

FY 2009 CDBG RECIPIENTS' MANUAL

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INTRODUCTION

The Georgia Department of Community Affairs (DCA) receives Community Development Block Grant (CDBG) funds from the U.S. Department of Housing and Urban Development (HUD) for the purpose of making subgrant awards to non-entitlement cities and counties in furtherance of the objectives of the Housing and Community Development Act of 1974, as amended.

This Recipients' Manual is for use by local Recipients in the day-to-day administration of the program. Though not all inclusive, it covers all the major areas of CDBG administration and compliance, provides both required and suggested forms and instructions, and references applicable laws and regulations. Whenever a suggested form or procedure is included, its non-mandatory character is clearly identified.

To provide technical assistance of a more specialized nature, DCA makes available manuals on such topics as housing rehabilitation, environmental assessments, Davis-Bacon compliance, etc. In addition, workshops of a technical nature are scheduled.

For more information or assistance, the Recipient is encouraged to contact his/her Program Representative at DCA. The general telephone number for the Office of Community Development is (404) 679-1582 or visit DCA's web site at www.dca.ga.gov. Email addresses for staff are available at the web site. Other useful web sites include the following:

www.dca.ga.gov/communities/CDBG/index.asp

www.hud.gov/

www.huduser.org/

GEORGIA CODE OF ETHICS FOR GOVERNMENT SERVICE

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

CODE OF ETHICS FOR GOVERNMENT SERVICE

Any person in government service should:

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

Chapter I: General Information

Section 1: Award and Acceptance of CDBG Funds

Upon approval of an application for Community Development Block Grant (CDBG) funds, the Georgia Department of Community Affairs (DCA) will transmit to the Recipient's certifying representative the following documents:

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

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

Once signed, the original (white) of the Statement of CDBG Award as well as the original Statement of Special Conditions, and Statement of Revisions, if any, must be returned to DCA, Office of Community Development, within thirty (30) days of grant award as evidence of acceptance of the grant.

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

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

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

Samples of all these forms are included in Appendix I.

All correspondence and submissions, except for drawdown requests (see page 5 for this address), relating to a CDBG program should be mailed to the following address in care of:

Office of Community Development Georgia Department of Community Affairs 60 Executive Park South, NE Atlanta, Georgia 30329-2231 Telephone: (404) 679-1582 Fax: (404) 679-1583
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Section 2: General and Special Conditions and Revisions

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

General Conditions are applicable to all grants and include the requirement for an environmental review before funds are obligated to covered activities.

The Special Conditions will vary from grant to grant and may address a number of different issues. Generally, they will restrict the drawdown of funds until necessary clearances have been obtained. The Recipient should be clearly aware of all Special Conditions attached to its award and should make every effort to clear them as promptly as possible.

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

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

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

DCA reserves the right to cancel any grant award, temporarily suspend payments, or to take other actions in the event a CDBG Recipient materially fails to comply with any of the terms of the Grant Award. See section 15: Sanctions.

Code of Ethics

Please note the following General Condition has been added to all Grant Award Packages.

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

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

Section 3: Cash Depositories

Funds advanced under CDBG Programs must be deposited as follows:

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

Only CDBG funds should be deposited into this account. Match and other funds should not be deposited into this account.

2. The separate bank account must be established in a financial institution with Federal deposit insurance coverage and the balance exceeding the coverage must be collaterally secured.
3. Consistent with the national goal of expanding the opportunities for minority business enterprises, Recipients are encouraged to use minority banks.

Section 4: Monitoring Program Performance and Compliance

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

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

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

In addition to technical assistance, the Department will, at appropriate times during program activities, review Recipients' records to ensure that all applicable state and federal requirements are being met. The Department's emphasis will be on preventing and correcting problems before they develop into serious obstacles to program implementation. For instance, under normal circumstances, Recipients would be reviewed first for compliance with applicable citizen participation and environmental requirements.

At this time, the DCA representative might also offer technical assistance in drafting policies for use in a rehabilitation program or assist the Recipient with acquisition procedures, etc. The next visit by the DCA representative might find the Recipient beginning to implement a rehabilitation project. At that time, a formal rehabilitation review would take place. Program representatives will use the Review Checklists in the appendix to this manual when reviewing local programs.

Leverage Funds are a component of the rating and ranking of CDBG applications and DCA will verify that the leverage and activities proposed by the local government and counted by DCA has in fact been provided. Grants will not be closed and final payments may not be made prior to this verification.

In addition, the following policy will apply to leveraged funds in the event of cost under-runs and grant deobligations:

1. In the event of cost under-runs/grant deobligations, the amount of leverage pledged to the amended CDBG grant will be required to be the same amount as pledged under the original grant award unless otherwise approved by DCA.
2. DCA will consider reducing the required amount of leveraged funds upon written request by the Recipient, and DCA will review the petition and take into account the following factors: 1) the impact of the reduction in leverage on the CDBG project and its intended beneficiaries; 2) the impact of the reduction in leverage on the original application score; and 3) other factors that may be pertinent to the situation.
3. In no event will a reduction in leverage be more than an amount that results in the percentage leverage contribution falling below the original percentage leverage contribution as defined in the grant award's source and use statement unless approved by DCA on an exception basis.

Section 5: Implementation Timeframes

Completion of program activities within the timeframes established in the approved application is extremely important. DCA may choose to exercise its right to recapture all unobligated CDBG funds after twenty-four (24) months of grant award or to take other sanctions described in this Manual.

If, however, for reasons beyond the control of the Recipient, it appears that an extension beyond the approved grant period, as shown on the Statement of CDBG Award, will be necessary, a written request for extension should be sent to DCA. The extension request should outline the reasons for delay and specify the projected completion date. All approvals of extensions will be made in the form of a Grant Adjustment Notice from DCA.

Section 6: Drawdown of Funds

Recipients shall submit to DCA a "Request for Drawdown of CDBG Funds" whenever necessary, but ordinarily not more frequently than weekly. (See copy of form and instructions in Appendix 1.) Prior to initial drawdown of any funds, the Statement of CDBG

Award, any Statement of Special Conditions or Revisions, the Authorization Agreement for Automatic Deposits form, a voided check, the authorized Signature Card and the Civil Rights Compliance Certification must have been properly executed and returned to DCA. (See Section 1 and 2 of this chapter.) In addition, any Special Conditions restricting drawdown of funds must have been satisfied and the environmental review (except for exempt activities) must be completed.

Important: For draw downs, at least one local government representative's (elected official or employee) signature must be on the drawdown form.

Requests for drawdowns (only) should be mailed to the following address for more efficient handling (**Note this is a new address as of September 15, 2008**):

Office of Community Development
Georgia Department of Community Affairs
Post Office Box 15523
Atlanta, Georgia 30333

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

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

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

Generally, CDBG draws are prepared on Tuesdays and Thursdays. The funds should be in your bank six days from the day DCA processes your request.

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

Section 7: Reporting Requirements

1. Quarterly Expenditures and Progress Report:

Recipients must submit a Quarterly Expenditures and Progress Report on the prescribed form to DCA. A report shall be due within 30 days from the close of each calendar quarter, beginning 30 days after the end of the first full calendar quarter and ending when all activities are completed and all benefit to low- and moderate-income persons has been reported.

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

Quarterly Reports are to be submitted using the Web Quarterly Reporting system (located at <http://destroyer.dca.ga.gov>). A sign-up form to register for using the online system is available and a sample completed Report is in Appendix I. If technical difficulties prevent users from completing quarterly reports online, the reports may be submitted by paper. Detailed instructions for completing the Quarterly Reports are available online at <http://destroyer.dca.ga.gov>.

Recipients should contact their Program Representative or Cindi Bernhardt at (404) 679-3169 or send email to cindi.bernhardt@dca.ga.gov if assistance is needed in the preparation of the reports. Assistance in using the Web Quarterly Reporting system is available by sending email to cfdadm@dca.ga.gov or contacting Maris Wynn at (404) 679-3134 or Robert Shaw at (404) 679-4806.

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

2. Labor Compliance Reports:

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

3. Beneficiary and Civil Rights Data Reports:

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

4. Other Reports:

The Recipient should review General Condition Number 1, which states that additional reports may be required. For example, information on the number of acquisitions, by type, and amounts paid for acquisition parcels may be required from time to time.

Section 8: Citizen Participation Requirements

The Housing and Community Development Act places emphasis on efforts to involve citizens, especially low- and moderate-income citizens, in all aspects of the CDBG Program.

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

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

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

1. At least one (1) public hearing must be held in the locality before submission of an application to DCA. The purpose of this hearing is to obtain citizen views, respond to proposals, and answer questions concerning previous CDBG funded projects (if any) and to obtain citizen participation in the development of new proposals including identification of community needs and proposed activities.
2. **At least one (1) public hearing must be held to discuss the approved activities within 60 days of the grant award.** This hearing must include the estimated amount proposed to be used for the activities that will benefit low- and moderate-income persons and the Recipient's plans for minimizing the displacement of persons as a result of CDBG funded activities and to assist persons actually displaced as a result of such activities. (See sample notice in Appendix.)
3. At least one (1) public hearing must be held if a grantee proposes a substantive amendment to the program, as defined in Section 9 of this Manual.
4. At the completion of the project, the Recipient shall prepare a detailed Final Quarterly Report, which describes the accomplishments of the project. The Recipient shall make the report available to the public and solicit comments on performance before grant close-out. A Public Notice must be published stating the availability of the Report and soliciting comments. This Notice can be combined with the "close-out" Public Hearing. (See page 10).
5. At the completion of the project, the Recipient shall also hold a Public Hearing. See Chapter I, Section 11: "Close-Out Procedures".
6. The public hearings required by this section shall be held only after publication of a notice not less than five (5) full days prior to said hearing in the nonlegal section of a local newspaper of general circulation. Local governments are encouraged to provide for other forms of public notice to persons known to be interested in the project.

