**c. Inspection, Acceptance, Project Closeout and Final Payment**

When construction work has been completed, the contractor must certify completion of work to the Grantee and submit a final request for payment. The Grantee must arrange for a final inspection and notify the WVDO of the date the inspection was completed. The Grantee or architect/engineer will make the final inspections and the Grantee or architect/engineer will prepare a written report of the inspection and issue a final certificate of payment.

Before making final payment, the Grantee must ensure that: all payrolls have been received and checked and any necessary restitutions have been made; all other required Labor Standards, Equal Opportunity and Section 3 provisions have been

satisfied; all contract submissions have been received; all claims and disputes involving the contractor have been resolved; all files are complete; and as-built plans have been filed with the Grantee.

All grantees are required to submit a **Final Performance Report (FPR)** upon project completion.

- The FPR must be submitted with the final drawdown request, excluding final audit costs.
- Only 90 percent of the Administration line item will be paid until a complete and satisfactory FPR is submitted.
- If possible, the final request should only contain administrative and audit costs.
- Upon approval of the FPR, the final drawdown request will be processed for payment.
- Information contained in the FPR is reported in the HUD Integrated Disbursement and Information System (IDIS).

### Section 3 Administration and Reporting

Congress established Section 3 policy to guarantee that the employment and other economic opportunities created by federal financial assistance should, if possible, be directed toward low- and very-low income persons, particularly those who are recipients of government assistance for housing.

Section 3 of the Housing and Urban Development Act of 1968, as amended, requires the provision of opportunities for training and employment that arise through HUD-assisted financed project to lower-income residents of the project area. Also required is that contracts be awarded to businesses that provide economic opportunities for low- and very low-income persons residing in the area.

Additional information is available at: [www.hud.gov/section3](http://www.hud.gov/section3). The state's Section 3 Policy is posted to the WVDO website.

The [Section 3 Business Registry](http://www.hud.gov/sec3biz) is a tool to help Grantees meet their regulatory obligations by providing a list of local self-certified Section 3 businesses. The Section 3 Business Registry can identify prospective firms to be notified about the availability of local HUD-funded contracts. The site can be searched by state, city, county, or type of business at [www.hud.gov/sec3biz](http://www.hud.gov/sec3biz).

**Section 3 Certifications and Clauses must be included in the Supplemental General Conditions of all contracts and subcontracts.** The project administrator is most often responsible for managing Section 3 compliance for construction projects. Engineers must also ensure that Section 3 clauses and forms are included in bid packages and contract documents to ensure compliance.

#### Section 3 Hiring Requirements

**All CDBG projects have a 30 percent Section 3 goal.** This goal was established in 1997, and performance is measured through annual reporting to the WVDO.

Under Section 3, Grantees, contractors and subcontractors must actively work to recruit and hire Section 3 residents and direct economic opportunities to Section 3 businesses. Current regulations require compliance with Section 3 for contractors and subcontractors whose contract amount exceeds \$100,000.

Covered contractors must make a good faith effort to utilize Section 3 area residents as trainees and employees in connection with the project. Targeted recruitment and the selection of Section 3 area residents for available positions are two examples of good faith efforts that meet this requirement.

Covered contractors must make a good faith effort to award contracts to Section 3 business concerns for work in connection with the project. Covered contractors must keep records documenting good faith efforts taken and results of these efforts.

The prime contractor and any subcontractors subject to Section 3 should submit a list of existing employees to the project administrator prior to construction. If additional employees

are needed to complete a project, stringent federal regulations apply to hiring activity. Grantees, contractors and subcontractors each have a role in ensuring compliance.

### Section 3 Annual Reporting

**All Grantees are required to complete an annual Section 3 Summary Report. If no Section 3 hiring or business activity occurred, the Grantee must document the actions taken to achieve compliance, and explain why these actions fell short of Section 3 hiring or business activity.**

Recipients of HUD CDBG funding, and their contractors and subcontractors, are required to provide economic opportunities consistent with existing federal, state, and local laws and regulations.

### Which Projects are Covered Under Section 3?

Section 3 applies to contractors and subcontractors performing work on construction projects when:

1. The amount of the assistance exceeds \$200,000; and
2. The amount of the contract or subcontract exceeds \$100,000.

If these thresholds are met, the Section 3 requirements apply to the entire project or activity that is funded with Section 3 covered assistance, regardless of whether the Section 3 activity is fully or partially funded with Section 3 covered assistance.

### Who are Section 3 Residents?

All residents of public housing are considered Section 3 residents. A list of public housing authorities is available from the WVDO. Section 3 residents include:

1. Public housing residents;
2. Low (80 percent of area median income) and very-low income (50 percent of area median income) persons in the metropolitan area or Non-metropolitan County in which a HUD-assisted project is located.

### What is a Section 3 Business?

The [Section 3 Business Registry](#) is a tool to help grantees meet their regulatory obligations by providing a list of local self-certified Section 3 businesses. Section 3 businesses include:

1. Businesses that are at least 51 percent owned by a Section 3 resident;
2. Businesses whose permanent, full-time employees include persons, at least 30 percent of whom are current Section 3 residents, or within three years of the date of first employment were Section 3 residents; or
3. Businesses that provide evidence of a commitment to subcontract in excess of 25 percent of the dollar award of all contracts to be awarded to a Section 3 business concern.

**What Types of Opportunities are Available under Section 3?**

Section 3 opportunities include: job training, employment, and contracts, such as:

Administrative/Management	Services	Construction
Accounting Payroll Research Bookkeeping Purchasing Data Entry	Marketing Janitorial Landscaping Printing Computer/Technology Manufacturing Transportation	Architecture, Engineering Bricklaying Carpentry Cement/Drywall Electrical Excavating Engineering Fencing Heating/HVAC Iron Works Machine Operation Painting Plastering Plumbing Road Work Surveying

**Who Receives Priority Under Section 3?**

1. Persons in public and assisted housing;
2. Persons in the area where the HUD financial assistance is expended;
3. Participants in HUD Youthbuild programs; or
4. Homeless persons.

**Section 3 Hiring Requirements**

Every recipient of CDBG funding must submit an annual report to the WVDO which outlines all Section 3 employment and business utilization activity. **All projects have a 30 percent Section 3 goal.**

Employment goals are based on **new hires**, which are defined as full-time employees for permanent, temporary or seasonal employment opportunities, meaning that 30 percent of the permanent, full-time, temporary or seasonal employees hired should be Section 3 residents. Section 3 residents who have been employed for three years can no longer be counted as a Section 3 employee to meet the 30 percent requirement. This requires participants to continue hiring Section 3 residents when employment opportunities are available.

**Annual Reporting Requirements**

Annual Reports are required each year for each open grant. If a Final Performance Report is submitted, reports will include activity through the date of the FPR. The following forms are required on an annual basis, usually at the end of July:

- Section 3 Hiring and Contracting Activity-HUD Report Form 60002
- Minority and Women Owned Business Contracting-HUD Report Form 2516
- Section 3 and Contracting Compilation Form

**Common Deficiencies****Equal Opportunity**

- Bid specifications/contracts do not contain all applicable Equal Opportunity provisions.
- Section 3 report not submitted annually.
- Contractor and Subcontractor Section 3 Certifications not obtained.
- Contractor and Subcontractor Equal Opportunity Certifications not obtained.
- Contract does not contain female and minority employment goals, or goals are not correct.
- Equal Opportunity Compliance File not complete.

**Bid Package**

- Federal wage rate modifications were not checked.
- Bid document checklist specifications lack one or more required provisions.
- Advertisements are not timely.
- Addenda are issued within 72 hours.
- Bids are not logged in, seals broken.
- Bid Document Checklist not in files.
- Deductive or additive alternates not used.
- Contractor and Subcontractor Section 3 Certifications not obtained.
- Contractor and Subcontractor Equal Opportunity Certifications not obtained.

**Contracts**

- Bonding requirements not met.
- Notice to Proceed not sent to the WVDO.
- Pre-construction Report not in files.
- Project Construction File inadequate.
- Applicable Equal Opportunity provisions not contained.
- Contract Document Checklist not utilized.
- All forms contained in **Attachment 6-5** are not completed.

**Construction Monitoring**

- No construction monitoring responsibility assigned.
- Contractor's failure to submit cost breakdown.
- Schedule of payments not established.
- Construction inspection inadequate.
- Delays in processing requests for progress payments.
- Change orders in excess of \$10,000 were not approved by the WVDO.
- Labor and Equal Opportunity monitoring are behind schedule.

# ADVERTISEMENT FOR BIDS

THIS EXAMPLE INCORPORATES APPLICABLE LANGUAGE AND REQUIREMENTS SPECIFIC TO HUD LEGISLATION AND IS RECOMMENDED FOR GENERAL USE WITH INDIVIDUAL PROJECT MODIFICATIONS.

**ADVERTISEMENT FOR BIDS**  
**(Construction Contracts)**

Sealed bids will be received by the \_\_\_\_\_, County of \_\_\_\_\_, West Virginia, at \_\_\_\_\_ from \_\_\_\_\_ until \_\_\_\_\_, \_\_\_\_\_, at which time, all sealed bids received will be publicly opened and read aloud for the \_\_\_\_\_ project.

Contract 1  
Contract 2

The \_\_\_\_\_ reserves the right to reject any and all bids and to waive any informality therein.

Bidders on this work will be required to comply with the President's Executive Order 11246, HUD Section 109, which prohibits discrimination in employment regarding race, creed, color, sex or national origin, and have non-segregated facilities.

This CDBG-Small Cities Block Grant project is to be financed in part by a grant from the United States Department of Housing and Urban Development (HUD) and the West Virginia Development Office and will be referred to as \_\_\_\_\_. (name)

The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

The parties of this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. Bidders' attention is directed to the Section 3 "Clause" set forth in the contract documents.

Bidders must comply with the requirements for Affirmative Action and Minority Business Enterprises participation as described in the Federal Specifications insert to the Contract Documents. Bidders must comply with Title VI of the Civil Rights Act of 1964, the Davis-Bacon Act, the Copeland Act, the Contract Work Hours and Safety Act, and the West Virginia Division of Labor Wages for Construction of Public Improvements pursuant to West Virginia Code §21-5A-3.

Plans and specifications are on file for inspection at the following offices during normal working hours:

F. W. Dodge Plan Room, Charleston, West Virginia  
F. W. Dodge Plan Room, Pittsburgh, Pennsylvania

Copies of Plans and Specifications and proposal forms may be obtained from

\_\_\_\_\_ by check or money order made out to

\_\_\_\_\_ in the amount of \$\_\_\_\_\_ per set.

In addition, a delivery charge of \$\_\_\_\_\_ for the first set and \$\_\_\_\_\_ per set for each additional set, if delivery is required. The delivery charge is non-refundable.

A certified check or bank draft payable to the \_\_\_\_\_, County of \_\_\_\_\_, West Virginia, or a Bid Bond executed by the Bidder and a grantee bidder and a bidder surety company approved by the \_\_\_\_\_, County of \_\_\_\_\_, West Virginia in the amount equal to five percent (5%) of the Bid, shall be submitted with each Bid, to guarantee the Bidder's entrance into a Contract, if given the award.

No Bid shall be waived or returned because the Bidder failed to or cannot comply with any requirements as set forth in the Plans and Specifications, or any applicable statutes of the United States, the State of West Virginia and/or local ordinances.

No Bidder may withdraw their bid for a period of ninety (90) days after the time of the opening of the Bids.

Any Contractor submitting a Bid on this project hereby certifies, indicates and acknowledges that he/she has a license and meets all the qualifications required by the statutes of the State and subdivision in which the work is to be performed.

\_\_\_\_\_  
**Chief Elected Official**

\_\_\_\_\_  
**Date**

**West Virginia CDBG-Small Cities Block Grant Program  
NOTICE OF INTENT TO BID**

**TO:** West Virginia Development Office  
Attention:  
Project Manager  
1900 Kanawha Boulevard, East  
Building 6, Room 553  
Charleston, West Virginia 25305-0311

**FROM:**

**DATE:**

**RE: NOTICE OF INTENT TO BID CDBG-SMALL CITIES PROJECT**

---

It is our intention to advertise for bids for the \_\_\_\_\_ project based upon the plans and specifications and bidding documents prepared by \_\_\_\_\_. (architect/engineer)

Bid opening will be held on \_\_\_\_\_ and contracts are expected to be awarded on \_\_\_\_\_.

I hereby certify that the bid documents include all of the attached provisions, that all pre-bid requirements have been accomplished, and that appropriate documentation is on file for review during the next monitoring visit.

We fully accept the responsibility to settle any and all bidding and/or contracting disputes that may arise. Prior to awarding the contracts, we will verify with your office that the bidder is not on the "List of Parties Excluded from Federal Procurement and Non-procurement Programs (Debarred Contractors)." We will provide your office with bid tabulations, justification for awarding the contract to other than the low bidder (if necessary) and/or justification for rejecting any or all bids.

---

**Chief Elected Official**

**Date**

**West Virginia CDBG-Small Cities Block Grant Program  
BID DOCUMENT CHECKLIST**

Grantee		Project #	
Project Name		Amount	
Prepared by		Agency	

**\*Note: Submit the Bid Document Checklist with the Project Manual/Specifications for WVDO review. Enclose a copy of the Advertisement for Bid if not included in the Project Manual/Specifications. Digital copies accepted. To verify that all bidders will comply with Equal Opportunity and Section 3 Requirements upon the award of a contract for a CDBG project, these certifications are required for each bidder as indicated below.**

REFERENCES	*PAGE #
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1.	Request for Wage Rate Determination (dated sos.wv.gov page accepted)	
2.	Federal Davis-Bacon Wage Rates	
3.	State-WorkForce West Virginia Rates	
4.	<b>Attachment 6-5A</b> <span style="float:right"><b>(Signature Required)</b></span> <ul style="list-style-type: none"> <li>• Certification of Bidder Regarding Section 3 and Segregated Facilities</li> </ul>	
5.	<b>Attachment 6-5B</b> <ul style="list-style-type: none"> <li>• Federal Labor Standards Provisions - (HUD-4010)</li> <li>• Contract Work Hours and Safety Standards Clauses - (HUD-4010)</li> <li>• Federal Davis-Bacon Provisions (\$2,000) - (HUD-4010)</li> <li>• Copeland Anti-Kickback Clause - (HUD-4010)</li> <li>• Employment of Apprentices/Trainees Clause - (HUD-4010)</li> </ul>	
6.	<b>Attachment 6-5C</b> <span style="float:right"><b>(Signature Required)</b></span> <ul style="list-style-type: none"> <li>• Special Equal Opportunity Provisions</li> <li>• Equal Opportunity Standard Clauses - Executive Order 11246</li> <li>• Title VI Clause - Civil Rights Act</li> <li>• Section 109 Clause</li> </ul>	
7.	<b>Attachment 6-5D</b> <ul style="list-style-type: none"> <li>• Section 3 Clause</li> <li>• Section 3 Workforce Needs <span style="float:right"><b>(Signature Required)</b></span></li> <li>• Section 3 Project Businesses <span style="float:right"><b>(Signature Required)</b></span></li> <li>• Section 3 Contractor's Plan <span style="float:right"><b>(Signature Required)</b></span></li> </ul>	
8.	<b>Attachment 6-5E</b> <ul style="list-style-type: none"> <li>• Clean Air and Water (\$100,000)</li> </ul>	
9.	• Proof of Flood Insurance (if applicable)	
10.	<b>Attachment 6-5F</b> <ul style="list-style-type: none"> <li>• Lead-Based Paint Clause</li> </ul>	
11.	<b>Attachment 6-5G</b> <ul style="list-style-type: none"> <li>• Architect's Certification of Compliance with Architectural Barriers Act of 1968</li> </ul>	
12.	<b>Attachment 6-5H</b> <ul style="list-style-type: none"> <li>• Bonding Insurance Provisions (\$100,000)</li> </ul>	
13.	<b>Attachment 6-5I</b> <ul style="list-style-type: none"> <li>• Access to Records and Maintenance of Records Clause</li> </ul>	

**BID DOCUMENT CHECKLIST**  
(Page 2)

Grantee		Project #	
Project Name		Amount	

<b>REFERENCES</b>	<b>*PAGE #</b>
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14.	<b>Attachment 6-5J</b> <ul style="list-style-type: none"> <li>• Review by Project Attorney</li> </ul>	
15.	General Administration Provisions (standard contract provisions)	
16.	Review by Outside Agencies (specify if applicable)	
	<ul style="list-style-type: none"> <li>• Division of Environmental Protection (State)</li> </ul>	
	<ul style="list-style-type: none"> <li>• Division of Environmental Protection (Federal)</li> </ul>	
	<ul style="list-style-type: none"> <li>• West Virginia Public Service Commission (PSC)</li> </ul>	
	<ul style="list-style-type: none"> <li>• Bureau of Public Health (DHHR)</li> </ul>	
	<ul style="list-style-type: none"> <li>• West Virginia Division of Highways (WVDOH)</li> </ul>	
	<ul style="list-style-type: none"> <li>• Others (<i>please list</i>)</li> </ul>	

*By signing below, I certify all items listed above are complete and have been included in the Bid Document.*

\_\_\_\_\_  
**Preparer's Signature**

\_\_\_\_\_  
**Date**

**If the project engineer does not number the pages of the entire bid document, the sections containing the above listed HUD documentation must be hand numbered and those page numbers used to index the location of each document.**

**The completed bid document checklist must be included with the submission of ATTACHMENT 6-2, NOTICE OF INTENT TO BID and the Project Manual/Specifications. Digital and bound copies are accepted.**

June 1, 2015

The Honorable Joan Q. Elect  
Mayor  
Town of Somewhere  
Post Office Box 2500  
Somewhere, West Virginia 25005

**RE: Town of Somewhere – Wastewater System Improvements  
CDBG-Small Cities Block Grant  
Project Number: 15SCBG0500 (\$1,500,000)  
Authorization to Bid**

Dear Mayor Elect:

This letter is to confirm that the West Virginia Development Office (WVDO) has received a Notice of Intent to Bid and a completed Bid Document Checklist certifying that all pre-bid requirements have been met and all related materials are included in the bid documents as required for the above referenced CDBG-Small Cities Block Grant project. Appropriate documentation must remain in the project files for future monitoring.

**Title I of the Housing and Community Development Act of 1974**

Note that the administration of Small Cities Block Grant program funds must comply with all restrictions, conditions, policies, guidelines and requirements of Title I of the Housing and Community Development Act of 1974, and all applicable State and Federal laws, as outlined in the grant agreement for this project.

**Procurement and Contracting**

As stated in the grant agreement, bids shall be obtained by public notice as a Class II legal advertisement in compliance with the provisions of Article Three, Chapter Fifty-Nine of the West Virginia Code. Construction contracts shall be procured in a manner that provides maximum open and free competition consistent with the procedures identified in the Small Cities Block Grant Handbook, and in accordance with Chapter 5-22-1 of the West Virginia Code and federal regulations, 24 CFR Part 85. You are reminded that you are required to take affirmative steps to assure that DBE businesses are encouraged to bid. These steps may include direct solicitation of DBE contractors and businesses, proof of which must be included in the project files.

**Additional Documents Required**

Send a “tear sheet” of the advertisement for bids to WVDO as soon as it is available from the newspaper. **A copy of the certified bid tabulation, justification for awarding the contract to any other than the low bidder (if necessary) and/or justification for rejecting any and all bids must be submitted to the WVDO prior to contract award.**

As detailed in the Notice of Intent to Bid, received in the West Virginia Development Office (WVDO) on March 1, 2015, Region 12 PDC and the Town of Somewhere accept responsibility for settling any bidding and/or contracting disputes.

## Bidder Certifications

### Debarment Review

Prior to the award of contracts, the "List of Parties Excluded from Federal Procurement and Non-procurement programs (Debarred Contractors)" will be submitted to the WVDO. All contractors must be reviewed for debarments on the State and Federal websites: <http://www.state.wv.us/admin/purchase/Debar.html> and [www.sam.gov](http://www.sam.gov).

- Print the search results pages; sign and date these pages. The search results pages must be submitted to WVDO, along with bid tabulations, prior to the award of a contract. These documents must also be retained in all project files.

### Authorization

This Authorization to Bid applies to activities funded by the \$1,500,000 grant for Project Number 15SCBG0500, as indicated above and described in the grant agreement. Funding for this project was provided as follows: \$1,500,000 awarded on December 30, 2015.

This Authorization to Bid applies to the project as specified in the grant agreement between the WVDO and the Town of Somewhere. Any proposed change to the scope of the project as described in the grant agreement will require prior notification to the WVDO and may result in further review.

If you have any questions, please call me at 304-558-2234 or send email to [cdbgrep@wv.gov](mailto:cdbgrep@wv.gov). Our team looks forward to working with you on this worthwhile project.

Sincerely,

John R. Worker  
Community Development Division

JRW:st

cc: Regional PDC Rep      Region 12      (email)  
    Manager                  WVDO

**West Virginia CDBG-Small Cities Block Grant Program  
MINUTES OF BID OPENING**

Grantee		Project #	
Project Name		Amount	
Prepared by		Agency	

The first bid was opened at: \_\_\_\_\_ , \_\_\_\_\_ .  
(Time) (Date)

Bidders and bid amount in order of opening:

- 1. \_\_\_\_\_ \$  
(Firm) (Amount)
- 2. \_\_\_\_\_ \$  
(Firm) (Amount)
- 3. \_\_\_\_\_ \$  
(Firm) (Amount)
- 4. \_\_\_\_\_ \$  
(Firm) (Amount)
- 5. \_\_\_\_\_ \$  
(Firm) (Amount)
- 6. \_\_\_\_\_ \$  
(Firm) (Amount)

Bid award is scheduled for \_\_\_\_\_  
(Date)

Signed \_\_\_\_\_  
(Name) (Title)

Witnessed by: \_\_\_\_\_  
(Name) (Title)

\_\_\_\_\_  
(Name) (Title)

**CONTRACT DOCUMENT CHECKLIST**  
*(Content of project files after contract has been awarded.)*

This checklist is provided to ensure proper documentation is on file for executed contracts.  
(\*This is an internal source document.)

**1. Pre-Construction**

- Executed Contract \_\_\_\_\_
- Notice of Contract Award and Pre-Construction Conference sent to the WVDO \_\_\_\_\_
- Pre-Construction Conference held \_\_\_\_\_
- List of subcontractors and subcontractor Section 3 plans obtained \_\_\_\_\_
- Pre-Construction Report filed in project Labor Standards Enforcement file  
Cross referenced filed in EEO file \_\_\_\_\_
- Workforce Needs \_\_\_\_\_
- Section 3 Project Businesses \_\_\_\_\_
- Contractor's Certification regarding Section 3 and Segregated Facilities (65-A)  
Contractor established own Equal Employment Opportunity File \_\_\_\_\_
- Requested and received wage decision and classifications not included on Wage  
Decision \_\_\_\_\_
- If apprentices are to be used on contract, received copy of contractor's Apprentice  
program from U.S. Department of Labor Bureau of Apprenticeship and Training \_\_\_\_\_
- Bonding Insurance on file \_\_\_\_\_
- Project Labor Standards Enforcement file established \_\_\_\_\_
- Project Equal Opportunity Enforcement file established \_\_\_\_\_
- Notice to Proceed issued to Contractor (Copies to State and Construction File) \_\_\_\_\_

**2. Construction Contract Enforcement**

Payrolls and Statement Compliance

	Received	Reviewed	Discrepancies:	Document attached with resolution
Week 1	_____	_____	_____	_____
Week 2	_____	_____	_____	_____
Week 3	_____	_____	_____	_____
Week 4	_____	_____	_____	_____

Project Inspection

Employee interviews

Month 1	_____	_____
Month 2	_____	_____
Month 3	_____	_____
Month 4	_____	_____

Complaints, if any and action taken: \_\_\_\_\_

Correspondence concerning Contractor Equal Opportunity compliance \_\_\_\_\_

3. Project Inspection Checklist

- (1) Wage Decision \_\_\_\_\_
  - (2) Notice to Employees M.N. 1 3 2 1 ) \_\_\_\_\_
  - (3) Safety & Health Protection on Job \_\_\_\_\_
  - (4) Equal Employment Opportunity Requirements (E.O. 11246) \_\_\_\_\_
- Copy of As-Built Plans received \_\_\_\_\_

**SECTION 3 AND SEGREGATED FACILITIES  
CERTIFICATION OF BIDDER**

Grantee		Project #	
Project Name			
Name of Prime Contractor			

The undersigned hereby certifies that:

- a) *If a contract or subcontract is in excess of \$100,000, Section 3 provisions will be included in the Contract.*
- b) *No segregated facilities will be maintained.*

\_\_\_\_\_  
**Name of Signer**

\_\_\_\_\_  
**Title of Signer**

\_\_\_\_\_  
**Signature** **Date**

## Federal Labor Standards Provisions

## U.S. Department of Housing and Urban Development Office of Labor Relations

### Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

**A. 1. (i) Minimum Wages.** All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section I(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

**(ii) (a)** Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

**(1)** The work to be performed by the classification requested is not performed by a classification in the wage determination; and

**(2)** The classification is utilized in the area by the construction industry; and

**(3)** The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

**(b)** If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

**(c)** In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

**(d)** The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

**(iii)** Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

**(iv)** If the contractor does not make payments to a trustee or other third person, the contractor may consider as part

of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

**2. Withholding.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

**3. (i) Payrolls and basic records.** Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been

communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

**(ii) (a)** The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

**(b)** Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

**(1)** That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### 4. Apprentices and Trainees.

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who

is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by

the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**(iii) Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract

**6. Subcontracts.** The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

**7. Contract termination; debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

**10. (i) Certification of Eligibility.** By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be

awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

**(ii)** No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

**(iii)** The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

**11. Complaints, Proceedings, or Testimony by Employees.** No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

**B. Contract Work Hours and Safety Standards Act.** The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

**(1) Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

**(2) Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

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**(3) Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

**(4) Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

**C. Health and Safety.** The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.

**(1)** No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

**(2)** The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

**(3)** The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

**BIDDER CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY**

**INSTRUCTIONS**

This certification is required pursuant to Executive Order 11246 (30 F.R. 12319-25). The implementing rules and regulations provide that any bidder or prospective contractor, or any of their proposed subcontractors, shall state as an initial part of the bid or negotiations of the contract, whether it has participated in any previous contract or subcontract subject to the equal opportunity clause; and, if so, whether it has files all compliance reports due under applicable instructions. Where the certification indicates that the bidder has not filed a compliance report due under applicable instructions, such bidders shall be required to submit a compliance report within seven (7) calendar days after bid opening. No contract shall be awarded unless such report is submitted.

**CERTIFICATION BY BIDDER**

Bidder Name			
Address		Zip Code	

1. Bidder has participated in previous contract or subcontract subject to the Equal Employment Opportunity Clause. (If yes, identify the most recent contract)  
 Yes     No        Contract \_\_\_\_\_
2. Compliance reports were required to be filed in connection with such contract or subcontract. (If yes, identify the most recent contract)  
 Yes     No        Contract \_\_\_\_\_
3. Bidder has filed all compliance reports due under applicable instructions, including SF- 100. If "No", please explain in detail on a separate sheet.  
 Yes     No         None Required
4. Have you ever been, or are you being considered, for sanctions due to the violation of Executive Order 11246, as amended?  
 Yes     No

Certification – The information above is true and complete to the best of my knowledge and belief.

\_\_\_\_\_  
Name and Title of Signer – (please type)

\_\_\_\_\_  
Signature Date

## SPECIAL EQUAL OPPORTUNITY PROVISIONS

### A. Activities and Contracts Not Subject to Executive Order 11246, as Amended

(Applicable to federally assisted construction contracts and related subcontracts \$10,000 and under)

During the performance of this contract, the contractor agrees as follows:

- (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure the applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- (2) The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this non-discrimination Clause. The Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (3) Contractors shall incorporate the foregoing requirements in all subcontracts.

### B. Executive Order 11246 (Contracts/subcontracts above \$10,000)

- (1) Section 202 Equal Opportunity Clause.

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment, or recruitment advertising; layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided setting forth the provisions of this non-discrimination Clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration without regard to race, color, religion, sex, or national origin.

- (3) The contractor will send to each labor union or representative of workers with which he has collective bargaining agreements or other contracts or understandings, a notice to be provided by the Contract Compliance Officer advising the said labor union or workers' representative of the contractor's commitment under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1964, and of the rules, regulations, and relevant order of the Secretary of Labor.
- (5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1964, and by rules and regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and others.
- (6) In the event of the contractor's non-compliance with the non-discrimination Clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1964, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (7) The contractor will include the provisions of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1964, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the Department may direct as a means of enforcing such provisions, including sanctions for non-compliance. Provided, however, that in the event a contract becomes involved in, or threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

The applicant further agrees that it will be bound by the above equal opportunity Clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a state or local government, the above equal opportunity Clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with equal opportunity Clause and the rules, regulations, and relevant order of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity Clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility of securing compliance.

**C. Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)** (Applicable to contracts/subcontracts exceeding \$100,000)

- 1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
- 2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

---

Goals for minority participation	Goals for female participation
Insert goals	Insert goals for current year

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These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographic area located outside of the covered area, it shall apply the goals established for such geographic area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort. To employ minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goal shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

- 3. The contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; and the geographical area in which the contract is to be performed.
- 4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is (insert description of the geographical areas where the contract is to be performed giving the state, county, and city, if any).

**D. Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11248)**

1. As used in these specifications:
  - a. **"Covered area"** means the geographical area described in the solicitation from which this contract resulted.
  - b. **"Director"** means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegated authority.
  - c. **"Employer"** identification number means the Federal Social Security number issued on the Employer's Quarterly Tax Return, U.S. Treasury Department Form 941.
  - d. **"Minority"** includes:
    - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
    - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
    - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO Clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith effort to achieve the Plan goals and timetables.
4. The Contractor shall implement the specific affirmative action standards provided in paragraph 7a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward

its goals in each craft during the period specified. Covered construction contractors performing contracts in geographical areas where they do not have a federal or federally-assisted construction contract shall apply the minority and female goals established for the geographic area where the contract is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246 or the regulations promulgated pursuant thereto.
6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effect to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
  - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
  - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' resources.
  - c. Maintain a current file on the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
  - d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority persons or women sent by the Contractor, or when the

Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the source complied under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or their employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractor and Subcontractor with whom the Contractor does or anticipated doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment sources, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.



Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be constructed as a violation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

#### **E. Certification of Non-segregated Facilities (Over \$10,000)**

By submission of this bid, the bidder, offeror, applicant or subcontractor certifies that he/she does not maintain or provide for his/her employees any segregated facility at any of his/her establishments, and that he/she does not permit employees to perform their services at any location, under his/her control, where segregated facilities are maintained. He/She further certifies that he/she will not maintain or provide for employees any segregated facilities at any of his/her establishments, and he/she will not permit employees to perform their services at any location under his/her control where segregated facilities are maintained. The bidder, offeror, applicant or subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity Clause of this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, time clock, locker rooms, and other storage or dressing areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. He/She further agrees that (except where he/she has obtained identical certification from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provision of the Equal Opportunity Clause); that he/she will retain such certification in his/her files, and that he/she will forward the following notice to such proposed subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

**F. Civil Rights Act of 1964**

Under Title VI of the Civil Rights Act of 1964, no persons shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

**G. Section 109 of the Housing and Community Development Act of 1974**

(a) No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

**SECTION 3 OF THE HOUSING AND URBAN  
DEVELOPMENT (HUD) ACT OF 1968,  
As Amended**

**LANGUAGE AND CERTIFICATIONS**

*(THE SECTION 3 CLAUSE MUST BE INCORPORATED IN BID AND CONTRACT DOCUMENTS IN  
EITHER THE GENERAL OR SUPPLEMENTAL CONDITIONS)*

## PART OF GENERAL CONDITIONS

### PROVISIONS AND PROCEDURES PERTAINING TO EMPLOYMENT OPPORTUNITIES FOR BUSINESS AND LOWER-INCOME PERSONS IN CONNECTION WITH FEDERAL ASSISTED PROJECTS IN COMPLIANCE WITH

#### SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968

#### 1. Purpose and Scope

The regulations set forth in this Part contain the procedures established by the Secretary of Housing and Urban Development for carrying out the responsibilities under Section 3 of the Housing and Urban Development Act of 1968, U.S.C. 1701u.

#### 2. Definitions

**Section 3 covered project** means the construction, reconstruction, conversion or rehabilitation of housing (including reduction and abatement of lead-based paint hazards), other public construction which includes buildings or improvements (regardless of ownership) assisted with housing or community development assistance.

#### 3. Assurance of Compliance

Every contractor and subcontractor shall incorporate, or cause to be incorporated, in all contracts for work in connection with a Section 3 covered project, the following Clause:

- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties of this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 Clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; the name and location

of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

- D. The contractor agrees to include this Section 3 Clause in every subcontract subject to compliance with regulations in 24 CFR Part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 Clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The contractor will not subcontract with any subcontractor where the contractor has a notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR Part 135.
- F. Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U. S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

#### **4. Work Force Needs**

Prior to the signing of the contract, the contractor shall provide a preliminary statement of work force needs (skilled, semi-skilled, unskilled labor and trainees by category where known); where not known, such information shall be supplied prior to the signing of any contract between the contractor and subcontractor (Appendix No. 1).

## WORKFORCE NEEDS

Existing Workforce					Employment Needs		
Occupation Category (write list)	By Category Total Workforce	Skilled	Laborer	Apprentices Trainees	No. Project Area Residents opt be Utilized		
					Skilled	Laborers	Apprentice/Trainees

**Employment Certification**

The Company hereby certifies that the above table represents the approximate number of employee positions required in the \_\_\_\_\_ Project and also represents the number of lower-income project area residents that the company proposes to employ.

\_\_\_\_\_  
*Company Name*

\_\_\_\_\_  
*Authorized Signature*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Date*

## SECTION 3 PROJECT BUSINESSES

A. The company shall utilize business concerns located in \_\_\_\_\_ in contracting for work to be performed in connection with the completion of the contract. To this end, the Company shall require the services of companies in the project area engaged in the business of \_\_\_\_\_.

Subcontracts (write list)	Total Subcontract Dollar Amount	Proposed Section 3 Businesses Available For Use	Total Subcontract to Section 3 Businesses \$ Amount
<b>Totals</b>			

\_\_\_\_\_  
**Company**

\_\_\_\_\_  
**Authorized Signature**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Date**

# CONTRACTOR/SUBCONTRACTOR

## Section 3 Plan

\_\_\_\_\_ agrees to implement the following specific affirmative action steps directed at increasing the utilization of the lowest income residents and businesses within the City/Town/County of \_\_\_\_\_.

- A. To ascertain from the locality's SCBG program official the exact boundaries of the Section 3 covered project area and where advantageous, seek the assistance of the local officials in preparing and implementing the affirmative action plan.
- B. To attempt to recruit from within the City/Town/County the necessary number of lower income residents through: Local advertising media, signs placed at the proposed site for the project, and community organizations and public or private institutions operating within or serving the project area.
- C. To maintain a list of all lower income residents who have applied either on their own or on referral from any source, and to employ such persons, if otherwise eligible and if a vacancy exists.
- D.\*To insert this Section 3 Plan in all bid documents, and to require all bidders and subcontracts to submit a Section 3 Affirmative Action Plan, including utilization goals and the specific steps planned to accomplish these goals.
- E. \*To ensure that subcontracts which are typically let on a negotiated rather than a bid basis in areas other than Section 3 covered project areas, are also let on a negotiated basis, whenever feasible, when let in a Section 3 covered project area.
- F. To formally contact unions, subcontractors and trade associations to secure their cooperation for this program.
- G. To ensure that all appropriated project area business concerns are notified of pending sub-contractual opportunities.
- H. To maintain records, including copies of correspondence, memoranda, etc., which document that all the above affirmative action steps have been taken.
- I. To appoint or recruit an executive official of the company or agency as Equal Opportunity Officer to coordinate the implementation of the Section 3 Plan.

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**Contractor/Subcontractor Signature**

**Date**

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\*Loans, grants, contracts, and subsidies for less than \$10,000 will be exempt.

**CLEAN AIR AND WATER ACTS—REQUIRED CLAUSES**

This Clause is required in all third party contracts involving projects subject to the Clean Air Act (42 U.S.C., 1857 et. seq.), the Federal Water Pollution Contract Act (33 U.S.C. 1251 et. seq.), and the regulations of the Environmental Protection Agency with respect to 40 CFR 15, as amended. It should also be mentioned in the bid documents.

During the performance of this contract, the **CONTRACTOR** agrees as follows:

- (1) The **CONTRACTOR** will certify that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the List of Violating Facilities issued by the Environmental Protection Agency pursuant to 40 CFR 15.20.
- (2) The **CONTRACTOR** agrees to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 U.S.C. 1958c-8) and Section 308 of the Federal Water Pollution Contract Act, as amended (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.
- (3) The **CONTRACTOR** agrees that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, Environmental Protection Agency, indicating that a facility utilized or to be utilized for the contract is under consideration to be listed on the Environmental Protection Agency List of Violating Facilities.
- (4) The **CONTRACTOR** agrees that it will include or use to be included the criteria and requirements in Paragraph (1) through (4) of this Section in every non-exempt subcontract and require every subcontractor to take such action as the Government may direct as a means of enforcing such provisions.

**SPECIAL CONDITIONS PERTAINING TO  
HAZARDS, SAFETY STANDARDS AND  
ACCIDENT PREVENTION**

**A. Lead-Based Paint Hazards**

*(Applicable to contract for construction or rehabilitation of residential structures.)*

The construction or rehabilitation of residential structures is subject to the HUD Lead-Based Pain regulations, 24 CFR Part 35. The Contractor and Subcontractor shall comply with the provisions for the elimination of lead-based paint hazards under subpart B of said regulations. The Owner will be responsible for the inspections and certifications required under Section 35.14(f) thereof.

**B. Use of Explosives (Modify as Required)**

When the use of explosives is necessary for the prosecution of work, the Contractor shall observe all local, state, and Federal laws in purchasing and handling explosives. The Contractor shall take all necessary precaution to protect completed work, neighboring property, water lines, or other underground structures. Where there is danger to structures or property from blasting, the charges shall be reduced and the material shall be covered with suitable timber, steel, or rope mats.

The Contractor shall notify all owners of public utility property of intention to sue explosives at least eight hours before blasting in done, close to such property. Any supervision or direction of use of explosives by the Engineer, does not in any way reduce the responsibility of the Contractor or his Surety for damages that may be cause by such use.

**C. Danger Signals and Safety Devices (Modify as Required)**

The Contractor shall make all necessary precautions to guard against damages to property and injury to persons. He shall put up and maintain in good condition, sufficient red or warning lights at night, suitable barricades, and other devices necessary to protect the public. In case the Contractor fails or neglects to take such precautions, the Owner may have such lights and barricades installed and share the cost of this work to the Contractor. Such action by the Owner does not relieve the Contractor of any liability incurred under these specifications or contract.

**ARCHITECT'S CERTIFICATION  
COMPLIANCE WITH MINIMUM STANDARDS FOR  
ACCESSIBILITY BY THE PHYSICALLY HANDICAPPED**

<b>Grantee</b>	
<b>Project Name</b>	
<b>Project #</b>	

Pursuant to the requirements of the Architectural Barriers Act of 1968, 42 U.S.C., 4151, and the regulations issued subsequent thereto, the undersigned certifies that the design of the above-mentioned project is in conformance with the minimum standards contained in the American Standard Specifications for Making Building and Facilities Accessible To and Usable By, the Physically Handicapped, Number A-117, 1 R 1971 (as modified by 41 CFR 101-19.603).

<b>Project Architect</b>	
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\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date*

**\*Only applicable to buildings**

**BONDING AND INSURANCE REQUIREMENTS*****THE "COMMON RULE"  
24 CFR PART 85  
PROCUREMENT STANDARDS***

A State or local unit of government receiving a grant from the Federal government which requires contracting for construction or facility improvement shall follow its own requirements relating to by guarantees, performance bonds, and payment bonds, except for contracts or subcontracts exceeding \$100,000. For contracts or subcontracts exceeding \$100,000, the Federal agency must make a determination that the Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

- a. A bid guarantee from each bidder equivalent to five percent of the bid price.  
The "bid guarantee" shall 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 his/her bid, execute such contractual documents as may be required within the time specified.
  
- b. A performance bond on the part of the contractor for 100 percent of the contract price.  
A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
  
- c. A payment bond on the part of the contractor for 100 percent of the contract price.  
A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and materials in the execution of the work provided for in the contract.

## **ACCESS TO AND MAINTENANCE OF RECORDS**

The Consultant/Contractor agrees to maintain such records and follow such procedures as may be required under OMB Circular A-102 and any such procedures that the West Virginia Development Office (WVDO) may prescribe. In general such records will include information pertaining to the contract, obligations and unobligated balances, assets and liabilities, outlays, equal opportunity, labor standards (as appropriate), and performance.

All such records and all other records pertinent to this contract and work undertaken under this contract shall be retained by the Grantee for a period of three years after the final audit of the Grantee's Small Cities Block Grant project, unless a longer period is required to resolve audit findings or litigation. In such cases, the Grantee shall request a longer period for record retention.

The Grantee, WVDO, and duly authorized officials of the State and Federal government shall have full access and the right to examine any pertinent documents, papers, records, and books of the Consultant/Contractor involving transaction to this local program and contract.

### **Conflict of Interest**

No officer, employee or agent of the Grantee who will participate in the selection, the award, or the administration of this grant, may obtain a personal or financial interest or benefit from the activity or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. It is further required that this stipulation be included in all subcontracts to this Contract. Upon written request, exceptions may be granted upon a case by case basis when it is determined that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the recipient's program or project. These exceptions are granted by the Department.

**CERTIFICATE OF OWNER'S ATTORNEY**

I, the undersigned, \_\_\_\_\_, the duly authorized and acting legal representative of the \_\_\_\_\_, do hereby certify as follows:

I have examined the attached contract(s) and surety bonds and the manner of execution thereof, and I am of the opinion that each of the aforesaid agreements has been duly executed by the proper parties thereto acting through their duly authorized representatives; that said representatives have full power and authority to execute said agreements on behalf of the respective parties named thereon; and that the foregoing agreements constitute valid and legally binding obligations upon the parties executing the same in accordance with terms, conditions, and provisions thereof.

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***Signature***

***Date***



## WEST VIRGINIA DEVELOPMENT OFFICE

1900 Kanawha Boulevard East • Charleston, WV 25305-0311  
 (304) 558-2234 • (800) 982-3386 • WVDO.org

**West Virginia CDBG Small Cities Block Grant Program  
 Grantee Debarment Review Certification**

<b>Grantee</b>				<b>Project Number</b>	
<b>Project Name</b>					
<b>Address</b>				<b>Phone</b>	
<b>City</b>		<b>State</b>		<b>Zip Code</b>	

<b>Debarment Review Completed By</b>	
<b>Title of Reviewer</b>	
<b>Reviewer's Organization</b>	
<b>Chief Elected Official</b>	
<b>Title of Chief Elected Official</b>	

By signing this certification, both the Reviewer and the Chief Elected Official certify all necessary actions were taken to complete the debarment check and that the grantee listed above is not suspended or debarred from conducting business with, or receiving funding from, the United States government.

---

**Signature of Reviewer**

**Date**

---

**Signature of Chief Elected Official**

**Date**

**Please submit a copy of this Certification to the West Virginia Development Office.  
 Keep the original, signed Certification in the CDBG project file.**

For additional information, please call the WVDO at 304.558.2234.

**West Virginia CDBG-Small Cities Block Grant Program  
CONTRACTOR DEBARMENT REVIEW CERTIFICATION**

**SAM.gov and State Certification Regarding Debarment and Suspension Instructions**

All CDBG-Small Cities Grantees will be required to conduct debarment reviews on all sub-recipients and contractors receiving CDBG funds. These checks will be completed by using the form provided. The completed form should be placed in your CDBG records in a separate folder. Two reviews are required:

**1. Federal System:**

**Grantees should use the System for Award Management (SAM) website, [www.sam.gov](http://www.sam.gov), to determine if the potential contractor is excluded from receiving Federal contracts.**

**2. State System:**

**Grantees should use the Division of Purchasing website to determine if the potential contractor is excluded from receiving State contracts.  
[www.state.wv.us/admin/purchase/Debar.html](http://www.state.wv.us/admin/purchase/Debar.html).**

For proposed sub-recipients, the checks must be completed prior to submission of the application. Upon award of grant funds, reviews must be completed prior to signing a contract for services.

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 7 CFR Part 3017, Section 3017.510, Participants' responsibilities. The regulations were published as Part IV of the January 30, 1989 Federal Register (pages 4722-4733).

- 1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
  - Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
  - Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- 2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective shall attach an explanation to this proposal.

**West Virginia CDBG-Small Cities Block Grant Program  
PRE-CONSTRUCTION CONFERENCE CHECKLIST/MINUTES**

<b>Grantee</b>		<b>Project #</b>	
<b>Project Name</b>		<b>Amount</b>	
<b>Engineer</b>			
<b>Contractor/Company</b>		<b>Contract # 1</b>	
<b>Represented By</b>		\$	
<b>Contractor/Company</b>		<b>Contract # 2</b>	
<b>Represented By</b>		\$	
<b>Contractor/Company</b>		<b>Contract # 3</b>	
<b>Represented By</b>		\$	

### 1. Labor Laws and Requirements

This federally funded project is subject to the following labor laws and regulations:

	<b>Davis-Bacon and Related Acts</b> require the payment of prevailing wage rates to all laborers and mechanics working on the construction site. The prevailing wages for this project are listed in the contract documents. Prevailing wages include a basic hourly rate of pay and in most cases a fringe benefit payment.
	The <b>Copeland Act</b> makes it a crime for anyone to require any laborer or mechanic to kickback any part of their wages. Consequently, the only deductions that can be taken out of an employee's paycheck are those <b>required by law</b> or those <b>authorized by the employee in writing</b> . <b>The Copeland Act also requires that every contractor pay their employees weekly and submit weekly certified payroll reports (CPRs).</b>
	<b>The Contract Work Hours and Safety Standards Act (CWHSSA)</b> requires time and one-half pay for hours worked over 40 in any workweek. The time and one-half is computed on the basic hourly wage and then the fringe amount is added to it. CWHSSA violations carry a liquidated damages penalty of ten dollars per day per violation. Intentional violations of CWHSSA standards are considered a Federal criminal misdemeanor
	<b>Section 3 of the Housing and Urban Development Act of 1968</b> , as amended requires the provision of opportunities for training and employment that arise through HUD-financed projects to lower-income residents of the project area. Also required is that contracts be awarded to businesses that provide economic opportunities for low- and very low-income persons residing in the project area, county or metropolitan statistical area. Section 3 Clauses must be inserted into each contract and subcontract documents for this project. The prime or general contractor and all subcontractors are responsible for compliance with Section 3. See Chapter 6 of the CDBG-Small Cities handbook for more information.