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

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

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

1. DCA shall respond to written complaints only and then only if evidence indicates that relief has previously been sought at the local level;
2. Upon receipt of a complaint, DCA shall transmit a copy of the complaint to the Recipient and request a response within fifteen (15) calendar days;
3. If the response indicates the Recipient is in noncompliance with law or regulation, DCA shall require corrective action and advise the complainant of its decision;
4. DCA will only take action if complaints indicate noncompliance with law or regulation. Other complaints about the program should be handled on the local level.

Location of Program Records:

Although Recipients may designate the location of the program records, DCA must be

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

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

Section 9: Program Amendments, Budget Revisions or Other Adjustments

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

1. If the addition of a new activity or the deletion of an approved activity is proposed.
2. If a decrease in excess of 10% in the scope of an approved activity is proposed.
3. If any activity is proposed in an area other than the approved target area. This includes a proposed change in location or use of any building proposed to be constructed with CDBG assistance.
4. If a budget revision is proposed that will result in a transfer between approved activities or in a change in any activity's allocation of an accumulative amount in excess of 10% of the grant award.

Before approving any budget revision, the Department may also review the revision's affect on locally committed match or leverage.

If a substantive amendment to the program is proposed, at least one (1) public hearing must be held. Recipients are advised to modify the format of the post award public briefing notice to advise the public of the status of the on-going grant as well as the amendment proposed. (See Section 8 of this chapter.) Substantive amendments may include, but are not limited to, new or amended target areas, elimination of activities, significant changes in project scope, and adverse impacts on proposed beneficiaries.

A request for program amendment must provide sufficient narrative information to adequately explain and justify the proposed amendment and must include: 1) a copy of the public hearing notice and minutes of the meeting (in cases of substantial amendments); 2) a revised map; 3) a revised Low- and Moderate-Income Calculation form (DCA-6); 4) a revised Proposed Accomplishments form (DCA-2); and 5) a revised budget reflecting the proposed transfers using the Budget Summary Form (DCA-7) and the Budget Analysis Form (DCA-8).

All forms should reflect **all grant and match and leverage** funds and all beneficiaries, rather than those funds subject only to the amendment request.

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

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

Note that if prior approval is not received, DCA may disallow use of CDBG funds for the unapproved costs.

Section 10: Retention of Records

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

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

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

Section 11: Close-Out Procedures

1. Within 30 days of project completion, the Recipient should inform DCA that the CDBG program is ready for close out and advise us when the next annual audit is scheduled.
2. DCA will conduct a review to ensure that any monitoring findings are resolved, and that any excess grant funds have been refunded.
3. Local governments should have data on persons receiving benefit available for monitoring. Data should be in a form that makes it possible to determine demographic characteristics of persons benefiting, such as persons with a disability,

female head of household, ethnic classification, etc. See the Quarterly Report Form and Instructions for data requirements.

Note that for housing direct benefit activities where a person submits an application to the government or implementing agency and receives a financial benefit (such as housing rehabilitation or relocation assistance) this data must be available both for applicants and Recipients of the assistance. In addition, this data for direct benefit activities must also be categorized by 4 family income levels: Very Low Income (30% of median), Low Income (50%), Moderate Income (80%) and Above Moderate Income. DCA will provide appropriate income limits to make these determinations.

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

Your Program Representative **must** be notified at least one week before the Hearing.

The Hearing and Notice can be combined with the requirement to publicize the Final Quarterly Report. (See Section 8, Paragraph 4)

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

Section 12: Conflict Of Interest Prohibition

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

1) When a local government CDBG Recipient contracts for the procurement of goods and services, the Conflict of Interest provision in the "Common Rule" (24 CFR 85.36) are applicable. See Chapter III, Section 3: Procurement Standards of this Manual. **These rules prohibit local officials and staff from being a party to any contract assisted with CDBG funds.**

2) In addition, the Conflict of Interest prohibition at 24 CFR Part 570.489 (h) (see Appendix II for a complete copy) is applicable to all CDBG grants and activities. This rule generally prohibits elected officials, and staff who are in a position to influence decisions, from receiving any benefit in a CDBG-assisted project. This includes the benefit from living

or owning property in a CDBG target area that receives CDBG improvements.

The following summarizes this regulation:

A. **Conflicts prohibited.** No persons described in paragraph B. below who exercise or have exercised any functions or responsibilities with respect to activities assisted with CDBG funds or who are in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or in the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

B. **Persons Covered.** The conflict of interest provisions of paragraph A. above apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the state, or of a unit of general local government, or of any designated public agencies, or subrecipients which are receiving or administering CDBG funds.

C. **Definition of Family or Business Ties.** DCA defines the meaning of the term "family or business ties" as follows:

- Family: "A group of people related by ancestry or marriage; relatives."
- Business: "The buying and selling of commodities and services; commerce, trade."
- Ties: "Something that connects, binds or joins; bond; link."

D. **Exceptions:** Upon written request, **DCA may grant an exception** to the provisions of paragraph A above, on a case-by-case basis, **before federal funds are expended. Exceptions can only be granted when DCA determines that the exception will serve to further the purposes of the CDBG Program** and the effective and efficient administration of the CDBG program or project. To seek an exception, **a written request for an exception must be submitted** by the unit of local government to DCA which:

- Fully discloses the conflict or potential conflict of interest, prior to the unit of government undertaking any action which results or may result in a conflict of interest, real or apparent; and
- Describes how the conflict of interest was publicly disclosed; and
- Includes a written opinion of the local government's attorney that the conflict of interest for which the exception is sought would not violate state or local law.
- Includes a written statement signed by the Chief Elected Official, Authorized Representative, city or county attorney, or by the official designated by the governing body to sign such statement addressing the factors DCA must consider when allowing a prohibited conflict of interest. See item G below for more information on the factors DCA must take into account.

E. **Public Disclosure:** The request for an exception must include a description of how the

conflict of interest was publicly disclosed. DCA requires at a minimum that the recipient include a complete description of the COI on the agenda for the public meeting where the COI will be disclosed, that the agenda be posted/advertised as required by law, that the COI be fully disclosed at a public meeting, and that the discussion of the COI be included in the minutes of the meeting. Note that state law requires the agenda to be posted prior to public meetings. The description of the method of disclosure, the public meeting announcement and the minutes of the public meeting must be included with the request for an exception.

F. **Non-Involvement**: One of the factors DCA must include in our decision to grant exception is whether or not the involved officials have abstained from involvement with the grant. The request for an exception must include an explanation of the extent of involvement of covered persons with any votes or discussion of the grant. Officials should abstain from any involvement as soon as any COI is foreseen.

G. **Factor to be considered for exceptions**: In determining whether to grant a requested exception after the local government CDBG Recipient has satisfactorily met the requirement of paragraph D. above, DCA will consider the cumulative effect of the following factors, where applicable:

1. Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;
2. Whether the person affected is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provide to the group or class;
3. Whether the affected person has withdrawn from his or her function or responsibilities, or the decision making process with respect to the specific assisted activity in question;
4. Whether the interest or benefit was present before the affected person was in a position as described in paragraph (B) above;
5. Whether undue hardship will result either to the participating jurisdiction or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
6. Any other relevant considerations presented to DCA;

H. **Owners and Developers of Housing**: No owner, developer or sponsor of a project assisted with CDBG funds (or officer, employee, agent or consultant of the owner, developer or sponsor) whether private, for profit or non-profit may occupy a CDBG-assisted affordable housing unit in a project. Any exceptions must be approved in advance by DCA and then only when the local government CDBG Recipient can demonstrate to DCA that the exception will serve to further the purposes of the CDBG program.

This provision does not preclude an income eligible, volunteer/owner participating in the construction of a single-family dwelling unit as part of a self-help homeownership program (e.g. Habitat for Humanity) when the individual is not an official, employee, agent, or consultant of the developer.

NOTE: *If you have any questions regarding who may or may not be covered under the conflict of interest provisions above, please call DCA immediately to discuss such matters prior to entering into contracts or disbursing money.*

Section 13: Residential Antidisplacement and Relocation Assistance Certification

Section 104(d) of the Housing and Community Development Act requires that CDBG Recipients certify that they are following a "residential antidisplacement and relocation assistance plan". The plan has three components: (1) identification of the steps it will take to minimize the displacement of persons from their homes as a result of an assisted project; (2) the plan to replace all occupied and "vacant occupiable" low/moderate-income dwellings that are converted to a use another use or demolished; and (3) the plan to provide relocation assistance to low/moderate-income families and individuals displaced as a direct result of the project.

The required Certification is a part of the Certified Assurances included in the CDBG applications and applies, **regardless of the type of project**. Recipients using funds to demolish any dwelling unit or rehabilitate rental units or convert the use of any low and moderate income dwelling unit will need to submit the additional information described in 2 below, prior to undertaking the activity.

1. **One-for-one Replacement Unit:** All occupied and "vacant occupiable" "low/mod income dwellings units" that are demolished or converted in conjunction with the project must be replaced with another housing unit. "Vacant occupiable" includes units in standard condition or in substandard condition but suitable for rehabilitation. "Vacant occupiable" units also include units in **any** condition which are occupied at any time within the period beginning 3 months before the date of execution of the rehabilitation or demolition contract.