### 2. Additional Classifications

	If the work classifications needed do not appear on the wage decision, a request for additional classification and wage rate will be needed. The contract administrator can assist you in this process. These additional classifications and rates must be approved by the U.S. Department of Labor.
--	--

### 3. Job Site Postings

The contractor is required to display, in a **conspicuous place**, the following:

	The <b>Wage Decision</b> for this project which is:	
--	---	--

	The Secretary of Labor's <b>Wage and Hour poster</b> (Form 1321) <a href="http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf">www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf</a>
--	--

4. Payrolls	
A.	Original payrolls must be submitted weekly by all contractors and subcontractors.
B.	Contractors are not required to use Payroll Form WH-347, but the payroll used must contain all of the information that is required on the WH-347 and the Statement of Compliance must be the exact wording as on the reverse of WH-347.
C.	Payroll information needed:
	Number of payrolls (mark last payroll final)
	All mechanics and laborers employed on the site must be listed on the payroll
	Employee name, and last four digits of social security number.
	Correct work classification taken from the wage decision or approved classification
	Hourly wage paid and fringe if paid in cash (see below for fringe paid to a plan)
	Daily and weekly total number of hours worked (only hours worked on this project)
	Gross pay for this project
	Allowable deductions (those required by law or authorized by the employee in writing)
	Net pay
	Reverse of WH-347 completed, box "a" or "b" checked and the certification signed
D.	Payroll deductions must be made according to DOL Regulations 29 CFR Part 3. These regulations prohibit the employer from requiring employees to "kick-back" any of their earnings. Allowable deductions include employee obligations for income taxes, Social Security payments, insurance premiums, retirement, savings account and any other legally-permissible deduction <b>authorized by the employee</b> . Deductions may also be Made for payments on judgments and other financial obligations legally imposed against the employee. Non-permissible deductions are tools, gas and similar items.
E.	If fringe benefits are paid to a plan instead of in cash, the hourly contribution must be determined. Documentation of the plan and the amount paid into the plan per employee must be submitted with the first payroll. Fringe benefits include health insurance and retirement. They do not include employer payments or contributions required by other federal, state, or local laws, such as the employer's contribution to Social Security or some disability insurance payments.
F.	If payrolls are not numbered sequentially by the respective contractor or subcontractor, then submit a letter or the "No Work" form to the contract administrator for the period that work is not performed so that a continuous record is maintained. One form may be submitted for extended period of inactivity on the job.
G.	General and all subs submit Signature Authorization Form stating who is designated to sign payrolls if someone other than the owner signs them.
H.	Payrolls must be submitted to _____ within seven (7) days after the payroll period ends.

5. Contractor/Subcontractor Certifications	
	Contractor/subcontractor certifications are to be submitted within ten (10) days of signing the contract. In lieu of the certification, a copy of the contract between the general contractor and subcontractor may be submitted. However, the contract must contain the Applicable Wage Determination and Labor Standards Provisions.
	<p><b>Prime contractors are responsible for the payment of employees of subcontractors and lower tier subcontractors and in compliance with Labor Standards Provisions.</b></p> <p>If the prime contractor's responsibility to employ only eligible subcontractors who have certified their eligibility written contracts.</p>
6. Split Classification	
	If employees perform work in more than one classification during the workweek, the wage rates specified for each classification can be paid <b>only</b> if accurate time records are maintained showing the amount of time spent in each classification of work. If there is a dispute, the contractor will be asked to provide the employee time records. If accurate time records are not maintained, the employees must be paid the highest wage rate of all the classifications for work performed.
7. Proper Designation of Trade	
	The classification of each employee must be selected from the wage decision or an approved Additional Classification based on the actual type of work performed. Each worker must be paid no less than the wage rate on the wage decision for that classification regardless of their level of skill. In other words, if someone is performing carpentry work on the project, they must be paid no less than the wage rate on the wage decision for Carpenters, even if they aren't considered by the contractor to be fully trained as a Carpenter. <b>The only people who can be paid less than the rate for their craft are apprentices registered with the U.S. Department of Labor.</b>
8. Foremen	
	Foremen or supervisors who regularly spend more than 20% of their time performing construction work are covered laborers and mechanics (workers, employees) for labor standards purposes and must be paid the designated wage for the classification in which they work.
9. Relatives	
	Relatives are not exempt from Davis-Bacon requirements and must be paid the prevailing wage rate for the classification of work performed.
10. Apprenticeship Provisions	
	<b>West Virginia does not have an approved USDOL apprenticeship or trainee program, so all apprentices must be registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, to be paid less than the Davis-Bacon rate for the work they perform.</b>
1.	Documentation of Apprentice registration must be submitted with the first payroll on which he appears. If the papers are not submitted, the employee must be paid the mechanic rate for the classification of work being performed. The apprentice must be registered prior to going to work on the job.
2.	The Journeyman-Apprentice ratio must be observed. If more apprentices per journeymen are used than permitted, the extras must be paid at the journeyman's rate.

11. Wage Interviews	
	Every contractor must make their employees available for interviews at the job site with the contract administrator or other agency representative.
12. Working Subcontractors	
	In the event the general contractor or the subcontractor hires a self-employed proprietor (someone who has no employees so will perform all the work himself/herself), the Davis-Bacon rate must be paid and the following procedure must be followed:
1.	Report the self-employed proprietor on the certified payroll of whoever hired them.
2.	Provide their name, address and social security number.
3.	State their classification of work (i.e. "finish carpenter").
4.	Indicated daily hours of work, by date, and the total hours per week.
5.	Show the hourly rate of pay, with the gross amount earned in the week.
6.	Enter "self-employed" and their contracting license number, where the payroll asked for "deductions."
7.	"Owner-operators" of trucks who are independent contractors and working on site must be reported on weekly payrolls. The payrolls do not need to show the hours worked or rates, only the notation Owner-operator.
13. Truck Drivers	
	Truck drivers employed by a construction contractor or construction subcontractor are not covered by Davis-Bacon prevailing wage requirements while engaged in transporting materials or supplies to or from <b>(BUT NOT DIRECTLY ON)</b> the site of the work. <b>These truck drivers must be paid Davis-Bacon rates for their time spent while employed "directly upon the site of the work."</b> They would also be covered while hauling between the project site and any special facilities established exclusively for the project (i.e., "dedicated facilities" under 29 CFR 5.2(1)(2)).
14. Violations	
	Withholding of funds, termination of the contract or contractor debarment.
15. Equal Employment Opportunity	
	The utilization of apprentices, trainees and journeymen shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.
16. Section 3 Hiring and Contracting Activity – HUD Annual Report 60002	
1.	Section 3 is MANDATORY for all CDBG projects. Under Section 3, Grantees, contractors and subcontractors must actively work to recruit and hire Section 3 residents and direct economic opportunities to Section 3 businesses. Current regulations require compliance with Section 3 for contractors and subcontractors whose contract amount exceeds \$100,000.
2.	The prime contractor and any subcontractors subject to Section 3 should submit a list of existing employees to the project administrator prior to construction. If additional employees are needed to complete a project, stringent Federal regulations apply to hiring activity, and all parties have a role in ensuring compliance.

3.	<p>Covered contractors must make a good faith effort to utilize Section 3 area residents as trainees and employees in connection with the project. Targeted recruitment and the selection of Section 3 area residents for available positions are two examples of good faith efforts that meet this requirement.</p> <p>All residents of public housing are considered Section 3 residents. A list of public housing authorities is available from the WVDO.</p>
4.	<p>Covered contractors must make a good faith effort to award contracts to Section 3 business concerns for work in connection with the project.</p>
5.	<p>Covered contractors must keep records documenting good faith efforts taken and results of these efforts.</p>
6.	<p>In addition to the certifications and Clauses in the Supplemental General Conditions, all covered contractors are required to complete an annual Section 3 Summary Report. If no Section 3 hiring or business activity occurred, the Grantee must document the actions taken to achieve compliance, and explain why these actions fell short of Section 3 hiring or business activity.</p>

17. Changes	
1.	<p>All work on a CDBG project must remain in the project area identified in the grant application and the environmental review record. Grant funds are awarded based upon strict criteria according to HUD National Objectives. <b>No changes can be made to the project area or beneficiaries without the written consent of the WVDO, upon the request of the Grantee.</b> Change orders are generally not approved prior to the start of construction.</p>
2.	<p>The Grantee may approve field expedient change orders that add minimally or incidentally to the project cost (\$10,000 or less), provided that approval is based upon a finding that the change is within the approved project scope and is necessary for the successful completion of the project and provided that sufficient funds are on hand to cover the change without jeopardizing the completion of the project. <b>All work initiated under a change order must be eligible under the CDBG guidelines.</b> The Grantee assumes responsibility for making eligibility determination prior to State concurrence. <b>Under no circumstances will the Grantee approve change orders that alter the scope of the project or which adversely affect the project.</b></p>
3.	<p>All change orders over <b>\$10,000</b> will be prepared by the architect/engineer and will be presented to the Grantee and the WVDO for approval with necessary supporting documentation including estimates, specifications and plans. A change order request must be signed by the engineer, Grantee and contractor. <b>No action can be taken without the approval of the WVDO.</b> Any work started prior to approval cannot be reimbursed with CDBG funds.</p>

This document may serve as minutes to the conference. Please add any additional pages as necessary.

Please sign two documents; one for the grant administrator and one for the contractor.

**Contractor**

**Date**

**Grantee Representative**

**Date**

**CDBG-Small Cities Block Grant Program  
PRE-CONSTRUCTION CONFERENCE CHECKLIST/MINUTES**

<b>Minutes Written By:</b>	<b>Date:</b>





**West Virginia CDBG-Small Cities Block Grant Program  
NOTICE TO PROCEED WITH CONSTRUCTION**

**TO:** Contractor

**FROM:**

**DATE:**

**SUBJECT: NOTICE TO PROCEED WITH CONSTRUCTION**

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\_\_\_\_\_ (Project name), located at  
\_\_\_\_\_ (Address), was awarded to  
\_\_\_\_\_ (Name of Contractor) on \_\_\_\_\_ (Date).

The Contractor is hereby notified to commence work set forth in the contract on or before \_\_\_\_\_ (Date).

All work is to be done in accordance with the plans, specifications and conditions provided in the contract.

The project must be fully complete within \_\_\_\_\_ (Number) consecutive calendar days after (Date). The date of completion of all work is therefore \_\_\_\_\_ (Date). Contractor will pay as liquidated damages the sum of \$\_\_\_\_\_ (Amount) as stipulated in the contract document.

Please acknowledge receipt of this Notice by signing the space below and returning a copy to this office. If you have any question, please feel free to contact our office. .

Sincerely,

Project Engineer

**Acceptance of Notice**

Receipt of the above Notice to Proceed is hereby acknowledged by \_\_\_\_\_ (Name) this \_\_\_\_\_ (Number) day of \_\_\_\_\_ (Month), \_\_\_\_\_ (Year).

By \_\_\_\_\_ Title \_\_\_\_\_



# Chapter Seven: Labor Compliance

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## Table of Contents

	<b>Page</b>
Labor Compliance Officer .....	7-1
Supporting Materials .....	7-1
Federal Labor Laws .....	7-1
Labor Standards Compliance Files .....	7-2
Authorization to use Force Account Labor .....	7-3
Federal and State Wage Determination .....	7-3
Bid Document Review .....	7-5
Wage Rate Review .....	7-5
Wage Rate Lock-In Date .....	7-5
Wage Sheet and Classification Review .....	7-6
Labor Standards Compliance Procedure .....	7-6
Worksite Postings .....	7-6
Wage Payment Compliance .....	7-7
Certified Payroll Submission .....	7-9
Semi-Annual Labor Standards Enforcement Report .....	7-10
Final Wage Compliance Report .....	7-10
Reference Materials .....	7-10

**Introduction**

Chapter 7: Labor Compliance provides information on the labor standards applicable to Community Development Block Grant (CDBG) projects and other related topics. Construction that is funded in whole or in part with CDBG funds must comply with all applicable federal labor standards requirements. This chapter describes the policies and procedures that must be followed to ensure compliance with these laws and regulations.

**Labor Compliance Officer**

Appoint a Labor Compliance Officer. This individual will be responsible for coordinating and ensuring compliance with all federal and state labor standards.

**Supporting Materials**

Attachment 7-1	Request to Use Force Account Labor
Attachment 7-2	West Virginia Code Article 22
Attachment 7-3	Project Wage Rate Sheet
Attachment 7-4	Labor Standards Complaint Procedure
Attachment 7-5	Final Wage Compliance Form

**Federal Labor Laws****Applicability of Federal Labor Provisions**

Most construction projects, including alteration, repair or demolition, funded in whole or in part with federal funds, must comply with federal labor standards provisions. The three primary federal laws governing labor standards are the Davis-Bacon Act; the Contract Work Hours and Safety Standards Act; and the Copeland Act (Anti-Kickback Act).

- **Davis-Bacon Act**  
(40 USC 276a – 276a-5)  
[www.dol.gov/whd/regs/statutes/dbra.htm](http://www.dol.gov/whd/regs/statutes/dbra.htm)

The Davis-Bacon Act requires payment of locally "prevailing wages" and fringe benefits to laborers and mechanics employed on federally-funded contracts in excess of \$2,000 for construction, alterations, or repair of public buildings or public works. Congress extended the Davis-Bacon prevailing wage requirements to other federal laws which provide federal assistance for construction through grants, loans, loan guarantees and insurance rather than direct contracts for construction with federal agencies. Section 110, Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301) requires the payment of prevailing wages set in accordance with the Davis-Bacon Act.

- **Contract Work Hours and Safety Standards Act, as Amended**  
(40 USC 327-333)  
[www.dol.gov/whd/regs/statutes/safe01.pdf](http://www.dol.gov/whd/regs/statutes/safe01.pdf)

The Contract Work Hours and Safety Standards Act, as amended, requires overtime pay for laborers and mechanics at a rate of one and one-half times the basic rate of pay for hours worked on covered contracts in excess of 40 hours in a workweek. This act also requires the

assessment of liquidated damages at the rate of \$10 per day for each day that each laborer and mechanic worked without payment of the required overtime compensation. This act has no job site limitation.

- **Copeland Act ("Anti-Kickback" Act)**  
(18 USC 874 and 40 USC 276c)  
[www.dol.gov/compliance/laws/comp-copeland.htm](http://www.dol.gov/compliance/laws/comp-copeland.htm)

The Copeland Act (Anti-Kickback Act) makes it a crime for anyone to require laborers or mechanics employed on a federal or federally assisted project to "kickback" any part of their wages. The act also requires every contractor and subcontractor to submit weekly payroll reports that include a "Statement of Compliance." The act also regulates payroll deductions from wages.

### **Section 3 of the Housing and Urban Development Act of 1968**

[www.hud.gov/section3](http://www.hud.gov/section3)

Section 3 of the Housing and Urban Development Act of 1968, as amended requires the provision of opportunities for training and employment that arise through HUD-assisted financed project to lower-income residents of the project area. Also required is that contracts be awarded to businesses that provide economic opportunities for low- and very low-income persons residing in the area.

- The [Section 3 Business Registry](http://www.hud.gov/section3biz) is a tool to help grantees meet their regulatory obligations by providing a list of local self-certified Section 3 businesses. The Section 3 Business Registry can identify prospective firms to be notified about the availability of local HUD-funded contracts. The site can be searched by state, city, county, or type of business at [www.hud.gov/section3biz](http://www.hud.gov/section3biz).

### **Labor Standards Compliance Files**

Comprehensive labor standards files must be established for each construction contract. At project completion, each file should contain the following items:

- Copies of applicable federal and state wage rates.  
[www.access.gpo.gov/davisbacon/allstates.html](http://www.access.gpo.gov/davisbacon/allstates.html) and  
[www.sos.wv.gov/administrative-law/wagerates/Pages/default.aspx](http://www.sos.wv.gov/administrative-law/wagerates/Pages/default.aspx)
- Verification of 10-day check of wages prior to bid opening.  
([www.access.gpo.gov/davisbacon/allstates.html](http://www.access.gpo.gov/davisbacon/allstates.html))
- Copy of labor standards complaint procedure.
- Bid advertisement with Affidavit of Publication.
- Weekly certified payrolls (signed), Statements of Compliance and evidence that payrolls were checked against the applicable wage determinations.  
([www.dol.gov/whd/forms/wh347.pdf](http://www.dol.gov/whd/forms/wh347.pdf))
- Additional classification requests.

- Copies of the Record of Employee Interview.  
([portal.hud.gov/hudportal/documents/huddoc?id=11.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=11.pdf))  
([www.hud.gov/offices/adm/hudclips/forms/files/11SP.doc](http://www.hud.gov/offices/adm/hudclips/forms/files/11SP.doc)) *Spanish version*
- Verification of contractor eligibility to work on a federally funded project.  
([www.sam.gov](http://www.sam.gov))
- Evidence that on-site interviews were checked against the payrolls and the applicable wage determination.
- Evidence that the Davis-Bacon wage rates and state wage rates were posted at the construction site.
- Evidence of restitution/resolution of identified discrepancies.
- Complaints from workers, if any, and actions taken.
- Liquidated damages assessed, appeals, if any, and outcome.

### **Authorization to use Force Account Labor**

In the event that the Grantee decides to use its own, full-time, competent employees to construct a project funded with CDBG funds, the Grantee must submit a **Request to Use Force Account Labor on a CDBG Project (Attachment 7-1)**, to the West Virginia Development Office (WVDO) for review and approval before construction can begin.

Please note that the Grantee must use full-time employees that are currently on their payroll. State law prohibits Grantees from hiring additional employees to complete work on a project funded with CDBG funds. In order to reimburse the Grantee for costs associated with labor performed by its own employees on a CDBG project, timesheets must be maintained and submitted with each Request for Payment where reimbursement of labor costs is requested.

### **Federal and State Wage Determination**

The Grantee must secure copies of both federal and state wage rates.

#### **A. Federal Wage Determinations**

Applicable federal wage determinations must be obtained online at [www.access.gpo.gov/davisbacon/allstates.html](http://www.access.gpo.gov/davisbacon/allstates.html).

If the project is assisted by another federal granting agency which requires that wage rate determinations be secured through another process, such procedures are acceptable provided that all federal requirements for securing wage rate determinations and modifications are met and that such documentation is entered into the project file.

## 1. Federal General Wage Determinations

The Wage and Hour Division of the United States Department of Labor issues Davis-Bacon wage determinations also known as general determinations or area determinations.

The term "wage determination" is defined as including not only the original decision but any subsequent decisions modifying, superseding, correcting or otherwise changing the rates and/or scope of the original decision.

General wage determinations have been issued and are now in effect for most counties for each general type of construction.

- General wage determinations are issued in the publication, *General Wage Determinations Issued Under the Davis-Bacon And Related Acts*.
- Each year a new annual edition of this publication is issued in the month of February. Each annual edition supersedes general wage determination issued previously and new wage decision numbers reflect the new edition number.
- Throughout the year, weekly updates or modifications are issued to the general wage decisions. Each week, commonly on Friday, a notice is published in the *Federal Register* that lists the general wage determinations being issued, modified or withdrawn, i.e., WV20140003 with nine modifications.
- These determinations are effective from their date of publication without a stated expiration date or until they are modified in the *Federal Register*.
- Four types of General Wage Determinations are: Building Construction; Residential Construction; Heavy Construction; and Highway Construction All Agency Memorandum No. 130 – HUD.  
[www.wdol.gov/aam/AAM130.pdf](http://www.wdol.gov/aam/AAM130.pdf)

**Please note:** To request additional classifications to a general wage determination, the Report of Additional Classification and Rate form must be utilized ([portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_12573.doc](http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_12573.doc)), which is further discussed under Task 9, Review of Project Wage Sheet and Applicable Wage Classifications before Start of Construction.

## 2. State Wage Rates

State wage rates must be obtained directly from the West Virginia Secretary of State's Office by contacting the Administrative Law Division at 304-558-6000 or by accessing the wage rates on the internet at [www.wvsos.com](http://www.wvsos.com).

State wage rates are issued annually and published in January of each year. Unlike the federal wage determination, state wage rates are not subject to modification throughout the year.

- Three types of state wage rates: Building Construction; Heavy Construction; and Highway Construction.

### 3. Prevailing Wages

The higher of the wages listed for each job classification on the federal wage determination or the state wage rates is the prevailing wage and **must** be paid during the project.

Note: In 2015, the state transferred responsibility for the determination of prevailing wages from the West Virginia Division of Labor to Workforce West Virginia. The West Virginia Secretary of State will continue to publish current and future wage rates. Exemptions to prevailing wage regulations are as follows:

- If a contract is under \$500,000 and there is federal funding in the project, only the federal rates will apply.
- If a contract exceeds \$500,000 and there is federal funding in the project, the prevailing wage – the higher of the state or federal rate – will apply.

### **Bid Document Review**

Compliance requirements for Labor Standards are included in the language of the federal statutes that formulate the Labor Standards. This language must appear in all bid advertisements and bid and contract documents. The Grantee and its designated Labor Compliance Officer must be familiar with compliance requirements and assume the responsibility for ensuring that compliance and monitoring is undertaken. See HUD Handbook 1344, Rev. 1., Federal Labor Standards Compliance in Housing and Community Development Programs: [www.tinyurl.com/HUDFLSR](http://www.tinyurl.com/HUDFLSR)

### **Wage Rate Review**

Ten calendar days before the opening of bids, the Grantee must determine if there have been any modifications to the wage determination(s). The Wage Determination link can be found at: [www.access.gpo.gov/davisbacon/allstates.html](http://www.access.gpo.gov/davisbacon/allstates.html). All modifications to the wage determination(s) are effective unless published less than 10 calendar days before the opening of bids.

- If the federal wage rates have been modified, an addendum to the bid document must be issued to all contractors who have requested bid packages at least five days prior to bid opening.

Please note that failure to conduct a 10-day wage check prior to bid opening will result in a monitoring finding. It will also make the Grantee responsible for making restitution to any affected employees if prevailing wage rates have not been paid.

### **Wage Rate Lock-In Date**

For contracts entered into pursuant to competitive bidding procedures, the bid opening date “locks-in” the federal wage determination and the state wage rates utilized in the bid document provided that the contract is awarded within 90 days. If the contract is awarded more than 90 days after bid opening, the contract award date “locks-in” the federal wage determination and the state wage rates.

## Wage Sheet and Classification Review

### Review of Project Wage Sheet

Prior to the start of construction, all contractors are required to submit a **Project Wage Sheet (Attachment 7-3)**. This sheet will list all work classifications that the contractor will utilize to perform work under the contract. The form will also designate if the prevailing rate is a federal or state rate, list the basic hourly rate with the fringe benefit rate and the total of both. The Project Wage Sheet must be reviewed and approved by the project engineer with respect to the work classifications to be used for the construction phase of the project. Also, the Project Wage Sheet must be reviewed and approved by the Grantee's labor compliance officer with respect to the wage rates and fringe benefits rates that are to be paid for each work classification.

### Additional Classifications

Any class of laborers or mechanics not listed in the initial wage determination shall be additionally classified in conformance with the wage determination. If additional classifications under the federal wage determinations are required, the Labor Compliance Officer will submit a "Report of Additional Classifications and Rate" form, located online at: ([portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_12573.doc](http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_12573.doc)), to the WVDO.

The WVDO will forward the request to the HUD Area Office for submission and approval by the United States Department of Labor. A report on additional classification actions must be approved, modified or disapproved by the United States Department of Labor's Administrator of the Wage and Hour Division, Employment Standards Administration, within 30 days of receipt.

### Minimum Criteria for Additional Classification Requests

Additional classification will be approved only when the following criteria have been met:

- a. The work to be performed by the classification requested is not performed by a classification in the wage determination;
- b. The classification is utilized in the area by the construction industry; and
- c. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

## Labor Standards Compliance Procedure

The Grantee must adopt a written Labor Standards Complaint Procedure (**Attachment 7-4**) that addresses how all complaints related to labor standards will be handled and resolved. A copy of the procedure must be maintained in the Grantee's labor files. Also, the Labor Compliance Officer's name, address and telephone number must be posted in a prominent location during the entire course of work at the project work site.

## Worksite Postings

The Labor Compliance Officer must secure and post the following work site posters at the site of work:

1. **NOTICE TO ALL EMPLOYEES**  
[www.dol.gov/whd/regs/compliance/posters/davis.htm](http://www.dol.gov/whd/regs/compliance/posters/davis.htm)
2. **EQUAL EMPLOYMENT OPPORTUNITY**  
[www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm](http://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm)
3. **JOB SAFETY AND HEALTH PROTECTION**  
[www.osha.gov/Publications/poster.html](http://www.osha.gov/Publications/poster.html)

The Labor Compliance Officer must also post legible copies of the applicable wage determination at the work site. Work site posters and the applicable wage determinations must be displayed in a prominent location and protected from the weather during the entire course of work. Also, the wage determinations must be accessible to employees at all times.

### **Wage Payment Compliance**

#### **Weekly Certified Payrolls and Basic Records**

When construction begins, the contractor is required to submit certified (signed) weekly payrolls on the **U.S. Department of Labor Wage and Hour Division Payroll Form-WH-347** ([www.dol.gov/whd/forms/wh347instr.htm](http://www.dol.gov/whd/forms/wh347instr.htm)).

**The Grantee must monitor this requirement to ensure that weekly certified payrolls are submitted and records are kept.**

The Grantee must submit the **first two certified payroll reviews** from each contractor or subcontractor working on a CDBG project to the WVDO. The WVDO will verify that the certified payroll reviews ensure that the contractor and subcontractor(s) have met minimum state and federal labor compliance requirements.

Payroll records shall contain the employee's full name and identifying number (**last four digits of the social security number**). The payroll records must also reflect correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, bona fide plans or programs for providing fringe benefits, written evidence of registered or certified apprentice or trainee programs, registration of apprentices or trainees and ratios, and wage rates prescribed in these programs.

Signed weekly certified payrolls must be submitted for each week in which any contract work is performed. The primary contractor is responsible for the submission of copies of payrolls by all subcontractors. Each payroll must be accompanied by a Statement of Compliance (with Davis-Bacon and Copeland Anti-Kickback Act provisions) signed by the contractor or subcontractor. If the signatory on the Statement of Compliance is not an officer of the contractor's or subcontractor's company, the chief executive officer must prepare a letter on company letterhead assigning signatory authority to another individual, such as a payroll officer, to sign on his/her behalf.

#### **Payment of Fringe Benefits**

Whenever the minimum wage rates prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor

shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent.

Any payment of fringe benefits other than cash payment must be verified by the agency which received the payment. The contract file must contain a listing provided by the bona fide fringe benefit plan for each employee, verifying the payment made.

### On-Site Interviews

**The Grantee must conduct on-site interviews using a HUD Form 11, Record of Employee Interview [[portal.hud.gov/hudportal/documents/huddoc?id=11.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=11.pdf)].**

The interview must include a sufficient sample of job classifications represented on the job to allow for a reasonable judgment as to compliance. **The Grantee's Labor Compliance Officer should conduct such on-site interviews with all prime contractors and subcontractors during the first month of construction. Thereafter, employee interviews must be conducted a minimum of once every other month (one time in 60-day intervals) or as needed if any discrepancies are found between the on-site interviews and the payroll review.** Labor interviews may be conducted more frequently depending on the number of subcontractors working on a project.

The Labor Compliance Officer must compare on-site interviews against applicable payrolls. Any action needed to correct any discrepancies should be undertaken immediately with the contractor and reported to the WVDO as soon as possible after the action and again at the completion of the contract. The Labor Compliance Officer must sign and comment in the payroll examination section on each interview form following review and approval of the applicable certified payroll.

### Freedom of Information Act (FOIA) Requests

If a Freedom of Information Act request is submitted for copies of certified payrolls, all identifiers that include employee name, address and social security numbers must be removed.

### Failure to Use Wage Determinations/Use of Incorrect Determination

The failure to include the required wage determination(s) and appropriate labor standards provisions in bid documents or contracts will not relieve the Grantee or contractors from potential liabilities for enforcement actions. Any failure to include a wage determination must be immediately rectified. The United States Department of Labor may issue a wage determination(s) after contract award or after the beginning of construction if the Grantee has failed to include a wage determination in a contract or has used a wage determination which by its terms clearly does not apply to the contract.

### Use of Wrong Determination

If an incorrect wage determination is included in bid and/or contract documents, the WVDO may request the United States Department of Labor to issue a wage determination which shall be applicable to a contract after contract award or after the start of construction. Also, a new wage determination must be issued if the Grantee has inaccurately described the project or its location in its request for a wage determination. The Grantee shall either terminate the contract with the invalid wage determination or shall make the valid wage determination retroactive to the beginning of construction through a supplemental agreement or through change order and shall compensate the contractor for any increases in wages resulting from such change.

The method used in implementing the valid wage determination and adjustment in contract price, where appropriate, should be in accordance with applicable contract law. Where a clerical error was made in a published general wage determination or issued project wage determination, the United States Department of Labor will issue a letter of inadvertence. Corrections shall be included in any bid documents or in any ongoing contract retroactively to the start of construction.

### **Failure to Pay Prevailing Wages**

In the event of a contractor's or subcontractor's failure to pay all or part of the wages required by the contract to any laborer or mechanic, including any apprentice or trainee, employed or working on the site of work or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project, the Grantee may after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance or guarantee of funds until such violations have ceased. The WVDO must immediately be notified of all such actions.

### **Failure to Pay Overtime Compensation**

In the event of violation of the overtime provision of the Contract Work Hours and Safety Standards Act, the contractor and any subcontractor responsible shall be liable for the unpaid wages and any liquidated damages.

The Grantee shall upon its own action or upon written request from the WVDO withhold or cause to be withheld any money payable on account for work performed by the contractor or subcontractor. Also, money payable to the same contractor may be withheld from other federal contracts. This also applies to any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor. The amount of money withheld may be determined by the amount necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages. The WVDO must be immediately notified of all such actions.

### **Debarment Proceeding**

Whenever any contractor or subcontractor is found to be in aggravated or willful violation of the labor standards provisions of any applicable statutes or who have been found to have disregarded required obligations to employees under the Davis-Bacon Act, such contractors or subcontractors shall be ineligible to receive any federal contracts. The WVDO must be immediately notified of all such actions.

## **Certified Payroll Submission**

### **The Grantee must submit the first two certified payroll reviews from each contractor or subcontractor working on a CDBG project.**

The WVDO will complete a desk review of the certified payroll reviews to ensure that the contractor and subcontractor(s) have met minimum state and federal labor compliance requirements. If any deficiencies are noted during that review, technical assistance will be provided by the WVDO to assist the Labor Compliance Officer to resolve the deficiencies.

**Semi-Annual Labor Standards Enforcement Report - HUD Form 4710**

In compliance with 29 CFR Part 5, Section 5.7(b), the U.S. Department of Labor requires that the WVDO provide a semi-annual report on compliance with, and the enforcement of, labor standard provisions of Davis-Bacon and its related acts.

The WVDO will notify the labor compliance officer that the Semi-Annual Labor Standards Enforcement Report [portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_12575.doc](http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_12575.doc) must be submitted for all construction contracts awarded during two reporting periods: April 1st to September 30<sup>th</sup>, and October 1st to March 31st. Failure to submit a report will result in a finding of noncompliance.

**Final Wage Compliance Report**

After completion of the project, the Grantee must submit a Final Wage Compliance Report (**Attachment 7-5**). This form is contained in the Final Performance Report, which is utilized for project closeout.

For additional information concerning questions related to labor compliance issues or for clarification of labor compliance standards please contact the WVDO.

**Reference Materials**

- Making Davis-Bacon Work: A Contractor's Guide to Prevailing Wage Requirements for Federally-Assisted Construction Projects  
[www.tinyurl.com/HUD-LR-4812](http://www.tinyurl.com/HUD-LR-4812)
- HUD's "On the Mark!" series  
[portal.hud.gov/hudportal/HUD?src=/program\\_offices/labor\\_standards\\_enforcement/olr\\_otm](http://portal.hud.gov/hudportal/HUD?src=/program_offices/labor_standards_enforcement/olr_otm)
- HUD's Labor Relations Letters  
[www.hud.gov/offices/adm/hudclips/letters/lrletters.cfm](http://www.hud.gov/offices/adm/hudclips/letters/lrletters.cfm)
- U.S. Department of Labor Regulations  
[www.dol.gov/whd/](http://www.dol.gov/whd/)
- U.S. Department of Labor Minority Participation Rates  
[www.dol.gov/ofccp/TAquides/TAC\\_FedContractors\\_JRF\\_QA\\_508c.pdf](http://www.dol.gov/ofccp/TAquides/TAC_FedContractors_JRF_QA_508c.pdf)

# Chapter 7

## Labor Compliance



## REQUEST TO USE FORCE ACCOUNT LABOR ON A CDBG-SCBG PROJECT

Responses to the following questions must be submitted to, and approved by, the West Virginia Development Office, prior to undertaking a project by force account:

1. Identify existing positions that constitute the "regular full-time employees" of the grantee/applicant. Enclose documentation-budget or comparable information.
2. Who will professionally design the proposed "force account" project? If not a registered engineer or architect, give a listing of the responsible person's design qualifications and construction experience.
3. How will the grantee/applicant ensure that "force account" construction meets accepted engineering standards?
4. What state or local permits or approvals are required for the design and construction of this project? When in the process will the permits be obtained? Who is responsible to see that such approvals are obtained and that construction is carried out accordingly?
5. What specific arrangements are proposed for full-time supervision of force account workers and equipment?
  - Specifically, who will supervise the work to ensure that construction is undertaken in accordance with standard construction practices and the plans and specifications as approved? What prior experience does this person have?
  - Identify the workforce's past construction experience on comparable projects.
  - What equipment is necessary to carry out this project? Is the equipment available and adequate? If not, how or where is equipment to be obtained?
  - Address the issue regarding possible "job competition" from the grantee's/applicant's other work and/or emergencies. In other words, once the new project is started, how will it affect the normal workload of the work force? Does the capacity really exist to do both?
6. What is the proposed schedule, taking into consideration possible construction problems such as subsoil conditions, equipment, work competition, weather and emergency problems? Is this schedule reasonable and timely?

**5-22-1. Bidding required; government construction contracts to go to lowest qualified responsible bidder; procedures to be followed in awarding government construction projects; penalties for violation of procedures and requirements debarment; exceptions.**

- A. This section and the requirements set forth in this section may be referred to as the "West Virginia Fairness In Competitive Bidding Act."
- B. As used in this section:

- (a) "Lowest qualified responsible bidder" means the bidder that bids the lowest price and that meets, as a minimum, all the following requirements in connection with the bidder's response to the bid solicitation. The bidder must certify that it:
1. Is ready, able and willing to timely furnish the labor and materials required to complete the contract;
  2. Is in compliance with all applicable laws of the state of West Virginia; and
  3. Has supplied a valid bid bond or other surety authorized or approved by the contracting public entity.
- (b) "The state and its subdivisions" means the state of West Virginia, every political subdivision thereof, every administrative entity that includes such a subdivision, all municipalities and all county boards of education.
- C. The state and its subdivisions shall, except as provided in this section, solicit competitive bids for every construction project exceeding twenty-five thousand dollars in total cost: *Provided*, That a vendor who has been debarred pursuant to the provisions of sections thirty-three-a through thirty-three-f, inclusive, article three, chapter five-a of this code may not bid on or be awarded a contract under this section. All bids submitted pursuant to this chapter shall include a valid bid bond or other surety as approved by the State of West Virginia or its subdivisions.
- D. Following the solicitation of bids, the construction contract shall be awarded to the lowest qualified responsible bidder who shall furnish a sufficient performance and payment bond: *Provided* that the state and its subdivisions may reject all bids and solicit new bids on the project.
- E. The contracting public entity may not award the contract to a bidder which fails to meet the minimum requirements set out in this section. As to any prospective low bidder which the contracting public entity determines not to have met any one or more of the requirements of this section or other requirements as determined by the public entity in the written bid solicitation, prior to the time a contract award is made, the contracting public entity shall document in writing and in reasonable detail the basis for the determination and shall place the writing in the bid file. After the award of a bid under this section, the bid file of the contracting public agency and all bids submitted in response to the bid solicitation shall be open and available for public inspection.
- F. Any public official or other person who individually or together with others knowingly makes an award of a contract under this section in violation of the procedures and requirements of this section is subject to the penalties set forth in section twenty-nine, article three, chapter five-a of the code of West Virginia.
- G. No officer or employee of this state or of any public agency, public authority, public corporation or other public entity and no person acting or purporting to act on behalf of such officer or employee or public entity shall require that any performance bond, payment bond or surety bond required or permitted by this section be obtained from any particular surety company, agent, broker or producer.

- H. All bids shall be open in accordance with the provisions of section two of this article, except design-build projects which are governed by article twenty-two-a of this chapter and are exempt from these provisions.
- I. Nothing in this section shall apply to:
- (a) Work performed on construction or repair projects by regular full-time employees of the state or its subdivisions;
  - (b) Prevent students enrolled in vocational educational schools from being utilized in construction or repair projects when the use is a part of the student's training program;
  - (c) Emergency repairs to building components and systems. For the purpose of this subdivision, the term emergency repairs means repairs that if not made immediately will seriously impair the use of building components and systems or cause danger to those persons using the building components and systems; and
  - (d) Any situation where the state or a subdivision thereof reaches an agreement with volunteers, or a volunteer group, whereby the governmental body will provide construction or repair materials, architectural, engineering, technical or any other professional services and the volunteers will provide the necessary labor without charge to, or liability upon, the governmental body.

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**Signature**

**Date**

**W. VA. CODE ARTICLE 22. GOVERNMENT CONSTRUCTION CONTRACTS.****§5-22-1: Bidding required; government construction contracts to go to qualified responsible bidder; debarment; exceptions.**

- (a) As used in this section, "the state and its subdivisions" means the State of West Virginia, every political subdivision thereof, every administrative entity that includes such a subdivision, all municipalities and all county boards of education.
- (b) The State and its subdivisions shall, except as provided in this section, solicit competitive bids for every construction project exceeding twenty-five thousand dollars in total cost **provided** that a vender who has been debarred pursuant to the provisions of Sections thirty-three-three-a through thirty-three-f, article three, chapter 5-a of this code, may not bid on or be awarded a contract under this section.
- (c) Following the solicitation of such bids, the construction contract shall be awarded to the lowest qualified responsible bidder, who shall furnish a sufficient performance and payment bond **provided** that the state and its subdivisions may reject all bids and solicit new bids on said project.
- (d) Nothing in this Section shall apply:
  - (1) Work performed on construction or repair projects by regular full-time employees of the state or its subdivisions;
  - (2) Prevent students enrolled in vocational educational schools from being utilized in construction or report projects when such use is a part of the students training program;
  - (3) Emergency repairs to building components and systems. For the purpose of this subdivision, emergency repairs means repairs that if not made immediately will seriously impair the use of such building components and systems, or cause danger to those persons using such building components and systems; and
  - (4) Any situation where the state or subdivision thereof shall come to an agreement with volunteers, or a volunteer group, whereby the governmental body will provide construction or repair materials, architectural, engineering, and technical or any other professional services and the volunteers will provide the necessary labor with charge to, or liability upon, the governmental body.

**CDBG-SCBG PROJECT WAGE RATE SHEET**

<b>Grantee</b>	
<b>Project Name</b>	

<b>Project #</b>	
<b>Date</b>	

<b>Wage Decisions</b>	
<b>County</b>	

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<i>Classification</i>	<b>FEDERAL</b>				
	<i>Number of Each</i>	<i>Basic Hourly Rate</i>	<i>Fringe Benefits</i>	<i>Total Hourly Rate</i>	<i>Overtime Rate</i>
				\$0.00	
				\$0.00	
				\$0.00	
				\$0.00	
				\$0.00	
				\$0.00	
				\$0.00	
				\$0.00	
				\$0.00	
				\$0.00	
				\$0.00	

<b>STATE</b>			
<i>Basic Hourly Rate</i>	<i>Fringe Benefits</i>	<i>Total Hourly Rate</i>	<i>Overtime Rate</i>
		\$0.00	
		\$0.00	
		\$0.00	
		\$0.00	
		\$0.00	
		\$0.00	
		\$0.00	
		\$0.00	
		\$0.00	
		\$0.00	
		\$0.00	
		\$0.00	

Basic + Fringe = Total Hourly Rate

When construction begins, submit this form with the Notice to Proceed.  
 Circle the wage rates used to pay each classification during the entire course of work on this project.

The Labor Compliance Officer, on behalf of the Grantee, certifies that the contract was awarded within ninety (90) days of the bid opening or that an extension was received from the USDOL authorizing the use of wage rates contained in the bid document or applicable addendum. The Labor Compliance Officer also certifies that the prevailing wage rates listed above, which were provided by the contractor, are correct.

**Submitted by**

**Approved by**

\_\_\_\_\_  
**Contractor** **Date**

\_\_\_\_\_  
**Labor Compliance Officer** **Date**

**LABOR STANDARDS COMPLAINT PROCEDURE**

Labor Standards Complain Procedure for the \_\_\_\_\_.

Any person with a Labor Standards complaint concerning the

\_\_\_\_\_

for which the Davis-Bacon and Related Acts apply, may file a complaint according to the following procedure:

**STEP ONE**

The complaint will be submitted either verbally or in writing to the Labor Compliance Officer setting forth the nature of the complaint and the facts upon which the complaint is based.

**STEP TWO**

The Labor Compliance Officer will review all documents associated with the complaint including the certified payroll reports and employee interview forms within seven (7) days of receiving the complaint and will verify that a basis for the complaint exists.

**STEP THREE**

If a valid complaint exists and cannot be resolved through informal discussion, the Labor Compliance Officer will prepare a written request to the contractor to resolve the issue in dispute and to make restitution, if owed, to the complainant. The contractor will have fourteen (14) days to respond to this request.

**STEP FOUR**

If the issue is not resolved by the contractor within fourteen days, the Labor Compliance Officer will withhold payment from the contractor for the wages due and will contact the West Virginia Development Office regarding the situation.

Adopted by the \_\_\_\_\_ during its regular meeting on

\_\_\_\_\_.

\_\_\_\_\_  
**Chief Elected Official**

\_\_\_\_\_  
**Date**

Attested by: \_\_\_\_\_

**FINAL WAGE COMPLIANCE**

*(Submit with the Final Performance Report)*

<b>Grantee</b>		<b>Project #</b>	
<b>Project Name</b>			

1. While reviewing the Contractor's weekly payrolls, were any laborers or mechanics paid less than the minimum wage rate plus fringe benefits (Davis-Bacon) as specified in the Secretary of Labor's Wage Decision that applied to this project?

Yes  No

2. While reviewing the Contractor's weekly payrolls, were any laborers or mechanics paid less than the overtime rate required by the Contract Work Hours and Safety Standards Act?

Yes  No

3. If the answer to either question 1 or 2 is Yes, provide the following information:

- a. Total amount of restitution paid \$ \_\_\_\_\_
- b. Total amount of liquidated damages \$ \_\_\_\_\_
- c. Method of payment  by Contractor  
 by funds withheld from Contractor

4.

Contractor Name	Nature of Violation	Number of Workers	Full Restitution Paid	Liquidated Damages Paid

**LABOR STANDARDS COMPLIANCE  
MONITORING CHECKLIST**

- 1. Does the Grantee have a designated Labor Compliance Officer to ensure labor standard compliance?
 

Yes  No
- 2. Did the Grantee use force account labor on this project?
 

Yes  No
- 3. If yes, did the project files contain and approval from the WVDO?
 

Yes  No

If no, please explain:

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- 4. Are federal wage rates applicable to this project? Yes  No
- 5. Did the bid advertisement contain the applicable Federal Labor Standards Clause?
 

Yes  No
- 6. Did the bid documents include the applicable federal wage determinations?
 

Building	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Heavy	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Highway	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Residential	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>

7. Which federal wage determination(s) was included in the bid document:

General Decision #		General Decision #	
# of Modifications		# of Modifications	
Date		Date	

General Decision #		General Decision #	
# of Modifications		# of Modifications	
Date		Date	

- 8. Did the Grantee check the Federal Wage Determinations 10 days prior to the bid opening?
 

Yes  No

9. Did the Federal Wage Determinations change? Yes  No

10. If yes, what were the applicable federal wage determinations 10 days prior to bid opening?

General Decision #		General Decision #	
# of Modifications		# of Modifications	
Date		Date	

General Decision #		General Decision #	
# of Modifications		# of Modifications	
Date		Date	

11. Did the project engineer/architect issue an addendum with the modified wage determinations five days prior to bid opening? Yes  No

12. Were contracts awarded within 90 days of bid opening? Yes  No

**Please note: All contracts must be awarded within 90 days of bid opening. The Grantee is required to update the wage decision if the contract is awarded more than 90-days after bid opening and incorporate changes in the contract document. Proof of lock-in is required at the time of project monitoring.**

13. If no, were the prevailing federal wage determinations in effect on the date of contract award incorporated into the contract document? Yes  No

If yes, please provide the following:

General Decision #		General Decision #	
# of Modifications		# of Modifications	
Date		Date	

General Decision #		General Decision #	
# of Modifications		# of Modifications	
Date		Date	

If no, please explain:

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14. List below the selected sample of contracts that are subject to Federal Labor Standards Provisions:

	Activity	Wage Rates Downloaded Date	10 Day Verification Date	Bid Opening Date 0	Contract Award Date 90
1.					
2.					
3.					
4.					

15. Pre-construction conference date \_\_\_\_\_

16. Did the pre-construction conference minutes contain Federal Labor Standards contracting responsibilities and actions?  
 Yes  No

17. Does the Labor Compliance Officer verify that each contractor was provided a set of federal worksite posters and given an explanation of the site posting requirements?  
 Yes  No

18. Does the Labor Compliance Officer verify the following were posted on the job site?

- Federal Labor Posters Yes  No
- Labor Complaint Procedure Yes  No
- Federal Wage Rates Yes  No
- State Wage Rates Yes  No

19. Are the required job site postings protected from the weather?  
 Yes  No

20. Did the project wage sheet include all applicable federal wage classifications?  
 Yes  No

21. If no, was an additional classification request submitted to the WVDO?  
 Yes  No

22. Are apprentices being used on this project? Yes  No

23. If yes, did the contractor/subcontractor submit a letter from the United States Department of Labor's Bureau of Apprenticeship and Training authorizing the apprentice's rate of pay on this project?  
 Yes  No

If no, please explain

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24. Are Certified Payrolls and a Statement of Compliance on file?

Yes  No

25. According to the Statements of Compliance, how are employee fringe benefits being paid:

Cash	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Bona Fide Fringe Benefit Plan	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Both	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>

26. If employee fringes were paid to a Bona Fide Fringe Benefit Plan, did the contractor or subcontractor submit documentation to verify the deductions?

Employee Union Cards	N/A	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Union Plans	N/A	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Insurance Plans	N/A	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
401K Plans	N/A	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Other Authorized Deductions	N/A	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>

27. Are employee wage interviews being conducted on a monthly basis with:

Contractors	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Subcontractors	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>

28. Do employee interviews represent a sampling of the job classifications being utilized on the project?

Yes  No

29. Are employee interview forms being compared to the applicable Certified Payrolls?

Yes  No

30. Did the Labor Compliance Officer sign off on the employee interview forms after reviewing the applicable certified payroll?

Yes  No

31. Did the Labor Compliance Officer submit the first two contractor/subcontractor certified payrolls to the Community Development Division for review and approval?

Yes  No

32. If yes, were any deficiencies noted?

Yes  No

33. If yes, have those deficiencies been addressed and corrected?

Yes  No

If no, please explain:

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34. Have any labor standards problems or complaints occurred on the project?

Yes  No

If no, please explain:

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35. Were any of the following federal labor laws violated?

Copeland Act	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Davis-Bacon Act	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Contract Work Hours and Safety Standards	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>

36. Were any liquidated damages assessed? Yes  No

37. Have any labor problems or complains been completely resolved?  
Yes  No

38. Did the Grantee submit the United States Department of Labor's Semi-Annual Labor Standards Enforcement Report to the Community Development Division?

Yes  No

If no, please explain:

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## DAVIS-BACON AND RELATED ACTS

### Questions and Answers

#### **GENERAL**

- 1) What is the Davis-Bacon Act (DBA)?

The Davis-Bacon Act (DBA) was enacted by Congress on March 3, 1931, to assure local workers a fair wage and to provide local contractors a fair opportunity to compete for local federal government contracts.

In general, the DBA, as amended, requires that each contract over \$2,000 to which the United States or the District of Columbia is a party for the construction, alteration, and/or repair (including painting or decorating) of public buildings or public works shall contain a clause setting forth the minimum wages to be paid to various classifications of laborers and mechanics employed under the contract. (The Davis Bacon Act is incorporated under 23 U.S.C. 113 as a Davis-Bacon related act statute and is applicable to construction of Federal-aid highways funded with Federal-aid funding. See the discussion on Applicability to Federal-aid Highway projects, questions 7 and 8.)

Contractors and subcontractors are required to pay their laborers and mechanics employed directly upon the "site of the work" no less than the locally prevailing wage and fringe benefit rates for corresponding work on similar projects in the area "regardless of any contractual relationship which may be alleged to exist." The Department of Labor determines and sets the prevailing wage rates. The geographical scope of the DBA is limited, by its terms, to the 50 States and the District of Columbia.

[29 CFR Part 5](#)  
[The Davis-Bacon Act \(WH-1246\)](#)

- 2) What do the terms "buildings or works" in the Davis-Bacon Act refer to?

The terms "building or work" refer to any construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include, without limitation, buildings, structures, and other facilities on which construction type improvements are performed. Some of the construction type improvements are related to facilities, such as: bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping.

[29 CFR 5.2\(i\)](#)

- 3) What do the terms "construction, prosecution, completion, or repair" in the Davis-Bacon Act refer to?

The terms "construction, prosecution, completion, or repair" refer to all types of work done on a particular building or work at the site thereof, including work at a facility which is deemed a part of the site of the work, including without limitation:

- a) Altering, remodeling, installation (where appropriate) on the site of the building or work on items fabricated off-site;
- b) Painting and decorating;

- c) Manufacturing or furnishing of materials, articles, supplies or equipment on the site of the building or work; and
- d) Transportation between the site of the work and a facility which is dedicated to the construction of the building or work and deemed part of the site of the work, such as:
  - Project office.
  - Tool yards.
  - Batch plants.
  - Borrow pits, etc.

- 4) Is the manufacturing or furnishing of materials, articles, supplies or equipment covered under the Davis-Bacon Act?

The requirements of the Davis-Bacon Act apply to construction, alteration, and/or repair (including painting or decorating) of public buildings or public works. Only when the manufacturing or furnishing of materials, articles, supplies or equipment is conducted in connection with and at the "site of the work" called for in the contract, are those activities covered under the Davis-Bacon Act.

[29 CFR 5.2\(i\)](#)

- 5) What is the minimum contract size/threshold for the prevailing wage rate requirements to apply?

The minimum contract size/threshold for the prevailing wage rate requirements to apply is over \$2,000.

[40 U.S.C. 3142\(a\)](#)

[29 CFR 5.5\(a\)](#)

- 6) Does the minimum contract size/threshold for the prevailing wage rate requirements apply to the contractor and/or subcontractors on a project?

The minimum contract size/threshold of \$2,000 only applies to the prime contractor. All related subcontractors on the project are covered under the DBA regardless of the size of the subcontract.

[40 U.S.C. 3142\(c\)](#)

[29 CFR 5.5\(a\)](#)

### **APPLICABILITY TO THE FEDERAL-AID HIGHWAY PROJECTS**

- 7) What are the "Davis-Bacon Related Acts (DBRA)?"

The Davis-Bacon Related Acts are those Acts extending the Davis-Bacon Act provisions to Federal agencies that provide financial assistance for public works construction through grants, loans, loan guarantees, and insurance. The Federal-aid Highway Acts extended the Davis-Bacon Act provisions to Federally funded construction contracts on Federal-aid highways in the 50 United States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands or other territories.

[29 CFR 5.1\(a\)](#)

[23 U.S.C. 113](#)

- 8) What are the Davis-Bacon labor standard clauses that must be included in a covered contract?

The Davis-Bacon Act requires contracting agencies to insert in full on any covered contract the clauses in the regulations at 29 CFR 5.5(a). If a contracting agency has a specific need which requires they modify the clauses, they can do so provided, that such modifications are first approved by the Department of Labor (USDOL). For Federal-aid highway construction projects, the contract clauses required by 29 CFR 5.5(a) are included in Form FHWA-1273 which is required to be physically incorporated in every prime contract and all subcontracts. The required contract clauses address the following topics:

- a) Minimum wages.
- b) Withholdings.
- c) Payrolls and basic records.
- d) Apprenticeships and trainees.
- e) Compliance with Copeland Act requirements.
- f) Subcontracts.
- g) Contract termination; debarment.
- h) Compliance with Davis-Bacon and Related Act requirements.
- i) Disputes concerning labor standards.
- j) Certification of eligibility.

[40 U.S.C. 3142\(c\)](#)  
[29 CFR 5.5\(a\)](#)

- 9) Are prevailing wage rate requirements applicable to highway construction projects on Federal-aid highways, as defined in the [23 U.S.C. 113](#)?

The prevailing wage rate requirements apply to any Federal-aid highway construction project (regardless of Federal-aid funding source) over \$2,000 that is:

- a) Located physically within the existing right-of-way of a Federal-aid highway (defined in 23 U.S.C. 101 as "... a highway eligible for assistance under this chapter other than highways classified as local roads or rural minor collectors.)
- b) Located outside the physically existing right-of-way of a Federal-aid highway but is linked to or dependent upon a Federal-aid highway project based on proximity or impact (i.e. without the Federal-aid highway the project would not exist); or
- c) Funded under the Transportation Alternatives Program (TAP) (except for projects carried out under the Recreational Trails Program set-aside).

[Transportation Alternatives Program Guidance](#)

- 10) May contracting agencies apply prevailing wage rate requirements to projects not located on a Federal-aid highway?

Yes, although not required to do so contracting agencies may apply prevailing wage rate requirements to projects not located on a Federal-aid highway.

- 11) When a contracting agency uses Federal-aid funds for preliminary engineering, is the related construction project federalized thus making the prevailing wage rate requirements applicable to the construction contract?

NO. The prevailing wage rate requirements apply on a "contract basis." A contracting agency may elect to use Federal-aid funds for the preliminary engineering phase of a project and 100% state funds for the construction phase. Since there are no Federal-aid funds in the construction phase contract, the prevailing wage rate requirements do not apply.

- 12) When a contracting agency “ties”- a Federal-aid funded project to a State or locally-funded project, do the prevailing wage rate requirements apply to all “tied” projects?

Some agencies “tie” or combine separate construction projects for bidding purposes to take advantage of economies of scale, thereby providing an incentive for contractors to provide more competitive bids for all contract lettings. In these cases, the projects are designed, constructed, and administered as separate projects.

- If the “tied” projects are awarded as separate contracts (each contract has its own performance bond, pay items, and separate and distinct funding sources .) and are ” tied” for the purpose of bidding and award, then the prevailing wage rate requirements only apply to the Federal-aid funded project or projects.
- If the “tied” projects are awarded as one contract , then the prevailing wage rate requirements apply to all projects since the contract is being funded as a Federal-aid project.

- 13) Do the prevailing wage rate requirements apply to force account contracts for emergency repair work performed by the following parties:

- a) Contracts let by State or local government agencies using force account procedures?

YES. The prevailing wage rate requirements apply to work performed by contractors and subcontractors on State or local government-let contracts using force account procedures.

- b) Work performed by State or local government forces using the force account method?

NO. The prevailing wage rate requirements apply to work performed by contractors or subcontractors. State or local government agencies are not considered contractors or subcontractors, therefore the prevailing wage rate requirements do not apply.

[29 CFR 5.2\(h\)](#)  
[Memorandum June 26, 2008 \(item3\)](#)

- 14) Do the prevailing wage rate requirements apply to contracts for emergency repair work solely for debris removal?

NO. Prevailing wage rate requirements do not apply to contracts where the scope of work is solely for the removal of debris and related clean up; however, if the debris removal is performed in conjunction with other repair or reconstruction work, prevailing wage rate requirements apply.

[Memorandum June 26, 2008 \(item3\)](#)

### **SITE OF THE WORK**

- 15) What is the “site of the work” where laborers and mechanics are covered by the prevailing wage rate requirements?”

The “site of the work” is the physical place or places where the building or work called for in the contract will remain once the contract work has been completed and any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the contract or project.

[29 CFR 5.2\(l\)\(1\)](#)

16) What criteria must be satisfied for a facility to be deemed part of the site of the work?

- a) Dedicated exclusively, or nearly so, to the performance of the contract; and
- b) Adjacent or virtually adjacent to the site of the work.

[29 CFR 5.2\(l\)\(2\)](#)

17) What locations are generally not included in the site of the work?

- a) Permanent home offices;
- b) Branch plant establishment;
- c) Fabrication plants;
- d) Tool yards, etc., of a contractor or subcontractor whose location and continuance in operation are determined wholly without regard to a particular Federal or federally-assisted contract or project; and
- e) Commercial or material supplier fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., established by supplier for the project before opening of bids but not on the site of the work.

[29 CFR 5.2\(l\)\(3\)](#)

18) Under what circumstances are truck drivers covered under the DBRA?

- a) Drivers of a contractor or subcontractor for time spent working on the site of the work;
- b) Drivers of a contractor or subcontractor for time spent loading and/or unloading materials and supplies on the site of the work, if such time is not de minimis;
- c) Truck drivers transporting materials or supplies between a facility that is deemed part of the site of the work and the actual construction site; and
- d) Truck drivers transporting portion(s) of the building or work between a site established specifically for the performance of the contract or project where a significant portion of such building or work is constructed and the physical place(s) where the building or work called for in the contract(s) will remain.

[Prevailing Wage Resource Book, DBA/DBRA Compliance Principles, Truck Drivers](#)

19) Under what circumstances are truck drivers not covered under the DBRA?

- a) Material delivery truck drivers while off “the site of the work;”
- b) Drivers of a contractor or subcontractor traveling between a Davis-Bacon job and a commercial supply facility while they are off the “site of the work;” and
- c) Truck drivers whose time spent on the site of the work is de minimis, such as only a few minutes at a time merely to pick up or drop off materials or supplies.

[Prevailing Wage Resource Book, DBA/DBRA Compliance Principles, Truck Drivers](#)

20) When site of the work issues arise, how are they resolved?

The USDOL Wage and Hour Division should be consulted when contracting agencies are confronted with “site of the work” issues. Refer to [WHD Local Offices](#) for information on contacting the local offices of the USDOL Wage and Hour Division.

- 21) Are the prevailing wage rate requirements applicable on projects to move or relocate facilities necessary for an associated Federal-aid construction project in the following situations?

- a) Contract let by a railroad or utility.

When a railroad or utility let a contract to move or relocate their facility to accommodate a highway construction project, payment under the contract is considered compensation for moving or relocating their facility, and not highway construction; therefore the prevailing wage rate requirements do not apply.

- b) Highway construction contract.

When the work to move or relocate a railroad or utility to accommodate a highway construction project is performed under the highway construction contract, the work is considered highway construction; therefore the prevailing wage rate requirements apply.

[Memorandum June 26, 2008 \(fourth item\)](#)

- 22) Are ferry boat projects covered by the prevailing wage rate requirements?

The construction and reconstruction of ferry boats and docking facilities is considered work performed upon "public works" within the meaning of the Davis-Bacon Act. When the location of the contract performance is known when bids are solicited, a wage determination would be issued. See [DOL's Field Operations Handbook, Section 15d11](#) for guidance.

### **WHO IS COVERED UNDER THE DBA?**

- 23) Who is covered under the Davis-Bacon Act?

The requirements of the Davis-Bacon Act apply to laborers and mechanics, which are those workers performing work that is physical and/or manual in nature (including those who use tools or who are performing the work of a trade), and employed by a contractor or subcontractor on the "site of the work," as distinguished from mental or managerial work. Laborers and mechanics also include apprentices, trainees, and helpers.

Laborers and mechanics do not include workers whose duties are primarily administrative, executive, or clerical rather than manual. In instances where supervisory employees and other employees whose work is not physical in nature (such as foremen, and other non-laborers and non-mechanics workers) devote over 20% of their time in a work week to physical and/or manual labors, they are covered under the DBA for the time spent performing the work of a laborer or mechanic. Persons employed in a bona fide executive, administrative, and professional capacity are not covered under the Davis-Bacon Act.

[29 CFR 5.2\(m\)](#)

- 24) What are some of the worker classifications covered under the Davis-Bacon Act?

The following are some of the worker classifications of laborers or mechanics covered under the Davis-Bacon Act:

- a) Carpenters.

- b) Electricians.
- c) Plumbers.
- d) Ironworkers.
- e) Flaggers.
- f) Craftsmen.
- g) Welders.
- h) Concrete Finishers.
- i) Longshoremen.
- j) Power Equipment Operators.
- k) Helpers.
- l) Workers participating in a special program that has not established specific wage rates and other compensations for the participants.

[AAM No. 141](#)

- 25) What are some of the worker classifications generally NOT covered under the Davis-Bacon Act?

The following worker classifications of laborers or mechanics are generally NOT covered under the Davis-Bacon Act:

- a) Architects.
- b) Engineers.
- c) Timekeepers.
- d) Supervisors.
- e) Foremen.
- f) Workers performing exploratory drilling services, such as subsurface utility engineering or utility location services, for the purpose of obtaining data to be used in engineering studies and the planning of a project. (The work performed is related to an activity and not a project; therefore the Davis-Bacon Act does not apply.)
- g) Employees of railroads.
- h) Employees of public utilities.
- i) Contracting agency inspectors.
- j) Public agency employees performing work on a public Agency force account basis.
- k) Contractor Quality Assurance Inspector.
- l) Material men and suppliers.
- m) Survey crew members using the equipment for measuring heights, distances, and bearings.
- n) Owner-Operators of trucks who drive their own trucks (The certified payroll would indicate that the work was performed by named "owner-operator" but would not need to show hours worked or the rate of pay).
- o) Bona fide programs approved by the USDOL with established wage rates, living allowances and other compensation. Some of the programs included:
  1. Summer youth opportunity programs, such as those sponsored by union and management or by a governmental or community group, and
  2. Federal Youth Program, such as: Youth Conservation Corps, Public Land Corps, American Conservation and Youth Service Corps (AmeriCorps), and Volunteers in Service to America (VISTA).

- 26) What are the requirements for apprentices and trainees?

The USDOL requirements of 29 CFR 5.5(a)(4)(i) and (ii) apply to apprentices and trainees individually registered in a bona fide apprenticeship program registered with the USDOL, Employment and Training Administration, Office of Apprenticeship Training, Employer and

Labor Services, or with a State Apprenticeship Agency recognized by the Office. Even though apprentices and trainees are laborers and mechanics, these worker classifications are not listed on a wage determination. The wages and fringe benefits rates they receive are specified in their approved training program and may be less than the journeyman rate for the type of work performed.

Apprentices and trainees performing on Federal-aid highway construction contracts and enrolled in programs certified by the Secretary of the Department of Transportation are exempt from the DBRA requirements of 29 CFR 5.5(a)(4)(i) and (ii) for apprentices and trainees.

[23 U.S.C. 113\(c\)](#)  
[29 CFR 5.5\(a\)\(4\)\(i\)](#)  
[29 CFR 5.5\(a\)\(4\)\(ii\)](#)

27) Is a helper classification included in a General Wage Determination?

NO. The wage and fringe benefit rates for a helper classification are not included in a General Wage Determination. The helper classification must be included in a project wage determination, or added by the USDOL Wage and Hour Division, only when the following conditions are met:

- a) The work duties are clearly defined and distinct from any other classification in the wage determination;
- b) The work performed by a helper is not performed by a classification in the wage determination;
- c) The use of helpers is an established prevailing practice in the area; and
- d) The helper is not employed as a trainee in an informal training program.

[29 CFR 5.2 \(n\)\(4\)](#)

## **WAGE DETERMINATIONS**

28) What is a "wage determination?"

A "wage determination" is the listing of wage rates and fringe benefit rates for each classification of laborers and mechanics which the Administrator of the Wage and Hour Division of the USDOL has determined to be prevailing in a given geographical area for a particular type of construction (e.g., building, heavy, highway, or residential). The prevailing wage is the wage paid to the majority (more than 50 percent) of the laborers or mechanics in the classification on similar projects in the area during the same period. If the same wage is not paid to a majority of those employed in the classification, the prevailing wage shall be the average of the wages paid, weighted by the total employed in the classification. A "wage determination" includes not only the original determination (or decision) but any subsequent determinations modifying, superseding, correcting, or otherwise changing the rates and scope of the original determination.

The USDOL Wage and Hour Division issues two types of wage determinations: general wage determinations, also known as area wage determinations, and project wage determinations.

[29 CFR 1.2\(a\)\(1\)](#)  
[WHD Davis-Bacon and Related Acts Frequently Asked Questions, I.](#)

## 29) What is a “general wage determination?”

A “general wage determination” (GWD) reflects those rates determined to be prevailing in a specific geographic area for the type of construction described. “General wage determinations,” including any subsequent decisions modifying, superseding, correcting, or otherwise changing the rates and scope of the original wage decision, contain no expiration dates and are effective from their date of publication on the Wage Determination On Line (WDOL) web site at <http://www.wdol.gov>; or notice in the Federal Register; or on the date the written notice is received by the contracting agency, whichever is earlier.

When a contracting agency has a proposed construction project to which a published GWD would be applicable, that wage determination may be used by the contracting agency without consulting the USDOL, provided that questions concerning its use shall be referred to the USDOL in accordance with 29 CFR 1.6(b).

When a contracting agency has a proposed construction project to which there is not an applicable published GWD, the contracting agency must request a wage determination using [Standard Form \(SF\) 308](#), “Request For Wage Determination And Response To Request.”

[29 CFR 1.6\(a\)\(2\)](#)

[Wage Determination OnLine \(WDOL\)](#)

[WHD Davis-Bacon & Related Acts Frequently Asked Questions, I., General WD](#)

## 30) What is a “project wage determination?”

A “project wage determination” is a wage determination for a specific named construction project. It is issued at the request of a Federal agency or a “State highway department under the Federal-aid Highway Acts” using Form SF-308, “Request For Wage Determination And Response To Request.” A “project wage determination” expires 180 calendar days from the date of issuance unless an extension of the expiration date is requested by the contracting agency and approved by the USDOL Wage and Hour Division.

[29 CFR 1.6](#)

[29 CFR 1.5\(b\)](#)

[Standard Form \(SF\) 308](#)

[WHD Davis-Bacon & Related Acts Frequently Asked Questions, I., Project WD](#)

## 31) When a wage determination does not contain a classification of worker needed to complete construction of a project, can the wage and fringe benefit rates for a worker classification be transferred to other workers on the project?

NO. The wage and fringe benefit rates for worker classifications listed in wage determinations are unique to a particular type of construction and the type of work being performed. Therefore, wage and fringe benefit rates for a worker classification are not transferrable to other worker classification.

## 32) What are the procedures for requesting a missing worker classification?

The contracting agency shall require that any classification of laborers or mechanics which are not listed in the wage determination and which are to be employed under the contract be classified in conformance with the wage determination.

When a classification considered necessary for performance of the work is missing from the WD, the contractor must initiate a request for approval for a proposed wage and benefit rate that conforms to the wage determination. The contractor can initiate this action by preparing a Standard Form 1444 ([SF-1444](#)), *Request for Authorization of Additional Classification and Rate.* The wage rate proposed by the contractor must bear a "reasonable relationship" to the wage rates in the WD.

[AAM No. 213](#)

When only one classification necessary for performance of the work is missing in the WD, the contracting agency may request a project wage determination using [Standard Form \(SF\) 308](#), *Request For Wage Determination And Response To Request.* Once the contract has been awarded, the project wage determination may be incorporated into the contract through supplemental agreement or through change order.

[WHD Davis-Bacon and Related Acts Frequently Asked Questions, VI.](#)

- 33) What criteria must be satisfied for an additional worker classification to be approved by the USDOL Wage and Hour Division?

The approval of an additional worker classification and the proposed wage and fringe benefits rates requires that the following criteria be satisfied:

- a) The work to be performed by the worker classification requested is not performed by any other worker classification in the wage determination; and
- b) The worker classification requested is utilized in the area by the construction industry; and
- c) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
- d) There is evidence of agreement on the worker classification and proposed wage rate among the parties involved, or the views of those involved -- the contractor(s), employees (if known) or their representative, and the contracting officer/agency -- are forwarded for consideration to the Wage and Hour Division; and
- e) The request does not involve wage rates for apprentices or trainees.

[29 CFR 5.5\(a\)\(1\)\(ii\)](#)

[WHD Davis-Bacon and Related Acts Frequently Asked Questions, VI.](#)

- 34) Who is responsible for deciding which wage determination would be appropriate to use on a specific project?

The contracting agency is responsible for determining the applicable wage determination to furnish to all parties involved on a project. See [Where can I obtain a copy of the General Wage Determination needed for a covered federal project?](#) for more details.

- 35) How does the USDOL Wage and Hour Division determine prevailing wages?

The US DOL Wage and Hour Division establishes prevailing wage rates using available data showing the rates for the type of construction and worker classification prevailing in a specific geographical area. The sources of data may include, but is not limited to:

- a) Conducting in-house reviews of payroll data, or
- b) Conducting surveys of wage data from active projects.

- 36) What prevailing wage determination applies to laborers and mechanics engaged in warranty or repair work under a construction contract?

The original contract prevailing wage determination applies regardless of when the warranty work is done. This is true whether or not there is a pay item for the warranty work.

[29 CFR 1.6\(a\)\(1\)](#)  
[AAM No. 157](#)

- 37) What prevailing wage determination should be used when a project is located on the border between two States with separate wage determinations?

The prevailing wage determinations are based on the prevailing wage rates for the area that the work will be performed. When a project site of the work is located in more than one area with separate wage determinations, the contracting agency has two options:

- a) Include all applicable GWDs in the contract, therefore, the contractor is required to pay employees based on where the work was performed using the appropriate GWD, or;
- b) Request a project wage rate determination for the project using [Standard Form \(SF\) 308](#), *“Request for Wage Determination and Response to Request.”*

- 38) What wage rate determination should be used on a contract that has more than one wage rate schedule with the same worker classification?

The contracting agency is responsible for insuring that only the appropriate wage determination(s) are incorporated in bid solicitations and contract specifications, and for designating specifically the work to which such wage determination will apply. It is possible for a project to have a worker classification for heavy construction and the same worker classification for highway construction. Because of the complexities in applying multiple wage rate schedules, the contracting agency should consult with the Wage and Hour Division to resolve any questions.

[29 CFR 1.6\(b\)](#)

- 39) Is the contractor allowed an equitable adjustment if a correction is necessary for a wage determination based on a clerical error by the USDOL?

YES. The contractor is compensated for any increases in wages resulting from a necessary wage rate modification retroactive to the beginning of construction through the effective date of the modification.

- 40) Do new wage determinations apply to construction contracts that have already been awarded?

A proper wage determination incorporated into a bid solicitation and related contract award establishes the minimum wage and fringe benefits rates which must be paid to the

laborers and mechanics for the entire term of the contract. Modifications to a wage determination issued after the bid opening do not apply.

Upon his or her own initiative or at the request of a contracting agency, the USDOL Wage and Hour Division may correct any wage determination believed to contain an inadvertent clerical error. Such corrections shall be included in any bid specifications containing the wage determination, or in any on-going contract containing the wage determination in question, retroactively to the start of construction.

[29 CFR 1.6\(d\)  
Prevailing Wage Rates](#)

- 41) What prevailing wage determination applies when a contracting agency executes an option provision in a multi-year contract to extend the terms of the contract for a specified period of time?

When a contracting agency executes an option provision in a multi-year contract to extend the terms of the contract for a specified period of time, the prevailing wage determination effective at that time the option was executed must be incorporated into the contract. See [November 20, 1998, Federal Register Notice titled: "Guidance to All Government Contracting Agencies of the Federal Government and the District of Columbia Concerning Application of Davis-Bacon Wage Determinations to Contracts With Option Clauses"](#) for detailed guidance.

- 42) What is a supersedeas wage determination?

Supersedeas Wage Determinations are issued annually to replace general decisions issued in the previous edition of the publication entitled General Wage Determinations issued under the Davis-Bacon and Related Acts. Supersedeas project wage determinations may also be issued.

Supersedeas decisions affecting determinations are effective under the same circumstances as "modifications." Whereas a modification to a wage determination may make changes in only selected provisions of the wage determination, a supersedeas determination replaces the entire existing wage decision.

[WHD Davis-Bacon and Related Acts Frequently Asked Questions, I.](#)

- 43) What is the 10-day rule?

A contracting agency is responsible for incorporating the applicable wage rate determination into each federally-assisted contract entered into pursuant to competitive bidding procedures. When notice of a change to a wage determination is published in the Federal Register 10 days or more before the opening of bids, the USDOL requires that the new wage determination be incorporated into the contract by amendment.

[29 CFR 1.6\(c\)\(3\)\(i\)](#)

- 44) When a contracting agency has failed to incorporate a wage determination in a covered contract and/or has incorporated a wage determination that clearly does not apply to the contract (e.g. inaccurate description of project, inaccurate location in a wage determination request), what can the contracting agency do?
- a) Terminate and re-solicit the contract with a valid wage determination, or
  - b) Incorporate a valid wage determination retroactive to the beginning of construction

through supplemental agreement or through change order. The contractor must be compensated for any increases in wages resulting from such contract change.

[29 CFR 1.6\(f\)](#)

## **CONTRACT ADMINISTRATION**

- 45) Where are the prevailing wage determinations found?

Prevailing wage determinations are available on the internet at: [Wage Determinations OnLine.gov](#).

- 46) May a contracting agency reference the wage determination(s) in a bid proposal?

YES. The contracting agency may reference the wage determination(s) in a bid proposal. [FHWA Questions and Answers Regarding Electronic Contracting, No. 7](#)

- 47) May a contracting agency reference the wage determination(s) in a construction contract?

NO. The contract between the contracting agency and the contractor (or between the contracting agency and the design-builder) must physically incorporate the applicable wage determination(s) into that contract.

[FHWA Questions and Answers Regarding Electronic Contracting, No. 7](#)

- 48) May a prime contractor reference the wage determination(s) in their contracts with subcontractors?

NO. The contracts between the prime contractor and the subcontractors must physically incorporate the applicable wage determination(s) into those contracts.

## **RECORDKEEPING / PAYROLL**

- 49) What payroll and basic information must contractors and subcontractors covered by the Davis-Bacon Act maintain for all laborers and mechanics employed on the site of the work?

- a) Name;
- b) Address;
- c) Full social security number;
- d) Worker classification;
- e) Regular hourly rate of pay, including rates of contributions or costs anticipated for fringe benefits or their cash equivalents;
- f) Daily and weekly numbers of hours worked;
- g) Deductions;
- h) Actual wage paid;
- i) If applicable, detailed information regarding various fringe benefit plans and programs, including records that show that the plan or program has been communicated in writing to the laborers and mechanics affected; and
- j) If applicable, detailed information regarding approved apprenticeship or trainee programs.

[29 CFR 5.5\(a\)\(3\)\(i\)](#)

- 50) What information must contractors and subcontractors provide on the weekly certified payroll submittals?

Contractors and subcontractors performing on contracts covered by the Davis-Bacon Act are required to pay laborers and mechanics on a weekly basis. They must submit a weekly payroll statement to the contracting agency that includes the following information:

- a) Name of each worker;
- b) Employee identification number (e.g., the last four digits of the employee's social security number);
- c) Worker classification;
- d) Hourly rates of wages paid;
- e) Daily and weekly number of hours worked;
- f) Deductions (fringe benefits, etc.) made; and
- g) Actual wages paid.

[29 CFR 5.5\(a\)\(3\)\(ii\)](#)

- 51) Does the USDOL require weekly certified payrolls to be submitted on form WH-347?

The [Form WH-347](#) is available for the convenience of contractors and subcontractors in submitting weekly certified payrolls. Use of the form is optional; however, the information necessary to properly fill out the form satisfies the requirements of a certified payroll submission in connection with contracts subject to the Davis-Bacon and related Acts and the Copeland Act. A properly executed certification set forth on the reverse side of Form WH-347 satisfies the requirement for submission of the "Statement of Compliance."

By signing the "Statement of Compliance," the contractor or subcontractor is certifying that the following statements for the pay period are correct:

- a) The information required under 29 CFR 5.5(a)(3)(ii) and 29 CFR 5.5(a)(3)(i) is being maintained and is correct and complete;
- b) Each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3; and
- c) Each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

- 52) Do the record retention requirements that apply to paper records also apply to records maintained electronically?

YES. When records are maintained electronically, contractors must take care to ensure that good records management system practices are used and that the electronic records system provides integrity, accuracy, authenticity, and reliability. As an example, see the guidance provided by the Office of Federal Contract Compliance Programs - ["Retention Provisions for Electronic Records."](#)

- 53) How long are contractors and subcontractors required to retain employee records, including payroll records?

Contractors and subcontractors must retain employee records, including payroll records, during the course of the contract work and three years after final payments and all other pending matters are closed; i.e. FHWA's final acceptance of the project.

[29 CFR 5.5\(a\)\(3\)\(i\)](#)  
[23 CFR 635.118](#)  
[49 CFR 18.36\(i\)\(11\)](#)

- 54) Are electronic submittals and electronic signatures acceptable for the contractor's weekly payroll and the "Statement of Compliance" submittals?

YES. The USDOL Wage and Hour Division permits the use of electronic submittals and electronic signatures for the contractor's weekly payroll and the "Statement of Compliance" submittals. For more information, refer to the USDOL's November 12, 2004, letter regarding [Electronic Signatures and the Copeland Act](#).

[29 CFR 5.5\(a\)\(3\)](#)  
[WH-347 and instructions](#)

## **OVERSIGHT**

- 55) What are the functions/responsibilities of the U.S. Department of Labor under the Davis-Bacon Act?

The U.S. Department of Labor (USDOL) Wage and Hour Division has regulatory and oversight authority to assure coordination of administration and consistency of enforcement of the labor standards provisions of the Davis-Bacon Act. The USDOL Wage and Hour Division issues regulations establishing standards and procedures for the administration and enforcement of the Davis-Bacon labor standard provisions.

- 56) What are the responsibilities of FHWA and recipients of federal assistance under the Federal Aid Highway Acts in administering and ensuring compliance with the labor standard provisions of the Davis-Bacon Act?

The FHWA has the overall responsibility for ensuring that recipients in the Federal-aid highway program comply with the requirements and policies for prevailing wage rates on covered construction contracts. The FHWA is responsible for ensuring that all contracting agencies (State DOTs, local public agencies, and other grant recipients) are correctly administering prevailing wage rate requirements. The FHWA oversees compliance of these requirements through a risk-based stewardship and oversight program administered by each FHWA Division Office but is also charged under DOL guidance to conduct such investigations as appropriate to enforce Davis Bacon Act requirements.

On Federal-aid highway construction projects, contracting agencies are responsible for properly applying and enforcing prevailing wage rate requirements in covered contracts including:

- a) Verifying that covered contracts have incorporated the required Davis-Bacon clauses and the applicable wage determination(s);
- b) Verifying that the Davis-Bacon notice and the applicable wage determination(s) are displayed at the site of the work in a conspicuous location in clear view of everyone;
- c) Reviewing certified payrolls in a timely manner;
- d) Conducting employee interviews;
- e) Conducting reviews and investigations of covered contracts in conjunction with FHWA

- as appropriate;
- f) Forwarding refusal to pay and/or debarment consideration cases to the USDOL Wage and Hour Division for appropriate action; and
- g) Submitting enforcement reports and semi-annual enforcement reports to the USDOL Wage and Hour Division.

57) What are some of the typical violations of the DBRA?

The following are some of the typical violations of the Davis-Bacon and Related Acts requirements:

- a) Misclassification of laborers and mechanics;
- b) Failure to pay full prevailing wage, including fringe benefits, for all hours worked (including overtime hours);
- c) Inadequate recordkeeping, such as not counting all hours worked or not recording hours worked by an individual in two or more classifications during a day;
- d) Failure of to maintain a copy of bona fide apprenticeship program and individual registration documents for apprentices;
- e) Failure to submit certified payrolls weekly; and
- f) Failure to post the Davis-Bacon poster and applicable wage determination.

58) What is FHWA's guidance regarding late submittals of weekly payroll statements?

Unless the contractor provides a satisfactory explanation, the FHWA recommends that the contracting agency consider initiating a compliance investigation if a contractor is habitually late in submitting payroll statements.

59) What actions can be taken when a contractor is continually late with payroll submittals?

The contracting agency must send the prime contractor a written notice restating the contract requirements for submitting the weekly payroll statements. If the contractor continues to submit the payroll statements late, the following actions can be taken:

- a) Withhold payments until the payroll submittal requirements are met;
- b) Terminate the contract; or
- c) Refer the violating contractor to the USDOL for possible legal prosecution and/or debarment.

60) What actions can be taken if a contractor is not paying prevailing wages?

The contracting agency may withhold contract funds, on its own initiative or at the direction of the USDOL, in a sufficient amount to satisfy any alleged wage underpayments ending resolution of a wage dispute.

When a subcontractor has not paid the prevailing wages, the prime contractor who is responsible for compliance on the contract and liable for any back wages not paid, may decide to withhold final payment from the subcontractor until the back wage issues are resolved.

When contractors or subcontractors are found to have disregarded their obligations to employees, or to have committed aggravated or willful violations while performing work on

Davis-Bacon Act covered projects, they may be subject to contract termination and debarment from future contracts for up to three years.

[40 U.S.C. 3142\(c\)\(3\)](#)  
[29 CFR 5.5\(a\)\(2\)](#)  
[29 CFR 5.5\(b\)\(3\)](#)

- 61) Who is responsible for assuring that the standard provisions of the Davis-Bacon and Related Acts have been inserted into covered federally-assisted construction contracts?

The Federal agency is responsible for ascertaining whether the clauses required by 29 CFR 5.5 have been inserted into construction contracts covered under the Davis-Bacon and Related Acts. For Federal-aid highway construction projects, FHWA requires the inclusion of form FHWA-1273 which incorporates the contract clauses of 29 CFR 5.5.

[23 CFR Part 633](#)

- 62) What action should a contracting agency take when there is cause to believe a back wage violation exists?

The contracting agency should withhold, or cause to be withheld, from the contractor as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. The funds are withheld from active contracts or any other contracts of the contractor where the prevailing wage rates apply.

[29 CFR 5.5\(a\)\(2\)](#)

- 63) What can contracting agencies do in situations where back wage violations occurred on a contract that has been accepted and paid as complete?

When funds remain on a contract under which a violation occurred are insufficient to cover back wages due, the contracting agency can withhold funds from other contracts subject to DBRA or any other federal contract held by the same prime contractor.

[29 CFR 5.5\(a\)\(2\)](#)

- 64) Can a contracting agency use accrued funds withheld from a contractor for payment of wages be used to resolve other contract claims against the contractor?

NO. The wages due underpaid employees have priority over any competing claims against the contractor.

## **INTERVIEWS**

- 65) How often should employee interviews in a compliance inspection of an employer be conducted by the contracting agency?

Employee interviews should be conducted at a frequency and number sufficient to establish the degree of adequacy and accuracy of the records, and the nature and extent of any violations. They should also be representative of all classifications of employees on the project under investigation. In doubtful compliance situations, interviews with former employees may be appropriate.

[29 CFR 5.6 \(a\)\(3\)](#)

- 66) An employee has been underpaid. What steps should be taken to resolve the issue?

The contracting agency may withhold funds sufficient to pay the unpaid employees. Considering the violation is a breach of contract, the contract may be termination, and/or the contractor or subcontractor may be debarred from obtaining any type of federally-funded contract for up to 3 years.

- 67) Are employee interviews intended to be confidential from the contractor?

Yes, employee interviews are intended to be private from their employer. Each employee should be informed that the information given is confidential, and that his/her identity will not be disclosed to the employer without the employee's written permission.

[PWRB 2013, Investigative Procedures Under DBRA/CWHSSA](#)

- 68) Do the prevailing wage rate requirements apply to all Recovery Act contracts?

YES. The first sentence of ARRA Section 1606 states in part: "Notwithstanding any other provision of law and in a manner consistent with other provisions of this Act . . ." This language explicitly overrides any limitation to Davis-Bacon coverage that may be contained in other Davis-Bacon related Acts. Specifically, the Highway Acts exclusion of highways functionally classified as local roads and rural minor collectors and limitation of applicability to projects located within the right-of-way does not apply to Recovery Act projects. For additional information, refer to the [ARRA Guidance](#) and the all agency memorandum [AAM No. 207 – "Applicability of Davis-Bacon to Federal and federally-assisted construction work funded by the American Recovery and Reinvestment Act of 2009."](#)

- 69) Who is responsible for assuring that the contractor has included the appropriate wage determination(s) in the contract?

The contracting agency is responsible for assuring that the appropriate wage determination is included in the contract.

[29 CFR 1.6\(b\)](#)

- 70) Who is responsible for compliance with the DBA labor standard provisions in a construction contract?

The prime contractor has overall responsibility for compliance with the DBA labor standard provision in a construction contract.

[29 CFR 5.5\(a\)\(6\)](#)

## **POSTERS**

- 71) What Davis-Bacon Act notice or poster must be displayed on Federal-aid funded construction projects?

Covered contractors and subcontractors are required to display the "Rights Under the Davis-Bacon Act" notice (WH-1321) on the job site in a prominent and accessible place where it can be easily seen by the workers. The applicable wage determination must be similarly posted.

[WH-1321, "Employees Rights Under the Davis-Bacon Act"](#)  
[WH-1321sp, "Derechos Del Empleado Bajo La Ley Davis-Bacon"](#)

- 72) Where can contractors and subcontractors obtain the workplace notices or posters required for Federal-aid funded construction projects?

The notices or posters required on Federal-aid funded constructions projects are available at no cost in electronic and printed form from the Department of Labor. For assistance in complying with federal workplace notices or posters requirements, see [DOL Poster Compliance Assistance](#).

[Where can I find workplace posters?  
Job Site Posters](#)

- 73) Where should contractors and subcontractors display workplace notices or posters required on Federal-aid funded construction projects?

Workplace notices or posters must be displayed at all times by the contractor and subcontractors at the site of the work in a prominent and accessible place where they can be easily seen by the workers.

[Where should I post the required federal posters?  
29 CFR 5.5\(a\)\(1\)\(i\)](#)

- 74) What is FHWA's position for displaying notices or posters on short-term projects when there is not a job office location?

When a job office is not established due to the nature of the work and/or the length of the contract, the contractor and subcontractors must display all notices or posters at their home offices where hiring is conducted and each employee must be provided copies of all the notices or posters and sign a statement acknowledging they received and understood the content of all the notices or posters.

- 75) Can the required workplace notices or posters be placed in a binder that is accessible in a supervisor's or foremen's vehicle when a job office has not been established for a covered Federal-aid construction project?

NO. Placing the required workplace posters in a binder does not meet the requirement for displaying or posting in a conspicuous place where they are easily visible to all employees — the intended audience.

[Can I put the required posters in a binder that I put on the wall?](#)

# Chapter 8

## Civil Rights





## Chapter Eight: Civil Rights

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### Table of Contents

	Page
Supporting Materials .....	8-1
Start-up Activities .....	8-1
Fair Housing .....	8-1
ADA and Section 504 .....	8-2
Civil Right Requirements .....	8-2
Other Requirements .....	8-4
Grantee Responsibilities .....	8-12
Record Keeping Requirements .....	8-27

## Introduction

Chapter 8: Civil Rights provides a review of the federal and state civil rights requirements associated with Community Development Block Grant (CDBG) program. These requirements are designed to ensure equal opportunity and access to all benefits derived from the State of West Virginia CDBG program. The entire chapter must be read thoroughly and all applicable instructions followed.

## Supporting Materials

Attachment 8-1	Sample Equal Employment Opportunity Policy
Attachment 8-2	Resolution Section 3
Attachment 8-3	Required Contract Language for Section 3 Responsibilities
Attachment 8-4	Contract Reporting Form and Instructions
Attachment 8-5	Sample Letter of Work Notification to Disadvantaged Business Enterprise
Attachment 8-6	Equal Employment Opportunity Brochure
Attachment 8-7	Sample Fair Housing Resolution
Attachment 8-8	Fair Housing Amendments Act Poster
Attachment 8-9	Sample Fair Housing Handout and Complaint Pamphlet
Attachment 8-10	Sample Hatch Act Resolution
Attachment 8-11	Sample Section 504 and ADA Complaint Procedures
Attachment 8-12	Sample ADA Self-Evaluation Inventory And Transition Plan
Attachment 8-13	Civil Rights Responsibilities Checklist

## Start-up Activities

There are several civil rights responsibilities of Grantees that must be completed during project start-up activities, especially required civil rights compliance resolutions that must be passed by the local government. Local government resolutions required during project start-up are resolutions for:

- Fair Housing,
- Equal Employment Opportunity,
- Hatch Act political activities restrictions, and
- ADA and Section 504 disabled accessibility and complaint resolution. (To be added to Evidentiary Materials and Release of Funds).

Review the civil rights laws and regulations and their summaries in this chapter. A checklist of Civil Rights Responsibilities is found in **Attachment 8-13**.

These Civil Rights activities are recommended at project start-up:

## Fair Housing

- Adopt a Fair Housing Resolution. **(Attachment 8-7)**
- Post fair housing notices and posters. **(Attachment 8-8)**

- Publicize affirmative fair housing rights and responsibilities.
- Distribute fair housing brochures. **(Attachment 8-9)**

### **ADA and Section 504**

(To be submitted as part of Evidentiary Materials and Release of Funds)

- Adopt ADA and Section 504 complaint resolution procedures to ensure compliance with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 (ADA). These procedures must allow for prompt and equitable resolution of charges alleging non-compliance with ADA.  
**Attachment 8-11**

- Conduct an ADA Self-Evaluation Inventory of local public facilities and buildings to determine the extent of local compliance with ADA requirements.

- Complete ADA Transition Plan for Disabled Accessibility to Public Facilities.  
**Attachment 8-12**

*Possible Exception:* If doing this ADA inventory, analysis, transition plan and resolutions at project start-up would cause a major hardship for the project given existing local resources, providing the WVDO with the signed resolution is an option. Afterwards, please contact the project's CDBG representative to discuss an alternative plan and a timetable for meeting these requirements as soon as feasibly possible. Remember that this information is required prior to the time the project is ready to close out.

- Adopt a Hatch Act Resolution  
**Attachment 8-10;** and
  - Inform local government officials and CDBG Grantee employees of the provisions of the Hatch Act; and
  - Designate a local government representative to disseminate the information and brochure regarding Hatch Act responsibilities.
- Adopt an Equal Employment Opportunity (EEO) Policy Resolution  
**Attachment 8-1**

### **Civil Rights Requirements**

Nondiscrimination also applies to employment practices. CDBG Grantees may not deny employment on the basis of race, color, national origin, age, sex, or handicap. Review existing local employment policies and include the EEO policy in the local government policy manual/handbook. Inform local government officials and employees, the public, and those applying for employment with the local government of the provisions of the Grantee's EEO policy.

Designate a person to disseminate the information and oversee EEO responsibilities and compliance. The following provides more information about equal employment opportunity

compliance, which can be pursued in a number of ways, such as:

- Adopt a Section 3 Resolution (**Attachment 8-2**) in order to inform the community of employment and business opportunities and to demonstrate compliance with Section 3 requirements.
- Place the required appropriate contract language regarding civil rights in bid documents and in all contracts. See Procurement and Contracting Chapter.
- Job opening advertisements must include the following phrase: “(Grantee or other as applicable) is an Equal Opportunity Employer. Minorities and women are encouraged to apply.”
- Notify nearby minority organizations of job openings.
- Maintain employment records related to equal employment opportunity.

During the course of the project, after start-up has been completed:

- Take action during the entire course of the project to ensure that no one is discriminated against in receiving services and benefits from the CDBG project. Generally, minority persons should benefit at least in proportion to their percentage of the community's or project area's overall population.
- Remember to gather and record the information that shows how the project meets requirements that are applicable to those CDBG projects with direct benefits to individuals. Keep records of direct beneficiary applicants and recipients by using the Final Performance Report form used for project closeout.
- Complete **Attachment 8-4**, Contract Reporting Form, at the time that each contract and subcontract (including contractors and subcontractors that are not minority owned) exceeding \$10,000 is awarded.
- Be diligent and consistent in implementing the project's civil rights responsibilities and be ready to explain to local citizens the purpose and importance of the civil rights laws and requirements in the CDBG program.

The federal and state civil rights requirements associated with CDBG grants are designed to ensure equal opportunity and access to all benefits derived from the CDBG Program administered by the state. The purpose of the laws is to protect people from discrimination on the basis of:

- Age
- Color
- Creed (fundamental beliefs)
- Marital Status
- National Origin
- Physical or Mental Handicap
- Gender

- Race
- Religion
- Political Ideas
- Family Status (Families with Children)

Population groups specifically protected by the provisions of these laws include:

- Minorities (Blacks, Hispanics, Native Americans, Alaskan Natives, Asians, and Pacific Islanders);
- Women;
- Groups distinguished by age (elderly); and
- Physically or mentally disabled persons.

For purposes of the CDBG Program, the groups listed above (commonly referred to as protected groups) are specifically protected from discrimination in the following areas:

**Housing:** Generally this includes the sale or rental of housing, and the financing, advertising or provision of brokerage services. There are other specific acts of discrimination that are equally illegal. Nondiscrimination requirements in this area are referred to as fair housing;

**Employment:** This applies to government employment, employment by government contractors or subcontractors, and employment under all construction contracts funded in whole or in part with federal money. These provisions are referred to as equal employment opportunity; and

**Participation in or Benefits Derived from CDBG Funded Activities:** This means that no one who is eligible may be excluded from participating in any CDBG-funded activity, nor may they be denied any benefits resulting from activities funded in whole or in part with CDBG funding.

### Other Requirements

Several federal and state statutes, portions of the CDBG regulations, and three Presidential Executive Orders contain civil rights and affirmative action provisions that apply to all programs funded with federal monies. Civil rights compliance and monitoring responsibilities are outlined in the following summary of federal and state laws, Executive Orders and CDBG program regulations.

#### A. FEDERAL

1. **The Hatch Act** (5 USC 1501, et seq.; 5 CFR, Part 151) restricts the political activities of certain public employees who may be connected with federally funded programs. In passing the Hatch Act in 1939, Congress declared that the partisan political activities of federal employees, employees of the District of Columbia government, and certain employees of state and local governments must be limited in order for public institutions to function fairly and effectively.

[www.osc.gov/Resources/HA Pamphlet Sept 2014.pdf](http://www.osc.gov/Resources/HA_Pamphlet_Sept_2014.pdf)

The Hatch Act means that employees in agencies who receive federal financial assistance may not use official authority to influence or interfere with the outcomes of

elections or nominations, or to directly or indirectly coerce contributions from subordinates to support a political party or candidate.