A "low/mod income dwelling unit" is defined as a unit with a market rental, including utility costs, that does not exceed the applicable Fair Market Rent (FMR) for existing housing under the HUD Section 8 Program.

Replacement units must be provided during the period beginning one year prior to the date of submission of this plan and within 3 years of the demolition or conversion, and must be:

- Designed to remain low/mod units for at least 10 years,
- At least equal to the number of bedrooms removed and sufficient in number of bedrooms and size to house at least the number of occupants that could have been housed in the unit(s) demolished or converted, as determined in accordance with local codes,

- Provided in standard condition, and
- Located in the Recipient's jurisdiction.

Note: Rehabilitated units that were vacant for 3 months prior to date of construction contract and if the previous tenant(s) was not displaced as a direct result of an assisted activity will qualify if all the above are met.

Replacement units can include Public Housing units, Section 8 Existing Units, and/or vacant units that have been raised from substandard to standard condition (if vacant three months prior to execution of the construction contract and no one was displaced as a direct result of the rehab).

Before obligating funds for an activity covered by this rule, the local Recipient must make public and submit to DCA a specific Antidisplacement and Replacement Housing Plan, including a schedule for replacement.

2. Relocation Assistance under Section 104(d): The second part of the rule provides that each low/mod tenant household displaced as a direct result of a CDBG activity must be provided with a **choice of relocation assistance** under the Uniform Act rules or under the Section 104(d) rules. Persons choosing to rent must be offered either (1) a Section 8 voucher or certificate (with referrals to **available** units) or (2) cash assistance.

Section 14: Financial Interest Disclosure Requirements

Section 102 of the HUD Reform Act of 1989, as amended is intended to ensure accountability and integrity in the way in which HUD assistance is made available.

A "Disclosure Report Form" is a part of application for CDBG assistance (Form 13) and must be kept up to date by Recipients.

A full Disclosure Report must be made by:

- Any applicant/Recipient of more than \$200,000 of CDBG funds, or
- Any applicant/Recipient of less than \$200,000 of CDBG funds, but who has received or expects to receive other covered HUD assistance which when added to the CDBG amount exceeds \$200,000.

The initial Disclosure Report included in the application disclosed the following:

- Other governmental assistance (Federal, State, or Local) that is to be used with the CDBG project.
- The identification of persons and entities with a reportable financial interest in the project. If an entity is being disclosed, the disclosure must include an identification of each officer, director, principal stockholder, or other official of the entity. **All consultants, developers, or contractors involved in the application for**

CDBG assistance, or in the planning, development or implementation of the CDBG project, must be disclosed as an interested party.

- The pecuniary interest of any other person in the project which exceeds \$50,000 or 10% (whichever is lower) of the CDBG assistance. Pecuniary interest is defined as any financial involvement in the project, including (but not limited to) situations in which a person or entity has an equity interest in the project, shares in any profit or resale or any distribution of surplus cash or other assets of the project or receives compensation for any goods or services provided in connection with the project.
- The source and use of all funds to be used in the project.

Note that the following are not considered interested parties: local government CDBG staff, Recipients of housing rehabilitation assistance, and rehabilitation contractors as long as the rehabilitation agreement (contract) is between the property owner and the contractor.

An **Updated Disclosure Report** (can be found in the Appendix) must be submitted if any of the following conditions apply:

- Additional persons or entities can be identified as interested parties, such as when a contract is awarded.
- There is an increase in the amount of pecuniary interest of a person or entity identified in the last report, if this increased interest is more than \$50,000 or 10% (whichever is lower) of the pecuniary interest (for that person or entity) listed in the initial or last updated report.
- There is a change in other governmental assistance. An updated report is required when the total amount of other assistance reported in the initial or last update has increased by \$250,000 or 10% (whichever is lower).
- There is a change in the source and/or use of funds from that which was provided in the initial or last updated report that exceeds the amount of all previously disclosed sources and/or uses by \$250,000 or 10% (whichever is lower).

An updated report must be submitted within 30 days of any change that meets the criteria listed above. This requirement ends when the grant is closed.

An "Updated" Disclosure Report is included in Appendix I. Only submit those pages that must be updated. Instructions are on the form.

Section 15: Sanctions

Whenever DCA determines that a unit of local government Recipient of CDBG assistance has failed to comply with the requirements of the CDBG Program, including those requirements

listed in this Manual, DCA shall notify the Chief Elected Official of the unit of local government of the noncompliance and shall request appropriate compliance action.

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

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

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

Section 16: Continued Use of Facilities

Every CDBG award for a new or rehabilitated facility will have a Special Condition requiring the Recipient to submit a certification regarding the use of the facility over a 20-year period. The following language must be included on a Certification signed by the Recipient and submitted to DCA prior to drawdown any CDBG funds.

"DCA expects facilities constructed or improved in whole or in part with CDBG funds are to be used for the approved use throughout the life of the facility. DCA should be contacted immediately if there is a proposed change in use or beneficiaries. Prior to DCA consideration of the request the local government must hold a Public Hearing to afford affected citizens an opportunity to comment on the proposed change. DCA will determine if in fact the new use is an eligible and appropriate activity. DCA will generally require and the CDBG Recipient agrees to the repayment of grant funds to the State if the facility is converted to an ineligible use as determined by DCA. The repayment will be based on 20-year straight-line depreciation, except 100% repayment of the grant funds will be required to be repaid during the first 5 years after the grant closeout date. Local governments that violate the agreement and fail to respond to a DCA finding with regards to an inappropriate change of use of a facility will be sanctioned and face penalties up to and including loss of their CDBG eligibility."

Section 17: Limitations on Use of Administration Funds:

The CDBG Applicants' Manual explains in detail limitations on administrative and professional fees. (See Part II: General Award Information and Requirements, page 20.)

In addition, the following requirements are applicable to all new and existing CDBG Recipients, regardless of time of award, unless otherwise noted:

1. Recipients may not draw down more than 25 percent of their administrative funds prior to clearance of all special conditions.
2. The last 10 percent of administrative funds may not be drawn down until all other CDBG funds have been expended.

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

Section 18: Requirements for All Administrative Contracts:

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

1. A clear description of the scope of work to be performed by the consultant or other service provider.
2. A listing of specific responsibilities, tasks, goals, and milestones along with dates and deadlines that are clearly described in the contract along with provisions for recourse if the consultant or other service provider fails to perform by the deadlines imposed.
3. A reference to the applicable CDBG Applicants' and Recipients' manuals and a statement requiring the consultant or other service provider to adhere to all requirements in the manuals (including all requirements referenced in the manuals) as well as to other directives issued by DCA.
4. Applicable dates of the contract and provisions for termination.

Chapter II

Major Compliance Requirements and Procedures

Section 1: Applicable Laws and Regulations

Certain State and Federal laws, as well as regulations and Executive Orders, are applicable in part or in whole to the CDBG program. To assist Recipients in meeting applicable requirements, the Department of Community Affairs provides guidance in the form of this manual, on-site technical assistance, and through the sponsorship of workshops and training conferences. To obtain copies of federal publications, requests should be addressed to:

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

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

Code of Federal Regulations: <http://www.gpoaccess.gov/ecfr/>
Community Connections @ 1-800-998-9999

The applicable laws, regulations and Executive Orders (classified in general by compliance area) include but are not limited to:

General:

1. The Housing and Community Development Act of 1974, as amended and as implemented by the most current HUD regulations (24 CFR Part 570).
2. Annual Action Plan for FFY 2003 Consolidated Funds.
3. State of Georgia Community Development Block Grant Program Regulations.
4. Title 50, Chapter 18, Article 4, Official Georgia Code, Georgia Open Records Act.

Financial Management:

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

Civil Rights:

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

13. Executive Order 11063 - Equal Employment Opportunity, as amended by Executive Order 12259.
14. Section 3 of the Housing and Development Act of 1968, as amended Section 118 of Title I, Community Development and Housing Act, 1974, and implemented by HUD regulations.
15. Georgia Department of Community Affairs Civil Rights Compliance Certification.
16. Age Discrimination Act of 1975.
17. Executive Order 12432: National Priority to Develop Minority and Women Owned Businesses.
18. Section 504 of the Rehabilitation Act of 1973 and implementation regulation (24 CFR Part 8).

Labor Standards:

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

Acquisition/Relocation:

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

Housing:

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

Environmental:

35. The National Environmental Policy Act (NEPA) of 1969, as amended by Executive Order 11991 of May 24, 1977 and the Council on Environmental Quality's (CEQ)

- NEPA Regulations, 40 CFR Parts 1500-1508;
36. Environmental Review Procedures for the CDBG Program, 24 CFR Part 58
 37. The National Historic Preservation Act of 1966, as amended; particularly Section 106;
 38. Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971;
 39. The Reservoir Salvage Act of 1960, as amended, particularly Section 3, as amended by the Archeological and Historic Preservation Act of 1974;
 40. Flood Disaster Protection Act of 1973, as amended;
 41. Executive Order 11988, Floodplain Management, May 24, 1977;
 42. Executive Order 11990, Protection of Wetlands, May 24, 1977;
 43. Georgia Air Quality Act of 1978 (OCGA Section 12-9-1, et. seq.) to regulate air pollution and protect air quality.
 44. Shore Assistance Act of 1977 (OCGA Section 12-5-230, et. seq.).
 45. Georgia Hazardous Waste Management Act (OCGA 12-8-60, et. seq.).
 46. Georgia Health Code (OCGA 31-3-1, et. seq.) regulates individual sewerage treatment systems.
 47. The Coastal Zone Management Act of 1972, as amended;
 48. The Safe Drinking Water Act of 1974, as amended;
 49. The Endangered Species Act of 1973, as amended; particularly Section 7;
 50. The Archeological and Historic Preservation Act of 1974;
 51. The Coastal Resources Barriers Act of 1982;
 52. The Wild and Scenic Rivers Act of 1968, as amended;
 53. The Clean Air Act Amendments of 1970, as amended;
 54. HUD Environmental Standards (24 CFR, Part 51) Environmental Criteria and Standards;
 55. Georgia Coastal Marshlands Protection Act of 1970;
 56. Georgia Groundwater Use Act of 1972 (OCGA Section 12-5-170, et. seq.).
 57. Georgia Safe Drinking Water Act of 1977 (OCGA Section 12-7-1, et. seq.).
 58. Georgia Erosion and Sedimentation Act of 1975 (OCGA Section 12-7-1, et. seq.).
 59. Georgia Solid Waste Management Act (OCGA Section 12-8-20, et. seq.) for collecting garbage or operating a landfill.
 60. Georgia Water Quality Control Act (OCGA Section 12-5-20, et. seq.).
 61. Farmland Protection Policy Act of 1981 (and the regulations at 7CFR Part 658).