To comply with the Hatch Act, CDBG Grantees are required to:

- Inform all employees of the provisions of the Hatch Act, and
- Adopt a policy of compliance with Hatch Act regulations.

**Attachment 8-10**, sample Hatch Act Resolution, has been provided for use by CDBG Grantees to document their efforts to comply with Hatch Act requirements.

To assist with Hatch Act compliance, each Grantee should obtain a copy of the U.S. Merit System Protection Board (MSPB) brochure entitled, "Political Activity and the State and Local Employee (**Attachment 8-10**).” Additional information about the Hatch Act is available [HERE](#).

Advisory opinions concerning Hatch Act issues may be obtained directly from the MSPB Office of the Special Counsel by using its toll-free telephone number 1-800-854-2824.

Established by the Civil Service Reform Act of 1978, the MSPB Board serves as guardian of the federal, state and local government's merit-based system of employment. [www.mspb.gov](http://www.mspb.gov)

2. **Title VII of the Civil Rights Act of 1964** provides that no person in the United States shall on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. [www.eeoc.gov/policy/vii.html](http://www.eeoc.gov/policy/vii.html)

Action required: CDBG Grantees must adopt and enforce a nondiscrimination policy designed to ensure that all project activities funded in whole or in part with CDBG funds are conducted in a manner that will not cause discrimination. This means the program must be administered in a nondiscriminatory manner to provide benefits on an equal, non-segregated basis.

Nondiscrimination also applies to employment practices. CDBG Grantees may not deny employment on the basis of race, color, national origin, age, sex, or handicap. Furthermore, affirmative action and equal employment opportunity policies are fundamental aspects of the CDBG program. (See **Attachment 8-1** for an example of an Equal Employment Opportunity Policy.)

3. **The Cranston-Gonzalez National Affordable Housing Act of 1990, Title II, Section 282 [42 USC 12832]**. The nondiscrimination clause of the National Affordable Housing Act of 1990, states that:

No person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this subchapter. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) or with respect to an otherwise qualified disabled individual as provided in section 794 of title 29 (Labor) shall also apply to any such program or activity.

[www.hud.gov/offices/cpd/affordablehousing](http://www.hud.gov/offices/cpd/affordablehousing).

4. **Section 504 of the Rehabilitation Act of 1973**, as amended (29 USC 794). Section 504 is explicitly incorporated into Title II, Subtitle F, §282 of the National Affordable Housing Act of 1990. Section 504 states that:

No otherwise qualified disabled individual in the United States, as defined in section (7) shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

[www.dol.gov/oasam/regs/statutes/sec504.htm](http://www.dol.gov/oasam/regs/statutes/sec504.htm)

Although similar in wording, §504 of the Rehabilitation Act differs conceptually from Title VII of the Civil Rights Act and §282 of the National Affordable Housing Act. See the following:

- The premise of Title VII and §282 is that there are no inherent differences or inequalities between the general public and the persons protected by these provisions; therefore, there should be no differential treatment in the administration of federal programs.
- The premise of §504 is that affirmative steps must be taken to ensure that persons who are inherently unequal (the disabled) are not discriminated against as a result of administrative procedures or CDBG project activities. Disabled persons may need different treatment in order to be afforded equal access to federally assisted programs and activities; thus identical treatment may, in fact, constitute discrimination.
- Section 504 provisions are explicitly incorporated into Housing and Urban Development (HUD) implementing regulations at 24 CFR, Part 8, Nondiscrimination Based on Handicap in Federally-assisted Programs and Activities of the Department of Housing and Urban Development. Website: [www.access.gpo.gov/nara/cfr/waisidx\\_98/24cfr8\\_98.html](http://www.access.gpo.gov/nara/cfr/waisidx_98/24cfr8_98.html)
- Definitions of disabled family and disabled person:

Disabled family: As outlined in Appendix B to 24 CFR, Part 8, lower-income housing and the Section 8 housing assistance programs operate under the following definition of disabled person or family found in §3(b)(3), United States Housing Act of 1937, as amended:

Families consisting of a single person in the case of a person who is at least 62 years of age or is under a disability; or two or more persons, the head of which (or the spouse) is 62 years of age or over or is under a disability as defined in §223 of the Social Security Act or in §102 of the Developmental Disabilities Services and Facilities Construction Amendments of 1970 or is disabled.

Disabled person: A person is considered disabled if such person is determined, pursuant to regulations issued by the Secretary, to have an impairment which (A) is expected to be of long-continued and indefinite duration, (B) substantially impedes his ability to live independently; and (C) is of such a nature that such ability could be improved by more suitable housing conditions. A person shall also be considered disabled if such person is a developmentally disabled individual as defined in Section 102(a) (5) of the Developmental Disabilities Services and Facilities Construction Amendments of 1950.

To comply with Section 504's protection of the rights of disabled persons, CDBG Grantees are required to:

- Provide qualified disabled persons with benefits and services that are as effective as those provided to non-disabled individuals;
- Avoid aiding or perpetuating discrimination against qualified disabled persons;
- Afford qualified disabled persons with the opportunity to participate as members of planning or advisory bodies; and
- Utilize criteria or methods of administration that do not subject qualified disabled persons to discrimination.

5. **The Americans with Disabilities Act (ADA) of 1990** (ADA) guarantees equal opportunity in employment, public accommodations, transportation, state and local government services, and telecommunications, for individuals with disabilities. The ADA became law on July 26, 1990, and became fully effective on January 26, 1992.

[www.ada.gov/](http://www.ada.gov/)

The ADA borrows much of its substantive framework and language from Section 504 of the Rehabilitation Act of 1973. Therefore, if the Grantee works toward compliance, or is in compliance with Section 504, it will also generally be in compliance with ADA, and vice versa.

6. **Architectural Barriers Act of 1968** (42 USC 4151-4157) HUD regulations at 24 CFR, Part 40, prescribe standards for the design, construction, and alteration of publicly owned residential structures to ensure that physically disabled persons will have ready access to, and use of, such structures. Appendix A of 24 CFR, Part 40, provides a detailed discussion of the Uniform Federal Accessibility Standards.

[www.access-board.gov/](http://www.access-board.gov/)

7. **Fire Administration Authorization Act of 1992** [as implemented under provisions of 24 CFR 8.4(b) (1) (iii) and (iv); 24 CFR 8.32, Uniform Federal Accessibility Standards (UFAS) and UFAS 4.28, Alarms] These regulations state the conditions under which fire alarm systems must be equipped with visual and/or sensory alarm systems (or appropriate wiring for later installation of same), as a reasonable accommodation to persons with disabilities.

[www.hud.gov/offices/adm/hudclips/lops/GHM-0062LOPS.doc](http://www.hud.gov/offices/adm/hudclips/lops/GHM-0062LOPS.doc)

[www.fire.nist.gov/bfrlpubs/fire95/PDF/f95067.pdf](http://www.fire.nist.gov/bfrlpubs/fire95/PDF/f95067.pdf)

8. **The Age Discrimination Act of 1975** (42 U.S.C. 6101 et seq.) is explicitly incorporated into Title II, Subtitle F, §282 of the National Affordable Housing Act of 1990.

CDBG Grantees are responsible for ensuring that no individuals will be discriminated against on the basis of age. The Age Discrimination Act states that no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance.

[www.dol.gov/oasam/regs/statutes/age\\_act.htm](http://www.dol.gov/oasam/regs/statutes/age_act.htm).

9. **Equal Employment Opportunities under HUD Assisted Contracts – Executive Order 11246, as amended by Executive Order 11375**

Nondiscrimination in employment is required for all federally assisted contracts. Grantees are required to institute affirmative actions to ensure equality of opportunity in all aspects of employment and implement assurances that the regulations are followed.

Consistent with rules and regulations promulgated by the U.S. Department of Labor, HUD has prescribed standards and procedures for compliance with Executive Order 11246 in 24 CFR, Part 7, Equal Employment Opportunity. Under the terms of Executive Order 11246, CDBG Grantees are required to:

- Include the equal opportunity clause in all non-exempt federally-assisted contracts for more than \$10,000, as set forth in §202 of Executive Order 11246; and
- Ensure that all federally-assisted construction contractors and subcontractors on a CDBG-assisted construction project take affirmative actions to ensure that employees and applicants for employment are not discriminated against because of race, color, religion, sex, or national origin.

[www.dol.gov/compliance/laws/comp-eeo.htm](http://www.dol.gov/compliance/laws/comp-eeo.htm)

The U.S. Department of Labor has established a minority participation percentage goal for all jurisdictions at:

[www.dol.gov/ofccp/TAguides/TAC\\_FedContractors\\_JRF\\_QA\\_508c.pdf](http://www.dol.gov/ofccp/TAguides/TAC_FedContractors_JRF_QA_508c.pdf)

The U.S. Equal Employment Opportunity Commission has a website (with Questions and Answers Concerning Federal Laws Prohibiting Job Discrimination section) that can be consulted for additional guidance: [www.eeoc.gov/facts/qanda.html](http://www.eeoc.gov/facts/qanda.html).

10. **Title VIII of the Civil Rights Act of 1968 (Fair Housing Act)** – as amended by the Fair Housing Amendments Act of 1988, provides for fair housing throughout the United States.

[www.hud.gov/offices/fheo/progdesc/title8.cfm](http://www.hud.gov/offices/fheo/progdesc/title8.cfm)

As of March 12, 1989, Title VIII provisions also include, as a protected group (for purposes of furthering fair housing), families with children. Title VIII requires that affirmative actions be taken by CDBG Grantees to further fair housing opportunities within their jurisdictions.

CDBG Grantees must comply with Title VIII of the Civil Rights Act of 1968, as amended, by administering all programs and activities related to housing and community development in a manner that affirmatively furthers fair housing in the sale or rental of housing, the financing of housing, and the provision of brokerage services.

11. **Fair Housing Act, Executive Order 11063** – as amended by Executive Order 12259 (Equal Opportunity in Housing)

[www.archives.gov/federal-register/codification/chapter-24.html](http://www.archives.gov/federal-register/codification/chapter-24.html).

The Fair Housing Act requires HUD to take all actions necessary and appropriate to prevent discrimination in housing and related facilities that are funded in whole or in part with federal financial assistance. Federally funded activities that fall under these provisions include:

- Mortgage insurance
- Guaranty programs, and
- Grants used to acquire, clear, relocate or otherwise prepare a housing site.

The Act's provisions are also binding on housing-related practices of lending institutions, insofar as such practices relate to loans ensured and guaranteed by the federal government.

Each CDBG Grantee must affirmatively further fair housing. Title VIII of the Civil Rights Act and Executive Orders 11063 and 12259 require the CDBG Grantee to:

- a. Promote maximum choice within the community's total housing supply;
- b. Lessen racial, ethnic, and economic concentrations; and
- c. Facilitate desegregation and racially inclusive patterns in the occupancy and use of public facilities.

12. **Section 3 of the Housing and Urban Development Act of 1968**, as amended Section 3 requires that to the greatest extent feasible:

- Opportunities for training and employment must be given to lower-income

residents of CDBG-assisted projects; and

- Contracts for work in connection with such projects should be awarded to business concerns located in, or owned in substantial part by "project area" residents. In addition:
  - The state's Section 3 policy is posted on the WVDO website.
  - Additional information is available at: [www.hud.gov/section3](http://www.hud.gov/section3).
  - The [Section 3 Business Registry](#) is a tool to help Grantees meet their regulatory obligations by providing a list of local self-certified Section 3 businesses. The Section 3 Business Registry can identify prospective firms to be notified about the availability of local HUD-funded contracts. The site can be searched by state, city, county, or type of business at [www.hud.gov/sec3biz](http://www.hud.gov/sec3biz).

In applying Section 3 regulations to CDBG projects, the project area is determined as follows:

- For municipalities, the project area is the limits in which the municipality is located. First consideration should be given to persons living in or businesses located in or closest to the project activities;
- For counties, in most cases, the entire county will be considered the Section 3 project area;
- For Community Housing Development Organizations (CHDOs), the Grantee should check with its assigned CDBG Program Specialist to determine the appropriate project area for its CDBG program activities.

### **13. Women's Business Enterprise and Minority Business Enterprise – Executive Orders 11625, 12138 and 12432**

These regulations establish the development of Women's and Minority Business Enterprises (WBE/MBE) as a national priority.

The HUD regulations in 24 CFR, Part 85 establish procurement standards to be followed in federal assistance programs. Among the provisions of 24 CFR, Part 85 is the requirement that Grantees and any sub-Grantees take all necessary affirmative steps to ensure that DBEs in labor surplus areas are used when possible in the procurement of goods and services for CDBG funded activities.

[www.hud.gov/offices/lead/library/lead/24\\_CFRPART\\_85.pdf](http://www.hud.gov/offices/lead/library/lead/24_CFRPART_85.pdf)

In order to accomplish this DBE-related objective, CDBG Grantees must take the following affirmative steps:

- a. Place qualified small and minority businesses and women's business enterprises on bid solicitation lists;

- b. Ensure that small and minority businesses and women's business enterprises are solicited whenever they are potential sources of goods or services;
- c. Divide total requirements – when economically feasible and consistent with state law – into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
- d. Establish delivery schedules which encourage participation by small and minority businesses and women's business enterprises whenever possible;
- e. Use the services and assistance of the U.S. Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce; and
- F. Require the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in the above paragraphs.

**14. 24 CFR, Part 85 – HUD Administrative Requirements for Grants (Basic Federal Regulations)**

HUD Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments can be found at the following websites:

[www.access.gpo.gov/nara/cfr/waisidx\\_99/24cfr85\\_99.html](http://www.access.gpo.gov/nara/cfr/waisidx_99/24cfr85_99.html)

[www.hud.gov/offices/lead/library/lead/24\\_CFRPART\\_85.pdf](http://www.hud.gov/offices/lead/library/lead/24_CFRPART_85.pdf)

**15. EEOC Compliance Manual Section on the Prohibition of National Origin Discrimination**

National origin discrimination means treating individuals less favorably because they come from a particular place, because of their ethnicity or accent, or because it is believed that they have a particular ethnic background.

National origin discrimination also means treating someone less favorably at work because of marriage or other association with someone of a particular nationality. Whether an employee or job applicant's ancestry is Mexican, Ukrainian, Filipino, Arab, American Indian, or any other nationality, that individual is entitled to the same employment opportunities as anyone else.

The U.S. Equal Employment Opportunity Commission issued 12/2/02 updated guidance/questions/answers regarding the prohibition against national origin discrimination that is included in Title VII of the Civil Rights Act of 1964. [www.eeoc.gov](http://www.eeoc.gov).

Examples of national origin bias violations covered under Title VII include:

- Employment Decisions: Title VII prohibits any employment decision, including recruitment, hiring, and firing or layoffs, based on national origin.

- Harassment: Title VII prohibits offensive conduct, such as ethnic slurs, that creates a hostile work environment based on national origin. Employers are required to take appropriate steps to prevent and correct unlawful harassment. Likewise, employees are responsible for reporting harassment at an early stage to prevent its escalation.
- Language: Accent discrimination- An employer may not base a decision on an employee's foreign accent unless the accent materially interferes with job performance. English fluency- A fluency requirement is only permissible if required for the effective performance of the position for which it is imposed. English-only rules- English-only rules must be adopted for nondiscriminatory reasons. An English-only rule may be used if it is needed to promote the safe or efficient operation of the employer's business.

## B. STATE

1. West Virginia Human Rights Statutes:  
[www.hrc.wv.gov/Pages/default.aspx](http://www.hrc.wv.gov/Pages/default.aspx)
2. West Virginia's Human Rights statutes apply to CDBG Grantee's program activities and are summarized below and **Attachment 8-13**.
3. West Virginia State Code:  
[www.legis.state.wv.us/WVCODE/code.cfm](http://www.legis.state.wv.us/WVCODE/code.cfm)
4. West Virginia Disabilities Laws:  
[www.ada.wv.gov/laws/Pages/default.aspx](http://www.ada.wv.gov/laws/Pages/default.aspx)

### Grantee Responsibilities

There are six general areas that must be documented during implementation of the CDBG program in order to demonstrate a good faith effort to comply with federal civil rights requirements. Any actions taken by persons connected with CDBG program activities or by the Grantee to carry out equal opportunity and fair-housing requirements should be documented in the CDBG Civil Rights Program files.

Records should be kept in the project's CDBG Civil Rights File concerning the following six areas of civil rights responsibility:

1. Program Benefits: efforts to ensure minority participation in the program
2. Grantee Hiring And Employment Practices: the community's affirmative action plan and activities initiated to extend employment opportunities to minorities and women
3. Contractor Affirmative Action: actions by contractors and subcontractors to employ minorities and women
4. Fair Housing;
5. Actions To Affirmatively Further Fair Housing: compliance with the federal mandate to

administer all programs so as to affirmatively further housing availability, and to prevent discrimination in federally-assisted housing

6. Disabled Accessibility Requirements: actions taken to ensure access by persons with physical and mental disabilities to federally assisted programs and activities

#### A. Program Benefits

Title VII of the Civil Rights Act of 1964 prohibits discrimination in any federally assisted program on the basis of race, color, or national origin.

Section 109 (of Title I of the Housing and Community Development Act of 1974) prohibits discrimination and denial of program benefits on the basis of sex, age, or handicap. Portions of the CDBG regulations relating to equal opportunity require Grantees to document administrative methods designed to ensure nondiscrimination in project activities, in site selection criteria designed to benefit minorities, and any actions taken to overcome the effects of past discrimination.

[www.hud.gov/offices/fheo/FHLaws/109.cfm](http://www.hud.gov/offices/fheo/FHLaws/109.cfm).

Section 3 of the Housing and Urban Development Act of 1968 provides that, to the greatest extent feasible, opportunities for training and employment should be given to low and very low-income residents and businesses in the CDBG-assisted area. Demonstrating compliance with the Section 3 requirements and providing documentation of that compliance is required of all CDBG Grantees. (See **Attachment 8-2**, Section 3 Summary Report: Economic Opportunities for Low- and Very Low-Income Persons).

[www.hud.gov/offices/fheo/section3/section3.cfm](http://www.hud.gov/offices/fheo/section3/section3.cfm).

One of the simplest ways to demonstrate Section 3 efforts is to publish a notice in the area newspaper before advertising for construction bids. **Attachment 8-2**, Sample Section 3 Public Notice, contains a sample form the Grantee can use to inform the community of prospective employment and business opportunities. This notice should be published at least once to ensure that the community has a reasonable opportunity to be informed about the potential benefits of the CDBG project.

Language in **Attachment 8-3** pertaining to the Section 3 Civil Rights requirements must be included in all requests for proposals, bid documents, and contracts. Place the advertisements in publications having a circulation among minority groups in the area of the project to ensure that potential contractors are aware that whenever possible they should be hiring and buying locally, thus extending CDBG benefits into the Grantee's community. The notation, An Equal Opportunity Employer, should be included on agency letterhead when it is used for CDBG project-related correspondence.

In addition, Grantees are required to keep a running tabulation of the race and gender of households in any direct benefit program – such as: families assisted through housing rehabilitation or jobs provided to individuals through an economic development project. (Use Direct Benefit Reporting form in the CDBG Final Performance Report document to record data.)

Documentation of Section 3 compliance efforts need to be included in the CDBG Civil Rights File.

## B. Grantee Hiring and Employment Practices

1. Maintaining equal employment opportunity in hiring under the CDBG program falls under Title VII (Civil Rights Act) and assures that there will be no discrimination in the benefits to be derived from the CDBG program including employment opportunities.

Title VII-related hiring actions that need to be undertaken (and documented in the project's Civil Rights file) to promote equal employment opportunity include data concerning the Grantee's affirmative actions for equal employment opportunity, including recruitment advertising, hiring, promotions, layoffs or terminations, pay and recruitment for training.

In order to meet these Title VI obligations, several steps can be taken by the Grantee to increase employment opportunities for protected groups when hiring for the CDBG program.

Efforts should include advertisements in minority newspapers and publications.

Any employment advertisements published could include the following statement: The [Name of Grantee] is an Equal Opportunity Employer.

Other affirmative actions include notifying minority organizations located in the area of potential CDBG-related job openings and making the agency's equal employment policies clearly known to everyone involved in hiring, promotion, and salary decisions (see **Attachment 8-1** for a sample Equal Employment Opportunity Policy). The Grantee's personnel policies and procedures manual should be reviewed periodically to ensure compliance with these requirements. Employment recruitment records should include a summary of the number of applicants for each position relating to the CDBG Program, and the number of applicants who are minorities, women and disabled persons.

There should also be documentation by race, gender and handicap of the number of persons interviewed and the reasons for the hiring decisions.

2. Data and Documentation regarding Grantee hiring and employment practices. The CDBG Grantee must maintain records documenting the following information regarding Grantee employment practices:
  - Personnel policies;
  - Interview and hiring records;
  - Employee records (training, promotion, salary levels);
  - Data on overall employment of women and minorities; and
  - Employment data that indicates staff composition by race, sex, handicap status and national origin.

The West Virginia Development Office (WVDO) has, in some instances, allowed the Grantee the opportunity to utilize - by resolution - the Regional Planning and Development Council personnel policy and procedure manual as its own in the case of a small group of employees. Contact the WVDO for assistance.

### C. Affirmative Action

Executive Order 11246 provides that no person shall be discriminated against in any phase of employment under federally assisted construction contracts. It also requires that contractors take affirmative steps to ensure fair treatment in employment upgrading, transfer, recruitment, layoffs, rate of pay and selection for training.

#### 1. *Contracting with Disadvantaged Business Enterprises (DBEs)*

In addition to Executive Order 11246, requirements concerning women-owned and minority-owned business fall within the Contractor Affirmative Action requirements. Disadvantaged Business Enterprises (DBEs) is a term used to collectively refer to both women-owned business enterprises and minority-owned business enterprises.

Grantees should encourage the prime contractors on their projects to utilize DBE firms to the maximum extent possible. **Attachment 8-5** provides a sample letter of work notification to a DBE firm. It is important that DBE firms have the opportunity to bid, and are encouraged to do so. Examples of such affirmative actions include:

- Utilizing the local media, electronic and print, to market and promote contract and business opportunities for DBEs, including placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- Developing procurement procedures that facilitate opportunities for DBEs to participate as vendors and suppliers of goods and services; including assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
- Developing informational and documentary materials (fact sheets, program guides, procurement forecasts, etc.) on contract/subcontract opportunities for DBEs;
- Sponsoring business opportunity-related meetings, conferences, seminars, etc., with minority and women business organizations;
- When economically feasible, (and where consistent with State of West Virginia law), dividing total requirements into smaller tasks or quantities so as to permit maximum participation by small and minority business and women's business enterprises;
- Establishing delivery schedules that encourage participation by small and minority business and women's business enterprises;
- Utilizing the services and assistance of the U.S. Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce;

- Requiring the prime contractor to take the affirmative steps outlined in the points above if subcontracts are to be let; and
- Maintaining centralized records with statistical data on the utilization and participation of DBEs as contractors/subcontractors in all CDBG-assisted program-contracting activities in the CDBG project Civil Rights file.

Minimum HUD standards require the CDBG Grantee to establish and oversee a minority and women business outreach program that is designed to be:

- A good faith, comprehensive and continuing endeavor;
- Supported by a statement of public policy and commitment published in the electronic and print media of widest local circulation; supported by an office and/or a key, ranking staff person with oversight responsibilities and access to the chief elected official; and
- Designed to utilize all available and appropriate public and private sector local resources.

Certification of DBEs: The Disadvantaged Business Enterprise Program (DBE) of the State of West Virginia Department of Transportation (WVDOT) conducts investigations of minority and women-owned businesses to determine if they can be certified as DBEs. Firms meeting the eligibility standards set forth in 49 CFR, Part 26 of the Code of Federal Regulations may be eligible to participate in the state's DBE program. DBEs must apply for re-certification annually.

### **Minority Business Enterprise (M/WBE)**

When inviting project bid proposals, CDBG Grantees should consult the directory and mail an announcement of all bid solicitations and Requests for Proposals to MBE/WBE firms within their region.

**Attachment 8-4**, Contract Reporting Form, is used to document M/WBE Contract Awards for activities of \$10,000 or more. **The form should be completed at the time of bid award and updated if additional contractors or subcontractors perform work on the project involving activities of \$10,000 or more.** These forms should be kept in the CDBG Civil Rights File and are to be included as part of the final program closeout report.

In some communities, particularly smaller, rural ones, Section 3 commitments to use local businesses may seem to conflict with commitments to use minority and women-owned firms because no minority or women-owned firms exist within the community. However, if the community makes reasonable efforts to solicit bids from appropriate local firms and also from DBE firms beyond the limits of its municipality or county (and documents these efforts), it is meeting both objectives and it may then select the lowest and best bidder.

2. *Data and Documentation concerning contracting with Disadvantaged Business Enterprises (DBEs)*. Responsibilities of CDBG Grantees include:

- Maintaining copies of notices of bid solicitations and Requests for Proposals in the CDBG Program Management File.
- Keeping copies of Requests for Proposals and bid packages for individual projects in the appropriate CDBG Project File.
- Retaining data on the dollar amount of contract awards to DBE firms in the CDBG Civil Rights File.
- Including equal opportunity clauses in all bid specifications and contracts.
- Providing EEO notices for contractors to post in the workplace (see **Attachment 8-6**, sample Equal Employment Opportunity Poster). Keep copies in the CDBG Civil Rights Program file.
- Including DBE firms in bid solicitation and Request for Proposal lists. Keep documentation in the CDBG Civil Rights File.
- To the extent feasible, making employment and business opportunities available to project area residents. Keep documentation in the CDBG Civil Rights File.

#### D. Fair Housing

Federal law obligates all Grantees, regardless of project type or size, to take steps to “affirmatively further fair housing.” Fair housing means that no person shall be subjected to discrimination (because of race, color, religion, sex, handicap, familial status, or national origin) in the sale, rental, or advertising of dwellings, in the provision of brokerage services, or in the availability of residential real estate-related transactions. Specifically, it is unlawful to:

- Refuse to sell or rent a dwelling, or to negotiate for the sale or rental of a dwelling;
- Discriminate in the terms, conditions, or privileges involved in a sale or rental;
- Engage in any conduct relating to the provision of housing that otherwise makes unavailable or denies dwellings;
- Make, print or publish, or cause to be made, printed or published, any notice, statement or advertisement (or make any oral statement) that indicates any illegal preference or limitation;
- Select media or locations for advertising that deny particular population segments access to information about housing opportunities;
- Impose different sales prices or rental charges upon a dwelling;
- Use different qualification criteria or sale or rental standards or procedures (such as income standards, credit analyses, etc.);
- Represent to any person that a dwelling is not available for sale or rental when such dwelling is in fact available;

- Discourage any person from inspecting, purchasing or renting a dwelling (by exaggerating drawbacks, failing to inform them of desirable features, limiting information regarding suitably priced dwellings available for sale or rental, or communicating that he or she would not be comfortable or compatible with existing residents);
- Engage in blockbusting practices (inducing property owners to sell hastily or at a loss, by appeals to fears of depressed property values or other undesirable neighborhood consequences because of threatened minority encroachment, with the intention to resell at inflated prices);
- Deny access to or membership or participation in any multiple-listing service, real estate brokers' association, or other service organization or facility;
- Limit the use of privileges, services or facilities associated with a dwelling;
- Assign any person to a particular section of a community or to a particular floor of a building;
- Refuse to provide municipal services or property or hazard insurance for dwellings or to provide such services or insurance differently;
- Discriminate in the making of loans or the provision of other financial assistance relating to the purchase, construction, improvement, repair or maintenance of dwellings;
- Fail to make repairs or delaying maintenance or repair of sale or rental dwellings; or
- Evict tenants because of race, color, religion, sex, handicap, familial status, or national origin.

**Fair housing provisions apply to the community as a whole, not just to CDBG-supported housing projects, and they are an essential part of the community's CDBG responsibilities.**

Developing a local fair housing program: In order to analyze whether a fair housing problem might exist within their community, Grantees should ask themselves the following questions:

- Do all or most of the minorities in the community live in one neighborhood?
- Does it appear that realtors are hesitant to show minorities rental or ownership units in certain areas of town or in certain apartment buildings or subdivisions?
- Is there evidence that local banks and savings and loans consistently fail to provide mortgage money or CDBG improvement loans in certain areas of town?
- Do landlords rent to single parent households with children?
- Does the community actively assist people who believe they have encountered housing discrimination?
- Fair housing means that no person shall be subjected to discrimination (because of race, color, religion, sex, handicap, familial status, or national origin) in the sale, rental, or advertising of dwellings, in the provision of brokerage services, or in the availability of residential real estate-related transactions.

Federal law obligates all Grantees, regardless of project type or size, to take steps to “affirmatively further fair housing.”

### E. Affirmatively Furthering Fair Housing

CDBG Grantees are required to affirmatively further fair housing in their community in soliciting renters, determining eligibility, and in the conduct of all transactions.

Each Grantee must affirmatively further fair housing according to the regulations contained in 24 CFR §570.904(c). The sample list of actions below is suggestive of the types of fair housing activities that may be undertaken by communities.

- Passing a fair housing resolution is an action CDBG Grantees can take to demonstrate a "good faith effort" to comply with the fair housing requirement. The fair housing resolution adopted by a CDBG Grantee must also be publicized and promoted within the community. As part of project start-up activities, Grantee communities must adopt and publicize a fair housing resolution similar to that contained in **Attachment 8-7**, sample Fair Housing Resolution. Keep a copy in the CDBG Civil Rights File.) Review project activities to ensure that they serve low and very low-income minority residents as well as non-minorities.
- Develop a public information network concerning fair housing using local newspapers, radio stations, bulletin boards, churches, and property tax mailings to ensure that all segments of the community are aware of fair housing requirements, especially realtors, landlords, financial institutions, and minority households.
- Develop a fair housing assistance program to make housing opportunities known to minorities, to monitor compliance, and to refer discrimination complaints to the proper authorities.
- Conduct a meeting with financial institutions that serve the community to discuss the importance of providing financial assistance for housing in all geographic areas and to all residents in the community.
- Survey special housing needs of minorities and women to determine possible effects of discrimination.
- Use the "Equal Housing Opportunity" slogan and logo on Grantee letterhead.
- Display Fair Housing Posters (see **Attachment 8-8**), and distribute a Fair Housing Handout and Complaint Pamphlet. See sample in **Attachment 8-9** to explain fair housing rights, practices and statutory requirements.

Additional HUD guidance: “Performance Review Standards for Fair Housing Requirements in the CDBG Program.” [CLICK HERE](#)

Data and Documentation: The CDBG Grantee must document the steps it has taken to promote fair housing. Keep these records in the CDBG Civil Rights File.

When developing a fair housing/affirmative marketing program, it is very important that the Grantee document all of the actions taken, as well as the results of those actions. If these efforts are not documented, WVDO will be unable to demonstrate to HUD that Grantees are meeting their fair housing obligations.

CDBG and Grantees with housing projects will assess affirmative marketing efforts of owners by comparing predetermined occupancy goals (based on the area from which potential tenants will come) to actual occupancy data the owner is required to maintain. Outreach efforts on the part of the owner will also be evaluated by reviewing marketing efforts.

## F. Disabled Accessibility Requirements

Three major federal laws specify disabled accessibility requirements for federally funded programs and activities. These are:

1. Section 504 of the Rehabilitation Act of 1973,
2. The Americans with Disabilities Act (ADA) of 1990, and
3. The Fair Housing Amendments Act of 1988.

The Rehabilitation Act was enacted in 1973 and last amended in 1986. It was not until June 2, 1988, that HUD published its final rule in the Federal Register for implementation of Section 504 (24 CFR, Part 8, Nondiscrimination based on handicap in federally-assisted programs and activities of the Department of Housing and Urban Development).

Implementing regulations for Fair Housing provisions are located at 24 CFR, Part 100, Discriminatory Conduct under the Fair Housing Act (under subpart D, Prohibition Against Discrimination Because of Handicap). The ADA became law on July 26, 1990 and became fully effective on January 26, 1992.

[www.ada.gov/](http://www.ada.gov/)

The implications of Section 504 of the Rehabilitation Act are that Grantees receiving CDBG funds must ensure handicap accessibility to programs, services and benefits. Grantees must ensure that CDBG programs and activities are accessible, both structurally and administratively, to disabled persons. Grantees who apply on behalf of sub-Grantees or non-profits must also ensure that the sub-Grantee's programs and activities are accessible, both structurally and administratively.

The purpose of the ADA is to extend to disabled persons the civil rights that are now available to groups protected under the Civil Rights Act (i.e., race, color, sex, national origin, and religion). Integration of individuals with disabilities into the mainstream of society is the fundamental purpose of the ADA.

Under the ADA, an individual is considered disabled if the individual has:

“...a physical or mental impairment that substantially limits one or more major life activities such as hearing, seeing, speaking, walking or learning.”

The term also applies to someone with a record of impairment, such as a history of cancer or alcoholism (but it does not apply to current drug or alcohol abusers). It also

includes any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, and skin and endocrine; as well as any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

This definition of “disabled individual” includes persons who do not perceive themselves as disabled, but who are perceived by others as having a disability (e.g., a person disfigured in an accident, someone with AIDS, or someone living with or associated with a person who has AIDS).

To meet the Section 504/ADA requirements, Grantees must conduct a self-evaluation (an informal accessibility survey) to determine whether their facilities and programs are in compliance with ADA requirements.

- In determining whether facilities meet federal accessibility requirements, Grantees should refer to the Uniform Federal Accessibility Standards (UFAS) [see 24 CFR, Part 40, Appendix A].
- Advocacy groups for disabled persons should be encouraged to participate in this process of self-evaluation, and documentation of this process must be maintained. The self-evaluation plan will be reviewed during the CDBG monitoring visit or as a desk review.

Develop a Section 504/ADA Transition Plan: Following the self-evaluation described above, the Grantee must develop a transition plan to outline the steps the Grantee intends to take to correct any deficiencies.

- The Grantee must also set a specific date in its transition plan by which the facilities and programs will be brought into full compliance.
- If the Grantee's facilities are not immediately accessible, it simply means that the Grantee must find some means of making CDBG program activities and services accessible to persons with disabilities.

Appoint a Local Section 504/ADA Compliance Coordinator. The Grantee should appoint a coordinator to ensure ADA/504 compliance within the agency. In addition, the CDBG Grantee must adopt and post a Complaint Resolution Procedure that allows for prompt and equitable resolution of charges alleging non-compliance with Section 504/ADA.

The complaint procedure must allow current employees, applicants or members of the public who believe they have been discriminated against on the basis of a disability to report the incident. (See **Attachment 8-11** for a sample Complaint Resolution Procedures that could be used to meet Section 504 and ADA requirements). Notice of these procedures must be posted in all work areas and must be visible to the public.

The State of West Virginia CDBG program has not adopted specific required forms for use by CDBG Grantees in completing their self-evaluations, transition plans, and complaint resolution procedures. However, a number of organizations have prepared publications that can assist in this process. The following is a partial listing of such

resources:

- Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities, Transportation Facilities, and Transportation Vehicles, U.S. Architectural and Transportation Barriers Compliance Board, 1331 F Street NW, Suite 1000, Washington DC, 20004-1111, (202) 272-5434.
- Americans with Disabilities Act Accessibility Guidelines Checklist for Buildings and Facilities, U.S. Architectural and Transportation Barriers Compliance Board, 1331 F Street NW, Suite 1000, Washington DC, 20004-1111, (202) 272-5434.
- ADA Title II Action Guide for State and Local Governments, Adaptive Environments Center, Inc., National Institute on Disability and Rehabilitation Research, LRP Publications, Horsham PA 19044-0980.

For National and State contacts for ADA Information and Assistance, see **Attachment 8-13**.

HUD does not require Grantees to take actions that would (a) result in a fundamental alteration of facilities or programs, or (b) that would impose an undue financial or administrative burden on the Grantee.

However, if the public cannot get to (or some group is not likely to get to) the Grantee's CDBG program, reasonable accommodations must be made so that the program can be brought to persons with disabilities. HUD recommends that administrative changes be considered before costly structural changes.

CDBG Grantees and their contractors may not discriminate against qualified individuals with disabilities. This means that all government facilities, residential structures, programs, services, and communications must be accessible to all persons.

CDBG Grantees are responsible for providing access to disabled persons in five basic areas:

1. Accessible Communications
  2. Access to Employment
  3. Access to Program Benefits
  4. Physical Accessibility to Programs; and
  5. Data and Documentation
1. *Accessible Communications for disabled persons.* In order to ensure accessibility of program services and activities to persons with disabilities, Grantees must be aware of the possibility that individuals may need to use alternative forms of communication.

When marketing its programs and services, the Grantee should take the following steps:

- a. All publications must include a statement similar to the following:

This document will be provided in an alternative format upon request.

This may mean that someone in the Grantee's organization will have to read the document to an individual, provide them with an audiotape of the document, or use a copier or computer to magnify the image. In addition, some individuals may need assistance with filling out necessary forms and applications.

- b. When setting up public meetings, be aware of the fact that the meeting room must be handicap accessible (i.e., persons in wheelchairs must be able to maneuver through the building and into the meeting room). In addition, some individuals may have a total or partial visual or hearing impairment. Each of these situations may require some different type of accommodation.

Some examples of accommodations that can be made to assist the hearing impaired during a group meeting include assisted listening devices such as induction loops wired into a room, FM systems, and infrared systems. For a deaf person, it may be necessary to provide a qualified interpreter. An alternative would be to use closed captioning on a real time reader board.

When advertising public meetings or program services and activities, the Grantee must include a written statement similar to the following:

The [CDBG Grantee] makes reasonable accommodations for any known disability that may interfere with a person's ability to participate in any CDBG Program service or activity. Persons needing an accommodation must notify [who] no later than [date] to allow adequate time to make needed arrangements.

- c. Use Disability Access Symbols to alert people with disabilities concerning access accommodations and information. Place the symbols on all advertising, publicity, websites, publications, signs, etc. CDBG Grantees can access the symbols via the Internet. Newly improved Disability Access Symbols produced by the Graphic Artist Guild and the National Endowment for the Arts are now online and downloadable at: [Disability Access Symbols](#).

The 12 disability access symbols that can be found at that website may be used to promote and publicize accessibility of places, programs and other activities for people with various disabilities, and the website gives suggestions for how the symbols can be used effectively and sensitively.

- d. For purposes of communications requirements of the ADA and Section 504, Grantees have access to the West Virginia Telecommunications Relay Service /Telecommunications Device for the Deaf (TDD). A Text Telephone (TTY/TDD) is an electronic device that enables people who are deaf, hard of hearing, or speech impaired to use the telephone by typing messages back and forth and reading responses on the display. A TTY is required for both parties to communicate directly, or the hearing party may call via the West Virginia Relay Service.

Grantees are not required to secure their own TDDs. West Virginia has in place a very sophisticated telephone relay system for the deaf called the

West Virginia Relay Center. West Virginia Relay Center makes communication by telephone simple, dependable and convenient for people who have difficulty using a standard phone. The West Virginia Relay Center enables standard telephone users to communicate with people who are deaf, hard of hearing, Deaf/Blind or speech disabled and use a TTY (text telephone) or another assistive telephone device.

TTY/TDD/PC/Voice	Dial 7-1-1
TTY/TDD/PC only	Dial 1-800-982-8771
Voice only	Dial 1-800-982-8772

A deaf person, or a person wishing to communicate with a deaf person, can call a toll-free number to access any city in the United States. An operator types in the conversation to the hearing-impaired person, who reads the message via a Telecommunication Device for the Deaf (TDD). The operator then reads the return message to the hearing person.

2. *Access to Employment for Disabled Persons.* Title I of the ADA prohibits discrimination by an employer against a qualified person with a disability.
  - a. Employers are required to make reasonable accommodation to known physical or mental limitations of an otherwise qualified individual, unless to do so would impose an undue hardship on the employer. Cost alone does not necessarily constitute undue hardship. A person with a disability is otherwise qualified if they can satisfy the requisite skill, experience and education requirements for the position and can perform the essential functions of the job with or without reasonable accommodations. Contact a CDBG Program Specialist who can provide assistance concerning specific types of reasonable accommodations.
  - b. Essential functions are defined as those that are fundamental to the job, excluding any marginal functions of the position. Where possible, the employer is required to make such accommodations as providing physical hardware or equipment to allow the disabled person to complete job duties (remembering that there is often more than one way to do a job), or reassigning job tasks among workers. If Grantees have questions regarding what constitutes an essential job function or an undue hardship on the employer, they should contact their assigned CDBG Program Specialist.
  - c. When recruiting, the Grantee and its contractors and subcontractors must include the following written statement:
 

“The [Grantee/contractor name] makes reasonable accommodations for any known disability that may interfere with an applicant's ability to compete in the recruitment and selection process or an employee's ability to perform the essential duties of the job. (In order for the Grantee/contractor to make such accommodations, the applicant must make known any needed accommodation.)

“You may call [telephone number] or write to [address] to make the request known. Use the WV Relay Center.”

When necessary, CDBG Grantees should use a local TDD number if possible. If no TDD is available locally, the Grantee may use the West Virginia Relay Center service number for this purpose.

If Grantees do intend to utilize the West Virginia Relay Center TDD number, they should make sure that the assigned CDBG Program Specialist is informed regarding the details of such announcements, and that CDBG project administrators receives copies of those announcements so that staff can competently answer questions received on the TDD about the Grantee's activities.

It is unlawful to ask an applicant if they have a disability or ask any questions about their specific disability (including the extent, nature or severity of the disability) prior to extending a conditional offer of employment.

Job-related questions may be asked such as: “Can you perform the essential functions of the job either with or without a reasonable accommodation?” In general, questions asked of applicants should be consistent with business necessity and they should be job-related, with the same questions asked of all applicants (e.g., conduct the same structured oral interview with the same questions for all applicants).

3. *Access to Program Benefits for Disabled Persons.* Title II of the ADA specifies that qualified individuals with disabilities are not to be excluded from participation in, or to be denied the benefits of, any services, programs, or activities funded in whole or in part with federal funds.
  - a. A qualified individual with a disability is one who meets the essential eligibility requirements for receipt of services or for participation in programs or activities, with or without a reasonable modification to rules, policies or practices; the removal of architectural, communication or transportation barriers; or the provision of auxiliary aids and services.
  - b. The basic requirement of ADA for CDBG Grantees is that all services, programs and activities be accessible to everyone, including people with disabilities, regardless of the accessibility of the Grantee's facilities.
  - c. Grantees are also required to take affirmative steps to ensure that qualified persons with disabilities are informed of the availability of program services and activities; and that the Grantee's activities or services are readily accessible to, and usable by, individuals with disabilities.

Administrative changes might include scheduling activities for the disabled at disabled accessible locations, assigning auxiliary aides to assist disabled clients, providing CDBG visits or on-call transportation services, and publicizing the availability of audio equipment and telecommunications devices for deaf persons (TDDs).

- d. The Grantee may not provide services or benefits to disabled persons through programs that are separate or different – unless the separate programs are necessary to ensure that the benefits or services are equally effective. Even when separate programs are permitted, an individual with a disability must still have the right to choose to participate in the regular program, and the Grantee may not require an individual with a disability to accept a special accommodation or benefit if the person chooses not to accept it.

4. *Physical Accessibility for Disabled Persons to Programs.*

- a. The Grantee should identify the primary access point to their office building and ensure that parking spaces are designated for people with disabilities displaying special permits on their vehicles.
- b. In addition, the Grantee needs to ensure that the accessible entrance to the building is kept accessible (i.e., free of snow and other blockage, with unauthorized persons not allowed to park in the handicap designated areas).
- c. Please refer to **Attachment 8-13** for all federal, state and local ADA information assistance.
- d. The regulations for meeting handicap accessibility requirements for housing facilities are complex and cannot be described concisely in this chapter, so what is found in this chapter is the beginning of the information that is needed to assure disabled accessibility for housing facilities.

The ADA generally does not cover private residential facilities. These facilities are addressed in the Fair Housing Amendments Act, which prohibits discrimination on the basis of disability in selling or renting housing.

However, provisions of the Fire Administration Authorization Act of 1992, which became effective October 26, 1992, require that all housing units assisted with federal funds be equipped with a hard-wired or battery-operated smoke detector that includes appropriate wiring that makes it possible to install visual and/or sensory alarm systems if the need arises. This requirement applies to all new construction, reconstruction, and rehabilitation projects on any multifamily or single-family housing assisted with CDBG funds. Further, where alarms already exist in common areas, visual and sensory alarms should be provided also, as a reasonable accommodation to persons with disabilities.

- e. As described in 24 CFR §8.4(b) (1) (iii) and (iv), it is illegal to discriminate against a disabled person by providing:

...any housing, aid, benefit, or service that is not as effective in affording the individual an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others ... unless such action is necessary to provide qualified individuals with handicaps with housing, aids, benefits or services that are as effective as those provided to others.

### 5. *Data and Documentation*

With respect to requirements of the Architectural Barriers Act Grantees, must be kept in each applicable CDBG Project File, documentation indicating that the standards prescribed in 24 CFR §40.4 are applicable to, and have been or will be incorporated into, the residential structure to be assisted with CDBG funds. In addition, CDBG will include in its existing procedures for the review and approval of newly constructed or substantially rehabilitated multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with the above provisions of the Fair Housing Act.

CDBG has incorporated into the normal grant monitoring procedures a review of the Grantee's Self-Evaluation and Transition Plan for compliance with Section 504 of the Rehabilitation Act and the Americans with Disabilities Act. The Grantee must certify to WVDO/CDBG in writing that their CDBG program activities are being operated in compliance with Section 504, the ADA and the Fair Housing requirements.

Each Grantee must submit compliance reports to the responsible civil rights official. Documentation shall be kept to ascertain compliance.

## **Record Keeping Requirements**

The Project's Civil Rights File should contain the following information and records

- Records demonstrating a good faith effort to comply with federal civil rights requirements.
- Records of program applicants and program beneficiaries, by race and gender. See **Direct Benefit Data Collection Requirements** on the following page for an explanation of HUD data collection requirements. A running tabulation of the race and gender of households in any direct benefit program, such as families assisted through housing rehabilitation or jobs provided to individuals through an economic development project. The Final Performance Report will be used for direct benefit applicants and recipients summary and race and gender of households reporting.
- Documentation of efforts to make CDBG program services and activities accessible to blind, deaf, and other physically and mentally disabled persons.
- Documentation regarding steps the Grantee has taken to promote fair housing. Efforts to ensure minority participation in the program (e.g., documentation of administrative methods designed to ensure nondiscrimination in project activities and in site selection criteria designed to benefit minorities, as well as actions taken to overcome the effects of past discrimination).
- Documentation of compliance with handicap accessibility requirements in housing construction and rehabilitation activities (Fair Housing Act, Section 504 of the Rehabilitation Act; and the Americans with Disabilities Act).
- Documented actions undertaken to promote equal employment opportunity, including documented efforts of the Grantee's affirmative actions in equal employment

- opportunity (e.g., recruitment advertising, hiring, promotions, layoffs or terminations, pay and recruitment for training).
- A summary of the number of applicants for each position, and the number of applicants who are minorities, women and disabled persons.
  - Documentation by race, gender and handicap of the number of persons interviewed and the reasons for the hiring decisions.
  - Documentation of the following information regarding Grantee employment practices:
    - Personnel policies
    - Interview and hiring records
    - Employee records (training, promotion, salary levels)
    - Data on overall employment of women and minorities employment data that indicates staff composition by race, sex, handicap status and national origin;
    - Documented actions undertaken to promote equal opportunity in bidding and contracting for services and products from DBE firms
    - Data recording the Grantee's affirmative actions to encourage the participation of DBE firms.

### **Data Collection Requirements for Ethnicity and Race from HUD and the Office of Management and Budget (Revised 2002)**

HUD has revised Grantee data collection and reporting requirements that have been established for HUD (which includes CDBG, HOME and other HUD-funded projects) by the Office of Management and Budget.

Under the current policy for data collection, HUD CDBG projects must:

- Offer respondents the option of selecting a self-description from HUD's new set of racial categories (provided on the following pages);
- Treat ethnicity as a category separate from race; and
- Use some new terminology that has been adopted for certain racial groups and ethnic groups.

The changes announced mean that:

1. In CDBG projects which have direct benefits to individuals and households, CDBG Grantees must now ask clients to identify their ethnicity prior to asking them to identify their race. See item 5.
2. For CDBG local project activities that require gathering ethnicity and race data from individuals or households, use of the new race/ethnicity categories is required. This would include housing rehabilitation for individual families, and the payment of water-system or sewer system hook-up fees, tap fees or assessment fees for LMI households. The intent to include tap fees or assessment fees in a project must be stated in the project application. The CDBG application includes the revised ethnic and racial categories required by HUD, and these categories should be used to collect data from individuals and households receiving direct assistance, if any, as part of the CDBG project.

3. There are now 10 racial categories listed below, and two ethnic categories, also listed below, that must be used in gathering this data from individuals receiving direct benefit assistance.
4. The CDBG program created revised project completion reports (see CDBG Final Performance Report) that reflect the additional race and ethnicity categories.
5. **Grantees should use a two-question format, meaning that separate questions for race and ethnicity should be used. Both questions must be answered. The ethnicity question should precede the race question.**

Ethnicity: (select only one)

1. Hispanic or Latino (HL)
2. Not Hispanic or Latino (NHL)

Race: (select one or more)

1. White
2. Black or African American
3. Asian
4. American Indian or Alaskan Native
5. Native Hawaiian or Other Pacific Islander
6. American Indian or Alaskan Native and White
7. Asian and White
8. Black or African American and White
9. American Indian or Alaskan Native and Black or African American
10. Other Multi-racial (balance of individuals reporting more than one race)

Self-reporting or self-identification by the individuals receiving the assistance (rather than observer identifications) is the preferred method for collecting race and ethnicity data. Self-identification for race and ethnicity means that responses are based on self-perception.

## EQUAL EMPLOYMENT OPPORTUNITY (EEO) POLICY

### PURPOSE

To provide equal employment opportunity in direct employment with the \_\_\_\_\_.

### POLICY

It is the policy of the \_\_\_\_\_ to provide equal opportunity to all of its employees and applicants for employment and to assure that there shall be no discrimination against any person on the basis of race, color, religion, creed, national origin, sex, age, physical or mental handicap, marital status or political beliefs unless related to a bona fide occupational requirement.

To this end, the \_\_\_\_\_ will take affirmative actions to equalize opportunity for employment at all levels of operation for those classes of people who have traditionally been denied equal opportunity – minority group members, women, and the disabled; and the \_\_\_\_\_ recognizes an obligation to make reasonable accommodations to the known physical or mental limitations of an otherwise qualified disabled applicants or employees unless the accommodation imposes an undue hardship.

All applicants for employment with the \_\_\_\_\_ will be recruited from the reasonably available labor market and evaluated on each person's individual qualifications and abilities.

All \_\_\_\_\_ employees shall be afforded equal employment opportunity during their terms of employment, and are guaranteed protection against retaliation for exercising any legal or administrative procedures to secure rights to equal employment opportunity or testifying on behalf of someone else doing so.

Adoption of this document reaffirms the \_\_\_\_\_'s policy of nondiscrimination in employment, including but not limited to the following:

- Recruitment
- Selection
- Placement
- Testing
- Training
- Promotion
- Transfer
- Discipline
- Demotion
- Layoff and termination

All supervisory personnel are responsible for, and shall be committed to, achieving and promoting equal employment opportunity with the \_\_\_\_\_ and for implementing this equal employment opportunity policy.

## ASSIGNMENT OF RESPONSIBILITY

Primary responsibility for the development, implementation and maintenance of procedures in accordance with this equal employment opportunity policy is assigned to \_\_\_\_\_, who will serve as the equal opportunity officer and will conduct periodic reviews of the \_\_\_\_\_'s personnel action to ensure that the policy of equal opportunity is being adhered to and will hold quarterly equal opportunity meetings with the \_\_\_\_\_ to apprise them of progress and of any developing problems for which remedial action would be appropriate.

The \_\_\_\_\_ hereby directs all employees of the \_\_\_\_\_ engaged in any phase of employments, including but not limited to the following:

- Recruitment
- Selection
- Placement
- Testing
- Training
- Promotion
- Transfer
- Discipline
- Demotion
- Layoff and termination

to take appropriate steps to ensure that employment opportunities with the \_\_\_\_\_ are offered on an equal basis to all without regard to race, color, sex, creed, religion, national origin, age, physical or mental handicap, marital status, or political beliefs unless such distinction is a bona fide occupational qualification.

## IMPLEMENTATION

The \_\_\_\_\_ will implement this policy and Title VII of the Civil Rights Act of 1964, by means of the Equal Employment Program outlined below. This program is drawn to the specifications and standards established by Presidential Executive Orders 11246 and 11375, which are described in Part 60-2 of the *Code of Federal Regulations* (issued by the Office of Federal Contract Compliance, U.S. Department of Labor).

This policy shall be comprehensive in its range. The \_\_\_\_\_ shall make good faith efforts to implement this policy. Procedures adopted will include, at a minimum:

- evaluate all current employment practices for evidence of discriminatory effect. Where such practices are found to be discriminatory in their effect, they shall be modified so as to excise any discriminatory effect;
- remedy any unwarranted instances of under-utilization of women, minorities, and other individuals who have traditionally been the victims of discrimination;

- develop training and upgrading procedures which will ensure full consideration for those classes of people who have traditionally been denied equal opportunity – minority group members, women, and the handicapped – in any future employment opportunities with the \_\_\_\_\_;
- seek out those who have been denied equal opportunity as applicants whenever vacancies occur;
- disseminate the substance of this policy on a continual basis through written notice to all employees, recruitment sources and other interested persons and organizations;
- provide equal pay for equal work;
- apprise all contractors and subcontractors of their affirmative action responsibilities in all contracts awarded by this jurisdiction;
- ensure compliance with all applicable federal and state equal employment requirements;
- include the following clause in all vacancy announcements:

**We are an Equal Opportunity Employer.**

- provide assistance to members of protected groups in completing applications;
- provide assistance to individuals needing help in meeting training and educational qualifications for job vacancies whenever possible;
- apprise all employment referral agencies of the substance of this policy in order to facilitate referral of qualified minorities, women and handicapped individuals;
- post EEO posters in conspicuous places on the \_\_\_\_\_ premises;
- instruct all supervisory personnel in the required procedures following an EEO complaint;
- inform all supervisory personnel of their duties and responsibilities with respect to equal employment opportunity; and
- inform all employees of the \_\_\_\_\_'s commitment to equal employment opportunity and of their rights and remedies under the law.

**EFFECTIVE DATE**

This policy shall take effect upon affirmative vote of the \_\_\_\_\_.  
(Please include resolution or minutes authorizing action.)

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**Chief Elected Official's Signature**

**Date**

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**Title of Chief Elected Official**

**HATCH ACT RESOLUTION**

RESOLUTION NO: \_\_\_\_\_

*WHEREAS*, the federal Hatch Act (5 USC, § § 1501 et seq.) restricts the political activity of local government employees employed in connection with programs financed in whole or in part by federal loans or grants; and

*WHEREAS*, the Hatch Act attempts to deter the political influence of public employees connected with federally funded programs; and

*WHEREAS*, the \_\_\_\_\_ receives federal loans or grants from the federal government to support various programs; and

*WHEREAS*, local governments which receive loans and grants from the federal government are required to inform all employees of the provisions of the Hatch Act and to adopt a policy of compliance with its regulations;

*THEREFORE, BE IT RESOLVED*, that the \_\_\_\_\_ is hereby appointed to serve as Hatch Act Information Officer, and that as such he/she will inform each of the \_\_\_\_\_ officials and employees of the provisions of the Hatch Act through the use of an employee manual, written memoranda or other written means of notification, maintain on file a copy of the brochure entitled *Political Activity and the State and Local Employee*, and monitor compliance with the provisions of the Hatch Act.

\_\_\_\_\_  
*Signature of Chief Elected Official* *Date*

\_\_\_\_\_  
*Typed Name of Chief Elected Official*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Attested By* *Date*

**SECTION 504 AND ADA  
COMPLAINT RESOLUTION PROCEDURES  
AND ADA COMPLAINT FORM**

Section 504 of the *Rehabilitation Act of 1973* and the *Americans with Disabilities Act of 1990* (ADA) provide comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services and programs, and telecommunications. Title II of the ADA states, in part, that:

*no otherwise qualified disabled individual shall, solely by reason of such disability, be excluded from the participation in, be denied the benefits of, or be subject to discrimination in programs or activities sponsored by a public entity.*

The \_\_\_\_\_ has adopted this complaint procedure to provide prompt and equitable resolution of complaints alleging any action prohibited by the U.S. Department of Justice regulations implementing Title II of the ADA.

Any individual who believes that she/he or a specific class of individuals with disabilities has been subjected to unlawful discrimination on the basis of that disability by the \_\_\_\_\_ or any of the \_\_\_\_\_'s contractors or suppliers may, by him or herself, or by an authorized representative, file a written complaint.

Complaints or questions should be addressed to:

<b>Name</b>	
<b>Address</b>	
<b>Telephone</b>	

The \_\_\_\_\_ has been designated to coordinate compliance with Section 504 of the *Rehabilitation Act of 1973* and the *Americans with Disabilities Act of 1990*.

1. The complaint must be filed in writing and contain the name, address and telephone number of the individual or representative filing the complaint; a description of the alleged discriminatory action in sufficient detail to inform the department of the nature and date of the alleged violation; the signature of the complainant or authorized representative; and a description of the corrective action that is being sought. Complaints filed on behalf of a third party must identify the alleged victims of the discrimination. Complaints may be filed on the attached complaint form.
2. The complaint must be received within 20 calendar days after the alleged violation occurs. This time may be extended, as determined by the Section 504/ADA Coordinator, for good cause shown.
3. The \_\_\_\_\_ shall promptly conduct an informal investigation of the complaint. Interested parties will be afforded an opportunity to submit information relevant to the complaint.

- 4. A written response will be issued and a copy forwarded to the complainant no later than 30 calendar days after completion of the investigation.
- 5. The \_\_\_\_\_ will maintain the files and records relating to the complaint and its investigation according to the SCBG records retention requirements.
- 6. Nothing in this complaint resolution procedure shall be construed as preventing an individual from pursuit of other remedies, including filing a formal complaint with the West Virginia Human Rights Commission, with any federal agency the individual believes is appropriate, or with the U.S. Department of Justice. The time limit for filing a formal complaint is 180 days after the alleged incident. This procedure also does not preclude the individual's right to file a lawsuit in federal district court.

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***Signature of Chief Elected Official***

***Date***

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***Title of Chief Elected Official***



**PLEASE SPECIFY THE CORRECTIVE ACTION YOU SOUGHT:**

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CHECK HERE if additional pages are attached

\_\_\_\_\_  
Signature of Complainant

\_\_\_\_\_  
DATE

**COMPLAINTS SHOULD BE ADDRESSED TO:**

\_\_\_\_\_  
Telecommunications Device for the Deaf

TTY/TDD/PC/Voice	Dial 7-1-1;
TTY/TDD/PC only	Dial 1-800-982-8771;
Voice only	Dial 1-800-982-8772 for the West Virginia Relay Service.

AGENCY USE ONLY				
<i>Reviewer</i>		<i>Signature</i>		<i>Date</i>
<i>Comments</i>				

**ADA SELF-EVALUATION INVENTORY AND TRANSITION PLAN**

<http://tinyurl.com/ADASET>

## CIVIL RIGHT RESPONSIBILITIES CHECKLIST

<b>1. Civil Right requirements at project start-up</b>		<b>(before first draw)</b>
Date	Set up a <b>CDBG Civil Rights file.</b>	
	<b>1a.</b>	Adopt a Fair Housing Resolution ( <i>Attachment 8-7</i> ). Display fair housing posters ( <i>Attachment 8-8</i> ) and start actions to affirmatively further fair housing.
	<b>1b.</b>	Adopt Nondiscrimination (Equal Employment Opportunity/EEO) Policy Resolution ( <i>Attachment 8-1</i> ) and start implementation of EEO.
	<b>1c.</b>	Adopt ADA & Section 504 Complaint Resolution Procedures ( <i>Attachment 8-11</i> ). Designate an ADA/Section 504 compliance coordinator.
	<b>1d.</b>	Conduct an ADA Self-Evaluation Inventory. Prepare an ADA Transition Plan for Handicapped Accessibility to Public Facilities ( <i>Attachment 8-12</i> ).
	<b>1e.</b>	Adopt a Hatch Act Resolution ( <i>Attachment 8-10</i> ).
<b>2. Civil rights responsibilities after project start-up</b>		
	<b>2a.</b>	Maintain (in the project's Civil Rights file) documentation/records of project activities related to progress concerning on-going implementation of and follow-through on each of the responsibilities <b>1.a</b> through <b>1.e</b> (as listed above and explained in Chapter 8).
	<b>2b.</b>	Publish <i>Attachment 8-2</i> (sample <i>Section 3 Public Notice: Economic Opportunities for Low-Income and Very Low-Income Persons</i> ) or its equivalent.
	<b>2c.</b>	Place the required appropriate contract language regarding civil rights in bid documents and in all contracts. See Chapter 5, Procurement.
	<b>2d.</b>	Take all civil rights protection action necessary (and keep records of actions taken) during the entire course of your project to ensure that no one is discriminated against in receiving services and benefits from the CDBG project, especially persons in the protected groups.
	<b>2e.</b>	If your project includes <i>direct benefits</i> to individuals and households: Gather and record the information that shows how your project meets requirements that are applicable to those CDBG projects with direct benefits to individuals: Keep records of direct beneficiaries.
	<b>2f.</b>	Complete <i>Attachment 8-4, Contract Reporting Form</i> , at the time that each contract and subcontract (including contractors and subcontractors that are not minority owned) exceeding \$10,000 is awarded.
	<b>2g.</b>	Assure contractor affirmative action responsibilities concerning contracting with Disadvantaged Business Enterprises.

## Resolution

### Section 3: Economic Opportunities for Low-and-Moderate Income Persons

The CDBG Grantee: City, Town or County of has received notice of the award of a Community Development Block Grant from the West Virginia Development Office. (Name of Grantee) will soon commence implementation of a (include a brief description) project.

CDBG regulations governing the grant require that to the greatest extent feasible, opportunities for training and employment arising in connection with this CDBG-assisted project will be extended to local lower-income residents. Further, to the greatest extent feasible, business concerns located in or substantially owned by residents of the project area will be utilized.

For more information, please contact (name) at (address) or call (phone number).

SAMPLE

**Note: This is a sample form that CDBG grant recipients can use to inform the community of prospective employment and business opportunities. This notice should be published at least once to ensure that the community has a reasonable opportunity to hear about the potential benefits of the CDBG project.**

**REQUIRED CONTRACT LANGUAGE FOR SECTION 3 RESPONSIBILITIES**  
**SECTION 3: Economic Opportunities for Low- and Very Low-Income Persons**

*Required Section 3 Language*

*Section 3 of the Housing and Urban Development Act of 1968; The contractor will ensure that to the greatest extent feasible opportunities for training and employment arising in connection with this CDBG-assisted project will be extended to lower income project area residents. Further, the contractor will, to the greatest extent feasible, utilize business concerns located in or substantially owned by residents of the project area, in the award of contracts and purchase of services and supplies.*

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In addition to publishing a notice of employment and business opportunities associated with the CDBG project (see Attachment 8-2):

- the language above pertaining to the civil rights requirements must be included in all requests for proposals, bid documents, and contracts; and
- this language must be placed in publications having a circulation among minority groups in the area of the project

Section 3 of the Housing and Urban Development Act of 1968 requires that to the greatest extent feasible:

- opportunities for training and employment must be given to lower-income residents of CDBG-assisted projects; and
- that contracts for work in connection with such projects should be awarded to business concerns located in, or owned in substantial part by "project area" residents.

In applying Section 3 regulations to CDBG projects, the project area is determined as follows:

- For municipalities, the project area is the county in which the municipality is located. First consideration should be given to persons living in or businesses located in or closest to the project activities;
- For counties, in most cases, the entire county will be considered the Section 3 project area;

For Community Housing Development Organizations (CHDOs), the grantee should check with their assigned CDBG Program Specialist to determine the appropriate project area for their CDBG program activities.

**CONTRACT REPORTING FORM – CONTRACT AND SUBCONTRACT ACTIVITY**  
*for contract and subcontract activity of \$10,000 or more*

<b>Grantee</b>		<b>Date</b>	
<b>Project Name</b>		<b>Project #</b>	
<b>Contact Person</b>		<b>Phone #</b>	

<b>Contractor Name</b>	<b>WV Contractor License #</b>	<b>Contract Amount</b>	<b>Trade Code</b>	<b>Ethnicity, Racial Category and Gender</b>	<b>Contractor ID</b>	<b>Sub-contractor ID</b>	<b>Address</b>

<i>Trade Codes</i>	1	Construction	2	Education/Training	3	Other		
<i>Ethnicity Codes</i>	HL – Hispanic or Latino			NHL – Not Hispanic or Latino				
<i>Racial Codes</i>	1	White	2	Black or African American	3	Asian	4	American Indian or Alaskan Native
	5	Native Hawaiian or Other Pacific Islander	6	American Indian or Alaskan Native and White	7	Asian and White	8	Black or African American and White
	9	American Indian or Alaskan Native and Black or African American			10	Other Multi-racial		

## CONTRACT REPORTING FORM INSTRUCTIONS

This report is to be used by grantees to report contract and subcontract activities of \$10,000 or more under the Community Development Block Grant (*Entitlement and Small Cities*). Grantees should also include contracts entered into by recipients of CDBG rehabilitation assistance. Contracts and subcontracts of less than \$10,000 may be reported at the option of the grantee, if the grantee believes that in the aggregate such contracts represent a significant portion of its contracting activity.

Business ethnicity, racial and gender codes (all of which are listed at the bottom of the form on page 1 of the form) are to be used to designate the ethnic, racial and gender character of the business entity receiving a contract or subcontract. To be classified in a particular racial, ethnic or gender category, a business entity must be 51% or more owned and controlled by the racial/ethnic/gender group members of the category. When a business is not 51% or more owned and controlled by a single racial/ethnic/gender group, enter the code for the group that seems most appropriate.

The contractors (*firms or organizations that contract directly with the local government receiving CDBG funds*) and subcontractors (*firms or organizations that contract with contractors*) names and addresses need only be included once on any quarterly report. The contractor's ID Number is to be shown on all prime contracts and on all of that contractor's subcontracts. For subcontracts, the subcontractor's ID number is also to be shown. When entering into a subcontract, only show the amount of the subcontract and the "type of trade" and business racial/ethnic/gender, codes of the subcontractor. The form is to be completed as follows:

1. **Grantee** Enter the name of the unit of government submitting report of contract/subcontract activity.
2. **Date** Enter the Date the report was submitted to the WVDO.
3. **Project Name** Enter the name of the project.
4. **Project #** Enter the project number.
5. **Contact Person** Enter name and phone number of person responsible for maintaining and submitting contract data at respective unit of government.
6. **Phone #** Enter the Contact Person's telephone number.
7. **Contractor Name** Enter the Contractor's Name
8. **West Virginia Contractor's License #** Enter the contractor's license number.
9. **Contract Amount** Enter the dollar amount of the contract or subcontract. Round the figures to the nearest thousand dollars. If subcontractor ID Number is provided, the dollar figure would be for the subcontract only - not the prime contract.

- 10. Trade Code** Enter the numeric code (*1 thru 3*) which best indicates the contractor's/subcontractor's service. If Subcontractor ID Number is provided, the type of trade code would be for the subcontractor only - not the prime contractor. The other category includes supply, professional services and all other activities except construction and education/training activities.
- 11. Business Racial/Ethnicity/Gender Code** Enter all the appropriate racial, ethnicity and gender codes (listed at the bottom of the form on page 1) that indicate the racial, ethnic and gender background of the contractor/subcontractor. If the subcontractor ID Number is provided, the code would apply to the Subcontractor - not the Prime Contractor.
- 12. Contractor ID** Enter the Employer (IRS) Number of the Prime Contractor as the unique identifier for prime recipient of CDBG funds. Note that the Employer's Number must be provided for each contract or subcontract awarded.
- 13. Subcontractor ID** Enter the Employer (IRS) Number of the Subcontractor as the unique identifier for each subcontract awarded from CDBG funds. (When the Subcontractor ID Number is provided, the respective Prime Contractor ID Number must also be provided.)
- 14. Contractor/Subcontractor Name and Address** Enter the address information for each firm receiving contract / subcontract activity. This information needs to be provided only one time on each report for each firm.

**LETTER OF WORK NOTIFICATION TO A  
DISADVANTAGED BUSINESS ENTERPRISE FIRM**

Stonecoal Construction, Inc.  
1001 Main Street  
Somewhere, WV 25000

Dear Business Owner:

According to the latest West Virginia Department of Transportation listing, your firm is an eligible Disadvantaged Business Enterprise (DBE).

Please be advised that the City of Somewhere is advertising for bids from firms regarding the construction of a water system improvements project planned for our community. A copy of the bid advertisement is attached.

The deadline for receipt of bid offers is (Time/Day/Month/Year). If you need additional information, please contact me at \_\_\_\_\_. Thank you very much.

Sincerely,

Mayor

Enclosure

# Equal Employment Opportunity is **THE LAW**

## **Private Employers, State and Local Governments, Educational Institutions, Employment Agencies and Labor Organizations**

Applicants to and employees of most private employers, state and local governments, educational institutions, employment agencies and labor organizations are protected under Federal law from discrimination on the following bases:

### **RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN**

Title VII of the Civil Rights Act of 1964, as amended, protects applicants and employees from discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment, on the basis of race, color, religion, sex (including pregnancy), or national origin. Religious discrimination includes failing to reasonably accommodate an employee's religious practices where the accommodation does not impose undue hardship.

### **DISABILITY**

Title I and Title V of the Americans with Disabilities Act of 1990, as amended, protect qualified individuals from discrimination on the basis of disability in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. Disability discrimination includes not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, barring undue hardship.

### **AGE**

The Age Discrimination in Employment Act of 1967, as amended, protects applicants and employees 40 years of age or older from discrimination based on age in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment.

### **SEX (WAGES)**

In addition to sex discrimination prohibited by Title VII of the Civil Rights Act, as amended, the Equal Pay Act of 1963, as amended, prohibits sex discrimination in the payment of wages to women and men performing substantially equal work, in jobs that require equal skill, effort, and responsibility, under similar working conditions, in the same establishment.

### **GENETICS**

Title II of the Genetic Information Nondiscrimination Act of 2008 protects applicants and employees from discrimination based on genetic information in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. GINA also restricts employers' acquisition of genetic information and strictly limits disclosure of genetic information. Genetic information includes information about genetic tests of applicants, employees, or their family members; the manifestation of diseases or disorders in family members (family medical history); and requests for or receipt of genetic services by applicants, employees, or their family members.

### **RETALIATION**

All of these Federal laws prohibit covered entities from retaliating against a person who files a charge of discrimination, participates in a discrimination proceeding, or otherwise opposes an unlawful employment practice.

### **WHAT TO DO IF YOU BELIEVE DISCRIMINATION HAS OCCURRED**

There are strict time limits for filing charges of employment discrimination. To preserve the ability of EEOC to act on your behalf and to protect your right to file a private lawsuit, should you ultimately need to, you should contact EEOC promptly when discrimination is suspected:

The U.S. Equal Employment Opportunity Commission (EEOC), 1-800-669-4000 (toll-free) or 1-800-669-6820 (toll-free TTY number for individuals with hearing impairments). EEOC field office information is available at [www.eeoc.gov](http://www.eeoc.gov) or in most telephone directories in the U.S. Government or Federal Government section. Additional information about EEOC, including information about charge filing, is available at [www.eeoc.gov](http://www.eeoc.gov).

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## Employers Holding Federal Contracts or Subcontracts

Applicants to and employees of companies with a Federal government contract or subcontract are protected under Federal law from discrimination on the following bases:

### **RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN**

Executive Order 11246, as amended, prohibits job discrimination on the basis of race, color, religion, sex or national origin, and requires affirmative action to ensure equality of opportunity in all aspects of employment.

### **INDIVIDUALS WITH DISABILITIES**

Section 503 of the Rehabilitation Act of 1973, as amended, protects qualified individuals from discrimination on the basis of disability in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. Disability discrimination includes not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, barring undue hardship. Section 503 also requires that Federal contractors take affirmative action to employ and advance in employment qualified individuals with disabilities at all levels of employment, including the executive level.

### **DISABLED, RECENTLY SEPARATED, OTHER PROTECTED, AND ARMED FORCES SERVICE MEDAL VETERANS**

The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212, prohibits job discrimination and requires affirmative action to employ and advance in employment disabled veterans, recently separated veterans (within

three years of discharge or release from active duty), other protected veterans (veterans who served during a war or in a campaign or expedition for which a campaign badge has been authorized), and Armed Forces service medal veterans (veterans who, while on active duty, participated in a U.S. military operation for which an Armed Forces service medal was awarded).

### **RETALIATION**

Retaliation is prohibited against a person who files a complaint of discrimination, participates in an OFCCP proceeding, or otherwise opposes discrimination under these Federal laws.

Any person who believes a contractor has violated its nondiscrimination or affirmative action obligations under the authorities above should contact immediately:

The Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 1-800-397-6251 (toll-free) or (202) 693-1337 (TTY). OFCCP may also be contacted by e-mail at [OFCCP-Public@dol.gov](mailto:OFCCP-Public@dol.gov), or by calling an OFCCP regional or district office, listed in most telephone directories under U.S. Government, Department of Labor.

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## Programs or Activities Receiving Federal Financial Assistance

### **RACE, COLOR, NATIONAL ORIGIN, SEX**

In addition to the protections of Title VII of the Civil Rights Act of 1964, as amended, Title VI of the Civil Rights Act of 1964, as amended, prohibits discrimination on the basis of race, color or national origin in programs or activities receiving Federal financial assistance. Employment discrimination is covered by Title VI if the primary objective of the financial assistance is provision of employment, or where employment discrimination causes or may cause discrimination in providing services under such programs. Title IX of the Education Amendments of 1972 prohibits employment discrimination on the basis of sex in educational programs or activities which receive Federal financial assistance.

### **INDIVIDUALS WITH DISABILITIES**

Section 504 of the Rehabilitation Act of 1973, as amended, prohibits employment discrimination on the basis of disability in any program or activity which receives Federal financial assistance. Discrimination is prohibited in all aspects of employment against persons with disabilities who, with or without reasonable accommodation, can perform the essential functions of the job.

If you believe you have been discriminated against in a program of any institution which receives Federal financial assistance, you should immediately contact the Federal agency providing such assistance.

**FAIR HOUSING RESOLUTION**

Whereas, the (City/Town Council or Board of County Commissioners) desires to give meaning to the guarantees of equal rights contained in the Constitution and laws of this State and the United States, and to encourage and bring about mutual self-respect and understanding among all citizens and groups in the (City/Town/County); and,

Whereas, under the Federal Fair Housing Law, Title VIII of the Civil Rights Act of 1968, it is illegal to deny housing to any person because of race, color, religion, sex, or national origin; and,

Whereas, under the West Virginia State Fair Housing Law, Title 49-2-305, MCA, it is illegal to deny housing to any person because of race, sex, religion, color, age, physical or mental handicap or national origin;

Therefore, be it resolved the (Name of CDBG Grantee), West Virginia makes a firm commitment to do all within its power to eliminate prejudice, intolerance, disorder and discrimination in housing.

Therefore, be it also resolved that a Fair Housing Law poster, which has the "Equal Housing Opportunity" logo, will be displayed at (City/Town Hall or County Courthouse).

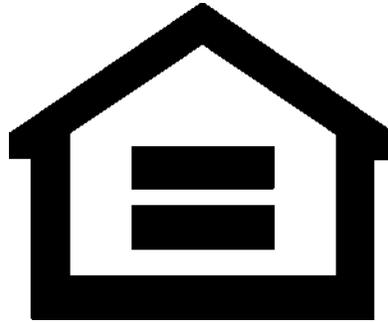
Therefore, be it also resolved that the following procedures will be used to accomplish the purpose of the aforementioned resolution:

1. The (City/Town Council/Board of County Commissioners) shall inform all (City/Town/County) employees of the (City/Town/County's) commitment to fair housing.
2. The (City/Town/Council/Board of County Commissioners) will post this resolution in (City/Town/County) buildings and other public places and publicize it.
3. The (City/Town Council/Board of County Commissioners) shall direct all employees to forward immediately to the (Mayor/Chairperson) any reports they receive of housing discrimination.
4. The (Mayor/Chairperson) shall forward such complaints to the West Virginia Human Rights Commission, 1321 Plaza East, Room 108A, Charleston, West Virginia, 25301-1400, within 10 days of receipt of said complaint.

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



**EQUAL HOUSING  
OPPORTUNITY**

**We Do Business in Accordance With the Federal Fair  
Housing Law**

(The Fair Housing Amendments Act of 1988)

**It is Illegal to Discriminate Against Any Person  
Because of Race, Color, Religion, Sex,  
Handicap, Familial Status, or National Origin**

In the sale or rental of housing or  
residential lots

In the provision of real estate  
brokerage services

In advertising the sale or rental  
of housing

In the appraisal of housing

In the financing of housing

Blockbusting is also illegal

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**Anyone who feels he or she has been  
discriminated against may file a complaint of  
housing discrimination:**

**1-800-669-9777 (Toll Free)**

**1-800-927-9275 (TTY)**

**[www.hud.gov/fairhousing](http://www.hud.gov/fairhousing)**

**U.S. Department of Housing and  
Urban Development  
Assistant Secretary for Fair Housing and  
Equal Opportunity  
Washington, D.C. 20410**

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**Sample Fair Housing Handout and Complaint Pamphlet**

***“Are You a Victim of Housing Discrimination?”***

**HUD Pamphlet: HUD-903.1**

[http://portal.hud.gov/hudportal/documents/huddoc?id=DOC\\_12150.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_12150.pdf)

# Chapter 9

## Monitoring Reporting Closeout





## Chapter Nine: Monitoring, Reporting, Closeout

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### Table of Contents

	<b>Page</b>
Supporting Materials .....	9-1
Monitoring .....	9-2
Annual Reporting Forms .....	9-2
Section 3 Annual Reports .....	9-3
Minority & Women Owned Businesses .....	9-6
Closeout Procedures .....	9-6
Final Performance Report .....	9-7
Interim & Final Closeout .....	9-9
Record Retention .....	9-9

**Introduction**

Chapter 9: Monitoring, Reporting and Closeout provides an overview of the primary aspects of ensuring and documenting compliance with Community Development Block Grant (CDBG) program rules and requirements with the form needed for performance measurement, reporting, recordkeeping, monitoring, and closeout requirements.

Additional information concerning the laws and regulations associated with the reporting requirements presented in this chapter are provided in Chapter 8: Civil Rights.

**Supporting Materials**

Attachment 9-1	Sample Notice of Monitoring
Attachment 9-2	Monitoring Form 1 – Design and Construction
Attachment 9-3	Monitoring Form 2 – Design Grant Only
Attachment 9-4	Sample Post-Monitoring Letter
Attachment 9-5	HUD 60002 Section 3 (2015)
Attachment 9-5A	HUD 60002 Section 3 Instructions
Attachment 9-5B	Section 3 Checklist
Attachment 9-5C	WV Youthbuild Directory
Attachment 9-6	MBE-WBE Contracting HUD 2516 Instructions
Attachment 9-6A	MBE-WBE Contracting HUD 2516
Attachment 9-7	Section 3 and Contracting Compilation
Attachment 9-8	Fair Housing Instructions and Reporting
Attachment 9-9	Program Income Instructions
Attachment 9-9A	Program Income Report
Attachment 9-10	Sample Final Performance Report (FPR)

**Monitoring**

All projects must be monitored at least once during the life of the project. The West Virginia Development Office (WVDO) reserves the right to monitor projects on a more frequent basis if necessary. **All projects must be monitored prior to submission of the Final Performance Review (FPR), final payment, interim closeout and/or final closeout.**

The WVDO will work closely with the Regional Planning and Development Council (RPDC), or the project administrator when the RPDC is not a partner in the grant, to schedule a monitoring visit. A letter will be sent by the U.S. Postal Service to the Grantee providing notification of the date, time and location of the project monitoring. A copy of the notification letter will be scanned and emailed to the RPDC or project administrator.

WVDO Project Development Accounting will also conduct a financial monitoring for each project independent of the programmatic monitoring. A letter notifying the grantee will be mailed. **Grantees are required to clear any and all findings and concerns of previous monitoring visits prior to submission of the FPR.**

**Audit**

Grantee audits must conform to the requirements outlined in OMB Circular A-133. Grantees will not receive a letter of final closeout until all CDBG funds have been audited and any findings or questioned costs have been resolved. The solicitation and contracting of auditors and scheduling of audits is the responsibility of the State Auditor, Chief Inspector Division. The WVDO will maintain continuous liaison with the State Auditor's Office to ensure that CDBG projects are included in scheduled audits.

**Annual Reporting Forms**

All Grantees are required to submit reports on an annual or semi-annual basis until a project has reached interim or final closeout status. All reports pertain to **required** actions on the part of CDGB Grantees. Annual reports include, but are not limited to:

**Annual Reports**

1. Section 3 Hiring and Contracting Activity-HUD Report Form 60002
2. Minority and Women Owned Business Contracting-HUD Report Form 2516
3. Section 3 and Contracting Compilation Form
4. Compliance with the Fair Housing Act Report Form
5. Program Income/Interest Earned Report Form

**Semi-Annual Reports**

1. HUD Form 4710 Semi-Annual Labor Standards Enforcement Report

The HUD Form 4710 Semi-Annual Labor Standards Enforcement Report requires two separate reporting periods:

- Period 1: October 1 - March 31
- Period 2: April 1 - September 30

**Failure to submit a report listed above will result in a finding of noncompliance.**

**Section 3 Annual Reports – HUD Form 60002****What is Section 3?**

Section 3 is a provision of the Housing and Urban Development (HUD) Act of 1968 that helps foster local economic development, neighborhood economic improvement, and individual self-sufficiency. The Section 3 program requires that recipients of certain HUD financial assistance, to the greatest extent feasible, provide job training, employment, and contracting opportunities for low- or very-low income residents in connection with projects and activities in their neighborhoods. More information can be found in Chapter 6.

**Section 3 Summary Reports (HUD Form 60002)**

Annually, each direct recipient of Housing and Community Development funding is required to submit form HUD-60002 to HUD's Economic Opportunity Division in Washington, DC. In order for the WVDO to complete this report, our office must receive the same information for each active CDBG project.

The Section 3 Summary Report must follow the same program, fiscal, or calendar year as the annual performance report the WVDO submits to HUD. *NOTE: Section 3 reports must be submitted by all sub-recipients that receive Housing and Community Development funding in excess of \$200,000 whether new employment, training, or contracting opportunities were created or not.*

**Determining What Should Be Reported on HUD Form 60002**

Section 3 Annual Summary Reports are intended to measure each recipient's efforts to comply with the statutory and regulatory requirements of Section 3 in its own operations and those of covered contractors, subcontractors, and sub-recipients. Each submission of form HUD-60002 should indicate the following:

- The total dollar amount of HUD funding that was expended by the recipient for covered projects/activities during the specified reporting period.
- The total number of new employees that were hired by the recipient (or its covered contractors, subcontractors, and sub-recipients) as a result of the completion of covered project/activities.
- The amount of new employees that were hired by the recipient (or its covered contractors, subcontractors, and sub-recipients), as a result of the completion of covered projects/activities, that met the definition of a Section 3 resident.
- The total number of man hours worked on covered projects (optional).
- The aggregate number of hours worked by Section 3 residents on covered projects (optional).
- The total number of Section 3 residents that participated in training opportunities that were made available by the PHA, its contractors, sub-recipients, or other local community resource agencies.

- The total dollar amount of construction and/or non-construction contracts (or subcontracts) that were awarded with covered funding.
- The dollar amount of the recipient's construction or non-construction contracts (or subcontracts) that were awarded to Section 3 business concerns.
- Detailed narrative descriptions of the specific actions that were taken by the recipient (or its covered contractors, subcontractors, sub-recipients, or others) to comply with the requirements of Section 3 and/or meet the minimum numerical goals for employment and contracting opportunities.

### **HUD Form 60002 and Section 3 Compliance Determinations**

Absent evidence to the contrary, the WVDO considers recipients of covered funding to be in compliance with Section 3 if they meet the minimum numerical goals set forth in 24 CFR Part 135.30(i). Specifically:

- 30 percent of the aggregate number of new hires shall be Section 3 residents;
- 10 percent of the total dollar amount of all covered construction contracts shall be awarded to Section 3 business concerns; and
- 3 percent of the total dollar amount of all covered non-construction contracts shall be awarded to Section 3 business concerns.

Grantees that fail to meet the minimum numerical goals above bear the burden of demonstrating why it was not possible to do so. Such justifications should describe the efforts that were taken, barriers encountered, and other relevant information that will enable the WVDO to make a compliance determination.

Grantees that submit Section 3 reports containing all zeros, without a sufficient explanation to justify their submission, are in noncompliance with the requirements of Section 3. Failure to comply with the requirements of Section 3 may result in sanctions, including: debarment, suspension, or limited denial of participation in HUD programs pursuant to 24 CFR Part 24.

Recipients that are subject to annual A-133 Audits may also receive an audit finding for failure to submit form HUD-60002 to the WVDO.

### **Fair Housing Compliance and Reporting**

**Compliance with the Fair Housing Act is required for each Grantee.** Reports are required for each open grant on an annual basis, regardless of amount or type. As required by HUD, the WVDO encourages each Grantee, sub-recipient, and developer to update its analyses of impediments to fair housing as necessary to reflect current market conditions. As part of Fair Housing Month, each year in April, WVDO encouraged all Grantees to pass a Fair Housing Resolution as the first step in affirmatively furthering fair housing.

Affirmatively furthering Fair Housing is one of HUD's the main objectives and is a **requirement** for participation in the CDBG program in West Virginia. Fair Housing is the right to choose housing free from unlawful discrimination. Fair Housing laws protect all individuals seeking

housing, including renters, homebuyers, persons obtaining a mortgage or homeowners insurance, and others. The federal Fair Housing Act prohibits discrimination in housing because of the following protected classes:

- Race
- Color
- Religion
- National origin
- Gender
- Disability or
- Familial status (presence of children under the age of 18 and pregnancy).

The West Virginia Fair Housing Act (as amended) includes two additional protected classes:

- Ancestry
- Blindness

Each year, Grantees must report to the WVDO regarding Fair Housing activities. This report must be submitted on the Compliance with the Fair Housing Act form. The report should include all actions taken to affirmatively further fair housing, which include, but are not limited to the following:

- Enacting or strengthening local ordinances.
- Passing a formal resolution.
- Advertising, including newspaper and radio.
- Communication or language in contracts, letterhead or use of Fair Housing symbol.
- Public outreach, including seminars, meetings or public hearings with interested parties.
- Assistance to minority groups.
- Development and distribution of community resource guides.
- Improvement of community facilities to integrate neighborhoods or preserve integration.

Any questions regarding Compliance with the Fair Housing Act or fair housing activities may be directed to April McComas at the WVDO at 304-957-2051 or [april.l.mccomas@wv.gov](mailto:april.l.mccomas@wv.gov).

### **Program Income/Interest Earned Report**

Program Income is defined in 24 CFR 570.489(e) as gross income received by a unit of local government that was generated from the use of CDBG funds. **All CDBG Program Income must be reported.**

For CDBG projects, if less than \$25,000 is received in a single year by a unit of local government, funds may be treated as miscellaneous income and will not be subject to program requirements. If \$25,000 or more in Program Income is received in a single year by a unit of local government, the generated Program Income will be treated as additional CDBG funds and be subject to all program requirements. This Program Income must be used to continue the same activity from which it was derived or be subject to recapture by the state.

**Attachment 9-9A** must be used to report any program income generated during the fiscal year.

**Minority and Women-Owned Businesses (M/WBE) – HUD Form 2516**

Grantees and their contractors and subcontractors must fully comply with the requirements of the Executive Order 11625. As required by Executive Order 11625, the WVDO must annually compile data on Minority Business Enterprises (MBE) and Women-Owned Business Enterprises (WBE). HUD compiles this information into an overall agency report for submission to the Minority Business Development Agency of the U.S. Department of Commerce.

The reporting form is the Contract and Subcontract Activity Form - HUD-2516. This form must be submitted to the WVDO on or before June 30<sup>th</sup> each year. The instructions and form HUD-2516 are located at the end of this chapter as **Attachments 9-6 and 9-6A**.

Additional resources concerning M/WBE administration are provided in Chapter 8. Grantees are expected to document their outreach to MBE-WBE business sources. Methods of outreach include, but are not limited to:

- Placing qualified MBE-WBE businesses on solicitation lists.
- Ensuring that MBE-WBE businesses are advised of opportunities to respond to bids or requests for proposals by letter.

In addition, the West Virginia Department of Transportation (DOT) maintains a Disadvantaged Business Enterprise Program. These small businesses are certified by the Unified Certification Program as being at least 51 percent owned and controlled by socially and economically disadvantaged individual(s). Females and certain minority groups are deemed to be socially disadvantaged.

The website below should be utilized in good faith efforts to provide business opportunities to minority and women-owned businesses.

[www.transportation.wv.gov/eeo/DBE/Pages/default.aspx](http://www.transportation.wv.gov/eeo/DBE/Pages/default.aspx)

**Closeout Procedures**

The closeout of a grant is the process established by the WVDO to determine that all applicable administrative actions and all required programmatic work on the grant have been completed by the sub-grantee (Unit of Local Government).

The three key activities that are required following the completion of a CDBG project are:

- Preparing a Final Performance Report,
- Clearing all monitoring findings recommendations, and
- Securing an audit and responding to and resolving audit findings.

These documents provide a comprehensive record of project activities, beneficiaries, and total cost. Report data is entered into the HUD Integrated Disbursement and Information System (IDIS).

**Final Performance Report (FPR)**

All grantees are required to submit a Final Performance Report (FPR) upon project completion.

- The FPR must be submitted with the final drawdown request, excluding final audit costs.
- Only 90 percent of the Administration line item will be paid until a complete and satisfactory FPR is submitted.
- If possible, the final request should only contain administrative and audit costs.
- Upon approval of the FPR, the final drawdown request will be processed for payment.

Information contained in the FPR is reported in the HUD Integrated Disbursement and Information System (IDIS). The FPR consists of the following:

**Cover Sheet**

This form identifies the project, reports all written comments received during the project period and is where the Chief Elected Official certifies the report.

**Financial Report**

The financial report summarizes all grant expenditures for the project. This information must be provided by activity as identified in the subgrantee's current project budget.

All budget amendments should be submitted and approved prior to submitting the FPR. If budget revisions are submitted with the FPR, the Final Drawdown will be delayed until the revision request can be reviewed and approved.

If the FPR is submitted and grant funds remain at the end of a project, the subgrantee will forfeit these funds. If there is a remaining balance of grant funds previously drawn down, arrangements must be made with the WVDO to return this balance.

**Status of Audits Report**

A summary of all expenditures audited and unaudited is required. The information regarding the CDBG funds expended can be obtained from audit reports issued by the State Auditor's Office or CPA audits which were scheduled by the State Auditor's Office.

**Grant Accomplishments and Impact Report**

This report requests specific information regarding project impact. Grantees must maintain thorough records throughout the project to successfully complete this section.

In the project proposal, Grantees were asked to project specific impact measures. This section requests up-to-date information on each of those measures. The state recognizes that, in some instances, the full impact will not be achieved at FPR submission. There may be "other funding" sources utilized for completing related project activities, and these activities may not be complete at the time of submission of the FPR. In these cases, and interim closeout will be granted and additional data must be accumulated until the final closeout.

Grant accomplishments and their impact should be listed and compared to the Grantee's projected impact measures from the project proposal.

**Program Benefits, Actual Accomplishments, and Direct Benefits**

Proposed objectives must be compared to actual outcomes in the FPR. The number of low- and moderate-income (LMI) beneficiaries must be listed in this section. Any changes between the proposed number of beneficiaries and the actual number of beneficiaries must be addressed. In addition, the census tracts and/or block groups cited must correspond to the initial application, unless otherwise noted. Demographic data for each census tract and block group must be reported.

The Grantee must provide updated information regarding the LMI benefit achieved by the project. This information is categorized into one of two categories: Area Wide Benefit or Direct Benefit. In most instances, CDBG funds are used in the Area Wide Benefit category.

When a project serves a subsection of the census tract or block group, provide the actual number of beneficiaries. In addition to the census tract and block group numbers, the number of beneficiaries served, if smaller than the census tract or block group, should also be provided. This number should correspond to the initial application, unless otherwise noted.

**Displacement**

Either direct or indirect displacement and the resulting relocation caused by projects or activities funded by CDBG. Both direct and indirect displacement includes displacement caused by CDBG-funded demolition, rehabilitation, or acquisition when carried out by third parties funded by the Grantee from the CDBG grant.

**Acquisition/Relocation**

This component provides a summary of all displacements reported on the displacement form and real property/relocations accomplished.

**Final Wage Compliance Report**

The subgrantee must conduct on-site interviews that must include a sufficient sample of job classifications represented on the job to allow for a reasonable judgment as to labor standards compliance.

Action taken to correct any discrepancies must be reported to the WVDO as soon as possible following the action. A summary Final Wage Compliance Report must be submitted as part of the FPR.

**Submission of the Final Performance Report**

The FPR should be submitted to the WVDO. One copy must be made available for public review and at least one copy must remain in the Grantee's file.

The original must be submitted to the Project Manager for the assigned region and sent to the following address:

Project Manager's Name  
Community Development Division  
Project Development  
Capitol Complex, Building 6, Room 553  
Charleston, West Virginia 25305

**Interim and Final Closeout**

Approval of the FPR is a necessary step to close out a project. In addition, there must be no unresolved review findings, and all national objectives must be met. Section 504 handicapped accessibility requirements must be met, and any property that has been acquired must be disposed of according to the "Common Rule," 24 CFR Part 85, 30-85, 33 requirements. All required audits must have been approved with the possible exception of the final audit. Economic development projects must also have met the necessary job and investment requirements.

Interim (conditional) closeouts may be issued after all of the following has been accomplished:

- Completed all activities and expended all funds received;
- Submitted a Final Performance Report (FPR) which has been reviewed and accepted;
- Resolved all monitoring findings or concerns;
- Resolved any third-party claims;
- Resolved or satisfactorily addressed any outstanding labor issues, equal opportunity issues, or citizen complaints; and
- Met all job creation and investment responsibilities.