Other:

62. Georgia Handicap Accessibility Law (OCGA, Title 30, Chapter 3) concerning handicapped accessibility to public buildings.
63. Georgia House Bill 1079 as amended by House Bill 513 (O.C.G.A § 36-91-1 through §36-91-95) Note: DCA has adopted this as the procurement regulation for CDBG)

Section 2: Environmental Review Requirements

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

outlined below.

The federal regulation governing the environmental review process is 24 CFR Part 58 and can be found in the Appendix II of this Manual or on the Web at <http://www.hud.gov/cpd/envirtoc.html>.

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

Environmentally Related Special Conditions: All applications that were funded have been reviewed by the Georgia Department of Natural Resources (DNR) for compliance with Georgia environmental laws and regulations. As a result of DNR's review, grants may have Special Conditions attached to specific budget line items. These Special Conditions specify actions, which must be taken by the Recipient prior to implementation. In some cases (such as floodplain or historic preservation compliance) these Special Conditions must be complied with as part of the environmental review. CDBG funds cannot be drawn down, obligated or expended for any activity with a Special Condition until the Special Condition has been cleared by DCA through issuance of a Grant Adjustment Notice.

Environmental Special Conditions usually concern:

- Historic Preservation (Section 106 Review);
- Floodplain Requirements;
- Wetland Requirements;

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

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

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

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

This written record or file is called the "Environmental Review Record" (ERR) and must be available for public review. It must contain a description of the program and of each of its activities, as well as any other document, notice or

information, and public comments received pertinent to the environmental review carried out by the Recipient. The ERR will vary in length and content depending upon whether the activities are exempt from all environmental reviews, categorically excluded from NEPA requirements, are found to have no significant impact on the environment, or require preparation of a full environmental impact statement.

The Environmental Review Record generally will contain the following documents:

- ◆ Environmental Assessment Format II and attachments (maps, plans, etc).
- ◆ Finding of Exemption for grant administration and design costs.
- ◆ Copies of Environmental Public Notices (including proof of publication), including:
 - ◆ Concurrent Notice of the Finding of No Significant Effect and Notice of Intent to Request Release of Funds,
 - ◆ Notice of Early Public Review (Floodplains and wetlands),
 - ◆ Notice of Explanation (Floodplains and wetlands).
- ◆ Correspondence with environmental regulatory agencies (including documentation that the Concurrent Notice was submitted).
- ◆ Comments received pursuant to the Public Notices and the response from the local government.
- ◆ Evidence the Request for Release of Funds was submitted to DCA, and
- ◆ Release of Funds letter from DCA.

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

Step 1: Exempt Projects/Activities:

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

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

All other activities found to be exempt must be included on a FOE mailed to DCA. Once DCA has cleared the general conditions, funds may be drawn down using standard procedures for the activity exempted.

Exempt Activities Include:

- Environmental studies, including historic preservation clearances necessary to comply with applicable laws.

- Design and engineering costs associated with carrying out an approved eligible CDBG activity.
- Eligible administrative costs.
- Activities funded because of imminent threats to health and safety, if they do not alter environmental conditions and are for improvements limited to actions necessary only to stop or control the effects of imminent threats or physical deterioration. (This includes most Immediate Threat and Danger Grants.)
- Public services that will not have a physical impact or result in any physical changes, including but not limited to services concerned with employment, crime prevention, child care, health, drug abuse, education, counseling, energy conservation and welfare or recreational needs;
- Inspections and testing of properties for hazards or defects;
- Purchase of insurance;
- Purchase of tools;
- Technical assistance and training;

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

Step 2: Categorically Excluded Projects/Activities:

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

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

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

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

- Special projects directed to the removal of material and architectural barriers that restrict the mobility of and accessibility to elderly and handicapped persons.
- Rehabilitation of buildings and improvements when the following conditions are met:
 - i. In the case of multifamily residential buildings:
 - Unit density is not changed more than 20 percent;
 - The project does not involve changes in land use from residential to non-residential; and
 - The estimated cost of rehabilitation is less than 75 percent of the total estimated cost of replacement after rehabilitation.
 - ii. In the case of non-residential structures, including commercial, industrial, and public buildings:
 - The facilities and improvements are in place and will not be changed in size or capacity by more than 20 percent; and
 - The activity does not involve a change in land use, such as from non-residential to residential, commercial to industrial, or from one industrial use to another.
- An individual action on a one- to four-family dwelling or an individual action on a project of five or more units developed on scattered sites when the sites are more than 2,000 feet apart and there are not more than four units on any one site.
- Acquisition or disposition of an existing structure or acquisition of vacant land provided that the structure or land acquired or disposed of will be retained for the same use.
- Combinations of the above activities.

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

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

- Affordable housing pre-development costs including legal, consulting, developer and other costs related to obtaining site options, project financing, administrative costs and fees for loan commitments, zoning approvals, and other related activities which do not have a physical impact.

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

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

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

Step 3: Complete the Environmental Assessment:

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

The Environmental Checklist, Format II, is found in the Appendix. For assistance, the Recipient should contact its CDBG Program Representative or CDBG Compliance Manager at (404) 679-3174.

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

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

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

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

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

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

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

3. Send copies of the "Concurrent Notice" to the following:

Georgia Department of Community Affairs
Attention: Rick Huber
60 Executive Park South
Atlanta, Georgia 30329-2231

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

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

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

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

A Recipient must re-evaluate its environmental assessment when:

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

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

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

Environmental Impact Statement

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

Floodplain and Wetland Compliance Requirements

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

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

audience and means of distribution used in #1 above should be used for this finding. This second notice can be published at the same time as the "Concurrent Notice" concerning environmental review.

Copies of the two required notices are found in the Appendix.

Additional Wetland Compliance Requirements

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

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

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

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

The initial step is to determine if your project is located in a wetland area. This is best done by consulting wetland maps that are available through the U.S. Fish and Wildlife Service for most of Georgia. Contact the Georgia Geologic Survey, Room 400, 19 Martin Luther King, Jr. Drive, Atlanta, Georgia 30334. Telephone: (404) 656-3214. If a map is not available, contact the Federal Fish and Wildlife Service, (404) 331-3580.

If the activity is located in a wetland area, a mitigation plan to deal with possible adverse effects may be required by the Corps of Engineers as part of the Section 404 permit.

Historic Preservation (Section 106) Compliance

All CDBG grants no matter what the project are subject to compliance with Section 106 of the National Historic Preservation Act and the Regulations of the Advisory Council on Historic Preservation (36 CFR Part 800).

The Advisory Council web site has additional information about the regulation at <http://www.achp.gov/work106.html>.

Housing Activities Compliance with Section 106

During 1997, DCA entered into a Programmatic Agreement with the State Historic Preservation Division and the Advisory Council on Historic Preservation. This Agreement changes the way historic preservation compliance works for housing related projects and is applicable to **all** housing activities. Contact DCA's Environmental Compliance Officer for a copy of the Programmatic Agreement.

Public Facility Compliance with Section 106

Prior to funding, each public facility application was reviewed by the Historic Preservation Division (HPD) at the Georgia Department of National Resources (DNR). The purpose of the review is to identify properties which might be eligible for the National Register of Historic Places and which might be affected by the project.

If eligible properties are affected, the Historic Preservation regulations must be followed as part of the environmental review process

Compliance with Section 106 regulations must be completed **prior** to publication of the environmental public notice(s).

Special Conditions related to historic preservation concerns and compliance may be placed on grants identified by the HPD. These conditions must be cleared before funds are obligated for construction.

OUTLINE OF HISTORIC PRESERVATION COMPLIANCE

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

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

ENVIRONMENTAL REVIEW FORMS

Located in Appendix I and at

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

- Finding of Exemption (FOE)
- Statutory Checklist
- Environmental Assessment Checklist, Format II
- Concurrent Notice (FONSI and NOI/RROF)
- Notice of Intent to Request Release of Funds (NOI/RROF)
- Request for Release of Funds and Certifications Form (RROF)
- Notice of Early Public Review (for floodplain and/or wetland compliance)
- Notice of Explanation (for floodplain and/or wetland compliance)

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Section 3: Federal Labor Standards and Requirements

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

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

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

- a. **The Davis-Bacon Act** is applicable to **all** contracts for construction, alteration and/or repairs in excess of \$2,000 which involve CDBG funds (including EIP direct loans), with the exception of rehabilitation of a "project" designed for residential use by fewer than 8 families. Contact your Field Representative if you have any questions about applicability.