**A project will be granted Interim Closeout status, pending the submission of the final audit, resolution of any audit findings, and the payment of any questioned costs. Final closeout will be issued when all requirements are completed.**

**Record Retention**

Files should be maintained in a central location. The Grantee is responsible for all files, whether maintained at the Grantee's office or at the office of the administrator.

Following final closeout, the Grantee **must retain** all project records for three years after the date of the final audit, according to 24 CFR 570.506, and must be available for review at any time. A complete listing of required records is provided in Chapter 1. Strict adherence to record keeping procedures should begin immediately following the grant award.

If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period.

In addition, WVDO or HUD representatives, the U.S. Inspector General, the General Accounting Office, and the Comptroller General of the United States must have access to any pertinent financial files, books, records, accounts, documents, papers, and other property belonging to the community that pertains to the grant.

January 20, 2015

The Honorable Wayne Calhoun  
Mayor  
Town of Anywhere  
Post Office Box 3003  
Anywhere, WV 25052

**RE: Monitoring Visit Number One  
FY2015 CDBG - Small Cities Block Grant  
Town of Anywhere – Waterline Extension Project  
Project Number: 15SCBG0500**

Dear Mayor Calhoun:

This letter is to inform you that I will be at the Region 12 Planning and Development Council office in Tylerville on June 25, 2015 at 9:30 a.m. to monitor the above-referenced project.

The areas to be monitored may include: performance and progress, financial management, allowable costs, procurement-engineering and/or contracting, labor standards, internal management, environmental, equal opportunity compliance, Section 504 compliance, and acquisition and/or relocation.

If you have any questions regarding this visit, please feel free to contact me at 304-558-2234, or by e-mail to [CDBGrename@wv.gov](mailto:CDBGrename@wv.gov).

Sincerely,

CDBG R. Epname  
Project Manager

cc: Amy O'Malley     Region 12 PDC  
Kelly Workman     WVDO

February 10, 2015

The Honorable William McNeal  
 Mayor  
 Town of Durgon  
 9400 Potomac Avenue  
 Durgon, West Virginia 25952

**RE: Final Performance Report  
 FY2015 Small Cities Block Grant  
 Town of Durgon – Wastewater Systems Improvement Project  
 Project Number: 15SCBG0100X (\$1,000,000)**

Dear Mayor Pauley:

This letter is to acknowledge receipt, and acceptance, of the Town of Durgon's CDBG - Small Cities Block Grant (SCBG) Final Performance Report, dated January 30, 2015 and submitted by Joshua Franklin of the Region 20 Planning and Development Council. The following comments resulted from our review of the information contained in the report.

#### **COVER SHEET**

A review of the report indicates there were no citizen complaints regarding this project. A review of the West Virginia Development Office (WVDO) files also indicates there were no citizen complaints received. If any complaints about this project should be made in the future, please notify and provide a copy of the complaint with the Town of Durgon's response to the WVDO.

#### **FINANCIAL**

The Town's project has been completed for \$1,000,000.00. The following is the final budget relating to the receipt of SCBG funds:

<b>Activity</b>	<b>Budget</b>	<b>Expended</b>
Administration	\$ 30,000.00	\$ 30,000.00
Construction Improvements	\$ 970,000.00	\$ 970,000.00
<i>Total:</i>	\$ 1,000,000.00	\$ 1,000,000.00

#### **AUDIT**

Our review shows that audits were completed for fiscal years 2008-2012 for a total of \$950,000 with no findings noted. Since the remaining amount to be audited will not trigger another audit, we will proceed with a final closeout of this grant. Upon completion of a final audit, please submit a copy to the WVDO.

**GRANT ACCOMPLISHMENTS AND IMPACT**

The proposed accomplishments for the Town of Durgon's Wastewater Systems Improvement Project involved constructing a sanitary sewer system to replace the antiquated clay lined piping constructed in the 1930's and 1940's. Actual accomplishments were the successful completion of the line work, keeping rates affordable for low-to-moderate income households. Funds were administered with sound financial management, labor compliance, accurate record keeping, and oversight of the project.

**PROGRAM BENEFIT**

The program benefit was improved service to the Town of Durgon with reliable waste water service for 814 customers where residents are 57.36% Low-to-Moderate Income. The identified project area included various ethnic groups, none were excluded as beneficiaries.

**HOUSING OPPORTUNITIES**

The WVDO acknowledges the activities to affirmatively further fair housing in your Town. Please be advised that all efforts undertaken to implement your Fair Housing Resolution should be documented and maintained in your files for a period of three years after project close-out.

**FINAL WAGE COMPLIANCE**

No labor discrepancies were noted during the Town of Durgon's project.

**CLEARANCE FINDING OF STATE MONITORING VISITS**

After completing a technical review of the project files, it has been determined that there are no outstanding issues that need to be resolved regarding state monitoring.

Thank you for the submission of the Final Performance Report. It is to be made available to the general public in a manner deemed acceptable. Citizen comments relevant to this report should be responded to and a copy provided to this office along with your response.

If you have any questions regarding this letter, please contact me at 304.558.2234 or by e-mail at CDBGRepname@wv.gov.

Sincerely,

CDBG Rep Name  
Project Manager

cc: Joshua Franklin Region 20 PDC  
Tom Gibbs WVDO



Monitoring Checklist

Visit Date		Visit No.	
Contract Award Date		Contract Expiration Date	
Evidentiary Materials Release Date		Award Amount	
Grantee			
Project			
Reviewer			
Approved			

**A. PROGRAM PROGRESS AND PERFORMANCE**

Determine that the project implemented meets one or more of the three national objectives and is eligible in accordance with Section 105(a) of Title I.

1. The project qualified under the \_\_\_\_\_ national objective.
2. Project Description: \_\_\_\_\_.

Determine the status of program performance and that the project is on time and on budget by completing the following checklist: **(Use last drawdown to complete this section.)**

3. Have there been any changes in scope? Yes  No
4. Were they approved by our office? Yes  No
5. If no, please explain: \_\_\_\_\_.
6. Has the project met thresholds for timely implementation noted in the state/local contract (from date of contract award)? Yes  No 
  - Has design and engineering been completed within 12 months? Yes  No
  - Did construction start within 18 months? Yes  No
  - Does it appear that the project will be completed within 36 months of grant award? Yes  No
  - For those projects not meeting implementation schedule thresholds of 6(a)(b) and (c), please explain:  
\_\_\_\_\_.
7. Are there any proposed project activities not on schedule? Yes  No   
If yes, please explain what activities are being taken to remedy the problem?  
\_\_\_\_\_.



8. Is the sub-grantee likely to fail to meet the performance requirements of the State/Local Agreement for construction and completion? Yes  No

If yes, explain: \_\_\_\_\_.

9. Based upon a comprehensive review, does the sub-grantee have the continuing capacity to satisfactorily carry out the remainder of this project? Yes  No

If no, please explain: \_\_\_\_\_.

**B. FINANCIAL MANAGEMENT  
(Notify Audit Section of concerns prior to releasing monitoring report)**

1. Does the grantee maintain the following financial records or their equivalent? Yes  No

- Cash Receipt Journal
- Cash Disbursements Journal
- Federal Cash Control Register  
(If multi-funded projects deposited into same account)
- General Ledger

2. Do you feel that the financial records are sufficient to report all project activities? Yes  No

3. Please note last posting date and balance of SCBG funds:

- Date of last posting: \_\_\_\_\_
- Amount of SCBG funds on hand: \$ \_\_\_\_\_

4. Has a non-interest bearing checking account been established? Yes  No

@ \_\_\_\_\_

5. Was an approved purchase order or state/local contract on file? Yes  No

6. Were all budget revisions approved and documented in the files? Yes  No

7. Have any indirect costs been charged to the project? Yes  No

8. Were indirect costs consistent with the rates of an approved cost allocation plan? Yes  No

9. Were administration costs at or below 10% of the total award? Yes  No

10. Has the sub-grantee established a written procedure for determining allowable, allocable, and reasonable costs? Yes  No

11. Has the sub-grantee established a written mechanism for ensuring compliance with the 3 day rule? Yes  No



12. Will program income be generated from any activity in the project? Yes  No

If yes, list below and notify the Audit Section of the WVDO:

Activity	Amount Projected
_____	\$ _____

13. Is program income being spent on eligible activities in accordance with the SCBG Handbook? Yes  No

14. Is program income being properly posted to the Cash Receipts Journal? Yes  No

15. Is program income being dispersed prior to requesting drawdowns for the same activity? Yes  No

16. The following transactions were reviewed:

Request for Funds					
Request Number	Date	Amount	Deposit Date	Disbursed Date	Balance
		\$			\$
		\$			\$
		\$			\$

17. Were records justifying request contained in the files? Yes  No

**The following items relate to the above transactions:**

18. Do all costs meet the eligibility criteria for allowable program activities that were included in the approved application and Section 105 of the Act? Yes  No

19. Were funds on hand less than the \$5,000 maximum? Yes  No

20. Based upon the evidence available, does it appear that the sub-grantee conforms to:

- The standard set forth in 24 CFR Part 85? Yes  No
- The eligibility requirements of A-87 and the SCBG Handbook? Yes  No
- The eligibility requirements of Title I? Yes  No



**C. ALLOWABLE COSTS**

- 1. Is a written review system for determining cost allowability, allocability, and reasonableness on file? Yes  No
- 2. If not, can project personnel describe system being used? Briefly describe below:  
\_\_\_\_\_
- 3. From your review, can you tell whether the system described above is in use? Yes  No
- 4. Are invoices processed for payment annotated by individual(s) responsible for oversight? Yes  No
- 5. Is system managed by third party consultants? Yes  No
- 6. For question 5, if yes, the procurement will be reviewed during the procurement of professional services.

**D. PROCUREMENT AND CONTRACTING**

**PROCUREMENT**

- 1. Has a written code of conduct been adopted and placed in the file? Yes  No   
**Date:** \_\_\_\_\_
- 2. Have written procurement procedures been established and are they equivalent to 24 CFR Part 85? Yes  No   
**Date:** \_\_\_\_\_
- 3. Do procurement procedures prescribe a dollar amount for Small Purchases? Yes  No   
**Amount:** \$ \_\_\_\_\_
- 4. Are small purchases documented by price quotations from qualified sources? Yes  No   
If no, please explain:  
\_\_\_\_\_



**COMPETITIVE NEGOTIATION**

Below, list a selected sample of contracts that were subject to competitive negotiation procedures.

Activity	Contractor	Total Budget	Contract Budget	Bid Price	Expended
Engineering		\$	\$	\$	\$
		\$	\$	\$	\$
		\$	\$	\$	\$
		\$	\$	\$	\$

1. Were Request for Proposals prepared and published for each of the above activities? Yes  No   
**Date:** \_\_\_\_\_
2. Were additional efforts made to contact firms regarding the advertisement for bids? Yes  No
3. Do the Request for Proposals clearly and accurately state the technical requirements for services procured? Yes  No
4. Does the file contain a copy of PSC approval of the engineer selected?  
*If yes, please disregard questions 5 through 9.* Yes  No
5. Was a basis for evaluation and selection specified? Yes  No
6. Was the selection process or method documented? Yes  No
7. Were technical evaluations conducted for proposals? Yes  No
8. Were "best" offerors determined? Yes  No
9. Were negotiations conducted for proposals? Yes  No
10. Was contractor eligibility verified? Yes  No
11. For those advertisements that did not receive sufficient responses, did the WVDO approve the contract award? Yes  No
12. Were all applicable contract provisions (PART II--TERMS AND CONDITIONS) Included in all the service contracts over \$10,000? Yes  No
13. Do contracts contain not-to-exceed requirements? Yes  No
14. Were contracts approved by the appropriate governing body of sub-grantee and/or contracting agency? Yes  No



**NON-COMPETITIVE NEGOTIATION**

1. Were any non-competitive procurements approved by the WVDO? Yes  No
2. Were circumstances under which a procurement was made by non-competitive negotiation limited to one of the following: Yes  No 
  - The item is available only from a single source?
  - Public exigency or emergency when the urgency for the requirements will not permit a delay incident to competitive solicitation?
  - The federal grantor agency authorizes non-competitive solicitation?
  - After solicitation of a number of sources, competition is determined inadequate?
3. Did the files contain a record of action assuring the items or services were only available from one source or that after a solicitation of a number of sources, competition was determined inadequate? Yes  No
4. For those advertisements that did not receive sufficient responses, was the previously completed cost or price analysis used as the basis of the selection process? Yes  No
5. Were all applicable contract provisions (PART II—TERMS AND CONDITIONS) included in all the service contracts over \$10,000? Yes  No
6. Does the contract's scope of service state clearly and accurately the technical requirements of the services to be rendered? Yes  No
7. Are costs reimbursements consistent with the type of contract specified in the SCBG Handbook? Yes  No

**Competitive Sealed Bids**

Below, list a selected sample of contracts that were subject to competitive bids and award procedures.

Activity	Contractor	Total Budget	Contract Budget	Bid Price	Expended
Construction		\$	\$	\$	\$
		\$	\$	\$	\$
		\$	\$	\$	\$
		\$	\$	\$	\$
		\$	\$	\$	\$

1. Were Invitations for Bids advertised in accordance with Chapter 59, Article 2 of the State Code? Yes  No

**Dates:** \_\_\_\_\_.



- 2. Is proof of advertisements contained in the contract files? Yes  No
- 3. Were all bids opened publicly at the time and place stated in the advertisement for bids? Yes  No
- 4. Were contracts awarded to the lowest responsible bidder? Yes  No
- 5. Are bid tabulations on file? Yes  No   
Total number of bids received: \_\_\_\_\_
- 6. Was contractor eligibility verified? Date: \_\_\_\_\_ Yes  No
- 7. Were all unsuccessful bidders notified? \* Yes  No   
Notification Method: \_\_\_\_\_

**COMPETITIVE SEALED BIDS**

The following checklist applies to contracts previously identified under competitive sealed bids:

- 1. Have bid document checklist(s) (Attachment 5-10) been previously submitted? Yes  No
- 2. Have contract document checklist(s) (Attachment 5-16) been completed and filed? Yes  No
- 3. Were Attachments 5-18 and 5-19 which includes all applicable contract provisions included in the bid package? Yes  No
- 4. Were Attachments 5-18 and 5-19 forms completed and signed in the contract document? Yes  No
- 5. For contracts under \$10,000: Did the sub-grantee follow its own requirements relating to bid, performance, and payment bonding? Yes  No
- 6. For contracts above \$100,000: Did the sub-grantee meet the federal requirements for bid, performance, and payment bonding as identified in 24 CFR Part 85, and were those forms included in the contract document? Yes  No
- 7. Are approvals from other applicable regulatory agencies on file? Yes  No   
If no, please explain: \_\_\_\_\_
- 8. Does the sub-grantee's administrator or engineer verify that such approvals were obtained? Yes  No
- 9. Have all contracts been approved by official action of the sub-grantee's governing body and, if applicable, the governing body/board of the contracting agency? Yes  No
- 10. Were the types of contracts awarded to each responsible low bidder consistent with types indicated in 24 CFR Part 85? Yes  No
- 11. Are fully executed documents on file? Yes  No



**SMALL PURCHASES**

- 1. For items or services procured by small purchases, do the files contain records that an adequate number of qualified sources were contacted? Yes  No
- 2. Did the procurement meet federal, state, and local requirements? Yes  No

**E. LABOR STANDARDS COMPLIANCE/CONSTRUCTION**

- 1. Name of Labor Compliance Officer: \_\_\_\_\_
- 2. Are they familiar with Labor Standards requirements: Yes  No
- 3. Did the administrator have a current edition of HUD Handbook 1344? Yes  No
- 4. Did the advertisement for bids contain the applicable Federal Labor Standards Clause? Yes  No
- 5. Was the Request for Determination and Response to Request form (Attachment 6-1) used to obtain wage rates? Yes  No
- 6. If not, was the project administrator's explanation adequate to explain how current federal wage rates were obtained? Yes  No
- 7. Were the current State wage rates obtained from the Secretary of State's Office? Yes  No
- 8. Were the applicable Federal and State wage rates included in the bid document? Yes  No
- 9. Davis-Bacon General Decision Number: \_\_\_\_\_
- 10. Modification number and date: \_\_\_\_\_
- 11. The pre-construction conference was held on \_\_\_\_\_ and the minutes contained instructions on contracting responsibilities and actions pursuant to federal Labor Standards.
- 12. Does the administrator verify that each successful contractor was provided with a set of posters and explained the Site Posting requirements? Yes  No
- 13. Are apprentices or trainees going to work on the project? Yes  No
- If apprentices or trainees are working, is the contractor familiar, and in compliance, with the requirements for their use? Yes  No
- Do the files contain a letter of authorization from USDOL to allow the contractor to use apprentices and trainees? Yes  No
- 14. Are certified payrolls being submitted weekly and is the statement of compliance on the back completed properly? Yes  No
- 15. If statement of compliance indicates payrolls are paid to approved plans, do the files contain verification from that plan that every employee working on the project has their fringes paid to an approved plan? Yes  No



16. Are employee interviews being conducted on a monthly basis and do they represent a sampling of the job classifications used? Yes  No

17. Are the employee interviews (Attachment 6-4) being compared to the payrolls and the form completed showing that comparison was completed? Yes  No

18. Is the Labor Standards complaint procedure in written form? Yes  No

If no, please describe the Labor Standards complaint procedure.

\_\_\_\_\_

19. Have there been Labor Standards problems/complaints and are there explanatory reports/correspondence on file? Yes  No

20. During your visit to the construction site, did you observe the project site posting? Yes  No

- State and Federal Wage Decisions Yes  No
- Notice to Employees (WH. 1321) Yes  No
- Job Safety and Health Protection (OSHA 2203) Yes  No
- Equal Employment Opportunity Requirements (EEOC P/E1) Yes  No
- Written Labor Standards Complaint Procedures Yes  No

21. Select a sample of payrolls from each contractor to review. Check for Basic Hourly Rate + fringe = Correct Wage. Correct payment of overtime.

If discrepancies are found, list below:

\_\_\_\_\_  
\_\_\_\_\_

22. List below the selected sample of contracts that area subject to Federal Labor Standards provisions:

Activity	Rate Request (-45)	10 Day Verification	Bids Opened (0)	Award (+90)

23. If wage rate changes 10 days prior to bid opening, was an addendum issued that included the most recent wage determination? Yes  No

24. Was the USDOL Semi-Annual Labor Standards Enforcement Report submitted to our office? Yes  No



25. Were contracts awarded within 90 days of bid opening? Yes  No
26. If not, was a time extension request submitted? Yes  No

**CONSTRUCTION**

The following documentation as referenced in the SCBG Handbook has been completed/ submitted and is on file:

- a. Notice of Intent to Bid SCBG Project (Attachment 5-10) Yes  No
- b. Minutes of Bid Opening (Attachment 5-11) Yes  No
- c. Notice of Bids Received (Attachment 5-12) Yes  No
- d. Notice of Contract Award/Pre-construction Conference Checklist (Attachment 5-13) Yes  No
- e. Notice to Proceed (Attachment 5-14) Yes  No
- f. Contract Documents Checklist (Attachment 5-16) Yes  No
- g. Records of Employee Interviews (Attachment 6-4) Yes  No

**F. EQUAL OPPORTUNITY COMPLIANCE**

**Employment by the Sub-Grantee (City or County)**

Please note that the administrator is the agent of the grantee and must know the answers to complete the following questions.

1. Has the sub-grantee adopted an Affirmative Action Plan related to employment? Yes  No
2. Does the sub-grantee have written employment and personnel policies which provide for equal opportunity? Yes  No
3. Were equal opportunity guidelines followed in advertising for vacancies? Yes  No
4. Does employment data indicate affirmative action in equal opportunity employment? Yes  No
5. Have any equal opportunity complaints been filed against the sub-grantee? Yes  No
6. If yes, what were the results of those complaints? Yes  No
- \_\_\_\_\_.

7. Number of city, town, or county employees

Workforce Analysis			
Total Employees		Total Minority	
Total Male		Minority – Male	
Total Female		Minority – Female	
Handicapped			



8.

Age Distribution			
18 to 25		41 to 50	
26 to 32		51 to 65	
33 to 44		Greater than 65	

*\*The above section can be submitted after monitoring visit.*

**Fair Housing Activities**

1. List actions taken to further fair housing:

---



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2. Are records maintained of those actions taken to affirmatively further fair housing as required by Title VIII certification and assurances? Yes  No

**Benefit Activities**

1. Did the files contain an anti-displacement plan? Yes  No

2. Are there any discernible differences in the level, quality, or type of benefit provided for minority beneficiaries versus non-minority beneficiaries? Yes  No

**Contracting**

1. Is the sub-grantee maintaining a record of Section 3 activity? \*  
\*Section 3 goal is 30% Yes  No

2. Is the sub-grantee submitting their annual report on Section 3 activity? Yes  No

3. Is the sub-grantee maintaining records regarding Section 3 compliance? Yes  No

4. Are project administrators/personnel familiar with the requirements of Section 3 and understand the procedures to be followed relative to Section 3 compliance? Yes  No

5. Is the sub-grantee taking affirmative steps to select small-, minority-owned, and women-owned businesses in compliance with Executive Order 11625 by:

a. Identifying such businesses in the community area? Yes  No

b. Including such businesses on solicitation lists? Yes  No

c. Requiring prime contractors to take affirmative steps to select such businesses? Yes  No

6. Has the sub-grantee adopted a Minority Business Enterprise regard to Executive Order 11625? (Minority and Women business utilization) Yes  No

a. Have appropriate goals been established? Yes  No

b. Total goal is \_\_\_\_\_% Yes  No



c. Has a list of Women and Minority Businesses been made available to the contractor? Yes  No

d. What are the results of these goals in regard to Executive Order 11625?

7. Are project administrators/personnel familiar with these requirements and understand the procedures relative to Executive Order 11625? Yes  No

8. Are project administrators/personnel familiar with the requirements of Executive Order 11246 and were those goal statements completed in Attachments 5-18 and 5-19 of the bid document? (minority/women employment) Yes  No

9. Have minorities and women been employed by the contractor pursuant to Standard Federal Equal Employment Opportunity goals? Yes  No

10. Are records being maintained of efforts to attain the established goals of Executive Order 11246? Yes  No

What are the results of those efforts?

11. Where the following Equal Employment Opportunity provisions and clauses included in the advertisement for construction bids:

- Title VI Clause Yes  No
- Section 109 Clause Yes  No
- Executive Order 11246 Yes  No
- Section 3 Clause Yes  No
- Federal and State Labor Standards Clause Yes  No
- Segregated Facilities Clause Yes  No
- Notice of Requirement of Affirmative Action Yes  No
- Standard Federal EEO Goals Yes  No
- Section 3 Plan for Contractors Yes  No
- Contractor's Certification of EEO Yes  No
- Subcontractor's Certification of EEO Yes  No
- Section 3 Certifications Yes  No

12. Do minutes of pre-construction conferences include Equal Employment Opportunity provisions and procedures? Yes  No



**G. SECTION 504**

- 1. Has the grantee previously completed a Section 504 Self-Evaluation and Transition Plan? Yes  No
  - 2. If yes, has the Self-Evaluation and Transition Plan been updated (including all property purchased since the last evaluation)? Yes  No
  - 3. If the answer to question #1 is no, has the grantee completed a Self-Evaluation as required? Yes  No
  - 4. Has the grantee completed a Transition Plan outlining what improvements need to be made and when the noted improvements will be completed? Yes  No
- Estimated costs of those improvements \$ \_\_\_\_\_

**SECTION 504 COMPLIANCE CHECKLIST**

***Initial and Continuing Notification (8.54)***

Has the recipient taken appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision, that it does not discriminate on the basis of disabilities? Yes  No

- 1. Was timely initial notification made to all groups as required? Yes  No
  - 2. Was documentation provided? Yes  No
  - 3. Is continuing notification made? Yes  No
  - 4. Was documentation provided? Yes  No
  - 5. Does the recipient's recruitment materials, (flyers, brochures, or other Publications) contain such a notice or non-discrimination? Yes  No
  - 6. Comments (explain all no answers and provide any other comments)
- 

***Designation of Responsible Employee (8.53)***

Has the recipient designated at least one person to coordinate its efforts to comply with Section 504? Yes  No

Provide name and title: \_\_\_\_\_



**Adoption of grievance procedures (8.53)**

Has the recipient adopted specific grievance procedures that incorporate appropriate due process standards and provides for the prompt equitable resolution of Section 504 related complaints?

Yes  No

Comments: \_\_\_\_\_

**H. INTERNAL MANAGEMENT SYSTEMS**

1. Were project files established and being maintained in accordance with the SCBG Handbook? If no, explain?

\_\_\_\_\_

2. Were project files accurate, complete, and orderly? Yes  No

3. Were all files kept in a central location? Yes  No

4. Are records capable of generating the following data for the final performance report? Yes  No

- Financial
- Low/mod income beneficiaries
- Minority data
- Fair Housing actions

**If applicant is utilizing its own staff: (answer 5-12)**

5. Are personnel policies written and include references to Title VI and other Civil Rights laws? Yes  No

6. Were time sheets properly maintained and do they distinguish between grant-related and other activities? Yes  No

7. Were written job descriptions for administrative staff prepared and correspond to work being done? Yes  No

8. Do personnel recruitment records exist? Yes  No

9. Do pay scales for assisted staff correspond to similar work performed in other areas of government? Yes  No

10. Do employees appear to be properly supervised? Yes  No

11. Do working conditions, benefits, annual leave/sick leave policies conform to other areas of government? Yes  No

12. Are travel expenses/reimbursements reasonable and conform to local government regulations? Yes  No



*\*If applicant is utilizing a Regional Council or third party consultant for administration respond to questions 13 and 14.*

- 13. Were time sheets and time distribution sheets on file? Yes  No
- 14. Are travel costs reimbursements reasonable and are they equal to or less than travel regulations? Yes  No
- 15. Are the following items on file?
  - Small Cities Program Application Yes  No
  - Letter from Governor approving award of funds Yes  No
  - Grant agreement and resolution from Council or Commission Yes  No
  - Amendments and revisions Yes  No
  - Intergovernmental agreement Yes  No
- 16. Do the files contain the Community Development and Housing Needs Assessment Plan? Yes  No
- 17. In your opinion, does staff have the continuing capacity to administer this project? Yes  No

**I. CITIZENS COMPLAINTS AND PARTICIPATION**

- 1. Has a citizen complaint procedure been established? Yes  No
- 2. Have citizen complaint files been established? Yes  No
- 3. Have any citizen complaints been received?  
If yes, explain:  
\_\_\_\_\_  
\_\_\_\_\_
- 4. Have timely and adequate responses been delivered/and on file for review? Yes  No

**J. ENVIRONMENTAL**

- 1. Was an Environmental Review Record on file? Yes  No
- 2. Was the letter of Certification of Environmental Compliance and the Release of funds on file? (Date the WVDO approved) Yes  No   
Date of Approval: \_\_\_\_\_

**K. ACQUISITION AND RELOCATION**

**ACQUISITION**

- 1. Was an independent appraiser and review appraiser selected through issuing an RFP? Yes  No



2. Is there a separate acquisition file for each parcel required? Yes  No

3. The following sample of individual case files were reviewed:

Name	Location	Type	Compliance

4. Regarding acquisition of real property, was HUD Form 4024 being completed for each case file reviewed? Yes  No

5. Where the appraisal reports, including the review appraiser's reports acceptable? Yes  No

6. Were any appeals or complaints filed regarding property acquisition? Yes  No

7. If yes, were the sub-grantees responses adequate? Yes  No

8. Was any conflict of interest involved in the acquisition of property? Yes  No

9. If yes, how was this resolved? Yes  No

\_\_\_\_\_

10. Based upon attached individual review of a sample acquisition file, the sub-grantee appears to have carried out the acquisition procedures in an acceptable manner consistent with the requirements of the Uniform Act and State Policy and Procedures. Yes  No

11. Explanations of all "NO" answers and recommendations for corrective actions.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**RELOCATION**

1. Is there a separate relocation file for each displaced person? Yes  No

2. Do personal information records adequately document relocation needs? Yes  No

3. Does each relocation file document evidence that affected individuals received guidelines explaining their rights? Yes  No

4. Has the sub-grantee developed a written grievance procedure? Yes  No



- 5. Do procedures include grounds for filing appeal? Yes  No
- 6. Have appropriate time limits been set for filing an appeal? Yes  No
- 7. The following sample of individual case files were reviewed with results as indicated on individual monitoring forms:

Name	From Address	To Address

- 8. Has HUD Form 4022 been completed for each case file reviewed? Yes  No
- 9. Do relocation records include a listing of persons occupying property at the time the application was submitted? Yes  No
- 10. Do relocation records include a listing of persons moving in after the project began, if any? Yes  No
- 11. Do relocation records include a listing of persons occupying property after the project is completed? Yes  No
- 12. Based upon attached individual reviews of a sample of relocation files, the sub-grantee appears to have carried out relocation procedures in an acceptable manner consistent with the requirements of the Uniform Act. Yes  No

SAMPLE



## MONITORING CHECKLIST - DESIGN

Visit Date		Visit No.	
Contract Award Date		Contract Expiration Date	
Evidentiary Materials Release Date		Award Amount	
Grantee			
Project			
Reviewer			
Approved			

### A. PROGRAM PROGRESS AND PERFORMANCE

Determine that the project implemented meets one or more of the three national objectives and is eligible in accordance with Section 105(a) of Title I.

1. The project qualified under the \_\_\_\_\_ national objective.
2. Project Description: \_\_\_\_\_.

Determine the status of program performance and that the project is on time and on budget by completing the following checklist: **(Use last drawdown to complete this section.)**

3. Have there been any changes in scope? Yes  No
4. Were they approved by our office? Yes  No
5. If no, please explain: \_\_\_\_\_.
6. Has the project met thresholds for timely implementation noted in the state/local contract (from date of contract award)? Yes  No 
  - Has design and engineering been completed with 12 months? Yes  No
  - For those projects not meeting implementation schedule thresholds of 6(a)(b) and (c), please explain:  
\_\_\_\_\_.
7. Are there any proposed project activities not on schedule? Yes  No   
If yes, please explain what activities are being taken to remedy the problem?  
\_\_\_\_\_.
8. Is the sub-grantee likely to fail to meet the performance requirements of the State/Local Agreement for construction and completion? Yes  No   
If yes, explain: \_\_\_\_\_.



9. Based upon a comprehensive review, does the sub-grantee have the continuing capacity to satisfactorily carry out the remainder of this project? Yes  No

If no, please explain: \_\_\_\_\_.

**B. FINANCIAL MANAGEMENT  
(Notify Audit Section of concerns prior to releasing monitoring report)**

1. Does the grantee maintain the following financial records or their equivalent? Yes  No

- Cash Receipt Journal
- Cash Disbursements Journal
- Federal Cash Control Register  
(If multi-funded projects deposited into same account)
- General Ledger

2. Do you feel that the financial records are sufficient to report all project activities? Yes  No

3. Please note last posting date and balance of SCBG funds:

- Date of last posting: \_\_\_\_\_
- Amount of SCBG funds on hand: \$ \_\_\_\_\_

4. Has a non-interest bearing checking account been established? Yes  No

@ \_\_\_\_\_

5. Was an approved purchase order or state/local contract on file? Yes  No

6. Were all budget revisions approved and documented in the files? Yes  No

7. Have any indirect costs been charged to the project? Yes  No

8. Were indirect costs consistent with the rates of an approved cost allocation plan? Yes  No

9. Were administration costs at or below 10% of the total award? Yes  No

10. Has the sub-grantee established a written procedure for determining allowable, allocable, and reasonable costs? Yes  No

11. Has the sub-grantee established a written mechanism for ensuring compliance with the 3 day rule? Yes  No

12. Will program income be generated from any activity in the project? Yes  No

If yes, list below and notify the Audit Section of the WVDO:

Activity	Amount Projected
_____	\$ _____



- 13. Is program income being spent on eligible activities in accordance with the SCBG Handbook? Yes  No
- 14. Is program income being properly posted to the Cash Receipts Journal? Yes  No
- 15. Is program income being dispersed prior to requesting drawdowns for the same activity? Yes  No
- 16. The following transactions were reviewed:

Request for Funds					
Request Number	Date	Amount	Deposit Date	Disbursed Date	Balance
		\$			\$
		\$			\$
		\$			\$

- 17. Were records justifying request contained in the files? Yes  No

**The following items relate to the above transactions:**

- 18. Do all costs meet the eligibility criteria for allowable program activities that were included in the approved application and Section 105 of the Act? Yes  No
- 19. Were funds on hand less than the \$5,000 maximum? Yes  No
- 20. Based upon the evidence available, does it appear that the sub-grantee conforms to:
  - The standard set forth in 24 CFR Part 85? Yes  No
  - The eligibility requirements of A-87 and the SCBG Handbook? Yes  No
  - The eligibility requirements of Title I? Yes  No

**C. ALLOWABLE COSTS**

- 1. Is a written review system for determining cost allowability, allocability, And reasonableness on file? Yes  No
- 2. If not, can project personnel describe system being used? Briefly describe below:  
 \_\_\_\_\_
- 3. From your review, can you tell whether the system described above is in use? Yes  No
- 4. Are invoices processed for payment annotated by individual(s)



- responsible for oversight? Yes  No
5. Is the accounting system managed by third party consultants? Yes  No
6. For question 5, if yes, the procurement will be reviewed during the procurement of professional services.

**D. PROCUREMENT AND CONTRACTING**

**PROCUREMENT**

1. Has a written code of conduct been adopted and placed in the file? Yes  No   
**Date:** \_\_\_\_\_
2. Have written procurement procedures been established and are they equivalent to 24 CFR Part 85? Yes  No   
**Date:** \_\_\_\_\_
3. Do procurement procedures prescribe a dollar amount for Small Purchases? Yes  No   
**Amount:** \$ \_\_\_\_\_
4. Are small purchases documented by price quotations from qualified sources? Yes  No   
 If no, please explain:  
 \_\_\_\_\_

**COMPETITIVE NEGOTIATION**

Below, list a selected sample of contracts that were subject to competitive negotiation procedures.  
 (Professional Services)

Activity	Contractor	Total Budget	Contract Budget	Bid Price	Expended
		\$	\$	\$	\$
		\$	\$	\$	\$
		\$	\$	\$	\$
		\$	\$	\$	\$

1. Were Request for Proposals prepared and published for each of the above activities? Yes  No   
**Date:** \_\_\_\_\_
2. Were additional efforts made to contact firms regarding the advertisement for bids? Yes  No
3. Do the Request for Proposals clearly and accurately state the technical requirements for services procured? Yes  No
4. Does the file contain a copy of PSC approval of the engineer selected?  
*If yes, please disregard questions 5 through 9.* Yes  No



- 5. Was a basis for evaluation and selection specified? Yes  No
- 6. Was the selection process or method documented? Yes  No
- 7. Were technical evaluations conducted for proposals? Yes  No
- 8. Were "best" offerors determined? Yes  No
- 9. Were negotiations conducted for proposals? Yes  No
- 10. Was contractor eligibility verified? Yes  No
- 11. For those advertisements that did not receive sufficient responses, did the WVDO approve the contract award? Yes  No
- 12. Were all applicable contract provisions (PART II--TERMS AND CONDITIONS) Included in all the service contracts over \$10,000? Yes  No
- 13. Do contracts contain not-to-exceed requirements? Yes  No
- 14. Were contracts approved by the appropriate governing body of sub-grantee and/or contracting agency? Yes  No

**NON-COMPETITIVE NEGOTIATION**

- 1. Were any non-competitive procurements approved by the WVDO? Yes  No
- 2. Were circumstances under which a procurement was made by non-competitive negotiation limited to one of the following: Yes  No 
  - The item is available only from a single source?
  - Public exigency or emergency when the urgency for the requirements will not permit a delay incident to competitive solicitation?
  - The federal grantor agency authorizes non-competitive solicitation?
  - After solicitation of a number of sources, competition is determined inadequate?
- 3. Did the files contain a record of action assuring the items or services were only available from one source or that after a solicitation of a number of sources, competition was determined inadequate? Yes  No
- 4. For those advertisements that did not receive sufficient responses, was the previously completed cost or price analysis used as the basis of the selection process? Yes  No
- 5. Were all applicable contract provisions (PART II—TERMS AND CONDITIONS) included in all the service contracts over \$10,000? Yes  No
- 6. Does the contract's scope of service state clearly and accurately the technical requirements of the services to be rendered? Yes  No
- 7. Are costs reimbursements consistent with the type of contract specified in the SCBG Handbook? Yes  No



**Competitive Sealed Bids**

Below, list a selected sample of contracts that were subject to competitive bids and award procedures.

(Professional Services)

Activity	Contractor	Total Budget	Contract Budget	Bid Price	Expended
		\$	\$	\$	\$
		\$	\$	\$	\$
		\$	\$	\$	\$
		\$	\$	\$	\$
		\$	\$	\$	\$

1. Were Invitations for Bids advertised in accordance with Chapter 59, Article 2 of the State Code? Yes  No

**Dates:** \_\_\_\_\_.

2. Is proof of advertisements contained in the contract files? Yes  No

3. Were all bids opened publicly at the time and place stated in the advertisement for bids? Yes  No

4. Were contracts awarded to the lowest responsible bidder? Yes  No

5. Are bid tabulations on file? Yes  No   
Total number of bids received: \_\_\_\_\_

6. Was contractor eligibility verified? Date: \_\_\_\_\_ Yes  No

7. Were all unsuccessful bidders notified? \* Yes  No

Notification Method: \_\_\_\_\_.

**COMPETITIVE SEALED BIDS**  
(Professional Services)

The following checklist applies to contracts previously identified under competitive sealed bids:

1. Have bid document checklist(s) (Attachment 5-10) been previously submitted? Yes  No

2. Have contract document checklist(s) (Attachment 5-16) been completed and filed? Yes  No

3. Were Attachments 5-18 and 5-19 which includes all applicable contract provisions included in the bid package? Yes  No

4. Were Attachments 5-18 and 5-19 forms completed and signed in the contract document? Yes  No

5. For contracts under \$10,000: Did the sub-grantee follow its own requirements relating to bid, performance, and payment bonding? Yes  No



- 6. For contracts above \$100,000: Did the sub-grantee meet the federal requirements for bid, performance, and payment bonding as identified in 24 CFR Part 85, and were those forms included in the contract document? Yes  No
- 7. Are approvals from other applicable regulatory agencies on file? Yes  No   
If no, please explain: \_\_\_\_\_.
- 8. Does the sub-grantee's administrator or engineer verify that such approvals were obtained? Yes  No
- 9. Have all contracts been approved by official action of the sub-grantee's governing body and, if applicable, the governing body/board of the contracting agency? Yes  No
- 10. Were the types of contracts awarded to each responsible low bidder consistent with types indicated in 24 CFR Part 85? Yes  No
- 11. Are fully executed documents on file? Yes  No

**SMALL PURCHASES**

- 1. For items or services procured by small purchases, do the files contain records that an adequate number of qualified sources were contacted? Yes  No
- 2. Did the procurement meet federal, state, and local requirements? Yes  No

**E. EQUAL OPPORTUNITY COMPLIANCE**

**Employment by the Sub-Grantee (City or County)**

*Please note that the administrator is the agent of the grantee and must know the answers to complete the following questions.*

- 1. Has the sub-grantee adopted an Affirmative Action Plan related to employment? Yes  No
- 2. Does the sub-grantee have written employment and personnel policies which provide for equal opportunity? Yes  No
- 3. Were equal opportunity guidelines followed in advertising for vacancies? Yes  No
- 4. Does employment data indicate affirmative action in equal opportunity employment? Yes  No
- 5. Have any equal opportunity complaints been filed against the sub-grantee? Yes  No
- 6. If yes, what were the results of those complaints? Yes  No   
\_\_\_\_\_.

7. Number of city, town, or county employees

Workforce Analysis						
Total Employees		Total Male		Total Female		Handicapped
Total Minority		Minority – Male		Minority - Female		



Age Distribution			
18 to 25		41 to 50	
26 to 32		51 to 65	
33 to 44		Greater than 65	

*\*The above section can be submitted after monitoring visit.*

**Fair Housing Activities**

- List actions taken to further fair housing:

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- Are records maintained of those actions taken to affirmatively further fair housing as required by Title VIII certification and assurances? Yes  No

**Benefit Activities**

- Did the files contain an anti-displacement plan? Yes  No
- Are there any discernible differences in the level, quality, or type of benefit provided for minority beneficiaries versus non-minority beneficiaries? Yes  No

**F. SECTION 504**

- Has the grantee previously completed a Section 504 Self-Evaluation and Transition Plan? Yes  No
- If yes, has the Self-Evaluation and Transition Plan been updated (including all property purchased since the last evaluation)? Yes  No
- If the answer to question #1 is no, has the grantee completed a Self-Evaluation as required? Yes  No
- Has the grantee completed a Transition Plan outlining what improvements need to be made and when the noted improvements will be completed? Yes  No

Estimated costs of those improvements \$ \_\_\_\_\_

**SECTION 504 COMPLIANCE CHECKLIST**

**Initial and Continuing Notification (8.54)**

Has the recipient taken appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision, that it does not discriminate on the basis of disabilities? Yes  No

- Was timely initial notification made to all groups as required? Yes  No
- Was documentation provided? Yes  No



- 3. Is continuing notification made? Yes  No
- 4. Was documentation provided? Yes  No
- 5. Does the recipient's recruitment materials, (flyers, brochures, or other Publications) contain such a notice or non-discrimination? Yes  No
- 6. Comments (explain all no answers and provide any other comments)

**Designation of Responsible Employee (8.53)**

Has the recipient designated at least one person to coordinate its efforts to comply with Section 504? Yes  No

Provide name and title: \_\_\_\_\_

**Adoption of grievance procedures (8.53)**

Has the recipient adopted specific grievance procedures that incorporate appropriate due process standards and provides for the prompt equitable resolution of Section 504 related complaints? Yes  No

Comments: \_\_\_\_\_

**G. INTERNAL MANAGEMENT SYSTEMS**

- 1. Were project files established and being maintained in accordance with the SCBG Handbook? If no, explain?  
\_\_\_\_\_
- 2. Were project files accurate, complete, and orderly? Yes  No
- 3. Were all files kept in a central location? Yes  No
- 4. Are records capable of generating the following data for the final performance report? Yes  No 
  - Financial
  - Low/mod income beneficiaries
  - Minority data
  - Fair Housing actions

**If applicant is utilizing its own staff: (answer 5-12)**

- 5. Are personnel policies written and include references to Title VI and other Civil Rights laws? Yes  No
- 6. Were time sheets properly maintained and do they distinguish between grant-related and other activities? Yes  No
- 7. Were written job descriptions for administrative staff prepared and correspond



to work being done?

Yes

No

8. Do personnel recruitment records exist?

Yes

No

9. Do pay scales for assisted staff correspond to similar work performed in other areas of government?

Yes

No

10. Do employees appear to be properly supervised?

Yes

No

11. Do working conditions, benefits, annual leave/sick leave policies conform to other areas of government?

Yes

No

12. Are travel expenses/reimbursements reasonable and conform to local government regulations?

Yes

No

*\*If applicant is utilizing a Regional Council or third party consultant for administration respond to questions 13 and 14.*

13. Were time sheets and time distribution sheets on file?

Yes

No

14. Are travel costs reimbursements reasonable and are they equal to or less than travel regulations?

Yes

No

15. Are the following items on file?

- Small Cities Program Application
- Letter from Governor approving award of funds
- Grant agreement and resolution from Council or Commission
- Amendments and revisions
- Intergovernmental agreement

Yes

No

Yes

No

Yes

No

Yes

No

Yes

No

16. Do the files contain the Community Development and Housing Needs Assessment Plan?

Yes

No

17. In your opinion, does staff have the continuing capacity to administer this project?

Yes

No

**H. CITIZENS COMPLAINTS AND PARTICIPATION**

1. Has a citizen complaint procedure been established?

Yes

No

2. Have citizen complaint files been established?

Yes

No

3. Have any citizen complaints been received?  
If yes, explain:

Yes

No

\_\_\_\_\_  
\_\_\_\_\_

4. Have timely and adequate responses been delivered/and on file for review?

Yes

No

February 20, 2015

The Honorable Catherine Dundee  
Mayor  
City of Brink  
Post Office Box 5000  
Brink, West Virginia 24892-0280

**RE: Monitoring Visit Number One  
City of Brink – Potato Hill Water Project  
FY2015 Small Cities Block Grant  
Project Number: 15SCBG0550 (\$200,000)**

Dear Mayor Dundee:

On February 15, 2015, I visited the office of the Region 16 Planning and Development Council and met with John Nabors and Joan Redden. The purpose of the visit was to review progress made to date on the CDBG – Small Cities grant for the Potato Hill Water Project.

The review included: program performance, financial management, allowable costs, procurement and contracting, equal opportunity compliance, 504 compliance, internal management systems, and citizen complaints.

#### **Financial Management**

Financial management records have been established in accordance with the SCBG Handbook and are sufficient to report all project activities. A non-interest-bearing checking account has been established at Pioneer Community Bank in Brink. Administrative costs are within the ten percent limit. It appears that no program income will be generated from any activity. Compliance was kept with the three-day rule, and the \$5,000 maximum-on-hand policy is in effect. All costs have been determined to be allowable in accordance with the SCBG Handbook and OMB Circular A-87.

A review of drawdowns indicates that documentation, including cancelled checks, deposit slips, bank statements, and invoices, are on file. Timesheets and payroll records are available.

Based upon the evidence available, it appears that the sub-grantee's financial management system conforms to the standards set forth in 24 CFR Part 85.

#### **Allowable Costs**

All costs have been incurred within the project period. The system for determining cost allowability, allocability, and reasonableness in the program has been established in written form. The system described is in use by the grantee, and all invoices were annotated by the proper personnel.

#### **Internal Management Systems**

Records have been established in accordance with the CDBG Handbook and are available at the Region Sixteen Planning and Development Council Office. A citizens' complaint procedure has been established. At the time of this monitoring visit, no citizen complaints had been received. Please be reminded that all citizen

complaints must be completely resolved prior to the submission of the final performance review and closeout of this project.

**Procurement and Contracting**

A written Code of Conduct and Small Purchase Procedure and Procurement Procedures were reviewed.

The firm A1 Engineers, Inc. was selected, through competitive negotiation, to provide engineering services. A Request for Proposal (RFP) was published, and technical requirements for the services required were stated clearly and accurately. All requirements for competitive negotiation have been completed in accordance with the SCBG Handbook. Part II--Terms and Conditions were included in the engineer's contract. The contract contained a "not to exceed" requirement. The contract was approved by the governing body.

**Equal Opportunity Compliance**

The City of Brink has adopted an Affirmative Action Plan and written employment and personnel policies, which provide for equal opportunity. The sub-grantee has provided documentation of its efforts taken to achieve fair housing, and a Fair Housing Resolution is on file. An anti-displacement plan is on file. The sub-grantee is maintaining records of Section 3 activity, and is submitting their annual report on Section 3 activity. The sub-grantee adopted an MBE plan in regard to E.O. 11625. All relevant E.O. provisions and clauses were included in advertisements for bids.

**504 Compliance**

The City of Brink has completed a section 504/ADA self-evaluation and a transition plan and has made efforts to address issues with accessibility. The project's documentation regarding compliance with Section 504 of the Rehabilitation Act of 1973, as amended 24 CFR Part 8, was present.

**Concerns/Findings**

There were no concerns or findings as a result of this monitoring.

**Conclusion**

From this review, no apparent problems exist which would affect project completion. No additional recommendations or comments are necessary at this time.

I would like to thank the staff of the Region 16 Planning and Development Council for their time and cooperation during this visit. If you should have any questions regarding this review, please feel free to contact me at 304.558.2234, or by e-mail to CDBGrepname@wv.gov.

Sincerely,

Rep Name  
Project Manager

cc: David Miller Region 16 PDC (e-mail)  
Emily Dew Region 16 PDC (e-mail)



**Part II: Contracts Awarded**

1. Construction Contracts:

A. Total dollar amount of all contracts awarded on the project	
B. Total dollar amount of contracts awarded to Section 3 businesses	
C. Percentage of the total dollar amount that was awarded to Section 3 businesses	
D. Total number of Section 3 businesses receiving contracts	

2. Non-Construction Contracts:

A. Total dollar amount all non-construction contracts awarded on the project/activity	
B. Total dollar amount of non-construction contracts awarded to Section 3 businesses	
C. Percentage of the total dollar amount that was awarded to Section 3 businesses	
D. Total number of Section 3 businesses receiving non-construction contracts	

**Part III: Summary**

Indicate the efforts made to direct the employment and other economic opportunities generated by HUD financial assistance for housing and community development programs, to the greatest extent feasible, toward low- and very low-income persons, particularly those who are recipients of government assistance for housing. (Check all that apply.)

- Attempted to recruit low-income residents through: local advertising media, signs prominently displayed at the project site, contracts with the community organizations and public or private agencies operating within the metropolitan area (or nonmetropolitan county) in which the Section 3 covered program or project is located, or similar methods.
- Participated in a HUD program or other program which promotes the training or employment of Section 3 residents.
- Participated in a HUD program or other program which promotes the award of contracts to business concerns which meet the definition of Section 3 business concerns.
- Coordinated with Youthbuild Programs administered in the metropolitan area in which the Section 3 covered project is located.
- Other; describe below.

Public reporting for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB number.

Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u, mandates that the Department ensures that employment and other economic opportunities generated by its housing and community development assistance programs are directed toward low- and very-low income persons, particularly those who are recipients of government assistance housing. The regulations are found at 24 CFR Part 135. The information will be used by the Department to monitor program recipients' compliance with Section 3, to assess the results of the Department's efforts to meet the statutory objectives of Section 3, to prepare reports to Congress, and by recipients as self-monitoring tool. The data is entered into a database and will be analyzed and distributed. The collection of information involves recipients receiving Federal financial assistance for housing and community development programs covered by Section 3. The information will be collected annually to assist HUD in meeting its reporting requirements under Section 808(e)(6) of the Fair Housing Act and Section 916 of the HCDA of 1992. An assurance of confidentiality is not applicable to this form. The Privacy Act of 1974 and OMB Circular A-108 are not applicable. The reporting requirements do not contain sensitive questions. Data is cumulative; personal identifying information is not included.

Form HUD-60002, **Section 3 Summary Report, Economic Opportunities for Low- and Very Low-Income Persons.**

**Instructions:** This form is to be used to report annual accomplishments regarding employment and other economic opportunities provided to low- and very low-income persons under Section 3 of the Housing and Urban Development Act of 1968. The Section 3 regulations apply to any **public and Indian housing programs** that receive: (1) development assistance pursuant to Section 5 of the U.S. Housing Act of 1937; (2) operating assistance pursuant to Section 9 of the U.S. Housing Act of 1937; or (3) modernization grants pursuant to Section 14 of the U.S. Housing Act of 1937 and to **recipients of housing and community development assistance in excess of \$200,000** expended for: (1) housing rehabilitation (including reduction and abatement of lead-based paint hazards); (2) housing construction; or (3) other public construction projects; and to **contracts and subcontracts in excess of \$100,000** awarded in connection with the Section-3-covered activity.

Form HUD-60002 has three parts, which are to be completed for all programs covered by Section 3. Part I relates to **employment and training**. The recipient has the option to determine numerical employment/training goals either on the basis of the number of hours worked by new hires (columns B, D, E and F). Part II of the form relates to **contracting**, and Part III summarizes recipients' **efforts** to comply with Section 3.

Recipients or contractors subject to Section 3 requirements must maintain appropriate documentation to establish that HUD financial assistance for housing and community development programs were directed toward low- and very low-income persons.\* A recipient of Section 3 covered assistance shall submit one copy of this report to HUD Headquarters, Office of Fair Housing and Equal Opportunity. Where the program providing assistance requires an annual performance report, this Section 3 report is to be submitted at the same time the program performance report is submitted. Where an annual performance report is not required, this Section 3 report is to be submitted by January 10 and, if the project ends before December 31, within 10 days of project completion. **Only Prime Recipients are required to report to HUD. The report must include accomplishments of all recipients and their Section 3 covered contractors and subcontractors.**

- HUD Field Office: Enter the Field Office name .
1. Recipient: Enter the name and address of the recipient submitting this report.
  2. Federal Identification: Enter the number that appears on the award form (with dashes). The award may be a grant, cooperative agreement or contract.
  3. Dollar Amount of Award: Enter the dollar amount, rounded to the nearest dollar, received by the recipient.
  - 4 & 5. Contact Person/Phone: Enter the name and telephone number of the person with knowledge of the award and the recipient's implementation of Section 3.
  6. Reporting Period: Indicate the time period (months and year) this report covers.
  7. Date Report Submitted: Enter the appropriate date.

8. Program Code: Enter the appropriate program code as listed at the bottom of the page.
9. Program Name: Enter the name of HUD Program corresponding with the "Program Code" in number 8.

**Part I: Employment and Training Opportunities**

**Column A:** Contains various job categories. Professionals are defined as people who have special knowledge of an occupation (i.e. supervisors, architects, surveyors, planners, and computer programmers). For construction positions, list each trade and provide data in columns B through F for each trade where persons were employed. The category of "Other" includes occupations such as service workers.

**Column B: (Mandatory Field)** Enter the number of new hires for each category of workers identified in **Column A** in connection with this award. New hire refers to a person who is not on the contractor's or recipient's payroll for employment at the time of selection for the Section 3 covered award or at the time of receipt of Section 3 covered assistance.

**Column C: (Mandatory Field)** Enter the number of Section 3 new hires for each category of workers identified in **Column A** in connection with this award. Section 3 new hire refers to a Section 3 resident who is not on the contractor's or recipient's payroll for employment at the time of selection for the Section 3 covered award or at the time of receipt of Section 3 covered assistance.

**Column D:** Enter the percentage of all the staff hours of new hires (Section 3 residents) in connection with this award.

**Column E:** Enter the percentage of the total staff hours worked for Section 3 employees and trainees (including new hires) connected with this award. Include staff hours for part-time and full-time positions.

**Column F: (Mandatory Field)** Enter the number of Section 3 residents that were trained in connection with this award.

**Part II: Contract Opportunities**

**Block 1: Construction Contracts**

**Item A:** Enter the total dollar amount of all contracts awarded on the project/program.

**Item B:** Enter the total dollar amount of contracts connected with this project/program that were awarded to Section 3 businesses.

**Item C:** Enter the percentage of the total dollar amount of contracts connected with this project/program awarded to Section 3 businesses.

**Item D:** Enter the number of Section 3 businesses receiving awards.

**Block 2: Non-Construction Contracts**

**Item A:** Enter the total dollar amount of all contracts awarded on the project/program.

**Item B:** Enter the total dollar amount of contracts connected with this project awarded to Section 3 businesses.

**Item C:** Enter the percentage of the total dollar amount of contracts connected with this project/program awarded to Section 3 businesses.

**Item D:** Enter the number of Section 3 businesses receiving awards.

**Part III: Summary of Efforts – Self -explanatory**

Submit one (1) copy of this report to the HUD Headquarters Office of Fair Housing and Equal Opportunity, at the same time the performance report is submitted to the program office. The Section 3 report is submitted by January 10. Include only contracts executed during the period specified in item 8. PHAs/IHAs are to report all contracts/subcontracts.

\* The terms "low-income persons" and very low-income persons" have the same meanings given the terms in section 3 (b) (2) of the United States Housing Act of 1937. **Low-income persons** mean families (including single persons) whose incomes do not exceed 80 percent of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families, except that

The Secretary may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of the Secretary's findings such that variations are necessary because of prevailing levels of construction costs or unusually high- or low-income families. **Very low-income persons** mean low-income families (including single persons) whose incomes do not exceed 50 percent of the median family income area, as determined by the Secretary with adjustments or smaller and larger families, except that the Secretary may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

## SECTION 3 ANNUAL REPORTING FORM (Form HUD 60002)

### Instructions

**HUD Field Office: Leave blank.**

1. **Recipient:** Enter the name and address of the recipient (grantee).
2. **Federal Identification:** Enter the CDBG project number.
3. **Dollar Amount of Award:** Enter the dollar amount of CDBG funds only, rounded to the nearest dollar.  
*Note: The Total Amount of Award will reflect the latest approved budget amount.*
4. **Contact Person:** Enter the name of the person with knowledge of the award and of the recipient's implementation of Section 3.
5. **Phone:** Enter the telephone number of the person listed in Item 4.
6. **Length of Grant:** The date of the grant award through the current approved contract expiration or expected close-out date.
7. **Reporting Period:** For the 2015 annual report, list **July 1, 2014 to June 30, 2015**. If an FPR was submitted during the reporting period, the report end date is the date of the FPR.
8. **Date Report Submitted:** Enter the date submitted to WVDO.
9. **Program Code:** "8"
10. **Program Name:** "CDBG State Administered"

### Part 1: Employment and Training Opportunities

**Column A** (*Various job categories*)

Professionals are defined as people who have special knowledge of an occupation (i.e. supervisors, architects, engineers, surveyors, planners, and computer programmers). *For construction positions, list each trade where persons were employed in column A and provide its corresponding data in columns B through F.* The category of "Other" includes occupations such as service workers. Include any persons hired by the recipient to work on the project.

**Column B** (*Mandatory Field*)

Enter the number of new hires for each category of workers identified in Column A in connection with this award (please see definitions section).

**Column C** (*Mandatory Field*)

Enter the number of Section 3 new hires for each category of workers identified in Column A in connection with this award (please see definitions section).

**Column D**

Enter the percentage of staff hours of new hires (Section 3 residents) in connection with all new hires for this project (total staff hours for the recipient and contractor worked by new Section 3 employees divided by the total staff hours worked by all new hires on the project).

**Column E**

Enter the percentage of the total staff hours worked by Section 3 employees and trainees (including new hires) connected with this award. Include staff hours for part-time and full-time positions. (This is the number of Section 3 staff hours divided by the total number of staff hours for all employees).

**Column F** (*Mandatory Field*)

Enter the number of Section 3 residents who were employed and trained (including new hires) in connection with this award.

## Part 2: Contract Opportunities

### *Block 1: Construction Contracts*

**Item A:** Enter the total dollar amount of all construction contracts awarded on the project/program (**CDBG funds only**). *This includes Construction, Building Trades, Carpentry, Masonry, Electrical, Plumbing, Demolition, and related.*

**Item B:** Enter the total dollar amount of construction contracts connected with this project/program that were awarded to Section 3 businesses (**CDBG dollars only**).

**Item C:** Enter the percentage of the total dollar amount of construction contracts connected with this project/program awarded to Section 3 businesses (**CDBG dollars only**).

**Item D:** Enter the number of Section 3 businesses receiving construction contracts.

### *Block 2: Non-Construction Contracts*

**Item A:** Enter the total dollar amount of all non-construction contracts awarded on the project/program (**CDBG funds only**). *This includes Professional Service Contracts for Administration, Architecture, Engineering, Legal Services, Appraisal, and related.*

**Item B:** Enter the total dollar amount of non-construction contracts connected with this project awarded to Section 3 businesses (**CDBG funds only**).

**Item C:** Enter the percentage of the total dollar amount of non-construction contracts connected with this project/program awarded to Section 3 businesses (**CDBG funds only**).

**Item D:** Enter the number of Section 3 businesses receiving non-construction contracts.

## Part 3: Summary of Efforts (*check all that apply*).

**Block 1:** Attempted to recruit low-income residents through advertising, project signs, and by contracting with community organizations/agencies (Workforce WV, Housing Agencies, Technical Schools).

**Block 2:** Participated in a program promoting the training or employment of Section 3 residents.

**Block 3:** Participated in a program promoting the award of contracts to Section 3 business concerns (*please see definitions section*).

**Block 4:** Coordinated with local Youthbuild Programs.

**Block 5:** Other. Describe these activities in the space provided below the block.

## Definitions

**Project Area:** The county or MSA where the CDBG funded activity is located.

**New Hire:** New hire refers to a full-time employee for a new permanent, temporary, or seasonal position that is created during the expenditure of the CDBG funds.

**Section 3 Resident:** A project area resident of public housing, a homeless person residing in the project area, a project area participant of the Youthbuild program, or a project area family or individual of *very low-income* (50 percent of median family income) or *low-income* (80 percent of median family income).

**Section 3 New Hire:** A project area resident of public housing, a homeless person residing in the project area, a project area participant of the Youthbuild program, or a very low- or low-income resident of the project area *who was hired* for a full-time permanent, temporary, or seasonal position that is created during the expenditure of the CDBG funds.

**Section 3 Business Concern:** Business concern means a business entity formed in accordance with state law, and which is licensed under state, county or municipal law to engage in the type of business activity for which it was formed and A) 51 percent or more of the business is owned by Section 3 residents; or B) thirty percent or more of the permanent, full-time employees are currently Section 3 residents or were Section 3 residents when hired (*hire date within the last 3 years*); or C) has committed to subcontract 25 percent or more of the dollar value of subcontracts to business concerns meeting either A or B above.

**Checklist: HUD Form 60002, Section 3 Summary Report**  
*(supplement to HUD instructions)*

- Blocks 1, 4 & 5      Grantee contact information
- Blocks 2, 3 & 10      Grant ID, name and fund amount
- Block 6      Start and end dates for grant award
- Block 7      (all) State FY: July 1 - June 30
- Block 8      Date report mailed
- Block 9      See bottom of form and copy the 'program code' corresponding to the grant being reported, usually '8' - "CDBG State Administered"
- Part I-A      Add and describe project job titles by labor category: plumber, brick mason, carpenter, etc. for all prime and sub-contractors. Include breakdown of admin. staff: professional, clerical, etc.
- Part I-B      List numbers of new hires by job category for the **Fiscal Year (FY)** reporting period
- Part I-C      " " " " " " " " who are Section 3 residents for the **FY** period
- Part I-D      For any Section 3 hires, list the % of time engaged in the project (100% - FTE; variable % - PTE [state percentage])
- Part I-E      List the percentage of hired Section 3 residents' man hours by their job category (payroll records will be needed to calculate this: Sec. 3 MH divided by total MH = %)
- Part I-F      List the number of any Section 3 resident trainees by job category

**Part II - Side two of form**

- Part 1-A      Dollar value of all construction contracts in project reported
- Part 1-B      " " " " " " for Section 3 businesses
- Part 1-C      Percentage of 'B' above divided by 'A' above
- Part 1-D      Number of Section 3 businesses receiving a construction award
- Part 2-A      Dollar value of all non-construction contracts in grant reported
- Part 2-B      " " " " " " for Section 3 businesses
- Part 2-C      Percentage of 'B' above divided by 'A' above
- Part 2-D      Number of Section 3 businesses receiving a non-construction award

**Part III - Narrative: Fill something out!**

First blank asks if you did as little as posting a Section 3 notice in the project area. Add details in the space below. Include any efforts to recruit inside or outside the Section 3 service area to show, "...maximum feasible effort."05.01.2012 (bottom of page) "Totals" - add totals for each column carried down or average %

## **Youthbuild Programs in West Virginia**

### **HRDF-Mon Youthbuild**

*Sponsored by Human Resource Development Foundation Inc.*

**Address**

HRDF-Mon Youthbuild  
305 Washington ST  
Fairmont WV 26554

**Main Phone**

(304) 366-1119

**Email**

[monybuild@frontier.com](mailto:monybuild@frontier.com)

**Website**

<http://www.monyouthbuild.org/>

### **Huntington Housing Authority**

**Address**

Huntington Housing Authority  
300 W 7th Avenue  
Huntington WV 25701

**Main Phone**

(304) 522-0576

**Website**

<http://www.huntingtonhousing.com>

### **SALS YouthBuild**

*Sponsored by Southern Appalachian Labor School*

**Address**

SALS YouthBuild  
P.O. Box 127  
Kincaid WV 251190127

**Main Phone**

(304) 779-2772

**Email**

[jdavid@citynet.net](mailto:jdavid@citynet.net)

**Website**

<http://www.sals.info>

### **YouthBuild North Central West Virginia**

*Sponsored by Randolph County Housing Authority*

**Address**

YouthBuild North Central West Virginia  
1404 N. Randolph Ave  
Elkins WV 26241

**Main Phone**

(304)637-9008

**Email**

[youthbuild@rchawv.org](mailto:youthbuild@rchawv.org)

## MBE/WBE CONTRACTING ANNUAL REPORTING FORM (Form HUD 2516)

### Instructions

All grantees with open CDBG and NSP projects are required to submit a HUD Form 2516 annually to report contracting activity with Minority Owned and Women Owned Businesses.

Note the following when completing HUD Form 2516, "Contract and Subcontract Activity:"

- If the project submitted a Final Performance Report (FPR) during the previous fiscal year, the reporting period starts on July 1 and only includes up through the FPR submittal date.
- Do not include any contracts or subcontracts reported previously, as the HUD 2516 is specific to the reporting period and is not cumulative.
- If a project has been funded out of multiple years, include CDBG/NSP funds for all program years.
- Do not report the entire contract dollar amount if CDBG/NSP funds are only a portion of the total contract. **Report only the CDBG/NSP funds.**
- Column 7c has only three options from which to choose for non-housing projects, listed under CPD at the bottom left of the page. The "3 = Other" category includes: supplies, engineering, professional services, administration, and all other soft cost activities except construction. Construction or Demolition contracts should be categorized as "1 = New Construction." **Do not report any contracts/activities under the "2 = Education/Training" category.**
- **The total of the "3 = Other" contract amounts should equal the "Non-Construction" contracts total from Page 2 on Form HUD 60002.**
- The Office of Small and Disadvantaged Business Utilization has not revised Form 2516 to reflect additional racial and ethnic categories. Therefore, you must select one of the options provided.

**NEW THIS YEAR:** Each reporting region/administrator is asked to complete the included excel spreadsheet entitled **Section 3 and Contracting Compilation Form**. There are three sheets tabbed at the bottom; Instructions, a sample form, and the fillable blank form. .

### WVDO Instructions for Completing the HUD FORM 2516

1. Grantee/Project Owner/Developer/Sponsor/Builder/Agency  
Enter the name of the unit of Local Government Grantee.
2. Location (City, State, Zip Code)  
Enter the mailing address of the Grantee.
3. a) Name of Contact Person and b) Phone Number (including area code)  
Provide the name and phone number of the **Grant Administrator (the person with knowledge about the HUD 2516)**.
4. Reporting Period  
Check the box; it should be prefilled with recently ended fiscal year.
5. Program Code  
Leave Blank
6. Date Submitted to Field Office  
Enter the date submitted to WVDO.

7. Items A-J

- A. **Grant/Project Number:** Enter the CDBG Project Number.
- B. **Amount of Contract or Subcontract:** Enter the CDBG dollar amount (Excluded non-CDBG funds) rounded to the nearest dollar. If the subcontractor ID number is provided in 7h, the dollar figure will be for the subcontract only and not for the prime contract. *Reporting of contracts and subcontracts of less than \$10,000 CDBG funds is optional, unless they represent a significant portion of the CDBG project's contracting activity.*
- C. **Type of Trade:** Enter a 1 or 3 as described above to best represent the contractor/subcontractor service. If the subcontractor ID number is provided in 7h, the type of trade code will be for the subcontractor only and not for the prime contractor.
- D. **Business Racial/Ethnic Code:** Enter the numeric code (see listing at bottom of form) which indicates the racial/ethnic character of the owner(s) and controller(s) of 51 percent of the business. When 51 percent or more is not owned and controlled by any single racial/ethnic category, enter the code which seems most appropriate. IF the subcontractor ID number is provided, the code will apply to the subcontractor and not to the prime contractor.
- E. **Women Owned Business:** Enter Yes or No.
- F. **Contractor Identification (ID) Number:** Enter the Employer (IRS) Number of the Prime Contractor (required). If the Contractor Identification (ID) is a Social Security number, use the format "xxx-xx-1234".
- G. **Section 3 Contractor:** Enter Yes or No. **This portion of the form must reconcile with the Form HUD 60002. If yes, it must have been reported on the 60002. If no, it must not have been reported on the 60002. Ensure contract amounts match if appearing on both forms.** Note: Regional Planning and Development Councils do not count as "Section 3 Contractors."
- H. **Subcontractor Identification (ID) Number:** Enter the Employer (IRS) Number of the Subcontractor (required). When the Subcontractor ID Number is provided, respective Prime Contractor ID Number must also be provided. If the Subcontractor Identification (ID) is a Social Security number, use the format "xxx-xx-1234".
- I. **Section 3 Contractor:** Enter Yes or No. **This portion of the form must reconcile with the Form HUD 60002. If yes, it must have been reported on the 60002. If no, it must not have been reported on the 60002. Ensure contract amounts match if appearing on both forms.**
- J. **Contractor/Subcontractor Name and Address:** Enter this information for each firm receiving contract/subcontract activity. If there are no new contracts for the project that were awarded during the applicable fiscal year, please add a note stating "No contract activity during report period."



This report is to be completed by grantees, developers, sponsors, builders, agencies, and/or project owners for reporting contract and subcontract activities of \$10,000 or more under the following programs: Community Development Block Grants (entitlement and small cities); Urban Development Action Grants; Housing Development Grants; Multifamily Insured and Noninsured; Public and Indian Housing Authorities; and contracts entered into by recipients of CDBG rehabilitation assistance.

Contracts/subcontracts of less than \$10,000 need be reported only if such contracts represent a significant portion of your total contracting activity. Include only contracts executed during this reporting period.

This form has been modified to capture Section 3 contract data in columns 7g and 7i. Section 3 requires that the employment and other economic opportunities generated by HUD financial assistance for housing and community development programs shall, to the greatest extent feasible, be directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing. Recipients using this form to report Section 3 contract data must also use Part I of form HUD-60002 to report employment and training opportunities data. Form HUD-2516 is to be

### Community Development Programs

**1. Grantee:** Enter the name of the unit of government submitting this report.

**3. Contact Person:** Enter name and phone of person responsible for maintaining and submitting contract/subcontract data.

**7a. Grant Number:** Enter the HUD Community Development Block Grant Identification Number (with dashes). For example: B-32-MC-25-0034. For Entitlement Programs and Small City multi-year comprehensive programs, enter the latest approved grant number.

**7b. Amount of Contract/Subcontract:** Enter the dollar amount rounded to the nearest dollar. If subcontractor ID number is provided in 7f, the dollar figure would be for the subcontract only and not for the prime contract.

**7c. Type of Trade:** Enter the numeric codes which best indicates the contractor's/subcontractor's service. If subcontractor ID number is provided in 7f., the type of trade code would be for the subcontractor only and not for the prime contractor.

The "other" category includes supply, professional services and all other activities except construction and education/training activities.

**7d. Business Racial/Ethnic/Gender Code:** Enter the numeric code which indicates the racial/ethnic/gender character of the owner(s) and controller(s) of 51% of the business.

When 51% or more is not owned and controlled by any single racial/ethnic/gender category, enter the code which seems most appropriate. If the subcontractor ID number is provided, the code would apply to the subcontractor and not to the prime contractor.

**7e. Woman Owned Business:** Enter Yes or No.

**7f. Contractor Identification (ID) Number:** Enter the Employer (IRS) Number of the Prime Contractor as the unique identifier for prime recipient of HUD funds. Note that the Employer (IRS) Number must be provided for each contract/subcontract awarded.

**7g. Section 3 Contractor:** Enter Yes or No.

**7h. Subcontractor Identification (ID) Number:** Enter the Employer (IRS) Number of the subcontractor as the unique identifier for each subcontract awarded from HUD funds. When the subcontractor ID Number is provided, the respective Prime Contractor ID Number must also be provided.

**7i. Section 3 Contractor:** Enter Yes or No.

**7j. Contractor/Subcontractor Name and Address:** Enter this information for each firm receiving contract/subcontract activity only one time on each report for each firm.

completed for public and Indian housing and most community development programs. Form HUD-60002 is to be completed by all other HUD programs including State administered community development programs covered under Section 3. A Section 3 Contractor/subcontractor is a business concern that provides economic opportunities to low and very Low-income residents of the metropolitan area (or nonmetropolitan county), including a business concern that is 51 person or more owned by low-income residents;

or provides subcontracting or business development opportunities to businesses owned by low or low-income residents. Low and very low-income residents; include participants in Youthbuild programs established under Subtitle D of Title IV of the Cranston-Gonzalez National Affordable Housing Act.

The terms "low-income persons" and "very low-income persons" have the same meanings given the terms in section 3(b)(2) of the United States Housing Act of 1937. Low-income persons mean families (including single persons) whose incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary, with adjustments for smaller an larger families, except that the Secretary may establish income ceilings higher or lower than 80 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of prevailing levels of construction

### Multifamily Housing Programs

**1. Grantee/Project Owner:** Enter the name of the unit of government, agency or mortgagor entity submitting this report.

**3. Contact Person:** Same as item 3 under CPD Programs.

**4. Reporting Period:** Check only one period.

**5. Program Code:** Enter the appropriate program code.

**7a. Grant/Project Number:** Enter the HUD Project Number or Housing Development Grant or number assigned.

**7b. Amount of Contract/Subcontract:** Same as item 7b. under CPD Programs.

**7c. Type of Trade:** Same as item 7c. under CPD Programs.

**7d. Business Racial/Ethnic/Gender Code:** Same as item 7d. under CPD Programs.

**7e. Woman Owned Business:** Enter Yes or No.

**7f. Contractor Identification (ID) Number:** Same as item 7f. under CPD Programs.

**7g. Section 3 Contractor:** Enter Yes or No.

**7h. Subcontractor Identification (ID) Number:** Same as item 7h. under CPD Programs.

**7i. Section 3 Contractor:** Enter Yes or No.

**7j. Contractor/Subcontractor Name and Address:** Same as item 7j. under CPD Programs.

costs or unusually high or low-income families. Very low-income families (including single persons) whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that the secretary may establish income ceilings higher or lower than 50 per centum of the median for the area on the basis of the Secretary's findings that such variations are necessary because of unusually high or low family incomes.

Submit two (2) copies of this report to your local HUD Office within ten (10) days after the end of the reporting period you checked in item 4 on the front. Complete item 7h. Only once for each contractor/subcontractor on each semi-annual report.

Enter the prime contractor's ID in item 7f. for all contracts and subcontracts. Include only contracts expected during this reporting period. PHAs/IHAs are to report all contracts/subcontracts.

### Public Housing and Indian Housing Programs

PHAs/IHAs are to report all contracts/subcontracts. Include only contracts executed during this reporting period.

**1. Project Owner:** Enter the name of the unit of government, agency or mortgagor entity submitting this report. Check box as appropriate.

**3. Contact Person:** Same as item 3 under CPD Programs.

**4. Reporting Period:** Check only one period.

**5. Program Code:** Enter the appropriate program code.

**7a. Grant/Project Number:** Enter the HUD Project Number or Housing Development Grant or number assigned.

**7b. Amount of Contract/Subcontract:** Same as item 7b. under CPD Programs.

**7c. Type of Trade:** Same as item 7c. under CPD Programs.

**7d. Business Racial/Ethnic/Gender Code:** Same as item 7d. under CPD Programs.

**7e. Woman Owned Business:** Enter Yes or No.

**7f. Contractor Identification (ID) Number:** Same as item 7f. under CPD Programs.

**7g. Section 3 Contractor:** Enter Yes or No.

**7h. Subcontractor Identification (ID) Number:** Same as item 7h. under CPD Programs.

**7i. Section 3 Contractor:** Enter Yes or No.

**7j. Contractor/Subcontractor Name and Address:** Same as item 7j. under CPD Programs.

## SECTION 3 AND CONTRACTING COMPILATION FORM

### Section 3 and Contracting Compilation Form Instructions

The **Summary Report** and a **Sample Report** are provided in separate tabbed Worksheets below.

Each Region or Project Administrating Agency should complete one report containing all Fiscal Year 2014 active projects that saw hiring and/or contracting activity. Active projects that reported “*No contract activity during report period*” do not need to be represented on this report. Please print Part 1 and Part 2 upon completion and submit with the packet of HUD Forms 60002 and 2516 you have completed for all the active projects administered by your organization in FY 2014.

#### Part 1- Section 3 Summary Report Instructions

1. The Section 3 Summary Report (Part 1) is to be completed using the HUD Form 60002 for each individual project. The fields correspond by number, letter, and title to the fields on the HUD Form 60002.
2. For every individual project, each Job Category (Column A) that saw a new hire will require a separate line to be completed. This would result in multiple entries for projects with multiple Job Categories represented. Only complete the Award Total (Column 3.) once for each project, leave the column blank for repeat entries.
3. The bottom “Total” line is set to automatically sum the entries for those columns that can accurately be represented as a total of annual accomplishments on a regional/administrator basis.

#### Part 2- Contract and Subcontract Activity (MBE/WBE) Instructions

1. The Contract and Subcontract Activity (MBE/WBE) Report (Part 2) is to be completed using the HUD Form 2516 for each individual project. Each line is designed to accommodate the corresponding information for a total project. The column headings indicate which column on the HUD Form 2516 will contain the requested data.
2. The columns for contract totals, drawn from column 7b. on HUD Form 2516, are categorized by common activity types. All Construction and Demolition contracts or subcontracts of Trade Code type (1) should be combined. The Non-Construction or Trade Code type (3) “Other” are divided among multiple columns. If the Non-Construction contract you need to enter is not clearly administration, legal, accounting/professional, or engineering utilize the accounting/professional column. Examples might include Right of Ways or Title Work. Multiple contracts of the same or similar activity for one project should be combined in a column.
3. Though Part 2 of the Contracting Compilation Form is completed from HUD Form 2516, the individual project totals for all Construction (Part II, 1.-A.) and Non-Construction (Part II, 2.-A.) contracts should match to those figures provided on Page 2 of HUD Form 60002 for the corresponding projects.

3. SECTION 3 AND CONTRACTING COMPILATION FORM

**Part 1**

**Section 3 Summary Report** (from HUD Form 60002)

**Hiring Data by Region/Admin.**

List all Contracts awarded during period:	FY 2014 (7/1/13-6/30/14)									
Administrating Agency:	Region A PDC									
1. Recipient	2. Grant No.	3. Award Total	8. Program Code	9. Program Name	A. Job Category	B. New Hires	C. Section 3 New Hires	D. Section 3 Hrs./Total Staff Hrs. (%)	E. Section 3 Employee & Trainee Hrs./Total Staff Hrs. (%)	F. # of Section 3 Trainees
City of Anytown	12SCBG0018X	\$ 1,500,000	8	CDBG	Laborer 1	1	1	100.0 %	5.0 %	0
Town of Yourville	18SCBG0114	\$ 500,000	8	CDBG	Carpenter	2	1	50.0 %	3.0 %	1
<b>SAMPLE</b>										
<b>TOTAL</b>		<b>\$ 2,000,000</b>				<b>3</b>	<b>2</b>			<b>1</b>

**Part 2**

**Contract and Subcontract Activity Report** (from HUD Form 2516)

**(MBE/WBE)**

List all Contracts awarded during period:	FY 2014 (7/1/13-6/30/14)					
Administrating Agency:	Region A PDC					
7a. Grantee/Project #	7b. Construction/Demo (1)*	7b. Administration (3)	7b. Legal (3)	7b. Acct/Professional (3)	7b. Engineering (3)	Total Non-Const. by Project (3)*
City of Anytown	\$ 1,200,000	\$ 80,000		\$ 20,000	\$ 200,000	\$ 300,000
Town of Yourville	\$ 480,000		\$ 10,000			\$ 10,000
<b>SAMPLE</b>						
<b>TOTAL</b>	<b>\$ 1,680,000</b>	<b>\$ 80,000</b>	<b>\$ 10,000</b>	<b>\$ 20,000</b>	<b>\$ 200,000</b>	<b>\$ 310,000</b>

From HUD-2516
CPD Trade Codes
(1)= New Const.
(2)= Don't Use
(3)= Other

\* Match Amounts from Pg. 2 of 60002



## COMPLIANCE WITH THE FAIR HOUSING ACT

### Instructions

Fair Housing is the right to choose housing free from unlawful discrimination. The Fair Housing Act protects people from discrimination in housing based on race, color, religion, sex, national origin, familial status, disability, familial status, and age. Under the Fair Housing Act, discrimination is illegal in housing transactions such as rentals, sales, lending, and insurance.

Affirmatively furthering fair housing is one of the guiding principles of the U.S. Department of Housing and Urban Development (HUD), and is a **requirement** for participation in the CDBG-Small Cities and NSP Programs in the State of West Virginia.

Affirmatively furthering fair housing is a requirement to use Federal financial assistance and other housing program resources in a manner that counteracts housing segregation, overcomes barriers to fair housing choice and promotes equal housing opportunity. Local governments, because of their influence, can effectively further fair housing.

As part of Fair Housing Month in April 2014, WVDO encouraged all Grantees to pass a Fair Housing Resolution as the first step in affirmatively furthering fair housing. Use the **Compliance with the Fair Housing Act** form to report this activity. The report should include any and all actions taken to affirmatively further fair housing, including, but not limited to:

- Enacting or strengthening local ordinances
- Passing a formal resolution
- Advertising, including newspaper and radio
- Communication or language in contracts, letterhead or use of Fair Housing symbol
- Public outreach, including seminars, meetings or public hearings with interested parties
- Assistance to minority groups
- Development and distribution of community resource guides
- Improvement of community facilities to integrate neighborhoods or preserve integration

Questions regarding Compliance with the Fair Housing Act or Fair Housing activities may be directed to April McComas at 304-957-2051, or send email to [april.l.mccomas@wv.gov](mailto:april.l.mccomas@wv.gov).

**ANNUAL REPORTING FORM**  
**For the Period July 1, 2014 to June 30, 2015**

Grantee:	Project Number:
Project Name:	
Reporting Period: July 1, 2014-June 30, 2015	

Grantees are required by Title I Certifications not to discriminate in the provision of housing and not to discriminate in CDBG-Small Cities and NSP activities that provide housing, housing services, or housing-related facilities. Grantees are required to administer housing and community development programs in a manner to affirmatively further fair housing in the sale or rental of housing, the financing of housing, and the provision of brokerage services. HUD and the State of West Virginia have a mandate to carry out all programs in a manner to affirmatively further fair housing.

**1. List the actions taken to affirmatively further fair housing.**

**2. Identify any fair housing complaints received this reporting period and indicate the disposition of any complaints.**

Questions regarding Compliance with the Fair Housing Act or Fair Housing activities may be directed to April McComas at 304-957-2051, or send email to [april.l.mccomas@wv.gov](mailto:april.l.mccomas@wv.gov)

## Program Income/Interest Earned

### Instructions

**Program Income** is defined in 24 CFR 570.489(e) as gross income received by a unit of local government that was generated from the use of CDBG-Small Cities and Neighborhood Stabilization Program (NSP) funds.

#### **All CDBG-Small Cities Program Income must be reported.**

For CDBG-Small Cities projects, if less than \$25,000 is received in a single year by a unit of local government, funds may be treated as miscellaneous income and will not be subject to program requirements. If \$25,000 or more in Program Income is received in a single year by a unit of local government, the generated Program Income will be treated as additional CDBG-Small Cities funds and be subject to all program requirements. This Program Income must be used to continue the same activity from which it was derived or be subject to recapture by the State.

#### **All NSP Program Income must be reported.**

**Please note the following guidelines:**

**Common sources of NSP program income are:**

- Proceeds from the sale of properties acquired and/or improved with NSP funds
- Recapture of NSP subsidies if an assisted home is sold before the end of the affordability period
- Payments of principal and interest on loans made with NSP funds
- Interest earned on program income pending its disposition
- Repayments of liens placed on privately owned property that was demolished using NSP money
- Gross income from the use or rental of real property constructed or improved with NSP funds, less the costs incidental to the generation of that income.

**The following revenues are NOT NSP program income:**

- Proceeds from fundraising by sub-recipients
- Funds collected through special assessments on public improvements (unlikely in NSP )
- Sub-recipient proceeds from disposition of real property five years or more after grant close-out
- Income received in a single calendar year by the recipient and all its sub-recipients (combined) if the total amount of such income does not exceed \$25,000. This is unlikely to occur in NSP.

Questions regarding the **NSP Program** may be directed to April McComas at 304-957-2051, or send email to [april.l.mccomas@wv.gov](mailto:april.l.mccomas@wv.gov).

Questions regarding **Program Income and Interest Earned** may be directed to Tom Gibbs at 304-957-2060 or by sending email to [thomas.w.gibbs@wv.gov](mailto:thomas.w.gibbs@wv.gov).

# PROGRAM INCOME REPORT

## For The Period July 1, 2014 to June 30, 2015

Program Income is defined as gross income received by the state, a general unit of local government or a subrecipient of a general unit of local government that was generated from the use of CDBG-Small Cities and NSP funds.

**I. GENERAL INFORMATION**

A. Grantee: \_\_\_\_\_  
 B. Grant #: \_\_\_\_\_  
 C. Project #: \_\_\_\_\_

**II. REVOLVING LOAN FUND LOAN STATUS**

A. Are all loan repayments current:  
 Yes \_\_\_\_\_ No \_\_\_\_\_  
 If "NO", attach an explanation which identified the number of days delinquent or if the business has defaulted on the loan.

**B. Revolving Loan Fund**

1) Beginning Balance (Grant Award) \$ \_\_\_\_\_

2) Receipts This Period

a) Loan Repayments	\$ _____
b) Interest Earned	\$ _____
c) Other Explanation	\$ _____
d) Total Receipts	\$ _____

3) Balance Available \$ \_\_\_\_\_

4) Obligations This Period

a) Administration/Delivery Cost	\$ _____
b) Loans	\$ _____
c) Total Obligaitons	\$ _____

5) Ending Balance \$ \_\_\_\_\_

**C. FINANCIAL INSTITUTION(S)**

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Account #: \_\_\_\_\_

**III. OTHER PROGRAM INCOME ACTIVITIES: Please attach a detailed description of Program Income sources (See 570.489 (e))**

1) Beginning Balance (Grant Award)	\$ _____
2) Receipts This Period	\$ _____
3) Expenditures This Period	\$ _____
4) Ending Balance	
<b>Total</b>	\$ _____

**IV. GRANTEE CONTACT PERSON:**

Name: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Telephone: (304) \_\_\_\_\_

**V. CERTIFICATION:**

I CERTIFY THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF THE INFORMATION CONTAINED IN THIS REPORT IS TRUE AND CORRECT.

\_\_\_\_\_  
**Signature of Chief Elected Official**

\_\_\_\_\_  
**Typed Name**

\_\_\_\_\_  
**Title**

Date: \_\_\_\_\_

# Chapter 10

## Acquisition of Real Property





## Chapter 10: Acquisition of Real Property

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### Table of Contents

	<b>Page</b>
Property Management & Disposition .....	10-1
Acquisition as a National Objective .....	10-2
Uniform Relocation Act .....	10-3
Recommended Acquisition Procedures - URA .....	10-5
Determine Properties to be Acquired .....	10-5
Just Compensation .....	10-8
Complete Acquisition .....	10-9
Procedures for Donation .....	10-10

**Introduction**

Chapter 10: Acquisition & Relocation provides a review of the policies, regulations and laws applicable to property acquisition undertaken as part of a Community Development Block Grant (CDBG) project. The use of real property (land and buildings) is governed by 24 CFR 570.505. The use of personal property (equipment and property other than real property) is governed by 24 CFR 85.32.

The Grantee must obtain all land, rights-of-ways and easements necessary for carrying out the project prior to bidding the project. The provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) are applicable to the purchase of real property and permanent easements for CDBG assisted projects, even if local funds are used for the acquisition. Please see [HUD Handbook 1378: Tenant Assistance Relocation and Real Property Acquisition](#).

CDBG funds may be used to pay for the cost of property identification, appraisals, legal fees, recording fees, and other costs necessary for the acquisition of real property. Real property is defined as land, including any improvements to and structures located on the land, excluding any movable equipment.

**Property Management & Disposition**

Federal requirements concerning property are organized according to ownership, use, and disposition. The Grantee's property management system must provide for accurate records, the conduct of regular inventory, adequate control and proper sales procedures.

1. Property can only be acquired with CDBG funds for a specific and approved purpose.
2. The use of the property must continue for the approved purpose, generally for as long as needed, and for a *minimum* of five years following the date of the project closeout.
3. For real property acquired or improved in whole or in part with CDBG funds in excess of \$25,000, the Grantee cannot change the use or planned use of the property, including the beneficiaries of such use, without providing affected citizens with reasonable notice of, and opportunity to comment on, any proposed change, and either:
  - The use of new property meets a national objective and is not a building for the general conduct of government; or
  - The contemplated new use is deemed appropriate, after consultation with affected citizens, but will not meet a national objective. In this case, the Grantee must reimburse the CDBG program for the amount of the current fair market value of the property, less the value attributable to any non-CDBG portion of the acquisition or improvements.
4. The Grantee must control the use of the property in accordance with its intended purpose and take adequate steps to prevent damage or loss.

5. In all cases, the net proceeds from the sale of property acquired with CDBG funding are considered program income and must be reported to the West Virginia Development Office (WVDO).

### Acquisition as a National Objective

Acquisition may qualify under each of HUD's three national objectives – benefit to low and moderate income individuals (LMI), slum and blight, or urgent need. The national objective is based upon the actual end use of the property, as follows:

#### Benefit to Low and Moderate Income (LMI)

- **Area Benefit Category:** If the real property acquired will be used for an activity that benefits the residents of a primarily residential area and at least 51 percent of those residents are of low and moderate income.
- **Limited Clientele Category:** If the real property acquired will be used for an activity that benefits a specific group of people, at least 51 percent of whom are LMI persons.
- **Housing:** If the property will be used for to develop housing to be occupied for LMI individuals.
- **Jobs:** If the economic development project will create or retain permanent jobs and at least 51 percent of those jobs will benefit LMI individuals.

#### Slum and Blight

- **Slum and Blighted Area:** If the property is in an area designated by the state as a slum or blighted area, and the property will be used to address on or more of the conditions which contributed to the deterioration of the area. Specific details are outlined in 24 CFR 570.483(b)(4)(D).
- **Spot Basis:** If the property is located outside a designated slum or blighted area and the acquisition is required for clearance which will eliminate specific conditions of blight or physical decay on a spot basis.

#### Urgent Need

- Acquisition may qualify under the Urgent Need national objective if the acquisition is part of an activity designed to alleviate existing conditions that pose a serious and immediate threat to health and welfare, and are of recent origin and for which no other source of funds exists. Note that the threshold for this category is difficult to achieve and is not widely used.

**Uniform Relocation and Real Property Acquisition Policies Act (URA)**

The provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) are applicable to the purchase of real property and all permanent easements. Review the following documents for additional information:

- [HUD Handbook 1378: Tenant Assistance Relocation and Real Property Acquisition](#)
- [When a Public Agency Acquires Your Property](#)

If CDBG assistance is used in any part of the project, the URA will govern the acquisition of real property for the activity, and any resulting displacement, even if local funds were used to pay the acquisition costs.

**Timing of Acquisition**

The timing of an acquisition can also make it subject to the URA. Acquisition that takes place on or after the date of submission of a CDBG application to fund an activity on that property is subject to the URA, unless the Grantee shows that the acquisition was unrelated to the proposed activity. Also, an acquisition that took place before the date of submission of the application can be subject to the URA if the acquisition is intended to support a subsequent CDBG activity.

**Objectives of the URA**

The URA applies to all federally assisted activities that involve the acquisition of real property or the displacement of persons, including displacement caused by rehabilitation and demolition activities. There are two main objectives of the URA:

- To ensure owners of real property to be acquired for CDBG projects are treated fairly and consistently, encourage and expedite acquisition by agreements with such owners, and minimize litigation; and
- To ensure that persons displaced from their homes or places of business as a direct result of CDBG projects are treated consistently and equitably so they do not suffer disproportionate injury as the result of a project designed for the benefit of the public as a whole.

**Applicability of the URA**

The URA covers the attainment of real property for a federally assisted program or project. This includes permanent interests, as well as permanent easements necessary for the project.

Under the URA, all persons (defined as any individual, family, partnership, corporation, or association) displaced (moved from real property or moved personal property from the real property) as a direct result of acquisition, rehabilitation or demolition for a CDBG-assisted project are entitled to relocation payments and other assistance under the URA. CDBG Grantees have the responsibility to minimize displacement that results from CDBG funded projects.

Note that private persons, corporations or businesses that acquire property or displace persons for a CDBG assisted project are subject to the URA. For example, if CDBG funds are used for infrastructure at an economic development site, the acquisition of land may be subject to the URA even when purchased by a private entity.

### **Leases Subject to the URA**

Leases of more than 15 years in duration are also subject to the URA. Leases may be reviewed for duration, cost, and compliance with the URA to determine whether the lease is reasonable when compared to acquisition.

### **Relocation Assistance Provisions**

Relocation assistance provisions are applicable to tenants that must move as a result of an acquisition, such tenants are considered displaced persons. However, acquisition provisions do not apply to:

1. Acquisitions by an entity that has the power of eminent domain and meets all of the following conditions:
  - No specific site or property needs to be acquired and several properties could be acquired for project purposes, although the Grantee may limit its search for alternative sites to a general geographic area (not to be construed to be a small, limited area).
  - The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within specific time limits.
  - The Grantee will not acquire the property through eminent domain because negotiations fail to result in an amicable agreement, and the owner is so informed in writing.
  - The Grantee will inform the owner in writing of what it believes to be the market value of the property.
  - If tenants are displaced, the tenants are provided relocation assistance. Documents verifying the Grantee will not use eminent domain and fair market value of the property are copied to the project file. Handbook 1378; Appendix 31.
2. Programs or projects undertaken by a Grantee or person that does not have the authority to acquire property by eminent domain, provided that such Grantee or person shall:
  - Prior to making an offer for the property, clearly advise the owner that it is unable to acquire the property if negotiations fail to result in an agreement; and
  - Inform the owner in writing of what it believes to be the market value of the property. Appraisals are not required but Grantees must have some reasonable basis for their determination of market value.
  - If tenants are displaced, the tenants are provided relocation assistance.

3. The acquisition of real property from a federal agency, state, or state agency, if the Grantee desiring to make the purchase does not have authority to acquire the property through condemnation.

### Recommended Acquisition Procedures Under the URA

The Grantee, and attorney as appropriate, should determine property acquisition needs and identify the particular properties to be obtained in the earliest project planning stages. Acquisition of property, regardless of the type of interest acquired or funding source(s), apart from acquisition procedures and proper documentation could result in costly errors and delays.