The requirements of Davis-Bacon include:

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

available.

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

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

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

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

1. Laborers and mechanics shall not work in excess of forty (40) hours in any workweek unless they receive overtime compensation at a rate not less than one and one-half times the basic rate of pay for those overtime hours. The contractor or subcontractor shall be liable to any affected employee for his unpaid wages.
2. Contractors in violation of the Contract Work Hours and Safety Standards Act (overtime law) are also liable to the United States for liquidated damages, computed at \$10.00 per day for each employee who worked overtime and was not paid overtime wages. Funds may be withheld from contractors and subcontractors to satisfy unpaid wages and liquidated damages. (See information concerning wire transfer of these CDBG funds at d. (16) below.)

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

DOL guidelines require that:

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

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

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

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

SAMPLE LABOR FORMS
(Located in Appendix I)

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

Section 4: Acquisition of Property and Relocation Requirements

The acquisition of property, including rights-of-way, permanent easements, fee simple acquisition, (but not temporary construction easements), demolition of occupied or occupiable housing units, and the displacement of any person or business in any project that includes CDBG funds is regulated by federal law and regulations. Disposition or the sale of property acquired with federal funds is also regulated by state law. The major applicable related laws and regulations include:

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

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

- Section 104(d) of the Housing Community Development Act of 1974, as amended, and as implemented by HUD regulations at 24 CFR Part 570.606 and 24 CFR Part 42. This is available from DCA or on the web at <http://www.gpo.gov/ecfr/>. This regulation requires the replacement of any occupied or occupiable "low and moderate income housing unit" demolished or converted as a result of a CDBG assisted activity and requires additional relocation assistance (generally beyond what would be required by the Uniform Act) for low and moderate income tenants actually displaced.
- The Georgia Urban Redevelopment Act, OCGA, Section 36-61-1, et. seq. This State law sets forth the requirements which must be followed when a public agency acquires private property for reuse or redevelopment by another private entity.
- Real Estate Appraiser, Licensing and Certification Act, OCGA, 43-39A-1 through 43-39A-27 and the rules of the Real Estate Appraisers Board. These requirements are in addition to the minimum appraisal standards in the Uniform Act regulations.

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

Section 5: Housing Rehabilitation Requirements

A: General

Housing rehabilitation can be a complex and varied activity. Although each

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

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

- **The Common Rule 24 CFR 85** (See Chapter III, Section 3 of this manual) applies if the local government is a direct party of the construction contract.
- **Federal Labor Standards** - only in certain situations (see Chapter III, Section 3 of this manual).
- The **Lead-Based Paint Hazard Elimination in CDBG Programs** (24 CFR Part 35). These rules have recently been updated and expanded to include inspection, testing, risk assessments, hazard control or abatement, safe work practices, clearance and notification/disclosure requirements.
- **Section 3 Clause of the Urban Development Act of 1968**, and as implemented by HUD regulations at 24 CFR Part 135 applies (regardless of the dollar amount of the contract) in the following situations:
 - If the Recipient contracts directly for rehabilitation services or acts as an agent for the homeowner, i.e., signs the rehabilitation contract.
 - If the Recipient provides homeowners with a list of contractors eligible to participate in the local rehabilitation program, the Recipient should assure that eligible Section 3 business concerns located or owned in part by residents of the area are also included on the list.
 - If the individual homeowner contracts directly for rehabilitation services and the Recipient is not a party to the contract, the Section 3 requirements do not have to be followed.
- **Section 104(d) of the Housing and Community Development Act** is applicable if rental units are converted to non "low and moderate income dwelling units" or if occupied or occupiable housing units are demolished. See HUD regulations at 24 CFR Part 570.606 and 24 CFR Part 42 included in the Appendix.
- **The Uniform Relocation Assistance and Real Property Acquisition Act of 1970**, as amended, and as implemented by DOT regulations 49 CFR Part 24, is applicable if tenants or homeowners (regardless of income) are displaced in conjunction with a CDBG activity.
- The Truth-In-Lending Act (Regulation Z) (USC 1601, et. seq.) which applies to any loan transaction between the Recipient and the homeowner provided the Recipient meets the criteria of being a "creditor", as defined by the Federal

Reserve System.

For specific aid on how to implement a rehabilitation program, DCA staff is available on request to provide technical assistance. A manual entitled **Guidelines for CDBG Residential Rehabilitation Programs** is also available. It includes sample forms as well as suggested approaches and procedures to assist Recipients in implementing rehabilitation programs. In addition, a housing rehabilitation workshop will be offered by DCA. Attendance at this workshop is essential for all grantees doing or considering housing activities.

B. Substantial Reconstruction of Housing

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

Substantial reconstruction of housing is limited to housing owned and occupied by low and moderate income persons and must be located on the same property as the original residential structure. The existing foundation does not have to be used if it is not feasible to do so.

When this activity for a particular identified house is included in the approved CDBG Application, no additional actions are required. In addition, on a case-by-case basis, the CDBG recipient can request approval of reconstruction in situations where rehabilitation was planned but later deemed not feasible upon a detailed inspection or after rehabilitation work begins.

Approval by DCA is based on the demonstrated economic viability of reconstruction as an alternative to acquisition and/or relocation if the dwelling unit is not feasible for rehabilitation.

C. Escrow Account Policies (Optional)

The following are DCA policies and procedures for administering optional escrow accounts for single family rehabilitation:

1. Terms of the construction contract between the owner and the contractor must expressly provide for payments through the escrow account. The owner must authorize the recipient (in writing) to maintain the account and provide a written statement accounting for all funds deposited and disbursed from the account at the completion of the rehabilitation.
2. All rehabilitation funds drawn down and placed in the escrow account must be deposited into **one interest bearing checking account** with one FDIC

insured financial institution. Separate bank accounts shall not be established for individual loans and grants. The account should be reconciled each month.

3. The amount of funds deposited into an escrow account shall be limited to the amount expected to be disbursed within 10 working days from date of deposit.
4. If the escrow account, for whatever reason, at any time contains funds exceeding 10 days cash needs, the grantee must immediately transfer the excess funds to its program account. In the program account, the excess funds shall be treated as funds erroneously drawn in accordance with DCA Financial Management requirements and must be returned to DCA if they exceed \$5,000.
5. Recipients may initially establish and maintain a reasonable balance if required by the depositor to earn interest and avoid a service charge. This exception must be approved in advanced by DCA. A request for an exception should include documentation from the depository concerning the interest rate paid, account type and minimum balance requirements to earn interest.
6. A recipient is permitted to draw down funds initially for deposit into an escrow account only **after** the property owner has executed the contract with the contractor selected to perform the rehabilitation work.
7. Interest earned on the escrow account must be remitted to DCA on a quarterly basis.
8. Rehabilitation Escrow Funds cannot be intermingled with other CDBG funds. An approved accounting system must be in place to assist monitors and auditors to effectively track the deposit and disbursement of escrow funds on an individual case basis.
9. In situations where there is more than one private lender participating in a leverage loan program, recipients may establish an escrow account at each participating institution. This exception must be approved in advance by DCA. All other escrow requirements will apply to this exception.
10. If a recipient fails to comply with these policies, DCA reserves the right to prohibit the continued use of their rehabilitation escrow account and may impose other program sanctions.

Lead-Based Paint Hazard Control Policies

The U.S. Department of Housing and Urban Development (HUD) has issued a regulation to protect young children from lead-based paint hazards in housing that is financially assisted by the federal government or being sold by the government. The final regulation, "Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance," was published in the Federal Register on September 15, 1999 and became effective September 15, 2000. The requirements apply to

housing built before 1978; the year lead-based paint was banned nationwide for consumer use.

The regulation puts all of HUD's lead-based paint regulations in one part of the Code of Federal Regulations (24 CFR Part 35), making it much easier to find HUD policy on the subject. HUD estimates that about 2.8 million housing units will be affected by the regulation during its first five years.

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

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

HUD estimates that the regulation will protect more than two million children from exposure to lead during its first five years. The estimated net benefits (that is, benefits minus costs) from the first five years are \$2 billion, mostly from increased lifetime earnings, but also including reductions in medical and special education costs. Additional benefits that have not been estimated in dollar terms include reduced family time and anxiety involved in caring for lead-poisoned children, increased stature and hearing ability, reduced hypertension in later life, and reduced juvenile delinquency and crime.

The regulation is issued under sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, which is Title X of the Housing and Community Development Act of 1992. Sections 1012 and 1013 of Title X amended the Lead-Based Paint Poisoning Prevention Act of 1971, which is the basic law covering lead-based paint in federally assisted housing. The new regulation appears within title 24 of the Code of Federal Regulations as part 35 (24 CFR 35).

The regulation sets hazard identification and reduction requirements that give much greater emphasis than existing regulations to reducing lead in house dust. Scientific research has found that exposure to lead in dust is the most common way young children become lead poisoned. Therefore the new regulation requires dust testing after paint is disturbed to make sure the home is lead-safe.

Specific requirements as they pertain to CDBG assisted housing rehabilitation depend on the type and amount of financial assistance, the age of the structure, and whether the dwelling is rental or owner-occupied.

A summary of the hazard reduction requirements for the various types of housing programs is attached to the Questions and Answers issued in association with this regulation and has been provided to CDBG and CHIP grantees. More detailed

information is available in training and guidance material, in the regulation itself, and in HUD's explanation of the regulation, published in the Federal Register and available from DCA.

Types of Housing Covered

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

Types of Housing Not Covered

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

For More Information

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

Section 6: Equal Opportunity, Fair Housing and Accessibility

A. General:

The regulations pursuant to Title I of the Housing and Community Development Act require applicants to assure through certification that all activities will be conducted in accordance with Section 109 of the Act (the nondiscrimination clause), Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, and Executive

Orders 11246 and 11063. These requirements are briefly described below:

1. *Title VI of Civil Rights Act of 1968* Nondiscrimination in any programs or activities receiving Federal financial assistance.
2. *Section 109 of Title I - Housing and Community Development Act of 1974*

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

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

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

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

Prohibition against discrimination based on sex.

4. *The Fair Housing Law*

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

- Refusing to sell or rent to, deal or negotiate with any person
- Discriminating in terms or conditions for buying or renting Housing
- Discriminating by advertising that housing is available only to persons of a certain family status, race, color, religion, sex, or national origin
- Denying that housing is available for inspection, sell or rent when it really is available
- "Blockbusting" - For profit, persuading owners to sell or rent housing by telling them that minority groups are moving into the neighborhood
- Denying to anyone the use of or participation in any real estate services, such as brokers' organizations, multiple listing services or other facilities related to the selling or renting of housing
- Denying or making different terms or conditions for home loans by commercial lenders, such as banks, savings and loan associations and

insurance companies

5. *Executive Order 11063 - Equal Opportunity in Housing, as amended by Executive Order 12259.*

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

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

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

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

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

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

The "project area" is the county in which the grant is made.

Note that DCA currently collects information about Section 3 accomplishments on the Quarterly Report. HUD's recent emphasis on Section 3 will require updated reporting forms that will be available on DCA's online reporting system. These reporting forms will be separate from the Quarterly Report.

Review this HUD website for more information:

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

B: Equal Opportunity Construction Contract Provisions

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

more information or contact your Program Representative.

C: Affirmatively Furthering Fair Housing

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

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

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

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

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

Possible Actions to Affirmatively Further Fair Housing

- Analyze any impediments to fair housing choice which may exist in your community. Contact HUD or DCA for an analysis of any fair housing complaints from your area.
- Review local zoning laws and procedures to determine whether they contribute to, or detract from, progress in fair housing. Establish a collection of zoning and land use planning material to have available for the use of local fair housing groups as well as recipient staff.
- Provide funding for local fair housing groups (eligible under the CDBG Program) or provide financial or technical assistance to citizens wishing to organize such a group.
- Adopt a local Fair Housing Ordinance or a resolution supporting the state and/or federal law.
- Distribute brochures outlining fair housing law to persons attending community

meetings or CDBG Public Hearings.

- Post a fair housing poster at City Hall or Courthouse.
- Require owners of rental property receiving CDBG assisted rehabilitation loans to sign fair housing agreements as a condition of receiving assistance.
- Develop an active public information and educational campaign to promote fair housing awareness in the community.
- Include a discussion of fair housing in public meeting agendas.
- Provide persons relocated to new housing with fair housing information and referrals.

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

Fair Housing Resources

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

D. Section 504 Requirements

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

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

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

1. CDBG recipients must file an assurance of compliance. The Certified Assurances in the CDBG Application included this assurance.

2. CDBG recipients must issue periodic public notices of nondiscrimination. This can be accomplished by including appropriate language in public hearing notices. The sample hearing notices included in this Manual reflects this requirement.
3. Employment practices are also covered by Section 504. Any CDBG recipient employing 15 or more persons must:
 - a. Designate at least one person to coordinate efforts to comply with the regulation (Section 504 Coordinator); and
 - b. Adopt formal grievance procedures that incorporate due process standards and that provide for the prompt and equitable resolution of discrimination complaints.
4. Communications: When a recipient communicates with applicants and beneficiaries by telephone, a telecommunication device for deaf persons (TDD's) or an equally effective system is required. The Georgia Relay Service (voice at 1-800-255-0135 or TDD at 1-800-255-0056 or at 711) is also available to provide this service.

<p>5. All meeting and public hearing spaces must be accessible and procedures should be in place to ensure that persons with impaired vision or hearing can notify the local government that assistance is required.</p>
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6. The regulations require each recipient to conduct a self-evaluation. The evaluation must be done in consultation with interested persons, including individuals with handicaps or organizations representing such people.
7. When the self-evaluation identifies structural changes as being required, a written transition plan must also be prepared. The transition plan sets forth the steps necessary to complete the changes, including a time schedule. The plan should identify the agency official responsible for implementation of the plan.

CHAPTER III

Financial Management and Administration

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

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

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

SECTION 1: FINANCIAL MANAGEMENT SYSTEMS

A. GENERAL REQUIREMENTS:

Recipients' financial management system must:

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

6. Provide procedures for ensuring the reasonableness, allocability and allowability of costs in accordance with OMB Circular A-87 and the applicable grant award.
7. Include source documentation to support the accounting records.
8. Provide for audits made by qualified and independent audit firms of management systems and internal control procedures that have been established. An audit shall be conducted annually and in accordance with Chapter I, Section 12 of this manual - "Audit Requirements".
9. Provide for source documents (appropriation ordinances, purchase orders, invoices, journal vouchers, cash receipts, bank deposit receipts, etc.) that support all financial transactions relating to CDBG activities should be filed and maintained.
10. Maintain accounting records that make it possible to identify the source and application of all funds committed to CDBG-supported activities. Local contributions to the program and income applied to the program should also be clearly identified. (See Chapter III, Section 2 of this manual.)
11. Include procedures to ensure that sound internal accounting controls are maintained over financial transactions and that effective control is maintained to safeguard physical assets.
12. Ensure that costs incurred in CDBG activities are allowable only under the following conditions:
 - The award has been properly accepted as described in Chapter I, Section 1 of this manual.
 - Costs are incurred on or after the date of the Grant Award by DCA (unless preagreement cost approval is requested and approved by DCA).
 - Costs for projects or activities (except costs for environmental reviews) are incurred only after all necessary environmental reviews have been completed, and all applicable conditions have been satisfied. (See Chapter I, Section 2, and Chapter II, Section 2 of this manual.)
 - Costs are accounted for in accordance with generally accepted accounting principles and are not prohibited by Federal, State or local laws.
 - Costs are authorized in the award made by DCA.
 - Costs are incurred for activities eligible under the CDBG Small Cities Program.
 - All appropriate credits have been applied.

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

B. SUGGESTED ACCOUNTING PROCEDURES, RECORDS AND FILING FORMAT

The accounting issues that your city or county should address to comply with the

state and federal requirements include:

- Organization of the accounting system,
- Fund structure and double entry bookkeeping,
- Uniform Chart of Accounts,
- Coding the chart of accounts, and
- Accounting records and files.

Organization of the Accounting System

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

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

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

Fund Structure and Double Entry Bookkeeping

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

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

Note that a separate checking account for CDBG funds only must also be established. See page 3 of this Manual.

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

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

Uniform Chart of Accounts

In 1997, the Georgia General Assembly passed the Local Government Uniform Chart of Accounts and Reporting Act (HB 491). Beginning in fiscal years ending in 2001, local governments must adopt and use a state published uniform chart in their accounting records; audited financial statements, including Comprehensive Annual Financial Reports (CAFRs); and reports to state agencies.

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

Accounting Records and Suggested Files

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

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

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

1. Establish the **Open Purchase Order File**, which contains purchase orders that have been issued but not filled. These unfilled purchase orders should be filed in sequence according to purchase order number.
2. Establish the **Open Contracts File** with a section for each open contract. Contract summary forms, a copy of the contract, contract invoices, and related correspondence should be filed in each section.
3. Establish the **Pending Payments File**, which contains all invoices and payment vouchers that have been approved for payment. The supporting documentation should be filed by due date with periodic reviews of the file to ensure timely payment.

4. Establish the **Pending Receipts File**, which contains documents to identify payments expected to be received. When the amounts are received, supporting documentation should be attached to the invoice or other form, the transaction should be recorded on the Federal Cash Control Register and posted to the Receivables Subsidiary Ledger, and the funds should be deposited on a timely basis.
5. Establish the **Personnel Payroll File**, which contains a section for each city employee who has worked on CDBG activities. For each employee, the file will contain the following:
 - Personnel Service Rate Computation
 - CDBG Personnel Timesheet (a sample format is included in the Appendix).

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

Items within each section should be filed by date.

6. Establish the **Cash Receipts Register**. This register should be maintained in a loose-leaf binder to document all cash receipts.
7. Establish the **Cash Disbursements Register**. This register should be maintained in a loose-leaf binder to document cash disbursements.
8. **General Journal entries** are prepared to record accounting transactions that do not involve cash receipts or disbursements. Journal entries should be prepared for adjustments and special actions such as CDBG budget, year-end accruals, etc.
9. Establish a **General Ledger** account page for each general ledger account in the chart of accounts. These pages can be maintained in a loose-leaf binder so that new accounts or continuation pages can easily be added.
10. Establish a **Fixed Asset Ledger**. This ledger should be maintained in loose-leaf form to control all fixed assets acquired in whole or in part using CDBG funds.
11. Establish a **Cash Control Register**. Enter the fiscal year at the top. A Separate Cash Control Register should be maintained for each fiscal year.
12. Establish an **Expenditure Summary Report** page for each budget line item. It is possible to combine more than one project on a page, depending on the volume of transactions. These pages should be maintained in loose-leaf form.

13. Establish a **Receivable and Payable Subsidiary Ledger** if advances or loans are made or goods and services are purchased on account. The ledger should be maintained in loose-leaf form. A separate record should be established for each person who has received a loan or advance, and for each individual vendor to whom money is owed.
14. Establish the **Permanent Files**, which should parallel the organization of the aforementioned accounting records, files and reports.

SAMPLE FILING FORMAT

File No. Content

- | | |
|---|---|
| 1 | Grant Application File: <ul style="list-style-type: none"> - Copy of Application - Correspondence about application - Low/moderate income data - Target area surveys |
| 2 | Grant Award File: <ul style="list-style-type: none"> -Award Statement -Special Conditions -Revisions -Correspondence -Grant Adjustment Notices |
| 3 | Drawdown Information: <ul style="list-style-type: none"> -Authorization Agreement for Automatic Deposits -Authorized Signature -Certification -Request for drawdowns |
| 4 | Reports: <ul style="list-style-type: none"> -Quarterly Progress and Expenditures -Annual Program Income Report -Final Wage Compliance Report -Other required reports |
| 5 | Citizen Participation Documentation: <ul style="list-style-type: none"> -Dated Public Hearing Notice(s) -Minutes of hearing(s) |
| 6 | Environmental Review Record (ERR): <ul style="list-style-type: none"> -Environmental Assessment Format II -Public Notice(s) -Public comments and response |

- Finding of Exemption (if applicable)
- Statutory Checklist
- Request for Release of Funds/Certifications
- Release of Funds letter from DCA

- 7 **Equal Opportunity Files:**
- Civil Rights Checklist
 - Beneficiary Data (Both applicants and recipients of direct benefits)
 - Sex (Female Head of Household)
 - Racial and Ethnicity
 - Income
 - Handicapped

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

- 9 **Financial Expenditure Documentation:**
- Invoices
 - Approved payment forms
 - Check copies

10 **Audit Records**

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

SECTION 2: AUDIT REQUIREMENTS

1. Recipients must contract for annual independent audits of their financial operations, including compliance with Federal and State law and regulations. The contracts for independent audit must be done in accordance with OMB Circular A-

133 if the following circumstances occur:

- If recipients expend \$500,000 or more in a year in **total federal funds** (CDBG plus any other federal funds), they must submit an annual audit that should be made in accordance with OMB Circular A-133, the General Accounting Office Government Auditing Standards and the Single Audit Act Amendments of 1996.
 - This audit should also include a Project Cost Schedule and a Source and Application of Funds Schedule.
2. Recipients that expend **less than \$500,000 in a year in total federal** (CDBG plus any other federal funds) awards are exempt from Federal (but not State of Georgia) audit requirements for that year. However, records must be available for review. In these cases a copy of the State Audit as well as the Project Cost Schedule and Source and Application Schedule must be submitted. CDBG funds may be used for pay for these financial schedules.
 3. Recipients are required to submit audits according to State laws and regulations.
 4. Small business concerns and business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in the performance of contracts for audit services awarded with CDBG funds. Recipients shall take the following affirmative action to further their goal:
 - Assure that audit firms owned and controlled by socially and economically disadvantaged individuals as defined in PL 95-507 are used to the fullest extent practicable.
 - Make information on forthcoming opportunities available, and arrange timeframes for the audit so as to encourage and facilitate participation by small or economically disadvantaged firms.
 - Consider in the contract process whether firms competing for larger audits intend to subcontract with small or economically disadvantaged firms.
 - Encourage contracting with small or economically disadvantaged audit firms which have traditionally audited government programs, and in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.
 - Encourage contracting with consortiums of small or economically disadvantaged audit firms as described in paragraph a when a contract is too large for an individual small or economically disadvantaged firm.
 - Use the services and assistance, as appropriate, of the Small Business Administration, the Minority Business Development Agency of the Department of Commerce, and the Community Services Administration in the solicitation

and utilization of small or economically disadvantaged audit firms.

- A copy of all audit reports shall be provided by the Recipient to DCA no later than 30 days after issuance of the reports and no later than one year plus 30 days after the end of the audit period.
5. Audits must include an examination of internal control systems established to ensure compliance with laws and regulations affecting the expenditure of CDBG funds, financial transactions, and accounts and financial statements, and reports of Recipient organizations. These examinations are to determine whether:
- There is effective control over and proper accounting for revenues, expenditures, assets and liabilities.
 - The financial statements are presented fairly in accordance with generally accepted governmental accounting principles.
 - The quarterly reports to DCA and claims for advances contain accurate and reliable financial data, and are presented in accordance with the terms of applicable agreements.
 - CDBG funds are being expended in accordance with the terms of the grant award and those provisions of Federal and State law or DCA regulations that could have a material effect on the financial statements.
6. In order to accomplish the purposes set forth above, a representative number of charges to the CDBG award shall be tested. The test shall be representative of all cost categories that materially affect the award. The test is to determine whether the charges:
- Are necessary and reasonable for the proper administration of the program.
 - Conform to any limitations or exclusions of the CDBG award itself.
 - Were given consistent accounting treatment and applied uniformly to both CDBG assisted and other activities of the Recipient.
 - Were net of applicable credits.
 - Did not include costs properly chargeable to other programs.
 - Were properly recorded (i.e., correct amount and date) and supported by source documentation.
 - Were approved in advance if subject to prior approval.
 - Were incurred in accordance with competitive purchasing procedures if covered by Section 3 of Chapter III of this manual.
 - Were allocated equitably to benefiting activities, including non-CDBG activities.
7. Audits should be made annually. If an acceptable annual audit is completed within a short period of time prior to close out of a CDBG program, DCA will request payment documentation of the unaudited funds and then formally close the grant.
8. If the auditor becomes aware of irregularities in the Recipient organization, the auditor shall promptly notify DCA and Recipient management officials above the level

of involvement. Irregularities include such matters as conflicts of interest, falsification of records and reports, and misappropriation of funds or other assets.

9. The annual audited financial statements shall include:

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

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

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

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

SECTION 3: PROGRAM INCOME

Program income is the gross income earned or received by Recipients from DCA awarded CDBG funded activities. It includes such items as receipts from the sale of real property acquired for non-administrative purposes, rental fees, and retained bid guarantees, and payments of principal and interest on loans made using CDBG funds.

1. Program income generated by a DCA funded grant generally **must be returned** to DCA. However, see item 2 below for active CDBG Recipients. Any Program Income retained by the Recipient must be clearly identified in the records as to date of receipt, nature of receipt, amount of receipt, and specific CDBG award which generated the income.
2. For active Grantees, **program income is considered "cash on hand" for drawdown of funds purposes.** (See Chapter I, Section 6 - "Drawdown of Funds" - in this manual.) However, small receipts of program income may be accumulated up to \$5,000 in combination with other cash on hand.
3. CDBG draws must be deposited in non-interest bearing checking accounts Any interest inadvertently earned on advances is not program income and must be returned to DCA quarterly and may not be used by the Recipient under any circumstances.

4. Proceeds from the sale of real or non-expendable personal property purchased in whole or in part with CDBG funds for the purpose of administering CDBG program must be handled in accordance with Chapter III, Section 6 - "Property Management Standards" - of this manual.
5. Receipts such as refunds of travel advances and overcharges from vendors are not program income but rather constitute decreases in expenditures. They should be used not less than once a month to pay bills on hand and should be reflected as miscellaneous income on the first drawdown form submitted after receipt of the income. If such refunds, in addition to other cash on hand, exceed \$5,000, they should be immediately returned to DCA, in accordance with Chapter I, Section 6 - "Drawdown of Funds" - of this manual. If there is no active CDBG award at the time of receipt of such refunds, DCA should be immediately advised and instructions for disposition of the funds requested.
6. Proceeds from the amortization of CDBG loans that are deposited into a local **DCA approved Revolving Loan Fund** (RLF) does not have to be remitted to DCA or used to offset future CDBG draws. Localities can allow program income to accumulate in the RLF while drawing down CDBG funds for other, unrelated projects. For example, if a locality uses an RLF to make economic development loans to small firms which otherwise would not expand and/or hire additional employees, it could still drawdown CDBG funds to pay for housing rehabilitation projects in a local target area. For more information on this topic, contact the CDBG Section. All Recipients with approved RLFs must comply with all RLF reporting requirements.
7. The Program Income Report found in the Appendix should be submitted annually for the period ending September 30. The report is due by October 30. If no program income is received during the year is not necessary to submit a Program Income Report.

SECTION 4: PROCUREMENT

A: STANDARDS

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

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

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

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

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

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

B. It is national policy to award a fair share of contracts to small and minority business firms. Accordingly, affirmative steps must be taken to assure that small and minority businesses are utilized where possible as sources of supplies, equipment, construction and services. Affirmative steps shall include the following:

a. Including qualified small and minority businesses on solicitation lists.

b. Assuring that small and minority businesses are solicited whenever they are potential sources.

c. When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum small and minority business participation.

d. Where the requirement permits, establishing delivery schedules which will encourage participation by small and minority business.

e. Using the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce and the Community Services Administration as required.

f. If any subcontracts are to be let, requiring the prime contractor to

take the affirmative steps in 1. through 5. above.

g. Grantees shall take similar appropriate affirmative action in support of women's business enterprises.

h. Grantees are encouraged to obtain goods and services from labor surplus areas.

C. **Competition:** All procurement transactions will be conducted in a manner providing full and open competition. Some of the situations considered to be restrictive of competition include but are not limited to:

- (i) Placing unreasonable requirements on firms in order for them to qualify to do business,
- (ii) Requiring unnecessary experience and excessive bonding,
- (iii) Noncompetitive pricing practices between firms or between affiliated companies,
- (iv) Noncompetitive awards to consultants that are on retainer contracts,
- (v) Organizational conflicts of interest,
- (vi) Specifying only a brand name product instead of allowing an equal product to be offered and describing the performance of other relevant requirements of the procurement, and
- (vii) Any arbitrary action in the procurement process.

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

a. Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, set forth minimum essential characteristics and standards to which it must conform to be satisfactory. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other important requirements of a procurement. The specific features of the named brand that must be met by offerors must be clearly stated.

b. Clearly set forth all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

c. Awards shall be made only to responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration must be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

d. Proposed procurement actions must be reviewed by Recipient officials to avoid purchasing unnecessary or duplicative items. Where appropriate, an analysis must be made of lease and purchase alternatives to determine which would be the most economical practical procurement. Consideration should be given to consolidated or breaking out to obtain a more economical purchase. To foster greater economy and efficiency, Recipients are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goals and services.

e. Recipients must perform some type of cost or price analysis concerning every procurement action including contract modifications and must only permit allowable costs to be included.

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

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

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

B: METHODS OF PROCUREMENT

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

1. **Small purchase procedures** which can be used for procurements under \$100,000 (**if allowed by local policy**) and which require that price or rate quotations be obtained from an adequate number of qualified sources. Note that this method is not appropriate for procurement of administrative or professional services.

2. **Public Works Construction: Competitive sealed bids (formal advertising)** where sealed bids are publicly solicited and a firm-fixed-price contract (lump-sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is lower in price.

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

a. A complete, adequate and realistic specification or purchase description is available.

b. Two or more responsible suppliers are willing and able to compete effectively for the grantee's business.

c. The procurement lends itself to a firm-fixed-price contract, and selection of the successful bidder can appropriately be made principally based on price.

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

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

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

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

DCA, under the authority of 24 CFR 570.489(g), has adopted Title 36, Chapter 91 of the Official Code of Georgia, Georgia Public Works Construction Law, for procurement of public works construction projects. The Georgia Municipal Association has published a Guide to the requirements and options available under this state law. The Guide and the text of the law are available on the GMA website at <http://www.gmanet.com/data/pdf/publicwo.pdf>.

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

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

- √ The contract opportunity must be posted in the governing authority's office;
- √ The contract opportunity must be advertised in either the legal organ

- of the government, or on an Internet website of the government entity or one identified by the entity; and
 - √ Contract opportunities must be advertised at least two times:
 - The first advertisement must be at least 4 weeks prior to the bid opening date; and
 - The second advertisement must follow at least 2 weeks after the first advertisement.
- Note:** Advertisements placed on an Internet website should run continuously for at least four weeks.

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

3. **Competitive negotiation** is a method of procurement for professional services where proposals are requested from a number of sources and the Request for Proposal (RFP) or Request for Qualifications (RFQ) is publicized. Negotiations must be conducted with more than one of the sources submitting offers, and either a fixed-price or cost-reimbursable type contract is awarded, as appropriate. Recipients should perform a systematic analysis of each contract item or task to assure adequate service and to offer reasonable opportunities for cost reductions. Competitive negotiation may be used if conditions are not appropriate for the use of formal advertising. If competitive negotiation is used for procurement under a grant, the following requirements apply:
 - a. Proposals must be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The Request for Proposals must be publicized and reasonable requests by other sources to compete must be honored to the maximum extent practicable. "Solicitation" requests by the Recipient must be specifically addressed to a list of more than one potential proposer identified by the City/County. To "publicize" the RFP, the Recipient must also offer the RFP through publication in a newspaper with adequate circulation or publication by other means such that reasonable exposure to potential proposers can be expected.
 - b. The Request for Proposal must identify all significant evaluation factors, including price or cost where required and their relative importance.
 - c. The Recipient must have mechanisms for technical evaluation of proposals received, for determinations of responsible offerors for the purpose of written or oral discussions, and for selection for contract award.
 - d. Award may be made to the responsible offeror whose proposal will be most advantageous to the procuring party, price and other factors considered. Unsuccessful offerors should be notified promptly.
 - e. Recipients may use competitive negotiation procedures for procurement

of Architectural/Engineering professional services, whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.

f. If "competitive negotiation" is not successful, then the Recipient must receive "sole source" approval from DCA before contracting.

Special Note on Procurement for Grant Administration and other Professional Services

Note that this process is not required when contracting with RDCs. These provisions apply, typically, to contracts with private consultants, engineers and architects.

Recipients are advised that CDBG payments for professional services are subject to the "competitive negotiation" requirements of 24 CFR, Part 85 (the "Common Rule", discussed above and included in the Appendix).

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

- ♦ Develop a request for proposal (RFP) which includes an explanation of how proposals will be evaluated, including any "evaluation factors" selected by the applicant. A Request for Qualifications may also be acceptable for engineering procurement.
- ♦ Publicize the RFP. This is most often accomplished by publishing it in the recipient's "legal organ;" The publication must be at least 30-days prior to the deadline for receipt of proposals.
- ♦ Send a letter with copy of RFP to a number of "known providers". When soliciting firms to administer projects, RFP's should be sent to at least 7 known providers. When soliciting engineering/architectural services, RFP's should be sent to at least 10 known providers. As a service to applicants, recipients and others, DCA maintains a list of professionals who have expressed an interest in proposing on CDBG projects. This is not an "approved" list. DCA does not approve or disapprove professionals. This is the applicant or recipient's responsibility;
- ♦ Negotiate with (preferably with at least 2) respondents to the RFP;
- ♦ Prepare documentation (file memo, etc.) which evaluates proposals and establishes reasons (based on criteria in RFP) for contractual recommendations;
- ♦ Consult city or county attorney with above recommendations and proposed contract; and

- ♦ Based upon established reasons and attorney's recommendation, obtain full council/commission approval and execute contract. Letter(s) thanking unsuccessful respondents for making a proposal should then be sent. Based on evaluation criteria contained in the RFP, this letter should state reasons why the respondent was not hired.
4. **Non-competitive** or "sole source" procurement requires prior DCA approval and may be considered when:
 - a. the item or service is available from only one source,
 - b. urgent public need will not allow for the delay caused by advertising,
 - c. although a number of bids were solicited, only one response was received.
 5. All contracts must be made with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration may be given to such matters as contractor integrity, record of past performance, financial and other technical resources, or accessibility to other necessary resources.
 6. Procurement records or files shall provide at least the following pertinent information: Justification for the use of negotiation instead of advertising, contractor selection, and the basis for the cost or price negotiated.
 7. **A system for contract administration must be maintained by the Recipient to assure contractor conformance with terms, conditions, and specifications of the contract or order, and to assure adequate and timely follow-up of all purchases.**

C. CONTRACT REQUIREMENTS

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

1. Contracts other than small purchases must contain such contractual provisions or conditions which will allow for administrative, contractual or legal remedies in instances where contractors violate or breach contract terms, and provide for appropriate sanctions and penalties.
2. All contracts in excess of \$10,000 must contain provisions for terminations "for convenience" by Recipient, including when and how termination may occur and the basis for settlement. In addition, all contracts must describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

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

The Recipient must report all suspected or reported violations to DCA. (See Chapter II, Section 3 - "Labor Standards" - of this manual.)

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

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

These requirements do not apply to the purchases of supplies or material or articles

ordinarily available on the open market. (See Chapter II, Section 3, - "Labor Standards" - of this manual.)

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

SECTION 5: BONDING AND INSURANCE

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

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

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

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

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

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

SECTION 6: PROPERTY MANAGEMENT STANDARDS

Recipients shall use their own property management standards and procedures provided

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

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

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

B. The minimum standards are as follows:

1. When the CDBG award under which the property was acquired is closed out, the Recipient may use the property for any subsequent CDBG activities, or if there is no subsequent CDBG award, for any eligible Community Development activities.
2. When the Recipient no longer needs the property for any eligible Community Development activities, the following regulations apply:
 - a. The Recipient shall request disposition instructions from DCA for all non-expendable property with a unit acquisition cost of \$1,000 or more, for all real property regardless of acquisition cost, and for all expendable personal property with an aggregate fair market value of \$1,000 or more.
 - b. Non-expendable property with a unit acquisition cost of less than \$1,000 and expendable personal property with an aggregate fair market value of less than \$1,000 shall be retained by the Recipient and used or disposed of at his

discretion.

3. The Recipient's property management standards for non-expendable personal property shall provide that:

a. Property records are maintained accurately and include a description of the property, a manufacturer's serial number or other identification number, the CDBG grant number with which it was acquired, the acquisition date and cost, the location, use and condition of the property and the date the information was reported, the unit acquisition cost and the ultimate disposition date.

b. A physical inventory shall be taken and the results reconciled with the property records at least once every two years. Any differences shall be investigated to determine the cause.

4. A control system shall be in effect to ensure adequate safeguards to prevent loss, damage or theft of property. Any loss, damage, or theft shall be investigated and fully documented.

5. Adequate maintenance procedures shall be implemented to keep the property in good condition.

6. Where the Recipient is authorized or required to sell the property, proper sales procedures shall be established which would provide for competition to the extent practicable and result in the highest possible return.

7. Shared use. During the time nonexpendable personal property is held for use on the project or program for which it was acquired, the grantee shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the property was originally acquired. First preference for such other use shall be given to other CDBG projects or programs sponsored by DCA. Second preference shall be given to other programs. User charges should be considered if appropriate.

8. Adequate dwelling and liability insurance coverage must be secured by the Recipient whenever it acquires or manages property.