The following steps are recommended to ensure compliance with the URA:

1. Review applicable laws and regulations
2. Determine properties to be acquired
3. Determine ownership of properties to be acquired
4. Establish a file for each property to be acquired
5. Notify owner of interest in acquiring the real property
6. Obtain appraisal(s) for each property or establish fair market value
7. Establish and offer just compensation
8. Complete acquisitions or pursue other options
9. Procedures for donations

#### 1. Review Applicable Laws and Regulations

- Uniform Relocation and Real Property Acquisition Policies Act (URA) of 1970, as amended (42 USC 4601 et seq.).
- Title 49 of the Code of Federal Regulations Part 24, as amended, is the government-wide regulation that implements the URA.
- Section 104(d) of the Housing and Community Development Act provides minimum requirements for federally funded programs or projects when units of low-income housing are demolished or converted to other uses.

For additional information and HUD Handbook 1378, which provides policy and guidance on implementing the URA, see [www.hud.gov/relocation](http://www.hud.gov/relocation).

#### 2. Determine Properties to be Acquired

Land acquisition requirements may not be readily apparent; however, many public projects, such as water and sewer improvements or sidewalk construction may need to acquire small parcels, easements or rights-of-way.

Regardless of the timeline, property acquisition in a CDBG project must follow acquisition procedures. Proper planning is needed to avoid unnecessary delays.

### 3. Determine Ownership

Conduct a title search as the first step in determining ownership of properties to be acquired. In the case of public improvement activities, verify that the property to be improved is in the public domain as some rights-of-way are privately owned.

#### **Common Deficiencies**

- Undertaking public improvement projects without properly acquiring the necessary easements or rights-of-way.

### 4. Establish File for Each Acquired Property

The Grantee must establish and maintain a file for each property to be acquired and include copies of all acquisition documents. Files must be kept for at least three years after program closeout. The Acquisition File Checklist (**Attachment 10-2**) identifies the required documents.

#### **Common Deficiencies**

- Separate files not established
- Documentation incomplete
- Copies of documents not included in the project file

#### **Supporting Materials**

Acquisition File Checklist (**Attachment 10-2**)

### 5. Notify Owner of Interest

As soon as possible, the Grantee must notify the owner in writing of its interest in acquiring the real property and the basic protections provided to the owner by law. This general information notice (and any applicable HUD relocation notice) should be personally served or sent by certified or registered first-class mail with return receipt requested. If hand delivered, receipt should be signed and dated by the property owner. The notice should be on the Grantee's letterhead, and should contain a confirmation of receipt signature line. A copy of this notice must also be sent to any tenants in residence.

The notice should contain information about the Grantee's land acquisition policies, or the HUD brochure, "When a Public Agency Acquires Your Property." If the recipient does not read or understand English, the Grantee must provide translation and assistance. **Each notice must indicate the name and telephone number of a person who may be contacted for further information.**

#### **Common Deficiencies**

- Delay in notifying owners (and tenants) of the Grantee's interest.
- Absence of HUD informational brochure or written statement of land acquisition procedures.
- Copies of acquisition documents not included in the project file.

### Supporting Materials

- Sample General Information Notices and Relocation Notices, see HUD Handbook 1378 at [www.hud.gov/relocation](http://www.hud.gov/relocation)
- General Information Brochure: [When a Public Agency Acquires Your Property](#)

## 6. Obtain Appraisals or Establish Fair Market Value

Before the initiation of negotiations, the real property to be acquired shall be appraised, except as provided in 49 CFR 24.102(c)(2) and noted below. The property owner or the owner's designee must be given the opportunity to accompany the appraiser during the appraiser's inspection of the property.

The appraiser should have no interest in the property or be related to or in business with anyone having an interest in the property to be acquired. The Grantee should adhere to adopted procurement procedures, request statements of qualifications from a number of appraisers, review those qualifications, and employ only professional and reputable appraisers.

The Grantee will then execute a professional services contract with an independent appraiser. The contract must specify the content requirements for the appraisal. Before the appraisal is undertaken, the Grantee or the appraiser selected must formally invite the property owner to accompany the appraiser during inspection of the property. This notice must be in writing and a copy placed in the property acquisition file.

### Review Appraisal

A minimum of one appraisal is required; however, if the project is potentially controversial (as with an unwilling seller or a conflict of interest involving a public official) or where property values are high, it is recommended that two independent appraisals be conducted.

**EXCEPTIONS:** An appraisal is not required if:

- The owner is donating the property and releases the Grantee from its obligation to appraise the property or the Grantee determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the anticipated value of the proposed acquisition is estimated at \$10,000 or less (up to \$25,000 maximum if no Conflict of Interest is determined), based on a review of available data.
- In the event the acquisition is **voluntary** (no threat of eminent domain), there is no requirement for an appraisal but **fair market value** does need to be established and the owner informed in writing by a reputable source.
- **When an appraisal is determined to be unnecessary, the Grantee must still establish fair market value and an amount believed to be just compensation to offer the property owner(s), and the offer must be made in writing.** This valuation of fair market value may be determined by a person with knowledge of the real estate market in the project area, such as a real estate broker, banker or other recognized authority.

- The valuation should be signed and dated and include a brief description of the property, the estimated value of the property, and a description of the reviewer's qualifications for making the determination. This document must be made part of the acquisition records. The cost of this review should be nominal and may also be provided free of charge.

### **Common Deficiencies**

- Failure to use a competitive process to select the appraiser
- Failure to execute a professional service contract in compliance with CDBG regulations
- Failure to secure an independent appraisal
- Failure to invite property owner to accompany appraiser during property inspection
- Failure to review appraisals
- Failure to establish and maintain supporting documents
- Failure to notify owner in writing of fair market value and no threat of eminent domain in the case of voluntary acquisition

### **Supporting Materials**

- Sample Appraisal Agreement, HUD Handbook 1378 - [www.hud.gov/relocation](http://www.hud.gov/relocation)
- Sample Invitation to Accompany an Appraiser (**Attachment 10-3**)
- Sample Review of Appraisal (**Attachment 10-4**)

## **7. Establish and Offer Just Compensation**

Prior to initiating negotiations, the Grantee must establish an amount of just compensation for the real property. This amount shall not be less than the approved appraisal of the market value of the property, taking into account the value of allowable damages or benefits to any remaining property. The Grantee must establish the amount believed to be just compensation and make a written offer to the owner to acquire the property for this amount.

Along with the initial written purchase offer, the owner shall be given a written Statement of the Basis for the Offer of Just Compensation. In addition to the amount of just compensation, the offer must specify the date on which negotiation for the sale of the property will begin, which may or may not be the same date as the written offer. As with all notices, its receipt must be documented. If the property is occupied, the Grantee must issue a general information notice to the tenants describing the Grantee's general relocation policies.

The written Statement of the Basis for Just Compensation must include:

- A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated.
- A description and location identification of the real property and the interest in the real property to be acquired, such as fee simple, easement, etc.
- An identification of the buildings, structures, and other improvements (including removable building equipment and fixtures) which are included as part of the offer of just compensation. Where appropriate, the statement shall identify any other separately held ownership interest in the property, such as a tenant-owned improvement, and indicate that such interest is not covered by this offer.

If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the Grantee shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. See 49 CFR 24.2(a)(27).

### **Basic Negotiation Procedures**

The Grantee shall make all reasonable efforts to contact the owner or designee and discuss its offer to purchase the property, including the basis for the offer of just compensation and explain its acquisition policies and procedures, including its payment of incidental expenses (49 CFR 24.106).

The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modifications in the proposed terms and conditions of the purchase.

Grantees must allow owners time for analysis, research and development, and compilation of a response, including perhaps getting an appraisal. The needed time can vary significantly, but 30 days is a reasonable basis. Regardless of project timeline, property owners must be provided with this opportunity. The Grantee shall consider the owner's presentation. Documentation of negotiation proceedings should be placed in the project acquisition file.

### **Common Deficiencies**

- Failure to notify owners on a return receipt requested basis or to secure documentation of receipt if hand-delivered
- Inadequate documentation

### **Supporting Materials**

- Sample Statement of the Basis for the Offer of Just Compensation (**Attachment 10-5**)
- Sample Written Offer to Purchase (**Attachment 10-6**)

## **8. Complete Acquisition or Pursue Other Options**

Depending upon whether the Grantee and the property owner can reach an agreement on an acquisition price, the Grantee will prepare a sales contract and complete the acquisition process, initiate condemnation proceedings, or decide not to acquire the property.

### **Complete the Acquisition Process**

Following successful negotiations, a contract of sale must be prepared and executed and transfer documents secured. The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and the Grantee approves such administrative settlement as being reasonable, prudent, and in the public interest. When CDBG funds pay for or participate in acquisition costs, a written justification shall be prepared to supports such a settlement.

The Grantee must pay the agreed purchase price to the owner before the owner surrenders possession of the real property. The Grantee must also reimburse the owner for recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property and similar expenses incidental to conveying the real property to the Grantee. However, the Grantee is not required to pay costs solely required to perfect the owner's title to

the real property, penalty cost or other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering real property, and the pro rata portion of any prepaid real property taxes which are allocable to the period after the Grantee obtains title to the property or effective possession of it whichever is earlier.

The Grantee must provide the owner with a Statement of Settlement Costs that identifies all settlement costs regardless of whether they are paid at, before, or after closing, and must clearly separate charges paid by the owner at the conclusion of the settlement. The Statement of Settlement Costs must be dated and certified as true and correct by the closing attorney or other person handling the transaction. A receipt for purchase price must be secured by the Grantee. Whenever feasible these costs should be paid directly by the Grantee rather than as a reimbursement to the owner.

### 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 involved in condemnation are the same as those in purchases except instead of arriving at a voluntary purchase, the entity must acquire the property by filing condemnation against the property owner because a mutually agreed upon price cannot be determined.

The following steps are required to acquire property through eminent domain:

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

### Decide Not To Acquire

If the Grantee decides not to acquire the property at any time after informing the property owner of its interest, it must notify the owner and all tenants in residence in writing of its intention not to acquire the property. 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 Grantee's determination not to acquire.

### Common Deficiencies

- Failure to provide a written statement of settlement costs
- Failure to provide a written Notice of Intent Not to Acquire
- Failure to provide copies of documents in the project file
- Supporting Materials
- Sample Notice of Intent Not to Acquire (**Attachment 10-7**)

## 9. Procedures for Donation

The procedures for donations differ slightly from the normal acquisition process. If a property is to be donated, the Grantee should send a General Information Notice and secure an appraisal or waiver thereof. The Grantee must then prepare a Statement of the Basis for the Offer of Just Compensation (**Attachment 10-5**).

If donations are being made by the elderly, poor, functionally illiterate or non-English speaking persons, the Grantee should take additional steps to document the efforts made to ensure the owner-occupants understood their rights in order to demonstrate the owner was not persuaded or coerced into the decision.

An owner whose real property is being acquired may, after being informed by the Grantee of the right to receive just compensation for such property, may donate such property or any part thereof, any interest therein, or any compensation paid therefore, to the Grantee as such owner shall determine.

The Grantee is responsible for ensuring that an appraisal of the real property is obtained unless the owner releases the Grantee from such obligation, except as provided in 49 CFR 24.102(c)(2). The purpose of the appraisal waiver provision is to provide a technique to avoid the costs and time delay associated with appraisal requirements for low-value, non-complex acquisitions. However, the Grantee must have a reasonable basis for the “waiver valuation” and the Grantee must still establish an amount believed to be just compensation to offer the property owner.

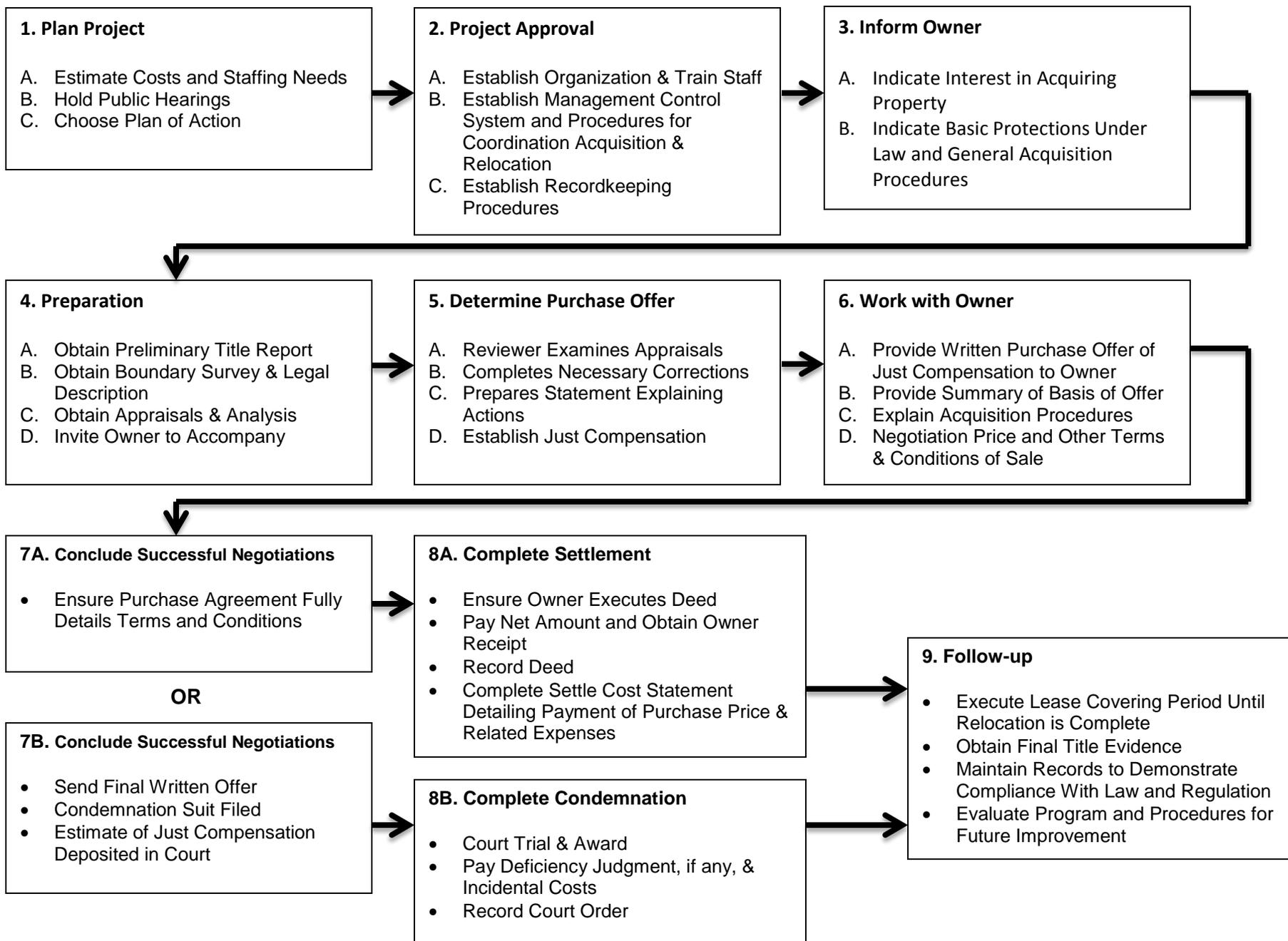
### ***Common Deficiencies***

- Failure to secure Appraisal Waiver for donation
- Failure to prepare Waiver Valuation
- Failure to identify tenant-occupied property and properly notify tenants of their benefits
- Failure to provide copies of documents in the project file

### ***Supporting Materials***

- HUD Handbook 1378
- [www.tinyurl.com/hudhb1378](http://www.tinyurl.com/hudhb1378)
- [www.fhwa.dot.gov/real\\_estate/uniform\\_act/](http://www.fhwa.dot.gov/real_estate/uniform_act/)

### URA Acquisition Process



**ACQUISITION FILE CHECKLIST**

Document must be maintained in the grantee acquisition files. A SEPARATE FILE SHOULD BE ESTABLISHED FOR EACH PROPERTY ACQUIRED.

- 1. Title Search/Clearance of Title
- 2. General Notice of Interest in Acquiring Real Property
- 3. Evidence of Invitation to Accompany Appraiser
- 4. Appraisal Report or Waiver Valuation, Including Donations
- 5. Review Appraisal Report
- 6. Written Statement of Just Compensation
- 7. Written Offer to Purchase and Evidence of Receipt
- 8. Contract of Sale
- 9. Statement of Incidental Costs
- 10. Receipt for Purchase Price and Copies of Cancelled Checks
- 11. If Donation, Waiver of Relocation Benefits, Not Applicable to Tenants
- 12. If Acquisition Terminated, Notice of Intent Not to Acquire
- 13. If Condemnation, Evidence of Court Deposit of Fair Market Value
- 14. If Condemnation, Court Resolution

**Voluntary Acquisition**

- Title search/clearance of title
- Letter sent/hand delivered to owner stating they are not eligible for relocation benefits; fair market value of property; and no use of eminent domain if an amicable agreement cannot be reached. See attachment 10-6A and 10-6B.
- Copies of documents submitted to the WVDO for permanent file.

**INVITATION TO ACCOMPANY APPRAISER**

Date  
Name  
Address

**RE: Property Appraisal**

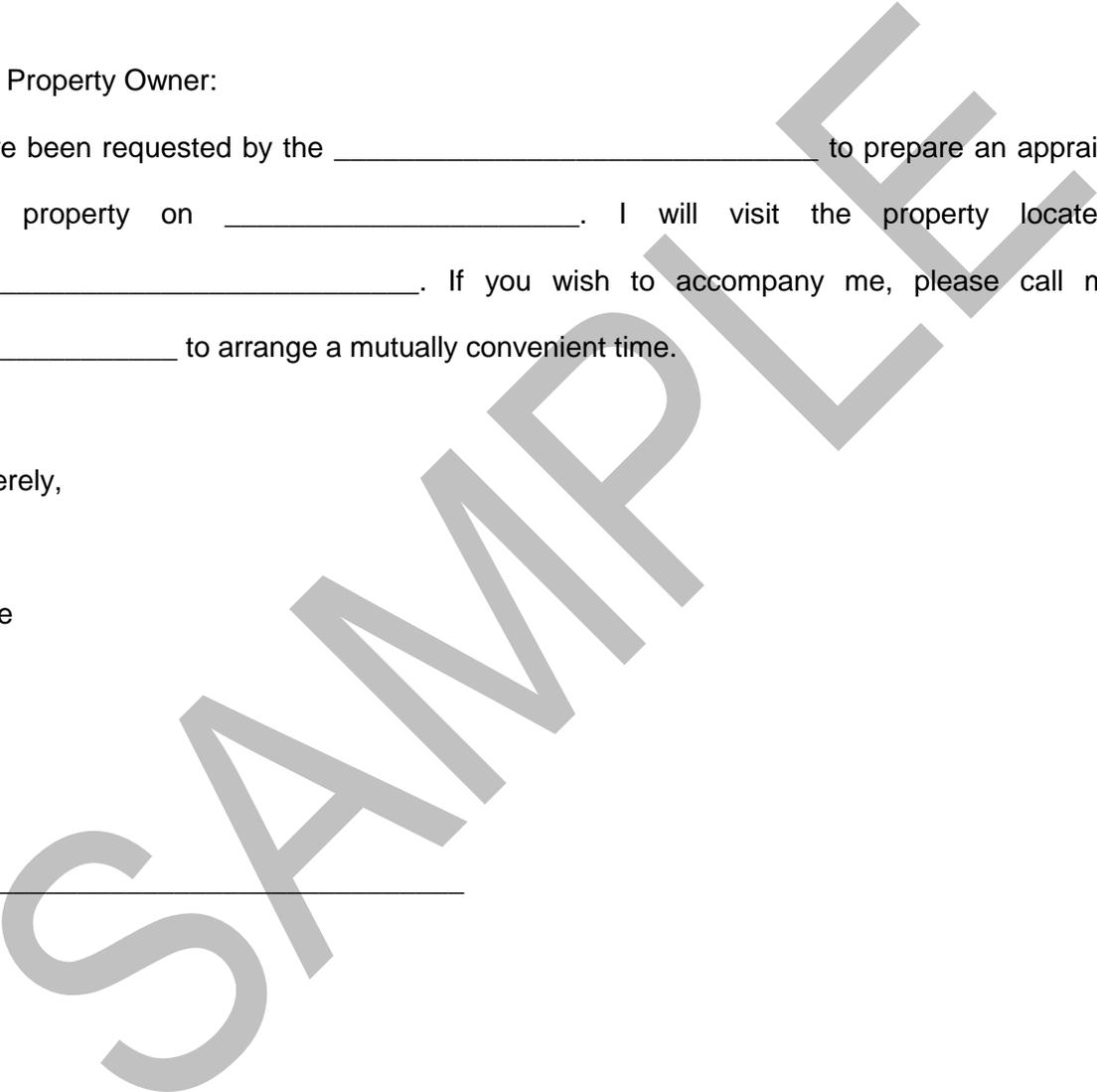
Dear Property Owner:

I have been requested by the \_\_\_\_\_ to prepare an appraisal of your property on \_\_\_\_\_. I will visit the property located at \_\_\_\_\_ . If you wish to accompany me, please call me at \_\_\_\_\_ to arrange a mutually convenient time.

Sincerely,

Name  
Title

cc: \_\_\_\_\_



**APPRAISAL REVIEW**

After reviewing the appraiser's supporting data and documentation, I find the fair market value of \$\_\_\_\_\_ for the purchase of Parcel 12, Lot 22, of the Long Way Water Project to be sound and accurate. The appraiser's report is complete and the methods utilized conform to recognized appraisal practices.

The appraisal report documents the determination of fair market value through:

**A. Cost Approach**

The appraiser estimated the value of the land through the search for vacant land sales. They compared land sales with six recent land sales and then adjusted for time and points of difference. Also, replacement costs for a new living area based on the actual square footage of the area were estimated at a standard rate. Deprecation based on age and observed conditions were subtracted from this total. All mathematical computations are accurate and were reached using sound judgment.

**B. Market Data Approach**

The appraiser searched for the sale of sixteen properties of which three were comparable to subject property. The Factual Data report is accurate. The sales were adjusted for points of difference. The qualifications of the appraiser are excellent. Accurate maps and photographs are included in the report.

\_\_\_\_\_  
*Signature of Review Appraiser* *Date*

\_\_\_\_\_  
*Address*

\_\_\_\_\_  
*Telephone*

\_\_\_\_\_  
*Email*

## STATEMENT OF THE BASIS FOR THE OFFER OF JUST COMPENSATION

### Description and Location of Property

The \_\_\_\_\_ proposes to purchase land and improvements located at \_\_\_\_\_ (Parcel \_\_\_\_\_ Lot \_\_\_\_\_) from owner \_\_\_\_\_ at \_\_\_\_\_.

It is a single-family residential unit, which conforms to zoning, present use, surrounding land use, and area trends.

### Purpose of Purchase

The \_\_\_\_\_ intends to use the whole parcel for the construction of a library building adjacent to the Eden Park Community Center Library.

### Improvements

It is a one-story single-family residence of wood frame construction with concrete foundation, stucco siding, a tar and gravel roof and aluminum gutters and downspouts.

It contains a living room, kitchen, center hall, two bedrooms and one bath.

Interior finish is hardwood floors, except linoleum in kitchen and bathroom; sheetrock walls and ceilings.

The kitchen has counters and painted wood cabinets. There are no built-in appliances.

Heat is gas-fired, forced air from Lennox, 150,000 BTU furnace.

The house is 36 years old. The design is good. Maintenance is poor.

### Declaration of Offer

Based on the two appraisals, the \_\_\_\_\_ hereby makes you an offer in the amount of \$ \_\_\_\_\_ for the purchase of your property. This offer is for the fair market value of your property and does not include any considerations of decrease of increase in value attributable to the project for which it is being acquired. It reflects no relocation payments which the owner/tenant may be entitled to receive under the Department of Housing and Urban Development Regulations.

### Definition of Fair Market Value

“Fair Market Value is the highest price estimated in terms of money which the property would bring if exposed for sale in the open market, allowing a reasonable time in which to find a purchaser buying with knowledge of all the uses and purposes for which it is adapted and for which it is capable of being used.”

### Appraisal Techniques

Two major techniques, cost approach and market data approach, were utilized to determine the fair market value of this property.

**Cost Approach**

**Land:**

To estimate the value of the land, as if unimproved, the market searched for vacant land sales, which might throw some light on the value of the subject land.

**Estimated Replacement Cost:**

To estimate the cost of replacing the home minus depreciation based on age and observed condition, 20%

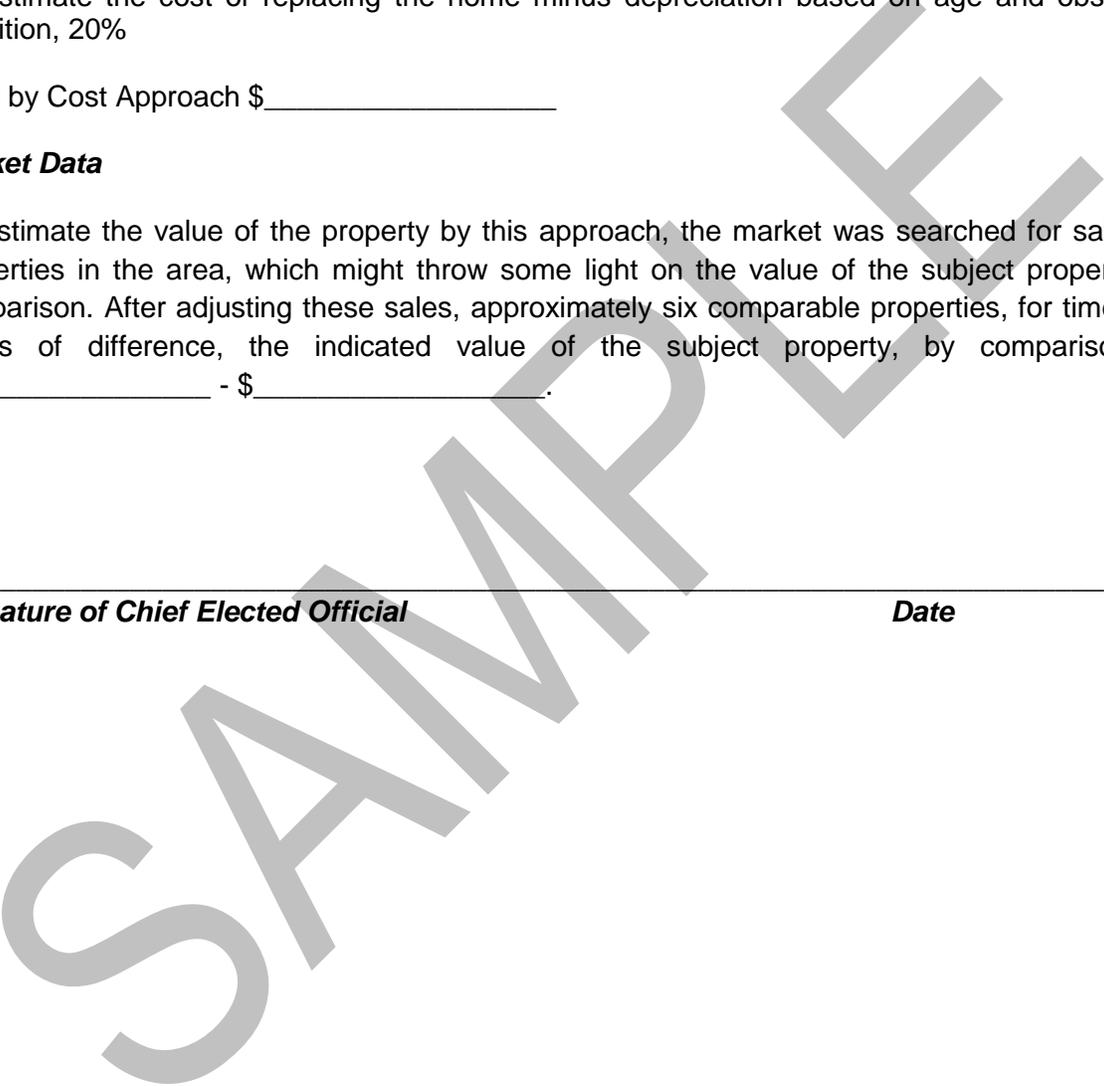
Total by Cost Approach \$ \_\_\_\_\_

**Market Data**

To estimate the value of the property by this approach, the market was searched for sales of properties in the area, which might throw some light on the value of the subject property by comparison. After adjusting these sales, approximately six comparable properties, for time and points of difference, the indicated value of the subject property, by comparison is \$ \_\_\_\_\_ - \$ \_\_\_\_\_.

\_\_\_\_\_  
*Signature of Chief Elected Official*

\_\_\_\_\_  
*Date*



**WRITTEN OFFER TO PURCHASE**

Date  
Name  
Address

Dear Property Owner:

This will introduce to you \_\_\_\_\_, who represents the \_\_\_\_\_ as the Right-of-Way Agent who will discuss with you the acquisition by the City Government of the property, which our records indicate is owned by \_\_\_\_\_. This property is required for the construction of the proposed \_\_\_\_\_.

We have had the property appraised by a competent and unbiased free appraiser and this report has been thoroughly analyzed by a competent review appraisal analyst and found to be well supported. Based on the appraisal and review, the City hereby makes you a firm offer in the amount of \$ \_\_\_\_\_ for the purchase of your property. Relocation benefits to which you may be entitled are in addition to the acquisition price of your property.

We feel that the above offer is most equitable and we urge your favorable consideration and acceptance of it. If this meets with our approval, the Department's representative has prepared (conveyance document) and will assist in any way convenient to you in finalizing the acquisition. Negotiations for the purchase of your property begin \_\_\_\_\_.

Thank you for your consideration of our offer.

Sincerely,

Chief Elected Official

Enclosure: Statement of Basis for the Offer of Just Compensation

**VOLUNTARY ACQUISITION NOTICE**  
*Grantee Letterhead*

Date:

Property Owner:

Address:

Subject:

Dear Property Owner:

Based on information available at this time, we believe that you are the owner of the subject property listed above, and that you are interested in selling said property. Please be advised that we are interested in acquiring this property if we determine it to be suitable to our planned project.

Our effort to acquire your property is voluntary in nature, and, therefore, without any threat of eminent domain (condemnation). For that reason, we can only consider acquiring your property if we are able to reach an amicable agreement.

At this time, we are prepared to offer you \$\_\_\_\_\_ for your property. This offer is contingent on certain conditions being met, and which includes among others:

- The property has a clear title without heirship, title dispute, or other problems.
- You accept our offer, or we agree to a negotiated amount that should not exceed the property's estimate of fair market value.

We have determined the estimate of fair market value to be \$\_\_\_\_\_.

We will inform you of what we believe to be the estimate of fair market value before we enter into an agreement to purchase your property.

Please return the attached Seller's Occupancy Certification form (Attachment 6B) regarding tenant occupancy. Please note that if the property is tenant occupied, our offer is subject to an evaluation of the complexity and cost of relocating the occupants.

If you have any questions or need additional information, please contact us.

Sincerely,

Buyer or Buyer's Representative

Enclosures

**SELLER'S OCCUPANCY CERTIFICATION**  
*Completed and signed by the seller of the property*

The Seller/s of the property located at:

Property Address:

Certify that:

- This property is vacant land and without any tenant resident or tenant personal property.  
***If checked, skip the statements below and return this document to the contact person.***

If the property does have a structure, or has tenant owned personal property, I/we certify that the following "checked" items are applicable: (Please mark only the applicable items.)

- No tenant(s) has/have occupied the property for a period of one year prior to the date of this purchase or option to purchase contract.
- This property did have a tenant who moved within the past year who was not asked to move in relation to this proposed acquisition transaction. The reason the tenant (or tenants) moved within the past year is explained on an attached page. (Please attach.)
- The property is tenant occupied, and I/we agree to allow egress/ingress to the site so that required notices can be delivered to each resident, and that each resident can be surveyed to determine their replacement housing needs and related moving costs.
- The property is not occupied, but personal property owned by a person other than the owner is located at the site.
- The property is not tenant occupied, but if a new tenant moves into the property, I/we assume responsibility for providing displacement assistance if we fail to execute a Move-In Notice.

Signature of Seller/s

\_\_\_\_\_  
**Signature** **Date**

\_\_\_\_\_  
**Signature** **Date**

\_\_\_\_\_  
**Signature** **Date**

**NOTICE OF INTENT NOT TO AQUIRE**

Date  
Name  
Address

**RE:**

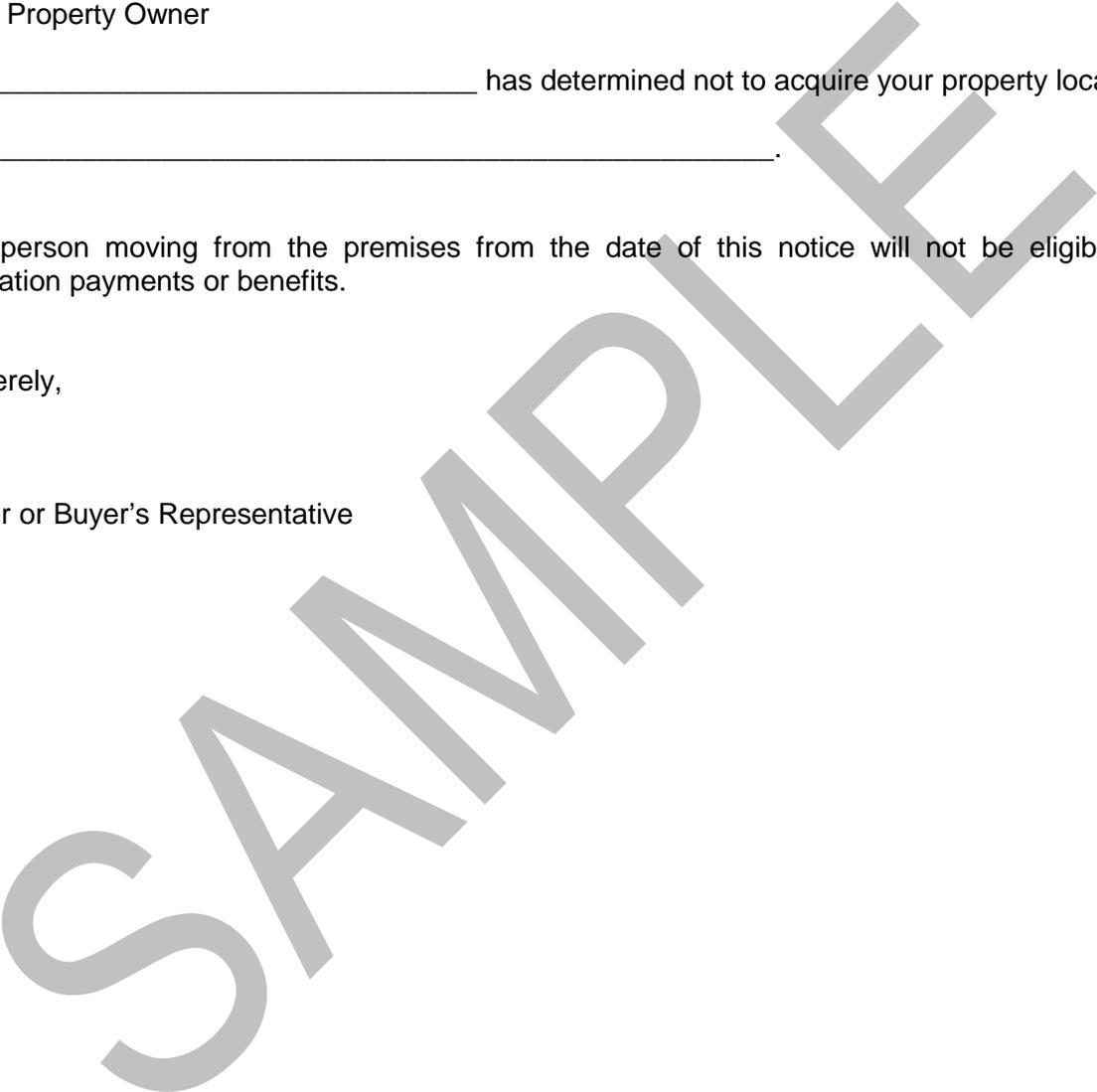
Dear Property Owner

The \_\_\_\_\_ has determined not to acquire your property located  
at \_\_\_\_\_.

Any person moving from the premises from the date of this notice will not be eligible for  
relocation payments or benefits.

Sincerely,

Buyer or Buyer's Representative  
Title



[www.hud.gov/relocation](http://www.hud.gov/relocation)

## **Introduction**

This booklet describes important features of the **Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970**, as amended (URA) and provides general information about public acquisition of real property (real estate) that should be useful to you.

Most acquisitions of real property by a public agency for a Federal project or a project in which Federal funds are used are covered by the URA. If you are notified that your property will be acquired for such a project, it is important that you learn your rights under this important law.

This booklet may not answer all of your questions. If you have more questions about the acquisition of your property, contact the Agency responsible for the project. (Check the back of this booklet for the name of the person to contact at the Agency.) Ask your questions before you sell your property. Afterwards, it may be too late.

## **General Questions**

### **What Right Has Any Public Agency To Acquire My Property?**

The Federal Government and every State government have certain powers which are necessary for them to operate effectively. For example, they have the power to levy taxes and the power to maintain order. Another government power is the power to acquire private property for public purposes. This is known as the power of eminent domain.

The rights of each of us are protected, however, by the Fifth and Fourteenth Amendments of the U.S. Constitution and by State constitutions and eminent domain laws which guarantee that if a public agency takes private property it must pay "just compensation" to the owner. The URA provides additional protections, as explained in this booklet.

### **Who Made The Decision To Buy My Property?**

The decision to acquire a property for a public project usually involves many persons and many determinations. The final determination to proceed with the project is made only after a thorough review which may include public hearings to obtain the views of interested citizens.

If you have any questions about the project or the selection of your property for acquisition, you should ask a representative of the Agency which is responsible for the

project.

## **How Will The Agency Determine How Much To Offer Me For My Property?**

Before making you an offer, the Agency will obtain at least one appraisal of your property by a competent real property appraiser who is familiar with local property values. The appraiser will inspect your property and prepare a report that includes his or her professional opinion of its current fair market value. After the appraiser has completed his work, a review appraiser will examine the appraisal report to assure that the estimate is fair and the work conforms with professional appraisal standards.

The Agency must offer you "just compensation" for your property. This amount cannot be less than the appraised fair market value of the property. "Just compensation" for your property does not take into account your relocation needs. If you are eligible for relocation assistance, it will be additional.

## **What Is Fair Market Value?**

Fair market value is sometimes defined as that amount of money which would probably be paid for a property in a sale between a willing seller, who does not have to sell, and a willing buyer, who does not have to buy. In some areas a different term or definition may be used.

The fair market value of a property is generally considered to be "just compensation." Fair market value does not take into account intangible elements such as sentimental value, good will, business profits, or any special value that your property may have for you or for the Agency.

## **How Does An Appraiser Determine The Fair Market Value Of My Property?**

Each parcel of real property is different and therefore no single formula can be devised to appraise all properties. Among the factors an appraiser typically considers in estimating the value of real property are:

- How it compares with similar properties in the area that have been sold recently.
- How much rental income it could produce.
- How much it would cost to reproduce the buildings and other structures, less any depreciation.

## **Will I Have A Chance To Talk To The Appraiser?**

Yes. You will be contacted and given the opportunity to accompany the appraiser on his or her inspection of your property. You may then inform the appraiser of any special features which you believe may add to the value of your property. It is in your best interest to provide the appraiser with all the useful information you can in order to insure that nothing of allowable value will be overlooked. If you are unable to meet with the appraiser, you may wish to have a person who is familiar with your property represent you.

## **How Soon Will I Receive A Written Purchase Offer?**

Generally, this will depend on the amount of work required to appraise your property. In the case of a typical single-family house, it is usually possible to make a written purchase offer within 45 to 60 days of the date an appraiser is selected to appraise the property.

Promptly after the appraisal has been reviewed (and any necessary corrections obtained), the Agency will determine just compensation and give you a written purchase offer in that amount along with a "summary statement," explaining the basis for the offer. No negotiations are to take place before you receive the written purchase offer and summary statement.

## **What Is In The Summary Statement Of The Basis For The Offer Of Just Compensation?**

The summary statement of the basis for the offer of just compensation will include:

- An accurate description of the property and the interest in the property to be acquired.
- A statement of the amount offered as just compensation. (If only part of the property is to be acquired, the compensation for the part to be acquired and the compensation for damages, if any, to the remaining part will be separately stated.)
- A list of the buildings and other improvements covered by the offer. (If there is a separately held interest in the property not owned by you and not covered by the offer (e.g., a tenant-owned improvement), it will be so identified.)

## **Must I Accept The Agency's Offer?**

No. You are entitled to present your evidence as to the amount you believe is the fair market value of your property and to make suggestions for changing the terms and conditions of the offer. The Agency will consider your evidence and suggestions. When fully justified by the available evidence of value, the offer price will be increased.

## **May Someone Represent Me During Negotiations?**

Yes. If you would like an attorney or anyone else to represent you during negotiations, please inform the Agency. However, the URA does not require the Agency to pay the costs of such representation.

## **If I Reach Agreement With The Agency, How Soon Will I Be Paid?**

If you reach a satisfactory agreement to sell your property and your ownership (title to the property) is clear, payment will be made at a mutually acceptable time. Generally,

this should be possible within 30 to 60 days after you sign a purchase contract. If the title evidence obtained by the Agency indicates that further action is necessary to show that your ownership is clear, you may be able to hasten the payment by helping the Agency obtain the necessary proof. (Title evidence is basically a legal record of the ownership of the property. It identifies the owners of record and lists the restrictive deed covenants and recorded mortgages, liens, and other instruments affecting your ownership of the property.)

### **What Happens If I Don't Agree To The Agency's Purchase Offer?**

If you are unable to reach an agreement through negotiations, the Agency may file a suit in court to acquire your property through an eminent domain proceeding. Eminent domain proceedings are often called condemnations. If your property is to be acquired by condemnation, the Agency will file the condemnation suit without unreasonable delay.

An Agency may also decide not to buy your property, if it cannot reach agreement on a price, and find another property to buy instead.

### **What Happens After The Agency Condemns My Property?**

You will be notified of the action. Condemnation procedures vary, and the Agency will explain the procedures which apply in your case.

Generally, when an Agency files a condemnation suit, it must deposit with the court (or in an escrow account) an amount not less than its appraisal of the fair market value of the property. You should be able to withdraw this amount, less any amounts necessary to pay off any mortgage or other liens on the property and to resolve any special ownership problems. Withdrawal of your share of the money will not affect your right to seek additional compensation for your property.

During the condemnation proceeding, you will be provided an opportunity to introduce your evidence as to the value of your property. Of course, the Agency will have the same right. After hearing the evidence of all parties, the court will determine the amount of just compensation. If that amount exceeds the amount deposited by the Agency, you will be paid the difference, plus any interest that may be provided by law.

To help you in presenting your case in a condemnation proceeding, you may wish to employ an attorney and an appraiser. However, in most cases the costs of these professional services and other costs which an owner incurs in presenting his or her case to the court must be paid by the owner.

### **What Can I Do If I Am Not Satisfied With The Court's Determination?**

If you are not satisfied with the court judgment, you may file an appeal with the appropriate appellate court for the area in which your property is located. If you are considering an appeal, you should check on the applicable time limit for filing the appeal and consult with your attorney on whether you have a basis for the appeal. The Agency may also file an appeal if it believes the amount of the judgment is too high.

## **Will I Have To Pay Any Closing Costs?**

You will be responsible for the payment of the balance on any mortgage and other liens on your property. Also, if your ownership is not clear, you may have to pay the cost of clearing it. But the Agency is responsible for all reasonable and necessary costs for:

- Typical legal and other services required to complete the sale, recording fees, revenue stamps, transfer taxes and any similar expenses which are incidental to transferring ownership to the Agency.
- Penalty costs and other charges related to prepayment of any recorded mortgage on the property that was entered into in good faith.
- Real property taxes covering the period beginning on the date the Agency acquires your property.

Whenever possible, the Agency will make arrangements to pay these costs directly. If you must incur any of these expenses yourself, you will be repaid--usually at the time of closing. If you later discover other costs for which you should be repaid, you should request repayment from the Agency immediately. The Agency will assist you in filing a claim. Finally, if you believe that you were not properly repaid, you may appeal the decision to the Agency.

## **May I Keep Any Of The Buildings Or Other Improvements On My Property?**

Very often, many or all of the improvements on the property are not required by the Agency. This might include such items as a fireplace mantel, your favorite shrubbery, or even an entire house. If you wish to keep any improvements, please let the Agency know as soon as possible.

If you do arrange to keep any improvement, the Agency will deduct only its salvage value from the purchase price you would otherwise receive. (The salvage value of an item is its probable selling price if offered for sale on the condition that the buyer will remove it at his or her own expense.) Of course, if you arrange to keep any real property improvement, you will not be eligible to receive a relocation payment for the cost of moving it to a new location.

## **Can The Agency Take Only A Part Of My Property?**

Yes. But if the purchase of only a part of your property reduces the value of the remaining part(s), you will be paid for the loss in value. Also, if any remaining part would have little or no utility or value to you, the Agency will offer to buy that remaining part from you.

Occasionally, a public project will increase the value of the part which is not acquired by the Agency. Under some eminent domain laws, the amount of such increase in value is deducted from the purchase payment the owner would otherwise receive.

## **Will I Have To Pay Rent To The Agency After My Property Is Acquired?**

If you remain on the property after the acquisition, you may be required to pay a fair rent to the Agency. Such rent will not exceed that charged for the use of comparable properties in the area.

## **How Soon Must I Move?**

If possible, a mutually agreeable date for the move will be worked out. Unless there is an urgent need for your property (e.g., your occupancy would present a health or safety emergency), you will not be required to move without at least 90 days advance written notice.

If you reach a voluntary agreement to sell your property, you will not be required to move before you receive the agreed purchase price. If the property is acquired by condemnation, you cannot be required to move before the estimated fair market value of the property has been deposited with the court so that you can withdraw your share.

If you are being displaced from your home, you will not be required to move before a comparable replacement home is available to you.

## **Will I Receive Relocation Assistance?**

Title II of the URA requires that certain relocation payments and other assistance must be provided to families, individuals, businesses, farms, and nonprofit organizations when they are displaced or their personal property must be moved as a result of a project that is covered by the URA.

The Agency will furnish you a full explanation of any relocation assistance to which you may be entitled. If you have any questions about such assistance, please contact the Agency. In order for the Agency to fulfill its relocation obligations to you, you must keep the Agency informed of your plans.

## **My Property Is Worth More Now. Must I Pay Capital Gains Tax On The Increase?**

Internal Revenue Service (IRS) Publication 544 explains how the Federal income tax would apply to a gain or loss resulting from the sale or condemnation of real property, or its sale under the threat of condemnation, for public purposes. If you have any questions about the IRS rules, you should discuss your particular circumstances with your personal tax advisor or your local IRS office.

## **I'm A Veteran. How About My VA Loan?**

After your VA home mortgage loan has been repaid, you will be permitted to obtain another VA loan to purchase another property. Check on such arrangements with your nearest Veterans Administration Office.

## **Is It Possible To Donate Property?**

Yes. You may donate your property or sell it to the Agency for less than its fair market value. The Agency must obtain an appraisal of the property and offer just compensation for it, unless you release the Agency from these obligations.

### **Additional Information**

If you have any questions after reading this booklet, contact the Agency and discuss your concerns with the Agency representative.

Agency:

Address:

Office Hours:

Telephone Number:

Person to Contact: